

## House Bill No. 1823

An act relating to developmental services and mental health; creating ss. 393.135, 394.4593, and 916.1075, F.S.; defining the terms “employee,” “sexual activity,” and “sexual misconduct”; providing that it is a second degree felony for an employee to engage in sexual misconduct with certain developmentally disabled clients, certain mental health patients, or certain forensic clients; providing certain exceptions; requiring certain employees to report sexual misconduct to the central abuse hotline of the Department of Children and Family Services and to the appropriate local law enforcement agency; providing for notification to the inspector general of the Department of Children and Family Services; providing that it is a first degree misdemeanor to knowingly and willfully fail to make a report as required, or to prevent another from doing so, or to submit inaccurate or untruthful information; providing that it is a third degree felony to coerce or threaten another person to alter testimony or a report with respect to an incident of sexual misconduct; providing criminal penalties; amending s. 435.03, F.S.; expanding level 1 screening standards to include criminal offenses related to sexual misconduct with certain developmentally disabled clients, mental health patients, or forensic clients and the reporting of such sexual misconduct; amending s. 435.04, F.S.; expanding level 2 screening standards to include the offenses related to sexual misconduct with certain developmentally disabled clients, mental health patients, or forensic clients and the reporting of such sexual misconduct; reenacting s. 393.067(6)(a), (b), (c), (d), (f), and (g), F.S., relating to background screening and licensure of personnel of intermediate care facilities for the developmentally disabled, for the purpose of incorporating the amendment to s. 435.04, F.S., in references thereto; amending s. 394.4572, F.S.; requiring the employment screening of mental health personnel to include screening as provided under ch. 435, F.S.; amending s. 943.0585, F.S., relating to court-ordered expunction of criminal history records, for the purpose of incorporating the amendment to s. 943.059, F.S., in a reference thereto; providing that certain criminal history records relating to sexual misconduct with developmentally disabled clients, mental health patients, or forensic clients, or the reporting of such sexual misconduct, shall not be expunged; providing that the application for eligibility for expunction certify that the criminal history record does not relate to an offense involving sexual misconduct with certain developmentally disabled clients, mental health patients, or forensic clients, or the reporting of such sexual misconduct; amending s. 943.059, F.S., relating to court-ordered sealing of criminal history records, for the purpose of incorporating the amendment to s. 943.0585, F.S., in a reference thereto; providing that certain criminal history records relating to sexual misconduct with developmentally disabled clients, mental health patients, or forensic clients, or the reporting of such sexual misconduct, shall not be sealed; providing that the application for eligibility for sealing certify that the criminal history record

does not relate to an offense involving sexual misconduct with certain developmentally disabled clients, mental health patients, or forensic clients, or the reporting of such sexual misconduct; amending s. 400.215, F.S., and reenacting paragraphs (b) and (c) of subsection (2) and subsection (3), relating to background screening requirements for certain nursing home personnel, for the purpose of incorporating the amendments to ss. 435.03 and 435.04, F.S., in references thereto; correcting a cross reference; amending s. 400.964, F.S., and reenacting subsections (1), (2), and (7), relating to background screening requirements for certain personnel employed by intermediate care facilities for the developmentally disabled, for the purpose of incorporating the amendments to ss. 435.03 and 435.04, F.S., in references thereto; correcting a cross reference; amending s. 435.045, F.S., and reenacting paragraph (a) of subsection (1), relating to requirements for the placement of dependent children, for the purpose of incorporating the amendment to s. 435.04, F.S., in a reference thereto; correcting a cross reference; reenacting ss. 400.414(1)(f) and (g), 400.4174, 400.509(4)(a), (b), (c), (d), (f), and (g), 400.556(2)(c), 400.6065(1), (2), and (4), 400.980(4)(a), (b), (c), (d), (f), and (g), 409.175(2)(k), 409.907(8)(d), 435.05(1) and (3), 744.3135, and 985.04(2), F.S., relating to denial, revocation, or suspension of license to operate an assisted living facility; background screening requirements for certain personnel employed by assisted living facilities; registration of particular home health care service providers; denial, suspension, or revocation of license to operate adult day care centers; background screening requirements for certain hospice personnel; background screening requirements for registrants of the health care service pools; the definition of “screening” in connection with the licensure of family foster homes, residential child-caring agencies, and child-placing agencies; background screening requirements of Medicaid providers; employment of persons in positions requiring background screening; credit and criminal investigations of guardians; oaths, records, and confidential information pertaining to juvenile offenders, respectively, for the purpose of incorporating the amendments to ss. 435.03 and 435.04, F.S., in references thereto; reenacting ss. 400.512, 400.619(4), 400.6194(1), 400.953, 409.912(32), 435.07(4), 464.018(1)(e), 744.309(3), 744.474(12), and 985.407(4), F.S., relating to background screening of home health agency personnel, nurse registry personnel, companions, and homemakers; application and renewal of adult family-care home provider licenses; relating to denial, revocation, or suspension of adult family-care home provider license; background screening of home medical equipment provider personnel, background screening requirements for certain persons responsible for managed care plans; exemptions from disqualification from employment; denial of nursing license and disciplinary actions against such licensees; disqualification of guardians; removal of guardians; background screening requirements for certain Department of Juvenile Justice personnel, respectively, for the purpose of incorporating the amendment to s. 435.03, F.S., in references thereto; reenacting ss. 39.001(2)(b), 39.821(1), 110.1127(3)(a) and (c), 112.0455(12)(a), 381.0059(1), (2), and (4),

381.60225(1)(a), (b), (c), (d), (f), and (g), 383.305(7)(a), (b), (c), (d), (f), and (g), 390.015(3)(a), (b), (c), (d), (f), and (g), 394.875(13)(a), (b), (c), (d), (f), and (g), 395.0055(1), (2), (3), (4), (6), and (8), 395.0199(4)(a), (b), (c), (d), (f), and (g), 397.451(1)(a), 400.071(4)(a), (b), (c), (d), and (f), 400.471(4)(a), (b), (c), (d), (f), and (g), 400.506(2)(a), (b), (c), (d), (f), and (g), 400.5572, 400.607(3)(a), 400.801(4)(a), (b), (c), (d), (f), and (g), 400.805(3)(a), (b), (c), (d), (f), and (g), 400.906(5)(a), (b), (c), (d), (f), and (g), 400.931(5)(a), (b), (c), (e), and (f), 400.962(10)(a), (b), (c), (d), and (f), 400.991(7)(b) and (d), 402.302(2)(e), 402.305(2)(a), 402.3054(3), 483.30(2)(a), (b), (c), (d), (f), and (g), 483.101(2)(a), (b), (c), (d), (f), and (g), 744.1085(5), 984.01(2)(b), 985.01(2)(b), 1002.36(7)(a) and (b), F.S., relating to background screening requirements for certain Department of Children and Family Services personnel; qualifications of guardians ad litem; security checks of certain public officers and employees; background screening requirements of certain laboratory personnel in connection with the Drug-Free Workplace Act; background screening requirements for school health services personnel; background screening of certain personnel of the public health system; background screening and licensure of birth center personnel; background screening and licensure of abortion clinic personnel; background screening of mental health personnel; background screening and licensure of personnel of crisis stabilization units, residential treatment facilities, and residential treatment centers for children and adolescents; background screening and licensure of personnel of hospitals, ambulatory surgical centers, and mobile surgical facilities; background screening of certain personnel in connection with registration for private utilization reviews; background screening of certain service provider personnel; background screening and licensure of certain long-term care facility personnel; background screening and licensure of certain home health agency personnel; background screening and licensure of nurse registry applicants; background screening of certain adult day care center personnel; denial or revocation of hospice license; background screening and licensure of certain transitional living facility personnel; background screening and licensure of certain prescribed pediatric extended care center personnel; background screening and licensure of certain home medical equipment provider personnel; background screening and licensure of certain personnel of intermediate care facilities for the developmentally disabled; background screening and licensure of health care clinic personnel; the definition of "child care facility" in connection with background screening of operators; background screening requirements for personnel of child care facilities; background screening requirements for child enrichment service providers; background screening and licensure of certain personnel of multiphasic health testing centers; background screening and licensure of certain clinical laboratory personnel; regulation of professional guardians; background screening of certain Department of Juvenile Justice and Department of Children and Family Services personnel in connection with programs for children and families in need of services; background screening of certain Department of Juvenile Justice and Department of Children and Family Services personnel in connection with

juvenile justice programs, background screening of personnel of the Florida School for the Deaf and the Blind, respectively, for the purposes of incorporating the amendment to s. 435.04, F.S., in references thereto; reenacting s. 943.0582(2)(a) and (6), F.S., relating to prearrest, postarrest, or teen court diversion program expunction for the purpose of incorporating the amendments to ss. 943.0585 and 943.059, F.S., in references thereto; reenacting s. 943.053(7), (8), and (9), F.S., relating to dissemination of criminal justice information, for the purpose of incorporating the amendment to s. 943.059, F.S., in references thereto; providing applicability; amending s. 20.19, F.S.; removing the developmental disabilities program from the Department of Children and Family Services; creating s. 20.197, F.S.; establishing the Agency for Persons with Disabilities for the purpose of providing services to persons with developmental disabilities, including institutional services; directing the agency to execute interagency agreements with the Agency for Health Care Administration for the financial management of the Medicaid waivers and the Department of Children and Family Services for administrative support; amending s. 393.063, F.S.; updating definitions and deleting obsolete definitions; amending s. 393.064, F.S.; deleting requirements that the agency's legislative budget request include funding for prevention; amending s. 393.0655, F.S.; requiring Level 2 screening for specified persons and service providers; providing a limitation on the screening requirement in certain circumstances involving children between 12 and 18 years of age; amending s. 393.066, F.S.; removing requirement that services be administered and approved by the districts; modifying a requirement to provide certain services; deleting a requirement for a 5-year plan relating to community-based services; adding a requirement to assist clients in gaining employment; repealing obsolete requirement authorizing the state to lease or construct residential facilities; deleting authorization to adopt rules ensuring compliance with federal rules; amending s. 393.0661, F.S.; authorizing the Agency for Disabled Persons to enter into certain contracts; providing for reimbursement to certain providers of services to the developmentally disabled pursuant a methodology; requiring the Agency for Health Care administration, in consultation with the Agency for Disabled Persons, to adopt rules related to such methodology; authorizing the Agency for Health Care Administration to adopt emergency rules in certain circumstances; limiting the applicability of such emergency rules; authorizing the Agency for Health Care Administration, in consultation with the Agency for Disabled Persons, to make certain adjustments necessary to comply with the availability of appropriations; deleting an obsolete provision; modifying provisions relating to an assessment instrument; adding requirements for adoption of rate methodologies; amending s. 393.068, F.S.; making service provision subject to available resources; updating list of services to be provided; deleting provision referring to 5-year plans; amending s. 393.0695, F.S.; requiring in-home subsidy amounts to be reassessed annually; amending s. 393.11, F.S.; deleting provisions referring to districts, department programs, and the nonexistent Department of Labor and Em-

ployment Security; amending s. 393.13, F.S.; deleting obsolete provisions; adding legislative intent relating to reducing the use of sheltered workshops; amending s. 393.17, F.S.; authorizing the agency to contract for the certification of behavioral analysts; deleting provisions relating to a certification program and provisions allowing fees; amending s. 393.22, F.S.; deleting prohibition preventing transfer of funds and ensuring financial commitment for specified developmental conditions; amending s. 393.502, F.S.; removing reference to districts; deleting a provision permitting appointment of family care council members if the Governor does not act; amending ss. 408.301 and 408.302, F.S.; amending legislative intent to add the Agency for Persons with Disabilities and the Department of Elderly Affairs as agencies that the Agency for Health Care Administration must enter into interagency agreement with regarding persons with special needs; amending s. 409.906, F.S.; clarifying powers of the Agency for Health Care Administration with respect to limiting coverage for certain services; repealing s. 393.14, F.S.; requiring a multiyear plan; repealing s. 393.165, F.S., relating to ICF/DDs; repealing s. 393.166, F.S., relating to homes for special services; repealing s. 393.505, F.S., relating to comprehensive day treatment service projects; transferring programs and institutions relating to developmental disabilities from the Department of Children and Family Services to the Agency for Persons with Disabilities; providing duties of those agencies as well as the Department of Management Services; providing for substitution of parties in administrative and judicial proceedings; providing duties of the Office of Program Policy Analysis and Government Accountability; providing for a report; amending ss. 92.53, 397.405, 400.464, 419.001, 914.16, 914.17, 918.16, 943.0585, and 943.059, F.S.; conforming cross references; amending ss. 393.0641, 393.065, 393.0651, 393.067, 393.0673, 393.0675, 393.0678, 393.071, 393.075, 393.115, 393.12, 393.125, 393.15, 393.501, 393.503, and 393.506, F.S.; conforming to the changes made by the act; providing applicability; providing for contracts for eligibility determination functions; providing for review of eligibility contracts by the Legislative Budget Commission in certain instances; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 393.135, Florida Statutes, is created to read:

393.135 Sexual misconduct prohibited; reporting required; penalties.—

(1) As used in this section, the term:

(a) “Employee” includes any paid staff member, volunteer, or intern of the agency or the department; any person under contract with the agency or the department; and any person providing care or support to a client on behalf of the department or its providers.

(b) “Sexual activity” means:

1. Fondling the genital area, groin, inner thighs, buttocks, or breasts of a person.

2. The oral, anal, or vaginal penetration by or union with the sexual organ of another or the anal or vaginal penetration of another by any other object.

3. Intentionally touching in a lewd or lascivious manner the breasts, genitals, the genital area, or buttocks, or the clothing covering them, of a person, or forcing or enticing a person to touch the perpetrator.

4. Intentionally masturbating in the presence of another person.

5. Intentionally exposing the genitals in a lewd or lascivious manner in the presence of another person.

6. Intentionally committing any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity in the presence of a victim.

(c) “Sexual misconduct” means any sexual activity between an employee and a client, regardless of the consent of the client. The term does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of duty by an employee.

(2) An employee who engages in sexual misconduct with an individual with a developmental disability who:

(a) Is in the custody of the department;

(b) Resides in a residential facility, including any comprehensive transitional education program, developmental services institution, foster care facility, group home facility, intermediate care facility for the developmentally disabled, or residential habilitation center; or

(c) Receives services from a family care program

commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. An employee may be found guilty of violating this subsection without having committed the crime of sexual battery.

(3) The consent of the client to sexual activity is not a defense to prosecution under this section.

(4) This section does not apply to an employee who:

(a) Is legally married to the client; or

(b) Has no reason to believe that the person with whom the employee engaged in sexual misconduct is a client receiving services as described in subsection (2).

(5) An employee who witnesses sexual misconduct, or who otherwise knows or has reasonable cause to suspect that a person has engaged in sexual misconduct, shall immediately report the incident to the department's central abuse hotline and to the appropriate local law enforcement agency. Such employee shall also prepare, date, and sign an independent report that specifically describes the nature of the sexual misconduct, the location and time of the incident, and the persons involved. The employee shall deliver the report to the supervisor or program director, who is responsible for providing copies to the department's inspector general. The inspector general shall immediately conduct an appropriate administrative investigation, and, if there is probable cause to believe that sexual misconduct has occurred, the inspector general shall notify the state attorney in the circuit in which the incident occurred.

(6)(a) Any person who is required to make a report under this section and who knowingly or willfully fails to do so, or who knowingly or willfully prevents another person from doing so, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Any person who knowingly or willfully submits inaccurate, incomplete, or untruthful information with respect to a report required under this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Any person who knowingly or willfully coerces or threatens any other person with the intent to alter testimony or a written report regarding an incident of sexual misconduct commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(7) The provisions and penalties set forth in this section are in addition to any other civil, administrative, or criminal action provided by law which may be applied against an employee.

Section 2. Section 394.4593, Florida Statutes, is created to read:

394.4593 Sexual misconduct prohibited; reporting required; penalties.—

(1) As used in this section, the term:

(a) "Employee" includes any paid staff member, volunteer, or intern of the department; any person under contract with the department; and any person providing care or support to a client on behalf of the department or its providers.

(b) "Sexual activity" means:

1. Fondling the genital area, groin, inner thighs, buttocks, or breasts of a person.

2. The oral, anal, or vaginal penetration by or union with the sexual organ of another or the anal or vaginal penetration of another by any other object.

3. Intentionally touching in a lewd or lascivious manner the breasts, genitals, the genital area, or buttocks, or the clothing covering them, of a person, or forcing or enticing a person to touch the perpetrator.

4. Intentionally masturbating in the presence of another person.

5. Intentionally exposing the genitals in a lewd or lascivious manner in the presence of another person.

6. Intentionally committing any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity in the presence of a victim.

(c) "Sexual misconduct" means any sexual activity between an employee and a patient, regardless of the consent of the patient. The term does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of duty by an employee.

(2) An employee who engages in sexual misconduct with a patient who:

(a) Is in the custody of the department; or

(b) Resides in a receiving facility or a treatment facility, as those terms are defined in s. 394.455,

commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. An employee may be found guilty of violating this subsection without having committed the crime of sexual battery.

(3) The consent of the patient to sexual activity is not a defense to prosecution under this section.

(4) This section does not apply to an employee who:

(a) Is legally married to the patient; or

(b) Has no reason to believe that the person with whom the employee engaged in sexual misconduct is a patient receiving services as described in subsection (2).

(5) An employee who witnesses sexual misconduct, or who otherwise knows or has reasonable cause to suspect that a person has engaged in sexual misconduct, shall immediately report the incident to the department's central abuse hotline and to the appropriate local law enforcement agency. Such employee shall also prepare, date, and sign an independent report that specifically describes the nature of the sexual misconduct, the location and time of the incident, and the persons involved. The employee shall deliver the report to the supervisor or program director, who is responsible for providing copies to the department's inspector general. The inspector general shall immediately conduct an appropriate administrative investigation, and, if there is probable cause to believe that sexual misconduct has occurred, the inspector general shall notify the state attorney in the circuit in which the incident occurred.



(6)(a) Any person who is required to make a report under this section and who knowingly or willfully fails to do so, or who knowingly or willfully prevents another person from doing so, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Any person who knowingly or willfully submits inaccurate, incomplete, or untruthful information with respect to a report required under this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Any person who knowingly or willfully coerces or threatens any other person with the intent to alter testimony or a written report regarding an incident of sexual misconduct commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(7) The provisions and penalties set forth in this section are in addition to any other civil, administrative, or criminal action provided by law which may be applied against an employee.

Section 3. Section 916.1075, Florida Statutes, is created to read:

916.1075 Sexual misconduct prohibited; reporting required; penalties.—

(1) As used in this section, the term:

(a) “Employee” includes any paid staff member, volunteer, or intern of the department; any person under contract with the department; and any person providing care or support to a client on behalf of the department or its providers.

(b) “Sexual activity” means:

1. Fondling the genital area, groin, inner thighs, buttocks, or breasts of a person.

2. The oral, anal, or vaginal penetration by or union with the sexual organ of another or the anal or vaginal penetration of another by any other object.

3. Intentionally touching in a lewd or lascivious manner the breasts, genitals, the genital area, or buttocks, or the clothing covering them, of a person, or forcing or enticing a person to touch the perpetrator.

4. Intentionally masturbating in the presence of another person.

5. Intentionally exposing the genitals in a lewd or lascivious manner in the presence of another person.

6. Intentionally committing any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity in the presence of a victim.

(c) “Sexual misconduct” means any sexual activity between an employee and a client, regardless of the consent of the client. The term does not include

an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of duty by an employee.

(2) An employee who engages in sexual misconduct with a client who resides in a civil or forensic facility commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. An employee may be found guilty of violating this subsection without having committed the crime of sexual battery.

(3) The consent of the client to sexual activity is not a defense to prosecution under this section.

(4) This section does not apply to an employee who:

(a) Is legally married to the client; or

(b) Has no reason to believe that the person with whom the employee engaged in sexual misconduct is a client receiving services as described in subsection (2).

(5) An employee who witnesses sexual misconduct, or who otherwise knows or has reasonable cause to suspect that a person has engaged in sexual misconduct, shall immediately report the incident to the department's central abuse hotline and to the appropriate local law enforcement agency. Such employee shall also prepare, date, and sign an independent report that specifically describes the nature of the sexual misconduct, the location and time of the incident, and the persons involved. The employee shall deliver the report to the supervisor or program director, who is responsible for providing copies to the department's inspector general. The inspector general shall immediately conduct an appropriate administrative investigation, and, if there is probable cause to believe that sexual misconduct has occurred, the inspector general shall notify the state attorney in the circuit in which the incident occurred.

(6)(a) Any person who is required to make a report under this section and who knowingly or willfully fails to do so, or who knowingly or willfully prevents another person from doing so, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Any person who knowingly or willfully submits inaccurate, incomplete, or untruthful information with respect to a report required under this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Any person who knowingly or willfully coerces or threatens any other person with the intent to alter testimony or a written report regarding an incident of sexual misconduct commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(7) The provisions and penalties set forth in this section are in addition to any other civil, administrative, or criminal action provided by law which may be applied against an employee.

Section 4. Subsection (2) of section 435.03, Florida Statutes, is amended to read:

435.03 Level 1 screening standards.—

(2) Any person for whom employment screening is required by statute must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under any of the following provisions of the Florida Statutes or under any similar statute of another jurisdiction:

(a) Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.

(b) Section 394.4593, relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.

(c)(a) Section 415.111, relating to abuse, neglect, or exploitation of a vulnerable adult.

(d)(b) Section 782.04, relating to murder.

(e)(e) Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.

(f)(d) Section 782.071, relating to vehicular homicide.

(g)(e) Section 782.09, relating to killing of an unborn child by injury to the mother.

(h)(f) Section 784.011, relating to assault, if the victim of the offense was a minor.

(i)(g) Section 784.021, relating to aggravated assault.

(j)(h) Section 784.03, relating to battery, if the victim of the offense was a minor.

(k)(i) Section 784.045, relating to aggravated battery.

(l)(j) Section 787.01, relating to kidnapping.

(m)(k) Section 787.02, relating to false imprisonment.

(n)(l) Section 794.011, relating to sexual battery.

(o)(m) Former s. 794.041, relating to prohibited acts of persons in familial or custodial authority.

(p)(n) Chapter 796, relating to prostitution.

(q)(o) Section 798.02, relating to lewd and lascivious behavior.

(r)(p) Chapter 800, relating to lewdness and indecent exposure.

~~(s)(q)~~ Section 806.01, relating to arson.

~~(t)(r)~~ Chapter 812, relating to theft, robbery, and related crimes, if the offense was a felony.

~~(u)(s)~~ Section 817.563, relating to fraudulent sale of controlled substances, only if the offense was a felony.

~~(v)(t)~~ Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.

~~(w)(u)~~ Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.

~~(x)(v)~~ Section 825.103, relating to exploitation of an elderly person or disabled adult, if the offense was a felony.

~~(y)(w)~~ Section 826.04, relating to incest.

~~(z)(x)~~ Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.

~~(aa)(y)~~ Section 827.04, relating to contributing to the delinquency or dependency of a child.

~~(bb)(z)~~ Former s. 827.05, relating to negligent treatment of children.

~~(cc)(aa)~~ Section 827.071, relating to sexual performance by a child.

~~(dd)(bb)~~ Chapter 847, relating to obscene literature.

~~(ee)(ee)~~ Chapter 893, relating to drug abuse prevention and control, only if the offense was a felony or if any other person involved in the offense was a minor.

(ff) Section 916.0175, relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.

Section 5. Subsection (2) of section 435.04, Florida Statutes, is amended to read:

435.04 Level 2 screening standards.—

(2) The security background investigations under this section must ensure that no persons subject to the provisions of this section have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under any of the following provisions of the Florida Statutes or under any similar statute of another jurisdiction:

(a) Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.

(b) Section 394.4593, relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.

- ~~(c)~~(a) Section 415.111, relating to adult abuse, neglect, or exploitation of aged persons or disabled adults.
- ~~(d)~~(b) Section 782.04, relating to murder.
- ~~(e)~~(e) Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.
- ~~(f)~~(d) Section 782.071, relating to vehicular homicide.
- ~~(g)~~(e) Section 782.09, relating to killing of an unborn child by injury to the mother.
- ~~(h)~~(f) Section 784.011, relating to assault, if the victim of the offense was a minor.
- ~~(i)~~(g) Section 784.021, relating to aggravated assault.
- ~~(j)~~(h) Section 784.03, relating to battery, if the victim of the offense was a minor.
- ~~(k)~~(i) Section 784.045, relating to aggravated battery.
- ~~(l)~~(j) Section 784.075, relating to battery on a detention or commitment facility staff.
- ~~(m)~~(k) Section 787.01, relating to kidnapping.
- ~~(n)~~(l) Section 787.02, relating to false imprisonment.
- ~~(o)~~(m) Section 787.04(2), relating to taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings.
- ~~(p)~~(n) Section 787.04(3), relating to carrying a child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to the designated person.
- ~~(q)~~(o) Section 790.115(1), relating to exhibiting firearms or weapons within 1,000 feet of a school.
- ~~(r)~~(p) Section 790.115(2)(b), relating to possessing an electric weapon or device, destructive device, or other weapon on school property.
- ~~(s)~~(q) Section 794.011, relating to sexual battery.
- ~~(t)~~(r) Former s. 794.041, relating to prohibited acts of persons in familial or custodial authority.
- ~~(u)~~(s) Chapter 796, relating to prostitution.
- ~~(v)~~(t) Section 798.02, relating to lewd and lascivious behavior.
- ~~(w)~~(u) Chapter 800, relating to lewdness and indecent exposure.

- ~~(x)(v)~~ Section 806.01, relating to arson.
- ~~(y)(w)~~ Chapter 812, relating to theft, robbery, and related crimes, if the offense is a felony.
- ~~(z)(x)~~ Section 817.563, relating to fraudulent sale of controlled substances, only if the offense was a felony.
- ~~(aa)(y)~~ Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
- ~~(bb)(z)~~ Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.
- ~~(cc)(aa)~~ Section 825.103, relating to exploitation of an elderly person or disabled adult, if the offense was a felony.
- ~~(dd)(bb)~~ Section 826.04, relating to incest.
- ~~(ee)(cc)~~ Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.
- ~~(ff)(dd)~~ Section 827.04, relating to contributing to the delinquency or dependency of a child.
- ~~(gg)(ee)~~ Former s. 827.05, relating to negligent treatment of children.
- ~~(hh)(ff)~~ Section 827.071, relating to sexual performance by a child.
- ~~(ii)(gg)~~ Section 843.01, relating to resisting arrest with violence.
- ~~(jj)(hh)~~ Section 843.025, relating to depriving a law enforcement, correctional, or correctional probation officer means of protection or communication.
- ~~(kk)(ii)~~ Section 843.12, relating to aiding in an escape.
- ~~(ll)(jj)~~ Section 843.13, relating to aiding in the escape of juvenile inmates in correctional institutions.
- ~~(mm)(kk)~~ Chapter 847, relating to obscene literature.
- ~~(nn)(ll)~~ Section 874.05(1), relating to encouraging or recruiting another to join a criminal gang.
- ~~(oo)(mm)~~ Chapter 893, relating to drug abuse prevention and control, only if the offense was a felony or if any other person involved in the offense was a minor.
- (pp) Section 916.0175, relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.
- ~~(qq)(nn)~~ Section 944.35(3), relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.

~~(rr)(00)~~ Section 944.46, relating to harboring, concealing, or aiding an escaped prisoner.

~~(ss)(pp)~~ Section 944.47, relating to introduction of contraband into a correctional facility.

~~(tt)(qq)~~ Section 985.4045, relating to sexual misconduct in juvenile justice programs.

~~(uu)(rr)~~ Section 985.4046, relating to contraband introduced into detention facilities.

Section 6. For the purpose of incorporating the amendment to section 435.04, Florida Statutes, in references thereto, paragraphs (a), (b), (c), (d), (f), and (g) of subsection (6) of section 393.067, Florida Statutes, are reenacted to read:

393.067 Licensure of residential facilities and comprehensive transitional education programs.—

(6) Each applicant for licensure as an intermediate care facility for the developmentally disabled must comply with the following requirements:

(a) Upon receipt of a completed, signed, and dated application, the agency shall require background screening, in accordance with the level 2 standards for screening set forth in chapter 435, of the managing employee, or other similarly titled individual who is responsible for the daily operation of the facility, and of the financial officer, or other similarly titled individual who is responsible for the financial operation of the center, including billings for resident care and services. The applicant must comply with the procedures for level 2 background screening as set forth in chapter 435, as well as the requirements of s. 435.03(3).

(b) The agency may require background screening of any other individual who is an applicant if the agency has probable cause to believe that he or she has been convicted of a crime or has committed any other offense prohibited under the level 2 standards for screening set forth in chapter 435.

(c) Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years in compliance with any other health care licensure requirements of this state is acceptable in fulfillment of the requirements of paragraph (a).

(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the Department of Law Enforcement background check, but the agency has not yet received background screening results from the Federal Bureau of Investigation, or a request for a disqualification exemption has been submitted to the agency as set forth in chapter 435, but a response has not yet been issued. A standard license may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all

standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation. However, the person may not continue to serve if the report indicates any violation of background screening standards and a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

(f) Each applicant must submit to the agency a description and explanation of any conviction of an offense prohibited under the level 2 standards of chapter 435 by a member of the board of directors of the applicant, its officers, or any individual owning 5 percent or more of the applicant. This requirement does not apply to a director of a not-for-profit corporation or organization if the director serves solely in a voluntary capacity for the corporation or organization, does not regularly take part in the day-to-day operational decisions of the corporation or organization, receives no remuneration for his or her services on the corporation or organization's board of directors, and has no financial interest and has no family members with a financial interest in the corporation or organization, provided that the director and the not-for-profit corporation or organization include in the application a statement affirming that the director's relationship to the corporation satisfies the requirements of this paragraph.

(g) A license may not be granted to an applicant if the applicant or managing employee has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to, any offense prohibited under the level 2 standards for screening set forth in chapter 435, unless an exemption from disqualification has been granted by the agency as set forth in chapter 435.

Section 7. Paragraph (a) of subsection (1) of section 394.4572, Florida Statutes, is amended to read:

394.4572 Screening of mental health personnel.—

(1)(a) The department and the Agency for Health Care Administration shall require employment screening for mental health personnel using the standards for level 2 screening set forth in chapter 435. "Mental health personnel" includes all program directors, professional clinicians, staff members, and volunteers working in public or private mental health programs and facilities who have direct contact with unmarried patients under the age of 18 years. For purposes of this chapter, employment screening of mental health personnel shall also include, but is not limited to, employment screening as provided under chapter 435.

Section 8. Section 943.0585, Florida Statutes, is amended to read:

943.0585 Court-ordered expunction of criminal history records.—The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this



section. Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and received a certificate of eligibility for expunction pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or a violation enumerated in s. 907.041 may not be expunged, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, the offense as a delinquent act. The court may only order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to expunction, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the sole discretion of the court.

(1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.—Each petition to a court to expunge a criminal history record is complete only when accompanied by:

(a) A certificate of eligibility for expunction issued by the department pursuant to subsection (2).

(b) The petitioner's sworn statement attesting that the petitioner:

1. Has never, prior to the date on which the petition is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation or adjudicated delinquent for committing a felony or a misdemeanor specified in s. 943.051(3)(b).

2. Has not been adjudicated guilty of, or adjudicated delinquent for committing, any of the acts stemming from the arrest or alleged criminal activity to which the petition pertains.

3. Has never secured a prior sealing or expunction of a criminal history record under this section, former s. 893.14, former s. 901.33, or former s. 943.058, or from any jurisdiction outside the state.

4. Is eligible for such an expunction to the best of his or her knowledge or belief and does not have any other petition to expunge or any petition to seal pending before any court.

Any person who knowingly provides false information on such sworn statement to the court commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) **CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.**—Prior to petitioning the court to expunge a criminal history record, a person seeking to expunge a criminal history record shall apply to the department for a certificate of eligibility for expunction. The department shall, by rule adopted pursuant to chapter 120, establish procedures pertaining to the application for and issuance of certificates of eligibility for expunction. The department shall issue a certificate of eligibility for expunction to a person who is the subject of a criminal history record if that person:

(a) Has obtained, and submitted to the department, a written, certified statement from the appropriate state attorney or statewide prosecutor which indicates:

1. That an indictment, information, or other charging document was not filed or issued in the case.

2. That an indictment, information, or other charging document, if filed or issued in the case, was dismissed or nolle prosequi by the state attorney or statewide prosecutor, or was dismissed by a court of competent jurisdiction.

3. That the criminal history record does not relate to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or a violation enumerated in s. 907.041, where the defendant was found guilty of, or pled guilty or nolo contendere to any such offense, or that the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, such an offense as a delinquent act, without regard to whether adjudication was withheld.

(b) Remits a \$75 processing fee to the department for placement in the Department of Law Enforcement Operating Trust Fund, unless such fee is waived by the executive director.

(c) Has submitted to the department a certified copy of the disposition of the charge to which the petition to expunge pertains.

(d) Has never, prior to the date on which the application for a certificate of eligibility is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation or adjudicated delinquent for committing a felony or a misdemeanor specified in s. 943.051(3)(b).

(e) Has not been adjudicated guilty of, or adjudicated delinquent for committing, any of the acts stemming from the arrest or alleged criminal activity to which the petition to expunge pertains.

(f) Has never secured a prior sealing or expunction of a criminal history record under this section, former s. 893.14, former s. 901.33, or former s. 943.058.

(g) Is no longer under court supervision applicable to the disposition of the arrest or alleged criminal activity to which the petition to expunge pertains.

(h) Is not required to wait a minimum of 10 years prior to being eligible for an expunction of such records because all charges related to the arrest or criminal activity to which the petition to expunge pertains were dismissed prior to trial, adjudication, or the withholding of adjudication. Otherwise, such criminal history record must be sealed under this section, former s. 893.14, former s. 901.33, or former s. 943.058 for at least 10 years before such record is eligible for expunction.

### (3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.—

(a) In judicial proceedings under this section, a copy of the completed petition to expunge shall be served upon the appropriate state attorney or the statewide prosecutor and upon the arresting agency; however, it is not necessary to make any agency other than the state a party. The appropriate state attorney or the statewide prosecutor and the arresting agency may respond to the court regarding the completed petition to expunge.

(b) If relief is granted by the court, the clerk of the court shall certify copies of the order to the appropriate state attorney or the statewide prosecutor and the arresting agency. The arresting agency is responsible for forwarding the order to any other agency to which the arresting agency disseminated the criminal history record information to which the order pertains. The department shall forward the order to expunge to the Federal Bureau of Investigation. The clerk of the court shall certify a copy of the order to any other agency which the records of the court reflect has received the criminal history record from the court.

(c) For an order to expunge entered by a court prior to July 1, 1992, the department shall notify the appropriate state attorney or statewide prosecutor of an order to expunge which is contrary to law because the person who is the subject of the record has previously been convicted of a crime or comparable ordinance violation or has had a prior criminal history record sealed or expunged. Upon receipt of such notice, the appropriate state attorney or statewide prosecutor shall take action, within 60 days, to correct the record and petition the court to void the order to expunge. The department shall seal the record until such time as the order is voided by the court.

(d) On or after July 1, 1992, the department or any other criminal justice agency is not required to act on an order to expunge entered by a court when such order does not comply with the requirements of this section. Upon receipt of such an order, the department must notify the issuing court, the appropriate state attorney or statewide prosecutor, the petitioner or the petitioner's attorney, and the arresting agency of the reason for noncompliance. The appropriate state attorney or statewide prosecutor shall take action within 60 days to correct the record and petition the court to void the

order. No cause of action, including contempt of court, shall arise against any criminal justice agency for failure to comply with an order to expunge when the petitioner for such order failed to obtain the certificate of eligibility as required by this section or such order does not otherwise comply with the requirements of this section.

(4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any criminal history record of a minor or an adult which is ordered expunged by a court of competent jurisdiction pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record; except that any criminal history record in the custody of the department must be retained in all cases. A criminal history record ordered expunged that is retained by the department is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and not available to any person or entity except upon order of a court of competent jurisdiction. A criminal justice agency may retain a notation indicating compliance with an order to expunge.

(a) The person who is the subject of a criminal history record that is expunged under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the expunged record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;
2. Is a defendant in a criminal prosecution;
3. Concurrently or subsequently petitions for relief under this section or s. 943.059;
4. Is a candidate for admission to The Florida Bar;
5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. 110.1127(3), s. 393.063(15), s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s. 916.106(10) and (13), s. 985.407, or chapter 400; or
6. Is seeking to be employed or licensed by the Office of Teacher Education, Certification, Staff Development, and Professional Practices of the Department of Education, any district school board, or any local governmental entity that licenses child care facilities.

(b) Subject to the exceptions in paragraph (a), a person who has been granted an expunction under this section, former s. 893.14, former s. 901.33, or former s. 943.058 may not be held under any provision of law of this state to commit perjury or to be otherwise liable for giving a false statement by reason of such person's failure to recite or acknowledge an expunged criminal history record.

(c) Information relating to the existence of an expunged criminal history record which is provided in accordance with paragraph (a) is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the department shall disclose the existence of a criminal history record ordered expunged to the entities set forth in subparagraphs (a)1., 4., 5., and 6. for their respective licensing and employment purposes, and to criminal justice agencies for their respective criminal justice purposes. It is unlawful for any employee of an entity set forth in subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., or subparagraph (a)6. to disclose information relating to the existence of an expunged criminal history record of a person seeking employment or licensure with such entity or contractor, except to the person to whom the criminal history record relates or to persons having direct responsibility for employment or licensure decisions. Any person who violates this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5) STATUTORY REFERENCES.—Any reference to any other chapter, section, or subdivision of the Florida Statutes in this section constitutes a general reference under the doctrine of incorporation by reference.

Section 9. Section 943.059, Florida Statutes, is amended to read:

943.059 Court-ordered sealing of criminal history records.—The courts of this state shall continue to have jurisdiction over their own procedures, including the maintenance, sealing, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to seal the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to seal a criminal history record until the person seeking to seal a criminal history record has applied for and received a certificate of eligibility for sealing pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or a violation enumerated in s. 907.041 may not be sealed, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed or pled guilty or nolo contendere to committing the offense as a delinquent act. The court may only order sealing of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the sealing of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the sealing of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not seal any record pertaining to such additional arrests if the order to seal does not articulate the intention of the court to seal records pertaining to more than one arrest. This section does not prevent the court from ordering the sealing of only a portion of a criminal history record

pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to sealing, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the sealing of any criminal history record, and any request for sealing a criminal history record may be denied at the sole discretion of the court.

(1) **PETITION TO SEAL A CRIMINAL HISTORY RECORD.**—Each petition to a court to seal a criminal history record is complete only when accompanied by:

(a) A certificate of eligibility for sealing issued by the department pursuant to subsection (2).

(b) The petitioner's sworn statement attesting that the petitioner:

1. Has never, prior to the date on which the petition is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation or adjudicated delinquent for committing a felony or a misdemeanor specified in s. 943.051(3)(b).

2. Has not been adjudicated guilty of or adjudicated delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to seal pertains.

3. Has never secured a prior sealing or expunction of a criminal history record under this section, former s. 893.14, former s. 901.33, former s. 943.058, or from any jurisdiction outside the state.

4. Is eligible for such a sealing to the best of his or her knowledge or belief and does not have any other petition to seal or any petition to expunge pending before any court.

Any person who knowingly provides false information on such sworn statement to the court commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) **CERTIFICATE OF ELIGIBILITY FOR SEALING.**—Prior to petitioning the court to seal a criminal history record, a person seeking to seal a criminal history record shall apply to the department for a certificate of eligibility for sealing. The department shall, by rule adopted pursuant to chapter 120, establish procedures pertaining to the application for and issuance of certificates of eligibility for sealing. The department shall issue a certificate of eligibility for sealing to a person who is the subject of a criminal history record provided that such person:

(a) Has submitted to the department a certified copy of the disposition of the charge to which the petition to seal pertains.

(b) Remits a \$75 processing fee to the department for placement in the Department of Law Enforcement Operating Trust Fund, unless such fee is waived by the executive director.

(c) Has never, prior to the date on which the application for a certificate of eligibility is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation or adjudicated delinquent for committing a felony or a misdemeanor specified in s. 943.051(3)(b).

(d) Has not been adjudicated guilty of or adjudicated delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to seal pertains.

(e) Has never secured a prior sealing or expunction of a criminal history record under this section, former s. 893.14, former s. 901.33, or former s. 943.058.

(f) Is no longer under court supervision applicable to the disposition of the arrest or alleged criminal activity to which the petition to seal pertains.

(3) PROCESSING OF A PETITION OR ORDER TO SEAL.—

(a) In judicial proceedings under this section, a copy of the completed petition to seal shall be served upon the appropriate state attorney or the statewide prosecutor and upon the arresting agency; however, it is not necessary to make any agency other than the state a party. The appropriate state attorney or the statewide prosecutor and the arresting agency may respond to the court regarding the completed petition to seal.

(b) If relief is granted by the court, the clerk of the court shall certify copies of the order to the appropriate state attorney or the statewide prosecutor and to the arresting agency. The arresting agency is responsible for forwarding the order to any other agency to which the arresting agency disseminated the criminal history record information to which the order pertains. The department shall forward the order to seal to the Federal Bureau of Investigation. The clerk of the court shall certify a copy of the order to any other agency which the records of the court reflect has received the criminal history record from the court.

(c) For an order to seal entered by a court prior to July 1, 1992, the department shall notify the appropriate state attorney or statewide prosecutor of any order to seal which is contrary to law because the person who is the subject of the record has previously been convicted of a crime or comparable ordinance violation or has had a prior criminal history record sealed or expunged. Upon receipt of such notice, the appropriate state attorney or statewide prosecutor shall take action, within 60 days, to correct the record and petition the court to void the order to seal. The department shall seal the record until such time as the order is voided by the court.

(d) On or after July 1, 1992, the department or any other criminal justice agency is not required to act on an order to seal entered by a court when such order does not comply with the requirements of this section. Upon receipt of such an order, the department must notify the issuing court, the appropriate state attorney or statewide prosecutor, the petitioner or the petitioner's attorney, and the arresting agency of the reason for noncompliance. The appropriate state attorney or statewide prosecutor shall take action within 60 days to correct the record and petition the court to void the order. No

cause of action, including contempt of court, shall arise against any criminal justice agency for failure to comply with an order to seal when the petitioner for such order failed to obtain the certificate of eligibility as required by this section or when such order does not comply with the requirements of this section.

(e) An order sealing a criminal history record pursuant to this section does not require that such record be surrendered to the court, and such record shall continue to be maintained by the department and other criminal justice agencies.

(4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal history record of a minor or an adult which is ordered sealed by a court of competent jurisdiction pursuant to this section is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and is available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective criminal justice purposes, or to those entities set forth in subparagraphs (a)1., 4., 5., and 6. for their respective licensing and employment purposes.

(a) The subject of a criminal history record sealed under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the sealed record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;
2. Is a defendant in a criminal prosecution;
3. Concurrently or subsequently petitions for relief under this section or s. 943.0585;
4. Is a candidate for admission to The Florida Bar;
5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. 110.1127(3), s. 393.063(15), s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s. 415.103, s. 916.106(10) and (13), s. 985.407, or chapter 400; or
6. Is seeking to be employed or licensed by the Office of Teacher Education, Certification, Staff Development, and Professional Practices of the Department of Education, any district school board, or any local governmental entity which licenses child care facilities.

(b) Subject to the exceptions in paragraph (a), a person who has been granted a sealing under this section, former s. 893.14, former s. 901.33, or former s. 943.058 may not be held under any provision of law of this state to commit perjury or to be otherwise liable for giving a false statement by reason of such person's failure to recite or acknowledge a sealed criminal history record.



(c) Information relating to the existence of a sealed criminal record provided in accordance with the provisions of paragraph (a) is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the department shall disclose the sealed criminal history record to the entities set forth in subparagraphs (a)1., 4., 5., and 6. for their respective licensing and employment purposes. It is unlawful for any employee of an entity set forth in subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., or subparagraph (a)6. to disclose information relating to the existence of a sealed criminal history record of a person seeking employment or licensure with such entity or contractor, except to the person to whom the criminal history record relates or to persons having direct responsibility for employment or licensure decisions. Any person who violates the provisions of this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5) STATUTORY REFERENCES.—Any reference to any other chapter, section, or subdivision of the Florida Statutes in this section constitutes a general reference under the doctrine of incorporation by reference.

Section 10. Paragraph (a) of subsection (2) of section 400.215, Florida Statutes, is amended, and paragraphs (b) and (c) of subsection (2) and subsection (3) of said section are reenacted for the purpose of incorporating the amendments to sections 435.03 and 435.04, Florida Statutes, in references thereto, to read:

400.215 Personnel screening requirement.—

(2) Employers and employees shall comply with the requirements of s. 435.05.

(a) Notwithstanding the provisions of s. 435.05(1), facilities must have in their possession evidence that level 1 screening has been completed before allowing an employee to begin working with patients as provided in subsection (1). All information necessary for conducting background screening using level 1 standards as specified in s. 435.03~~(1)~~ shall be submitted by the nursing facility to the agency. Results of the background screening shall be provided by the agency to the requesting nursing facility.

(b) Employees qualified under the provisions of paragraph (a) who have not maintained continuous residency within the state for the 5 years immediately preceding the date of request for background screening must complete level 2 screening, as provided in chapter 435. Such employees may work in a conditional status up to 180 days pending the receipt of written findings evidencing the completion of level 2 screening. Level 2 screening shall not be required of employees or prospective employees who attest in writing under penalty of perjury that they meet the residency requirement. Completion of level 2 screening shall require the employee or prospective employee to furnish to the nursing facility a full set of fingerprints to enable a criminal background investigation to be conducted. The nursing facility shall submit the completed fingerprint card to the agency. The agency shall establish a record of the request in the database provided for in paragraph (c) and forward the request to the Department of Law Enforcement, which

is authorized to submit the fingerprints to the Federal Bureau of Investigation for a national criminal history records check. The results of the national criminal history records check shall be returned to the agency, which shall maintain the results in the database provided for in paragraph (c). The agency shall notify the administrator of the requesting nursing facility or the administrator of any other facility licensed under chapter 393, chapter 394, chapter 395, chapter 397, or this chapter, as requested by such facility, as to whether or not the employee has qualified under level 1 or level 2 screening. An employee or prospective employee who has qualified under level 2 screening and has maintained such continuous residency within the state shall not be required to complete a subsequent level 2 screening as a condition of employment at another facility.

(c) The agency shall establish and maintain a database of background screening information which shall include the results of both level 1 and level 2 screening. The Department of Law Enforcement shall timely provide to the agency, electronically, the results of each statewide screening for incorporation into the database. The agency shall, upon request from any facility, agency, or program required by or authorized by law to screen its employees or applicants, notify the administrator of the facility, agency, or program of the qualifying or disqualifying status of the employee or applicant named in the request.

(3) The applicant is responsible for paying the fees associated with obtaining the required screening. Payment for the screening shall be submitted to the agency. The agency shall establish a schedule of fees to cover the costs of level 1 and level 2 screening. Facilities may reimburse employees for these costs. The Department of Law Enforcement shall charge the agency for a level 1 or level 2 screening a rate sufficient to cover the costs of such screening pursuant to s. 943.053(3). The agency shall, as allowable, reimburse nursing facilities for the cost of conducting background screening as required by this section. This reimbursement will not be subject to any rate ceilings or payment targets in the Medicaid Reimbursement plan.

Section 11. For the purpose of incorporating the amendments to sections 435.03 and 435.04, Florida Statutes, in references thereto, subsections (1) and (2) of section 400.964, Florida Statutes, are reenacted, and subsection (7) of said section is amended and reenacted, to read:

400.964 Personnel screening requirement.—

(1) The agency shall require level 2 background screening as provided in chapter 435 for all employees or prospective employees of facilities licensed under this part who are expected to be, or whose responsibilities are such that they would be considered to be, a direct service provider.

(2) Employers and employees shall comply with the requirements of chapter 435.

(7) All employees must comply with the requirements of this section by October 1, 2000. A person employed by a facility licensed pursuant to this part as of the effective date of this act is not required to submit to rescreening if the facility has in its possession written evidence that the person has

been screened and qualified according to level 1 standards as specified in s. 435.03(1). Any current employee who meets the level 1 requirement but does not meet the 5-year residency requirement must provide to the employing facility written attestation under penalty of perjury that the employee has not been convicted of a disqualifying offense in another state or jurisdiction. All applicants hired on or after October 1, 1999, must comply with the requirements of this section.

Section 12. For the purpose of incorporating the amendment to section 435.04, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 435.045, Florida Statutes, is amended and reenacted to read:

435.045 Requirements for placement of dependent children.—

(1)(a) Unless an election provided for in subsection (2) is made with respect to the state, the department is authorized to conduct criminal records checks equivalent to the level 2 screening required in s. 435.04(1) for any person being considered by the department for placement of a child subject to a placement decision pursuant to chapter 39. Approval shall not be granted:

1. In any case in which a record check reveals a felony conviction for child abuse, abandonment, or neglect; for spousal abuse; for a crime against children, including child pornography, or for a crime involving violence, including rape, sexual assault, or homicide but not including other physical assault or battery, if the department finds that a court of competent jurisdiction has determined that the felony was committed at any time; and

2. In any case in which a record check reveals a felony conviction for physical assault, battery, or a drug-related offense, if the department finds that a court of competent jurisdiction has determined that the felony was committed within the past 5 years.

Section 13. For the purpose of incorporating the amendments to sections 435.03 and 435.04, Florida Statutes, in references thereto, paragraphs (f) and (g) of subsection (1) of section 400.414, Florida Statutes, are reenacted to read:

400.414 Denial, revocation, or suspension of license; imposition of administrative fine; grounds.—

(1) The agency may deny, revoke, or suspend any license issued under this part, or impose an administrative fine in the manner provided in chapter 120, for any of the following actions by an assisted living facility, for the actions of any person subject to level 2 background screening under s. 400.4174, or for the actions of any facility employee:

(f) A determination that a person subject to level 2 background screening under s. 400.4174(1) does not meet the screening standards of s. 435.04 or that the facility is retaining an employee subject to level 1 background screening standards under s. 400.4174(2) who does not meet the screening standards of s. 435.03 and for whom exemptions from disqualification have not been provided by the agency.

(g) A determination that an employee, volunteer, administrator, or owner, or person who otherwise has access to the residents of a facility does not meet the criteria specified in s. 435.03(2), and the owner or administrator has not taken action to remove the person. Exemptions from disqualification may be granted as set forth in s. 435.07. No administrative action may be taken against the facility if the person is granted an exemption.

Administrative proceedings challenging agency action under this subsection shall be reviewed on the basis of the facts and conditions that resulted in the agency action.

Section 14. For the purpose of incorporating the amendments to sections 435.03 and 435.04, Florida Statutes, in references thereto, section 400.4174, Florida Statutes, is reenacted to read:

400.4174 Background screening; exemptions.—

(1)(a) Level 2 background screening must be conducted on each of the following persons, who shall be considered employees for the purposes of conducting screening under chapter 435:

1. The facility owner if an individual, the administrator, and the financial officer.

2. An officer or board member if the facility owner is a firm, corporation, partnership, or association, or any person owning 5 percent or more of the facility if the agency has probable cause to believe that such person has been convicted of any offense prohibited by s. 435.04. For each officer, board member, or person owning 5 percent or more who has been convicted of any such offense, the facility shall submit to the agency a description and explanation of the conviction at the time of license application. This subparagraph does not apply to a board member of a not-for-profit corporation or organization if the board member serves solely in a voluntary capacity, does not regularly take part in the day-to-day operational decisions of the corporation or organization, receives no remuneration for his or her services, and has no financial interest and has no family members with a financial interest in the corporation or organization, provided that the board member and facility submit a statement affirming that the board member's relationship to the facility satisfies the requirements of this subparagraph.

(b) Proof of compliance with level 2 screening standards which has been submitted within the previous 5 years to meet any facility or professional licensure requirements of the agency or the Department of Health satisfies the requirements of this subsection, provided that such proof is accompanied, under penalty of perjury, by an affidavit of compliance with the provisions of chapter 435. Proof of compliance with the background screening requirements of the Financial Services Commission and the Office of Insurance Regulation for applicants for a certificate of authority to operate a continuing care retirement community under chapter 651, submitted within the last 5 years, satisfies the Department of Law Enforcement and Federal Bureau of Investigation portions of a level 2 background check.

(c) The agency may grant a provisional license to a facility applying for an initial license when each individual required by this subsection to undergo screening has completed the Department of Law Enforcement background checks, but has not yet received results from the Federal Bureau of Investigation, or when a request for an exemption from disqualification has been submitted to the agency pursuant to s. 435.07, but a response has not been issued.

(2) The owner or administrator of an assisted living facility must conduct level 1 background screening, as set forth in chapter 435, on all employees hired on or after October 1, 1998, who perform personal services as defined in s. 400.402(17). The agency may exempt an individual from employment disqualification as set forth in chapter 435. Such persons shall be considered as having met this requirement if:

(a) Proof of compliance with level 1 screening requirements obtained to meet any professional license requirements in this state is provided and accompanied, under penalty of perjury, by a copy of the person's current professional license and an affidavit of current compliance with the background screening requirements.

(b) The person required to be screened has been continuously employed in the same type of occupation for which the person is seeking employment without a breach in service which exceeds 180 days, and proof of compliance with the level 1 screening requirement which is no more than 2 years old is provided. Proof of compliance shall be provided directly from one employer or contractor to another, and not from the person screened. Upon request, a copy of screening results shall be provided by the employer retaining documentation of the screening to the person screened.

(c) The person required to be screened is employed by a corporation or business entity or related corporation or business entity that owns, operates, or manages more than one facility or agency licensed under this chapter, and for whom a level 1 screening was conducted by the corporation or business entity as a condition of initial or continued employment.

Section 15. For the purpose of incorporating the amendments to sections 435.03 and 435.04, Florida Statutes, in references thereto, paragraphs (a), (b), (c), (d), (f), and (g) of subsection (4) of section 400.509, Florida Statutes, are reenacted to read:

400.509 Registration of particular service providers exempt from licensure; certificate of registration; regulation of registrants.—

(4) Each applicant for registration must comply with the following requirements:

(a) Upon receipt of a completed, signed, and dated application, the agency shall require background screening, in accordance with the level 1 standards for screening set forth in chapter 435, of every individual who will have contact with the client. The agency shall require background screening of the managing employee or other similarly titled individual who is responsible for the operation of the entity, and of the financial officer or other

similarly titled individual who is responsible for the financial operation of the entity, including billings for client services in accordance with the level 2 standards for background screening as set forth in chapter 435.

(b) The agency may require background screening of any other individual who is affiliated with the applicant if the agency has a reasonable basis for believing that he or she has been convicted of a crime or has committed any other offense prohibited under the level 2 standards for screening set forth in chapter 435.

(c) Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years in compliance with any other health care or assisted living licensure requirements of this state is acceptable in fulfillment of paragraph (a).

(d) A provisional registration may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the abuse-registry background check through the agency and the Department of Law Enforcement background check, but the agency has not yet received background screening results from the Federal Bureau of Investigation. A standard registration may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation. However, the person may not continue to serve if the report indicates any violation of background screening standards and if a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

(f) Each applicant must submit to the agency a description and explanation of any conviction of an offense prohibited under the level 2 standards of chapter 435 which was committed by a member of the board of directors of the applicant, its officers, or any individual owning 5 percent or more of the applicant. This requirement does not apply to a director of a not-for-profit corporation or organization who serves solely in a voluntary capacity for the corporation or organization, does not regularly take part in the day-to-day operational decisions of the corporation or organization, receives no remuneration for his or her services on the corporation's or organization's board of directors, and has no financial interest and no family members having a financial interest in the corporation or organization, if the director and the not-for-profit corporation or organization include in the application a statement affirming that the director's relationship to the corporation satisfies the requirements of this paragraph.

(g) A registration may not be granted to an applicant if the applicant or managing employee has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to, any offense prohibited under the level 2 standards for screening set forth in chapter 435, unless an

exemption from disqualification has been granted by the agency as set forth in chapter 435.

Section 16. For the purpose of incorporating the amendments to sections 435.03 and 435.04, Florida Statutes, in references thereto, paragraph (c) of subsection (2) of section 400.556, Florida Statutes, is reenacted to read:

400.556 Denial, suspension, revocation of license; administrative fines; investigations and inspections.—

(2) Each of the following actions by the owner of an adult day care center or by its operator or employee is a ground for action by the agency against the owner of the center or its operator or employee:

(c) A failure of persons subject to level 2 background screening under s. 400.4174(1) to meet the screening standards of s. 435.04, or the retention by the center of an employee subject to level 1 background screening standards under s. 400.4174(2) who does not meet the screening standards of s. 435.03 and for whom exemptions from disqualification have not been provided by the agency.

Section 17. For the purpose of incorporating the amendments to sections 435.03 and 435.04, Florida Statutes, in references thereto, subsections (1), (2), and (4) of section 400.6065, Florida Statutes, are reenacted to read:

400.6065 Background screening.—

(1) Upon receipt of a completed application under s. 400.606, the agency shall require level 2 background screening on each of the following persons, who shall be considered employees for the purposes of conducting screening under chapter 435:

(a) The hospice administrator and financial officer.

(b) An officer or board member if the hospice is a firm, corporation, partnership, or association, or any person owning 5 percent or more of the hospice if the agency has probable cause to believe that such officer, board member, or owner has been convicted of any offense prohibited by s. 435.04. For each officer, board member, or person owning 5 percent or more who has been convicted of any such offense, the hospice shall submit to the agency a description and explanation of the conviction at the time of license application. This paragraph does not apply to a board member of a not-for-profit corporation or organization if the board member serves solely in a voluntary capacity, does not regularly take part in the day-to-day operational decisions of the corporation or organization, receives no remuneration for his or her services, and has no financial interest and has no family members with a financial interest in the corporation or organization, provided that the board member and the corporation or organization submit a statement affirming that the board member's relationship to the corporation or organization satisfies the requirements of this paragraph.

(2) Proof of compliance with level 2 screening standards which has been submitted within the previous 5 years to meet any facility or professional

licensure requirements of the agency or the Department of Health satisfies the requirements of this section.

(4) The agency shall require employment or contractor screening as provided in chapter 435, using the level 1 standards for screening set forth in that chapter, for hospice personnel.

Section 18. For the purpose of incorporating the amendments to sections 435.03 and 435.04, Florida Statutes, in references thereto, paragraphs (a), (b), (c), (d), (f), and (g) of subsection (4) of section 400.980, Florida Statutes, are reenacted to read:

400.980 Health care services pools.—

(4) Each applicant for registration must comply with the following requirements:

(a) Upon receipt of a completed, signed, and dated application, the agency shall require background screening, in accordance with the level 1 standards for screening set forth in chapter 435, of every individual who will have contact with patients. The agency shall require background screening of the managing employee or other similarly titled individual who is responsible for the operation of the entity, and of the financial officer or other similarly titled individual who is responsible for the financial operation of the entity, including billings for services in accordance with the level 2 standards for background screening as set forth in chapter 435.

(b) The agency may require background screening of any other individual who is affiliated with the applicant if the agency has a reasonable basis for believing that he or she has been convicted of a crime or has committed any other offense prohibited under the level 2 standards for screening set forth in chapter 435.

(c) Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years in compliance with any other health care or assisted living licensure requirements of this state is acceptable in fulfillment of paragraph (a).

(d) A provisional registration may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the Department of Law Enforcement background check but the agency has not yet received background screening results from the Federal Bureau of Investigation. A standard registration may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation. However, the person may not continue to serve if the report indicates any violation of background screening standards and if a disquali-



fiction exemption has not been requested of and granted by the agency as set forth in chapter 435.

(f) Each applicant must submit to the agency a description and explanation of any conviction of an offense prohibited under the level 2 standards of chapter 435 which was committed by a member of the board of directors of the applicant, its officers, or any individual owning 5 percent or more of the applicant. This requirement does not apply to a director of a not-for-profit corporation or organization who serves solely in a voluntary capacity for the corporation or organization, does not regularly take part in the day-to-day operational decisions of the corporation or organization, receives no remuneration for his or her services on the corporation's or organization's board of directors, and has no financial interest and no family members having a financial interest in the corporation or organization, if the director and the not-for-profit corporation or organization include in the application a statement affirming that the director's relationship to the corporation satisfies the requirements of this paragraph.

(g) A registration may not be granted to an applicant if the applicant or managing employee has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to, any offense prohibited under the level 2 standards for screening set forth in chapter 435, unless an exemption from disqualification has been granted by the agency as set forth in chapter 435.

Section 19. For the purpose of incorporating the amendments to sections 435.03 and 435.04, Florida Statutes, in references thereto, paragraph (k) of subsection (2) of section 409.175, Florida Statutes, is reenacted to read:

409.175 Licensure of family foster homes, residential child-caring agencies, and child-placing agencies; public records exemption.—

(2) As used in this section, the term:

(k) "Screening" means the act of assessing the background of personnel and includes, but is not limited to, employment history checks as provided in chapter 435, using the level 2 standards for screening set forth in that chapter. Screening for employees and volunteers in summer day camps and summer 24-hour camps and screening for all volunteers included under the definition of "personnel" shall be conducted as provided in chapter 435, using the level 1 standards set forth in that chapter.

Section 20. For the purpose of incorporating the amendments to sections 435.03 and 435.04, Florida Statutes, in references thereto, paragraph (d) of subsection (8) of section 409.907, Florida Statutes, is reenacted to read:

409.907 Medicaid provider agreements.—The agency may make payments for medical assistance and related services rendered to Medicaid recipients only to an individual or entity who has a provider agreement in effect with the agency, who is performing services or supplying goods in accordance with federal, state, and local law, and who agrees that no person shall, on the grounds of handicap, race, color, or national origin, or for any

other reason, be subjected to discrimination under any program or activity for which the provider receives payment from the agency.

(8)

(d) Proof of compliance with the requirements of level 2 screening under s. 435.04 conducted within 12 months prior to the date that the Medicaid provider application is submitted to the agency shall fulfill the requirements of this subsection. Proof of compliance with the requirements of level 1 screening under s. 435.03 conducted within 12 months prior to the date that the Medicaid provider application is submitted to the agency shall meet the requirement that the Department of Law Enforcement conduct a state criminal history record check.

Section 21. For the purpose of incorporating the amendments to sections 435.03 and 435.04, Florida Statutes, in references thereto, subsections (1) and (3) of section 435.05, Florida Statutes, are reenacted to read:

435.05 Requirements for covered employees.—Except as otherwise provided by law, the following requirements shall apply to covered employees:

(1)(a) Every person employed in a position for which employment screening is required must, within 5 working days after starting to work, submit to the employer a complete set of information necessary to conduct a screening under this section.

(b) For level 1 screening, the employer must submit the information necessary for screening to the Florida Department of Law Enforcement within 5 working days after receiving it. The Florida Department of Law Enforcement will conduct a search of its records and will respond to the employer agency. The employer will inform the employee whether screening has revealed any disqualifying information.

(c) For level 2 screening, the employer or licensing agency must submit the information necessary for screening to the Florida Department of Law Enforcement within 5 working days after receiving it. The Florida Department of Law Enforcement will conduct a search of its criminal and juvenile records and will request that the Federal Bureau of Investigation conduct a search of its records for each employee for whom the request is made. The Florida Department of Law Enforcement will respond to the employer or licensing agency, and the employer or licensing agency will inform the employee whether screening has revealed disqualifying information.

(d) The person whose background is being checked must supply any missing criminal or other necessary information to the employer within 30 days after the employer makes a request for the information or be subject to automatic disqualification.

(3) Each employer required to conduct level 2 background screening must sign an affidavit annually, under penalty of perjury, stating that all covered employees have been screened or are newly hired and are awaiting the results of the required screening checks.

Section 22. For the purpose of incorporating the amendments to sections 435.03 and 435.04, Florida Statutes, in references thereto, section 744.3135, Florida Statutes, as amended by chapter 2003-402, Laws of Florida, is reenacted to read:

744.3135 Credit and criminal investigation.—The court may require a nonprofessional guardian and shall require a professional or public guardian, and all employees of a professional guardian who have a fiduciary responsibility to a ward, to submit, at their own expense, to an investigation of the guardian's credit history and to undergo level 2 background screening as required under s. 435.04. The clerk of the court shall obtain fingerprint cards from the Federal Bureau of Investigation and make them available to guardians. Any guardian who is so required shall have his or her fingerprints taken and forward the proper fingerprint card along with the necessary fee to the Florida Department of Law Enforcement for processing. The professional guardian shall pay to the clerk of the court a fee of up to \$7.50 for handling and processing professional guardian files. The results of the fingerprint checks shall be forwarded to the clerk of court who shall maintain the results in a guardian file and shall make the results available to the court. If credit or criminal investigations are required, the court must consider the results of the investigations in appointing a guardian. Professional guardians and all employees of a professional guardian who have a fiduciary responsibility to a ward, so appointed, must resubmit, at their own expense, to an investigation of credit history, and undergo level 1 background screening as required under s. 435.03, at least every 2 years after the date of their appointment. At any time, the court may require guardians or their employees to submit to an investigation of credit history and undergo level 1 background screening as required under s. 435.03. The court must consider the results of these investigations in reappointing a guardian. This section shall not apply to a professional guardian, or to the employees of a professional guardian, that is a trust company, a state banking corporation or state savings association authorized and qualified to exercise fiduciary powers in this state, or a national banking association or federal savings and loan association authorized and qualified to exercise fiduciary powers in this state.

Section 23. For the purpose of incorporating the amendments to sections 435.03 and 435.04, Florida Statutes, in references thereto, subsection (2) of section 985.04, Florida Statutes, is reenacted to read:

985.04 Oaths; records; confidential information.—

(2) Records maintained by the Department of Juvenile Justice, including copies of records maintained by the court, which pertain to a child found to have committed a delinquent act which, if committed by an adult, would be a crime specified in ss. 435.03 and 435.04 may not be destroyed pursuant to this section for a period of 25 years after the youth's final referral to the department, except in cases of the death of the child. Such records, however, shall be sealed by the court for use only in meeting the screening requirements for personnel in s. 402.3055 and the other sections cited above, or pursuant to departmental rule; however, current criminal history information must be obtained from the Department of Law Enforcement in accordance with s. 943.053. The information shall be released to those persons

specified in the above cited sections for the purposes of complying with those sections. The court may punish by contempt any person who releases or uses the records for any unauthorized purpose.

Section 24. For the purpose of incorporating the amendment to section 435.03, Florida Statutes, in references thereto, section 400.512, Florida Statutes, is reenacted to read:

400.512 Screening of home health agency personnel; nurse registry personnel; and companions and homemakers.—The agency shall require employment or contractor screening as provided in chapter 435, using the level 1 standards for screening set forth in that chapter, for home health agency personnel; persons referred for employment by nurse registries; and persons employed by companion or homemaker services registered under s. 400.509.

(1)(a) The Agency for Health Care Administration may, upon request, grant exemptions from disqualification from employment or contracting under this section as provided in s. 435.07, except for health care practitioners licensed by the Department of Health or a regulatory board within that department.

(b) The appropriate regulatory board within the Department of Health, or that department itself when there is no board, may, upon request of the licensed health care practitioner, grant exemptions from disqualification from employment or contracting under this section as provided in s. 435.07.

(2) The administrator of each home health agency, the managing employee of each nurse registry, and the managing employee of each companion or homemaker service registered under s. 400.509 must sign an affidavit annually, under penalty of perjury, stating that all personnel hired, contracted with, or registered on or after October 1, 1994, who enter the home of a patient or client in their service capacity have been screened and that its remaining personnel have worked for the home health agency or registrant continuously since before October 1, 1994.

(3) As a prerequisite to operating as a home health agency, nurse registry, or companion or homemaker service under s. 400.509, the administrator or managing employee, respectively, must submit to the agency his or her name and any other information necessary to conduct a complete screening according to this section. The agency shall submit the information to the Department of Law Enforcement for state processing. The agency shall review the record of the administrator or manager with respect to the offenses specified in this section and shall notify the owner of its findings. If disposition information is missing on a criminal record, the administrator or manager, upon request of the agency, must obtain and supply within 30 days the missing disposition information to the agency. Failure to supply missing information within 30 days or to show reasonable efforts to obtain such information will result in automatic disqualification.

(4) Proof of compliance with the screening requirements of chapter 435 shall be accepted in lieu of the requirements of this section if the person has been continuously employed or registered without a breach in service that exceeds 180 days, the proof of compliance is not more than 2 years old, and

the person has been screened by the Department of Law Enforcement. A home health agency, nurse registry, or companion or homemaker service registered under s. 400.509 shall directly provide proof of compliance to another home health agency, nurse registry, or companion or homemaker service registered under s. 400.509. The recipient home health agency, nurse registry, or companion or homemaker service registered under s. 400.509 may not accept any proof of compliance directly from the person who requires screening. Proof of compliance with the screening requirements of this section shall be provided upon request to the person screened by the home health agencies; nurse registries; or companion or homemaker services registered under s. 400.509.

(5) There is no monetary liability on the part of, and no cause of action for damages arises against, a licensed home health agency, licensed nurse registry, or companion or homemaker service registered under s. 400.509, that, upon notice that the employee or contractor has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under s. 435.03 or under any similar statute of another jurisdiction, terminates the employee or contractor, whether or not the employee or contractor has filed for an exemption with the agency in accordance with chapter 435 and whether or not the time for filing has expired.

(6) The costs of processing the statewide correspondence criminal records checks must be borne by the home health agency; the nurse registry; or the companion or homemaker service registered under s. 400.509, or by the person being screened, at the discretion of the home health agency, nurse registry, or s. 400.509 registrant.

(7)(a) It is a misdemeanor of the first degree, punishable under s. 775.082 or s. 775.083, for any person willfully, knowingly, or intentionally to:

1. Fail, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose in any application for voluntary or paid employment a material fact used in making a determination as to such person's qualifications to be an employee under this section;

2. Operate or attempt to operate an entity licensed or registered under this part with persons who do not meet the minimum standards for good moral character as contained in this section; or

3. Use information from the criminal records obtained under this section for any purpose other than screening that person for employment as specified in this section or release such information to any other person for any purpose other than screening for employment under this section.

(b) It is a felony of the third degree, punishable under s. 775.082, s. 775.083, or s. 775.084, for any person willfully, knowingly, or intentionally to use information from the juvenile records of a person obtained under this section for any purpose other than screening for employment under this section.

Section 25. For the purpose of incorporating the amendment to section 435.03, Florida Statutes, in references thereto, subsection (4) of section 400.619, Florida Statutes, is reenacted to read:

400.619 Licensure application and renewal.—

(4) Upon receipt of a completed license application or license renewal, and the fee, the agency shall initiate a level 1 background screening as provided under chapter 435 on the adult family-care home provider, the designated relief person, all adult household members, and all staff members. The agency shall conduct an onsite visit to the home that is to be licensed.

(a) Proof of compliance with level 1 screening standards which has been submitted within the previous 5 years to meet any facility or professional licensure requirements of the agency or the Department of Health satisfies the requirements of this subsection. Such proof must be accompanied, under penalty of perjury, by a copy of the person's current professional license and an affidavit of current compliance with the background screening requirements.

(b) The person required to be screened must have been continuously employed in the same type of occupation for which the person is seeking employment without a breach in service that exceeds 180 days, and proof of compliance with the level 1 screening requirement which is no more than 2 years old must be provided. Proof of compliance shall be provided directly from one employer or contractor to another, and not from the person screened. Upon request, a copy of screening results shall be provided to the person screened by the employer retaining documentation of the screening.

Section 26. For the purpose of incorporating the amendment to section 435.03, Florida Statutes, in references thereto, subsection (1) of section 400.6194, Florida Statutes, is reenacted to read:

400.6194 Denial, revocation, or suspension of a license.—The agency may deny, suspend, or revoke a license for any of the following reasons:

(1) Failure of any of the persons required to undergo background screening under s. 400.619 to meet the level 1 screening standards of s. 435.03, unless an exemption from disqualification has been provided by the agency.

Section 27. For the purpose of incorporating the amendment to section 435.03, Florida Statutes, in references thereto, section 400.953, Florida Statutes, is reenacted to read:

400.953 Background screening of home medical equipment provider personnel.—The agency shall require employment screening as provided in chapter 435, using the level 1 standards for screening set forth in that chapter, for home medical equipment provider personnel.

(1) The agency may grant exemptions from disqualification from employment under this section as provided in s. 435.07.

(2) The general manager of each home medical equipment provider must sign an affidavit annually, under penalty of perjury, stating that all home medical equipment provider personnel hired on or after July 1, 1999, who enter the home of a patient in the capacity of their employment have been

screened and that its remaining personnel have worked for the home medical equipment provider continuously since before July 1, 1999.

(3) Proof of compliance with the screening requirements of s. 110.1127, s. 393.0655, s. 394.4572, s. 397.451, s. 402.305, s. 402.313, s. 409.175, s. 464.008, or s. 985.407 or this part must be accepted in lieu of the requirements of this section if the person has been continuously employed in the same type of occupation for which he or she is seeking employment without a breach in service that exceeds 180 days, the proof of compliance is not more than 2 years old, and the person has been screened by the Department of Law Enforcement. An employer or contractor shall directly provide proof of compliance to another employer or contractor, and a potential employer or contractor may not accept any proof of compliance directly from the person requiring screening. Proof of compliance with the screening requirements of this section shall be provided, upon request, to the person screened by the home medical equipment provider.

(4) There is no monetary liability on the part of, and no cause of action for damages arising against, a licensed home medical equipment provider that, upon notice that an employee has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under s. 435.03 or under any similar statute of another jurisdiction, terminates the employee, whether or not the employee has filed for an exemption with the agency and whether or not the time for filing has expired.

(5) The costs of processing the statewide correspondence criminal records checks must be borne by the home medical equipment provider or by the person being screened, at the discretion of the home medical equipment provider.

(6) Neither the agency nor the home medical equipment provider may use the criminal records or juvenile records of a person for any purpose other than determining whether that person meets minimum standards of good moral character for home medical equipment provider personnel.

(7)(a) It is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for any person willfully, knowingly, or intentionally to:

1. Fail, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose in any application for paid employment a material fact used in making a determination as to the person's qualifications to be an employee under this section;

2. Operate or attempt to operate an entity licensed under this part with persons who do not meet the minimum standards for good moral character as contained in this section; or

3. Use information from the criminal records obtained under this section for any purpose other than screening that person for employment as specified in this section, or release such information to any other person for any purpose other than screening for employment under this section.

(b) It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, for any person willfully, knowingly, or intentionally to use information from the juvenile records of a person obtained under this section for any purpose other than screening for employment under this section.

Section 28. For the purpose of incorporating the amendment to section 435.03, Florida Statutes, in references thereto, subsection (32) of section 409.912, Florida Statutes, is reenacted to read:

409.912 Cost-effective purchasing of health care.—The agency shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care. The agency shall maximize the use of prepaid per capita and prepaid aggregate fixed-sum basis services when appropriate and other alternative service delivery and reimbursement methodologies, including competitive bidding pursuant to s. 287.057, designed to facilitate the cost-effective purchase of a case-managed continuum of care. The agency shall also require providers to minimize the exposure of recipients to the need for acute inpatient, custodial, and other institutional care and the inappropriate or unnecessary use of high-cost services. The agency may establish prior authorization requirements for certain populations of Medicaid beneficiaries, certain drug classes, or particular drugs to prevent fraud, abuse, overuse, and possible dangerous drug interactions. The Pharmaceutical and Therapeutics Committee shall make recommendations to the agency on drugs for which prior authorization is required. The agency shall inform the Pharmaceutical and Therapeutics Committee of its decisions regarding drugs subject to prior authorization.

(32) Each managed care plan that is under contract with the agency to provide health care services to Medicaid recipients shall annually conduct a background check with the Florida Department of Law Enforcement of all persons with ownership interest of 5 percent or more or executive management responsibility for the managed care plan and shall submit to the agency information concerning any such person who has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to, any of the offenses listed in s. 435.03.

Section 29. For the purpose of incorporating the amendment to section 435.03, Florida Statutes, in references thereto, subsection (4) of section 435.07, Florida Statutes, is reenacted to read:

435.07 Exemptions from disqualification.—Unless otherwise provided by law, the provisions of this section shall apply to exemptions from disqualification.

(4) Disqualification from employment under subsection (1) may not be removed from, nor may an exemption be granted to, any personnel who is found guilty of, regardless of adjudication, or who has entered a plea of nolo contendere or guilty to, any felony covered by s. 435.03 solely by reason of any pardon, executive clemency, or restoration of civil rights.

Section 30. For the purpose of incorporating the amendment to section 435.03, Florida Statutes, in references thereto, paragraph (e) of subsection (1) of section 464.018, Florida Statutes, is reenacted to read:



464.018 Disciplinary actions.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(e) Having been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under s. 435.03 or under any similar statute of another jurisdiction; or having committed an act which constitutes domestic violence as defined in s. 741.28.

Section 31. For the purpose of incorporating the amendment to section 435.03, Florida Statutes, in references thereto, subsection (3) of section 744.309, Florida Statutes, is reenacted to read:

744.309 Who may be appointed guardian of a resident ward.—

(3) **DISQUALIFIED PERSONS.**—No person who has been convicted of a felony or who, from any incapacity or illness, is incapable of discharging the duties of a guardian, or who is otherwise unsuitable to perform the duties of a guardian, shall be appointed to act as guardian. Further, no person who has been judicially determined to have committed abuse, abandonment, or neglect against a child as defined in s. 39.01 or s. 984.03(1), (2), and (37), or who has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under s. 435.03 or under any similar statute of another jurisdiction, shall be appointed to act as a guardian. Except as provided in subsection (5) or subsection (6), a person who provides substantial services to the proposed ward in a professional or business capacity, or a creditor of the proposed ward, may not be appointed guardian and retain that previous professional or business relationship. A person may not be appointed a guardian if he or she is in the employ of any person, agency, government, or corporation that provides service to the proposed ward in a professional or business capacity, except that a person so employed may be appointed if he or she is the spouse, adult child, parent, or sibling of the proposed ward or the court determines that the potential conflict of interest is insubstantial and that the appointment would clearly be in the proposed ward's best interest. The court may not appoint a guardian in any other circumstance in which a conflict of interest may occur.

Section 32. For the purpose of incorporating the amendment to section 435.03, Florida Statutes, in references thereto, subsection (12) of section 744.474, Florida Statutes, is reenacted to read:

744.474 Reasons for removal of guardian.—A guardian may be removed for any of the following reasons, and the removal shall be in addition to any other penalties prescribed by law:

(12) Having been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under s. 435.03 or under any similar statute of another jurisdiction.

Section 33. For the purpose of incorporating the amendment to section 435.03, Florida Statutes, in references thereto, subsection (4) of section 985.407, Florida Statutes, is reenacted to read:

985.407 Departmental contracting powers; personnel standards and screening.—

(4) The department shall require employment screening pursuant to chapter 435, using the level 1 standards for screening set forth in that chapter, for personnel in delinquency facilities, services, and programs.

Section 34. For the purpose of incorporating the amendment to section 435.04, Florida Statutes, in references thereto, paragraph (b) of subsection (2) of section 39.001, Florida Statutes, is reenacted to read:

39.001 Purposes and intent; personnel standards and screening.—

(2) DEPARTMENT CONTRACTS.—The department may contract with the Federal Government, other state departments and agencies, county and municipal governments and agencies, public and private agencies, and private individuals and corporations in carrying out the purposes of, and the responsibilities established in, this chapter.

(b) The department shall require employment screening, and rescreening no less frequently than once every 5 years, pursuant to chapter 435, using the level 2 standards set forth in that chapter for personnel in programs for children or youths.

Section 35. For the purpose of incorporating the amendment to section 435.04, Florida Statutes, in references thereto, subsection (1) of section 39.821, Florida Statutes, is reenacted to read:

39.821 Qualifications of guardians ad litem.—

(1) Because of the special trust or responsibility placed in a guardian ad litem, the Guardian Ad Litem Program may use any private funds collected by the program, or any state funds so designated, to conduct a security background investigation before certifying a volunteer to serve. A security background investigation must include, but need not be limited to, employment history checks, checks of references, local criminal records checks through local law enforcement agencies, and statewide criminal records checks through the Department of Law Enforcement. Upon request, an employer shall furnish a copy of the personnel record for the employee or former employee who is the subject of a security background investigation conducted under this section. The information contained in the personnel record may include, but need not be limited to, disciplinary matters and the reason why the employee was terminated from employment. An employer who releases a personnel record for purposes of a security background investigation is presumed to have acted in good faith and is not liable for information contained in the record without a showing that the employer maliciously falsified the record. A security background investigation conducted under this section must ensure that a person is not certified as a guardian ad litem if the person has been convicted of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under the provisions of the Florida Statutes specified in s. 435.04(2) or under any similar law in another jurisdiction. Before certifying an applicant to serve as a guardian ad litem, the chief judge of the circuit court may request a

federal criminal records check of the applicant through the Federal Bureau of Investigation. In analyzing and evaluating the information obtained in the security background investigation, the program must give particular emphasis to past activities involving children, including, but not limited to, child-related criminal offenses or child abuse. The program has the sole discretion in determining whether to certify a person based on his or her security background investigation. The information collected pursuant to the security background investigation is confidential and exempt from s. 119.07(1).

Section 36. For the purpose of incorporating the amendment to section 435.04, Florida Statutes, in references thereto, paragraphs (a) and (c) of subsection (3) of section 110.1127, Florida Statutes, are reenacted to read:

110.1127 Employee security checks.—

(3)(a) All positions in programs providing care to children, the developmentally disabled, or vulnerable adults for 15 hours or more per week; all permanent and temporary employee positions of the central abuse hotline; and all persons working under contract who have access to abuse records are deemed to be persons and positions of special trust or responsibility, and require employment screening pursuant to chapter 435, using the level 2 standards set forth in that chapter.

(c) All persons and employees in such positions of trust or responsibility shall be required to undergo security background investigations as a condition of employment and continued employment. For the purposes of this subsection, security background investigations shall be conducted as provided in chapter 435, using the level 2 standards for screening set forth in that chapter.

Section 37. For the purpose of incorporating the amendment to section 435.04, Florida Statutes, in references thereto, paragraph (a) of subsection (12) of section 112.0455, Florida Statutes, is reenacted to read:

112.0455 Drug-Free Workplace Act.—

(12) DRUG-TESTING STANDARDS; LABORATORIES.—

(a) A laboratory may analyze initial or confirmation drug specimens only if:

1. The laboratory is licensed and approved by the Agency for Health Care Administration using criteria established by the United States Department of Health and Human Services as general guidelines for modeling the state drug testing program. Each applicant for licensure must comply with the following requirements:

a. Upon receipt of a completed, signed, and dated application, the agency shall require background screening, in accordance with the level 2 standards for screening set forth in chapter 435, of the managing employee, or other similarly titled individual responsible for the daily operation of the laboratory, and of the financial officer, or other similarly titled individual who is

responsible for the financial operation of the laboratory, including billings for services. The applicant must comply with the procedures for level 2 background screening as set forth in chapter 435, as well as the requirements of s. 435.03(3).

b. The agency may require background screening of any other individual who is an applicant if the agency has probable cause to believe that he or she has been convicted of an offense prohibited under the level 2 standards for screening set forth in chapter 435.

c. Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years in compliance with any other health care licensure requirements of this state is acceptable in fulfillment of screening requirements.

d. A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the Department of Law Enforcement background check, but the agency has not yet received background screening results from the Federal Bureau of Investigation, or a request for a disqualification exemption has been submitted to the agency as set forth in chapter 435, but a response has not yet been issued. A license may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation. However, the person may not continue to serve if the report indicates any violation of background screening standards and a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

e. Each applicant must submit to the agency, with its application, a description and explanation of any exclusions, permanent suspensions, or terminations of the applicant from the Medicare or Medicaid programs. Proof of compliance with the requirements for disclosure of ownership and control interests under the Medicaid or Medicare programs shall be accepted in lieu of this submission.

f. Each applicant must submit to the agency a description and explanation of any conviction of an offense prohibited under the level 2 standards of chapter 435 by a member of the board of directors of the applicant, its officers, or any individual owning 5 percent or more of the applicant. This requirement does not apply to a director of a not-for-profit corporation or organization if the director serves solely in a voluntary capacity for the corporation or organization, does not regularly take part in the day-to-day operational decisions of the corporation or organization, receives no remuneration for his or her services on the corporation or organization's board of directors, and has no financial interest and has no family members with a financial interest in the corporation or organization, provided that the direc-

tor and the not-for-profit corporation or organization include in the application a statement affirming that the director's relationship to the corporation satisfies the requirements of this sub-subparagraph.

g. A license may not be granted to any applicant if the applicant or managing employee has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to, any offense prohibited under the level 2 standards for screening set forth in chapter 435, unless an exemption from disqualification has been granted by the agency as set forth in chapter 435.

h. The agency may deny or revoke licensure if the applicant:

(I) Has falsely represented a material fact in the application required by sub-subparagraph e. or sub-subparagraph f., or has omitted any material fact from the application required by sub-subparagraph e. or sub-subparagraph f.; or

(II) Has had prior action taken against the applicant under the Medicaid or Medicare program as set forth in sub-subparagraph e.

i. An application for license renewal must contain the information required under sub-subparagraphs e. and f.

2. The laboratory has written procedures to ensure chain of custody.

3. The laboratory follows proper quality control procedures, including, but not limited to:

a. The use of internal quality controls including the use of samples of known concentrations which are used to check the performance and calibration of testing equipment, and periodic use of blind samples for overall accuracy.

b. An internal review and certification process for drug test results, conducted by a person qualified to perform that function in the testing laboratory.

c. Security measures implemented by the testing laboratory to preclude adulteration of specimens and drug test results.

d. Other necessary and proper actions taken to ensure reliable and accurate drug test results.

Section 38. For the purpose of incorporating the amendment to section 435.04, Florida Statutes, in references thereto, subsections (1), (2), and (4) of section 381.0059, Florida Statutes, are reenacted to read:

381.0059 Background screening requirements for school health services personnel.—

(1) Pursuant to the provisions of chapter 435, any person who provides services under a school health services plan pursuant to s. 381.0056 must meet level 2 screening requirements as described in s. 435.04. A person may

satisfy the requirements of this subsection by submitting proof of compliance with the requirements of level 2 screening conducted within 12 months before the date that person initially provides services under a school health services plan.

(2) A person may provide services under a school health services plan pursuant to s. 381.0056 prior to the completion of level 2 screening. However, pending the results of the screening, such person may not be alone with a minor.

(4) Under penalty of perjury, each person who provides services under a school health plan pursuant to s. 381.0056 must attest to meeting the level 2 screening requirements for participation under the plan and agree to inform his or her employer immediately if convicted of any disqualifying offense while providing services under a plan.

Section 39. For the purpose of incorporating the amendment to section 435.04, Florida Statutes, in references thereto, paragraphs (a), (b), (c), (d), (f), and (g) of subsection (1) of section 381.60225, Florida Statutes, are reenacted to read:

381.60225 Background screening.—

(1) Each applicant for certification must comply with the following requirements:

(a) Upon receipt of a completed, signed, and dated application, the Agency for Health Care Administration shall require background screening, in accordance with the level 2 standards for screening set forth in chapter 435, of the managing employee, or other similarly titled individual responsible for the daily operation of the organization, agency, or entity, and financial officer, or other similarly titled individual who is responsible for the financial operation of the organization, agency, or entity, including billings for services. The applicant must comply with the procedures for level 2 background screening as set forth in chapter 435, as well as the requirements of s. 435.03(3).

(b) The Agency for Health Care Administration may require background screening of any other individual who is an applicant if the Agency for Health Care Administration has probable cause to believe that he or she has been convicted of a crime or has committed any other offense prohibited under the level 2 standards for screening set forth in chapter 435.

(c) Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years in compliance with any other health care licensure requirements of this state is acceptable in fulfillment of the requirements of paragraph (a).

(d) A provisional certification may be granted to the organization, agency, or entity when each individual required by this section to undergo background screening has met the standards for the Department of Law Enforcement background check, but the agency has not yet received background screening results from the Federal Bureau of Investigation, or a

request for a disqualification exemption has been submitted to the agency as set forth in chapter 435, but a response has not yet been issued. A standard certification may be granted to the organization, agency, or entity upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation. However, the person may not continue to serve if the report indicates any violation of background screening standards and a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

(f) Each applicant must submit to the agency a description and explanation of any conviction of an offense prohibited under the level 2 standards of chapter 435 by a member of the board of directors of the applicant, its officers, or any individual owning 5 percent or more of the applicant. This requirement does not apply to a director of a not-for-profit corporation or organization if the director serves solely in a voluntary capacity for the corporation or organization, does not regularly take part in the day-to-day operational decisions of the corporation or organization, receives no remuneration for his or her services on the corporation or organization's board of directors, and has no financial interest and has no family members with a financial interest in the corporation or organization, provided that the director and the not-for-profit corporation or organization include in the application a statement affirming that the director's relationship to the corporation satisfies the requirements of this paragraph.

(g) The agency may not certify any organization, agency, or entity if any applicant or managing employee has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to, any offense prohibited under the level 2 standards for screening set forth in chapter 435, unless an exemption from disqualification has been granted by the agency as set forth in chapter 435.

Section 40. For the purpose of incorporating the amendment to section 435.04, Florida Statutes, in references thereto, paragraphs (a), (b), (c), (d), (f), and (g) of subsection (7) of section 383.305, Florida Statutes, are reenacted to read:

383.305 Licensure; issuance, renewal, denial, suspension, revocation; fees; background screening.—

(7) Each applicant for licensure must comply with the following requirements:

(a) Upon receipt of a completed, signed, and dated application, the agency shall require background screening, in accordance with the level 2 standards for screening set forth in chapter 435, of the managing employee, or other similarly titled individual who is responsible for the daily operation of the center, and of the financial officer, or other similarly titled individual

who is responsible for the financial operation of the center, including billings for patient care and services. The applicant must comply with the procedures for level 2 background screening as set forth in chapter 435 as well as the requirements of s. 435.03(3).

(b) The agency may require background screening of any other individual who is an applicant if the agency has probable cause to believe that he or she has been convicted of a crime or has committed any other offense prohibited under the level 2 standards for screening set forth in chapter 435.

(c) Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years in compliance with any other health care licensure requirements of this state is acceptable in fulfillment of the requirements of paragraph (a).

(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the Department of Law Enforcement background check, but the agency has not yet received background screening results from the Federal Bureau of Investigation, or a request for a disqualification exemption has been submitted to the agency as set forth in chapter 435 but a response has not yet been issued. A standard license may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation. However, the person may not continue to serve if the report indicates any violation of background screening standards and a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

(f) Each applicant must submit to the agency a description and explanation of any conviction of an offense prohibited under the level 2 standards of chapter 435 by a member of the board of directors of the applicant, its officers, or any individual owning 5 percent or more of the applicant. This requirement does not apply to a director of a not-for-profit corporation or organization if the director serves solely in a voluntary capacity for the corporation or organization, does not regularly take part in the day-to-day operational decisions of the corporation or organization, receives no remuneration for his or her services on the corporation or organization's board of directors, and has no financial interest and has no family members with a financial interest in the corporation or organization, provided that the director and the not-for-profit corporation or organization include in the application a statement affirming that the director's relationship to the corporation satisfies the requirements of this paragraph.

(g) A license may not be granted to an applicant if the applicant or managing employee has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to, any offense prohibited



under the level 2 standards for screening set forth in chapter 435, unless an exemption from disqualification has been granted by the agency as set forth in chapter 435.

Section 41. For the purpose of incorporating the amendment to section 435.04, Florida Statutes, in references thereto, paragraphs (a), (b), (c), (d), (f), and (g) of subsection (3) of section 390.015, Florida Statutes, are reenacted to read:

390.015 Application for license.—

(3) Each applicant for licensure must comply with the following requirements:

(a) Upon receipt of a completed, signed, and dated application, the agency shall require background screening, in accordance with the level 2 standards for screening set forth in chapter 435, of the managing employee, or other similarly titled individual who is responsible for the daily operation of the clinic, and financial officer, or other similarly titled individual who is responsible for the financial operation of the clinic, including billings for patient care and services. The applicant must comply with the procedures for level 2 background screening as set forth in chapter 435, as well as the requirements of s. 435.03(3).

(b) The agency may require background screening of any other individual who is an applicant if the agency has probable cause to believe that he or she has been convicted of a crime or has committed any other offense prohibited under the level 2 standards for screening set forth in chapter 435.

(c) Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years in compliance with any other health care licensure requirements of this state is acceptable in fulfillment of the requirements of paragraph (a).

(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the Department of Law Enforcement background check, but the agency has not yet received background screening results from the Federal Bureau of Investigation, or a request for a disqualification exemption has been submitted to the agency as set forth in chapter 435 but a response has not yet been issued. A standard license may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation. However, the person may not continue to serve if the report indicates any violation of background screening standards and a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

(f) Each applicant must submit to the agency a description and explanation of any conviction of an offense prohibited under the level 2 standards of chapter 435 by a member of the board of directors of the applicant, its officers, or any individual owning 5 percent or more of the applicant. This requirement does not apply to a director of a not-for-profit corporation or organization if the director serves solely in a voluntary capacity for the corporation or organization, does not regularly take part in the day-to-day operational decisions of the corporation or organization, receives no remuneration for his or her services on the corporation or organization's board of directors, and has no financial interest and has no family members with a financial interest in the corporation or organization, provided that the director and the not-for-profit corporation or organization include in the application a statement affirming that the director's relationship to the corporation satisfies the requirements of this paragraph.

(g) A license may not be granted to an applicant if the applicant or managing employee has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to, any offense prohibited under the level 2 standards for screening set forth in chapter 435, unless an exemption from disqualification has been granted by the agency as set forth in chapter 435.

Section 42. For the purpose of incorporating the amendment to section 435.04, Florida Statutes, in references thereto, paragraphs (a), (b), (c), (d), (f), and (g) of subsection (13) of section 394.875, Florida Statutes, are reenacted to read:

394.875 Crisis stabilization units, residential treatment facilities, and residential treatment centers for children and adolescents; authorized services; license required; penalties.—

(13) Each applicant for licensure must comply with the following requirements:

(a) Upon receipt of a completed, signed, and dated application, the agency shall require background screening, in accordance with the level 2 standards for screening set forth in chapter 435, of the managing employee and financial officer, or other similarly titled individual who is responsible for the financial operation of the facility, including billings for client care and services. The applicant must comply with the procedures for level 2 background screening as set forth in chapter 435, as well as the requirements of s. 435.03(3).

(b) The agency may require background screening of any other individual who is an applicant if the agency has probable cause to believe that he or she has been convicted of a crime or has committed any other offense prohibited under the level 2 standards for screening set forth in chapter 435.

(c) Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years in compliance with any other health care licensure requirements of this state is acceptable in fulfillment of the requirements of paragraph (a).

(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the Department of Law Enforcement background check, but the agency has not yet received background screening results from the Federal Bureau of Investigation, or a request for a disqualification exemption has been submitted to the agency as set forth in chapter 435, but a response has not yet been issued. A standard license may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation. However, the person may not continue to serve if the report indicates any violation of background screening standards and a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

(f) Each applicant must submit to the agency a description and explanation of any conviction of an offense prohibited under the level 2 standards of chapter 435 by a member of the board of directors of the applicant, its officers, or any individual owning 5 percent or more of the applicant. This requirement does not apply to a director of a not-for-profit corporation or organization if the director serves solely in a voluntary capacity for the corporation or organization, does not regularly take part in the day-to-day operational decisions of the corporation or organization, receives no remuneration for his or her services on the corporation or organization's board of directors, and has no financial interest and has no family members with a financial interest in the corporation or organization, provided that the director and the not-for-profit corporation or organization include in the application a statement affirming that the director's relationship to the corporation satisfies the requirements of this paragraph.

(g) A license may not be granted to an applicant if the applicant or managing employee has been found guilty of an, regardless of adjudication, or has entered a plea of nolo contendere or guilty to, any offense prohibited under the level 2 standards for screening set forth in chapter 435, unless an exemption from disqualification has been granted by the agency as set forth in chapter 435.

Section 43. For the purpose of incorporating the amendment to section 435.04, Florida Statutes, in references thereto, subsections (1), (2), (3), (4), (6), and (8) of section 395.0055, Florida Statutes, are reenacted to read:

395.0055 Background screening.—Each applicant for licensure must comply with the following requirements:

(1) Upon receipt of a completed, signed, and dated application, the agency shall require background screening of the managing employee in accordance with the level 2 standards for screening set forth in chapter 435, as well as the requirements of s. 435.03(3).

(2) The agency may require background screening for a member of the board of directors of the licensee, or an officer or an individual owning 5 percent or more of the licensee, if the agency has probable cause to believe that such individual has been convicted of an offense prohibited under the level 2 standards for screening set forth in chapter 435.

(3) Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years in compliance with any other health care licensure requirements of this state is acceptable in fulfillment of subsection (1).

(4) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the Department of Law Enforcement background check, but the agency has not yet received background screening results from the Federal Bureau of Investigation, or a request for a disqualification exemption has been submitted to the agency as set forth in chapter 435 but a response has not yet been issued. A standard license may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation; however, the person may not continue to serve if the report indicates any violation of background screening standards and a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

(6) Each applicant must submit to the agency a description and explanation of any conviction of an offense prohibited under the level 2 standards of chapter 435 by a member of the board of directors of the applicant, its officers, or any individual owning 5 percent or more of the applicant.

(8) A license may not be granted to an applicant if the applicant or managing employee has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to, any offense prohibited under the level 2 standards for screening set forth in chapter 435, unless an exemption from disqualification has been granted by the agency as set forth in chapter 435.

Section 44. For the purpose of incorporating the amendment to section 435.04, Florida Statutes, in references thereto, paragraphs (a), (b), (c), (d), (f), and (g) of subsection (4) of section 395.0199, Florida Statutes, are reenacted to read:

395.0199 Private utilization review.—

(4) Each applicant for registration must comply with the following requirements:

(a) Upon receipt of a completed, signed, and dated application, the agency shall require background screening, in accordance with the level 2 standards for screening set forth in chapter 435, of the managing employee or other similarly titled individual who is responsible for the operation of the entity. The applicant must comply with the procedures for level 2 background screening as set forth in chapter 435, as well as the requirements of s. 435.03(3).

(b) The agency may require background screening of any other individual who is an applicant, if the agency has probable cause to believe that he or she has been convicted of a crime or has committed any other offense prohibited under the level 2 standards for screening set forth in chapter 435.

(c) Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years in compliance with any other health care licensure requirements of this state is acceptable in fulfillment of the requirements of paragraph (a).

(d) A provisional registration may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the Department of Law Enforcement background check, but the agency has not yet received background screening results from the Federal Bureau of Investigation, or a request for a disqualification exemption has been submitted to the agency as set forth in chapter 435 but a response has not yet been issued. A standard registration may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation. However, the person may not continue to serve if the report indicates any violation of background screening standards and a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

(f) Each applicant must submit to the agency a description and explanation of any conviction of an offense prohibited under the level 2 standards of chapter 435 by a member of the board of directors of the applicant, its officers, or any individual owning 5 percent or more of the applicant. This requirement does not apply to a director of a not-for-profit corporation or organization if the director serves solely in a voluntary capacity for the corporation or organization, does not regularly take part in the day-to-day operational decisions of the corporation or organization, receives no remuneration for his or her services on the corporation or organization's board of directors, and has no financial interest and has no family members with a financial interest in the corporation or organization, provided that the director and the not-for-profit corporation or organization include in the application a statement affirming that the director's relationship to the corporation satisfies the requirements of this paragraph.

(g) A registration may not be granted to an applicant if the applicant or managing employee has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to, any offense prohibited under the level 2 standards for screening set forth in chapter 435, unless an exemption from disqualification has been granted by the agency as set forth in chapter 435.

Section 45. For the purpose of incorporating the amendment to section 435.04, Florida Statutes, in references thereto, paragraph (a) of subsection (1) of section 397.451, Florida Statutes, is reenacted to read:

397.451 Background checks of service provider personnel.—

(1) PERSONNEL BACKGROUND CHECKS; REQUIREMENTS AND EXCEPTIONS.—

(a) Background checks shall apply as follows:

1. All owners, directors, and chief financial officers of service providers are subject to level 2 background screening as provided under chapter 435.

2. All service provider personnel who have direct contact with children receiving services or with adults who are developmentally disabled receiving services are subject to level 2 background screening as provided under chapter 435.

Section 46. For the purpose of incorporating the amendment to section 435.04, Florida Statutes, in references thereto, paragraphs (a), (b), (c), (d), and (f) of subsection (4) of section 400.071, Florida Statutes, are reenacted to read:

400.071 Application for license.—

(4) Each applicant for licensure must comply with the following requirements:

(a) Upon receipt of a completed, signed, and dated application, the agency shall require background screening of the applicant, in accordance with the level 2 standards for screening set forth in chapter 435. As used in this subsection, the term “applicant” means the facility administrator, or similarly titled individual who is responsible for the day-to-day operation of the licensed facility, and the facility financial officer, or similarly titled individual who is responsible for the financial operation of the licensed facility.

(b) The agency may require background screening for a member of the board of directors of the licensee or an officer or an individual owning 5 percent or more of the licensee if the agency has probable cause to believe that such individual has been convicted of an offense prohibited under the level 2 standards for screening set forth in chapter 435.

(c) Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years

in compliance with any other health care or assisted living licensure requirements of this state is acceptable in fulfillment of paragraph (a). Proof of compliance with background screening which has been submitted within the previous 5 years to fulfill the requirements of the Financial Services Commission and the Office of Insurance Regulation pursuant to chapter 651 as part of an application for a certificate of authority to operate a continuing care retirement community is acceptable in fulfillment of the Department of Law Enforcement and Federal Bureau of Investigation background check.

(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the Department of Law Enforcement background check, but the agency has not yet received background screening results from the Federal Bureau of Investigation, or a request for a disqualification exemption has been submitted to the agency as set forth in chapter 435, but a response has not yet been issued. A license may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation; however, the person may not continue to serve if the report indicates any violation of background screening standards and a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

(f) Each applicant must submit to the agency a description and explanation of any conviction of an offense prohibited under the level 2 standards of chapter 435 by a member of the board of directors of the applicant, its officers, or any individual owning 5 percent or more of the applicant. This requirement shall not apply to a director of a not-for-profit corporation or organization if the director serves solely in a voluntary capacity for the corporation or organization, does not regularly take part in the day-to-day operational decisions of the corporation or organization, receives no remuneration for his or her services on the corporation or organization's board of directors, and has no financial interest and has no family members with a financial interest in the corporation or organization, provided that the director and the not-for-profit corporation or organization include in the application a statement affirming that the director's relationship to the corporation satisfies the requirements of this paragraph.

Section 47. For the purpose of incorporating the amendment to section 435.04, Florida Statutes, in references thereto, paragraphs (a), (b), (c), (d), (f), and (g) of subsection (4) of section 400.471, Florida Statutes, are reenacted to read:

400.471 Application for license; fee; provisional license; temporary permit.—

(4) Each applicant for licensure must comply with the following requirements:

(a) Upon receipt of a completed, signed, and dated application, the agency shall require background screening of the applicant, in accordance with the level 2 standards for screening set forth in chapter 435. As used in this subsection, the term “applicant” means the administrator, or a similarly titled person who is responsible for the day-to-day operation of the licensed home health agency, and the financial officer, or similarly titled individual who is responsible for the financial operation of the licensed home health agency.

(b) The agency may require background screening for a member of the board of directors of the licensee or an officer or an individual owning 5 percent or more of the licensee if the agency reasonably suspects that such individual has been convicted of an offense prohibited under the level 2 standards for screening set forth in chapter 435.

(c) Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years in compliance with any other health care or assisted living licensure requirements of this state is acceptable in fulfillment of paragraph (a). Proof of compliance with background screening which has been submitted within the previous 5 years to fulfill the requirements of the Financial Services Commission and the Office of Insurance Regulation pursuant to chapter 651 as part of an application for a certificate of authority to operate a continuing care retirement community is acceptable in fulfillment of the Department of Law Enforcement and Federal Bureau of Investigation background check.

(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the Department of Law Enforcement background check, but the agency has not yet received background screening results from the Federal Bureau of Investigation. A standard license may be granted to the licensee upon the agency’s receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency’s receipt of the report from the Federal Bureau of Investigation. However, the person may not continue to serve if the report indicates any violation of background screening standards and a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

(f) Each applicant must submit to the agency a description and explanation of any conviction of an offense prohibited under the level 2 standards of chapter 435 by a member of the board of directors of the applicant, its officers, or any individual owning 5 percent or more of the applicant. This requirement does not apply to a director of a not-for-profit corporation or organization if the director serves solely in a voluntary capacity for the corporation or organization, does not regularly take part in the day-to-day operational decisions of the corporation or organization, receives no remuneration for his or her services on the corporation or organization’s board of



directors, and has no financial interest and has no family members with a financial interest in the corporation or organization, provided that the director and the not-for-profit corporation or organization include in the application a statement affirming that the director's relationship to the corporation satisfies the requirements of this paragraph.

(g) A license may not be granted to an applicant if the applicant, administrator, or financial officer has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to, any offense prohibited under the level 2 standards for screening set forth in chapter 435, unless an exemption from disqualification has been granted by the agency as set forth in chapter 435.

Section 48. For the purpose of incorporating the amendment to section 435.04, Florida Statutes, in references thereto, paragraphs (a), (b), (c), (d), (f), and (g) of subsection (2) of section 400.506, Florida Statutes, are reenacted to read:

400.506 Licensure of nurse registries; requirements; penalties.—

(2) Each applicant for licensure must comply with the following requirements:

(a) Upon receipt of a completed, signed, and dated application, the agency shall require background screening, in accordance with the level 2 standards for screening set forth in chapter 435, of the managing employee, or other similarly titled individual who is responsible for the daily operation of the nurse registry, and of the financial officer, or other similarly titled individual who is responsible for the financial operation of the registry, including billings for patient care and services. The applicant shall comply with the procedures for level 2 background screening as set forth in chapter 435.

(b) The agency may require background screening of any other individual who is an applicant if the agency has probable cause to believe that he or she has been convicted of a crime or has committed any other offense prohibited under the level 2 standards for screening set forth in chapter 435.

(c) Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years in compliance with any other health care or assisted living licensure requirements of this state is acceptable in fulfillment of the requirements of paragraph (a).

(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the Department of Law Enforcement background check but the agency has not yet received background screening results from the Federal Bureau of Investigation. A standard license may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all

standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation. However, the person may not continue to serve if the report indicates any violation of background screening standards and a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

(f) Each applicant must submit to the agency a description and explanation of any conviction of an offense prohibited under the level 2 standards of chapter 435 by a member of the board of directors of the applicant, its officers, or any individual owning 5 percent or more of the applicant. This requirement does not apply to a director of a not-for-profit corporation or organization if the director serves solely in a voluntary capacity for the corporation or organization, does not regularly take part in the day-to-day operational decisions of the corporation or organization, receives no remuneration for his or her services on the corporation or organization's board of directors, and has no financial interest and has no family members with a financial interest in the corporation or organization, provided that the director and the not-for-profit corporation or organization include in the application a statement affirming that the director's relationship to the corporation satisfies the requirements of this paragraph.

(g) A license may not be granted to an applicant if the applicant or managing employee has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to, any offense prohibited under the level 2 standards for screening set forth in chapter 435, unless an exemption from disqualification has been granted by the agency as set forth in chapter 435.

Section 49. For the purpose of incorporating the amendment to section 435.04, Florida Statutes, in references thereto, section 400.5572, Florida Statutes, is reenacted to read:

400.5572 Background screening.—

(1)(a) Level 2 background screening must be conducted on each of the following persons, who shall be considered employees for the purposes of conducting screening under chapter 435:

1. The adult day care center owner if an individual, the operator, and the financial officer.

2. An officer or board member if the owner of the adult day care center is a firm, corporation, partnership, or association, or any person owning 5 percent or more of the facility, if the agency has probable cause to believe that such person has been convicted of any offense prohibited by s. 435.04. For each officer, board member, or person owning 5 percent or more who has been convicted of any such offense, the facility shall submit to the agency a description and explanation of the conviction at the time of license application. This subparagraph does not apply to a board member of a not-for-profit corporation or organization if the board member serves solely in a voluntary

capacity, does not regularly take part in the day-to-day operational decisions of the corporation or organization, receives no remuneration for his or her services, and has no financial interest and has no family members with a financial interest in the corporation or organization, provided that the board member and facility submit a statement affirming that the board member's relationship to the facility satisfies the requirements of this subparagraph.

(b) Proof of compliance with level 2 screening standards which has been submitted within the previous 5 years to meet any facility or professional licensure requirements of the agency or the Department of Health satisfies the requirements of this subsection.

(c) The agency may grant a provisional license to an adult day care center applying for an initial license when each individual required by this subsection to undergo screening has completed the Department of Law Enforcement background check, but has not yet received results from the Federal Bureau of Investigation, or when a request for an exemption from disqualification has been submitted to the agency pursuant to s. 435.07, but a response has not been issued.

(2) The owner or administrator of an adult day care center must conduct level 1 background screening as set forth in chapter 435 on all employees hired on or after October 1, 1998, who provide basic services or supportive and optional services to the participants. Such persons satisfy this requirement if:

(a) Proof of compliance with level 1 screening requirements obtained to meet any professional license requirements in this state is provided and accompanied, under penalty of perjury, by a copy of the person's current professional license and an affidavit of current compliance with the background screening requirements.

(b) The person required to be screened has been continuously employed, without a breach in service that exceeds 180 days, in the same type of occupation for which the person is seeking employment and provides proof of compliance with the level 1 screening requirement which is no more than 2 years old. Proof of compliance must be provided directly from one employer or contractor to another, and not from the person screened. Upon request, a copy of screening results shall be provided to the person screened by the employer retaining documentation of the screening.

(c) The person required to be screened is employed by a corporation or business entity or related corporation or business entity that owns, operates, or manages more than one facility or agency licensed under this chapter, and for whom a level 1 screening was conducted by the corporation or business entity as a condition of initial or continued employment.

Section 50. For the purpose of incorporating the amendment to section 435.04, Florida Statutes, in references thereto, paragraph (a) of subsection (3) of section 400.607, Florida Statutes, is reenacted to read:

400.607 Denial, suspension, or revocation of license; imposition of administrative fine; grounds; injunctions.—

(3) The agency may deny or revoke a license upon a determination that:

(a) Persons subject to level 2 background screening under s. 400.6065 do not meet the screening standards of s. 435.04, and exemptions from disqualification have not been provided by the agency.

Section 51. For the purpose of incorporating the amendment to section 435.04, Florida Statutes, in references thereto, paragraphs (a), (b), (c), (d), (f), and (g) of subsection (4) of section 400.801, Florida Statutes, are reenacted to read:

400.801 Homes for special services.—

(4) Each applicant for licensure must comply with the following requirements:

(a) Upon receipt of a completed, signed, and dated application, the agency shall require background screening, in accordance with the level 2 standards for screening set forth in chapter 435, of the managing employee, or other similarly titled individual who is responsible for the daily operation of the facility, and of the financial officer, or other similarly titled individual who is responsible for the financial operation of the facility, including billings for client care and services, in accordance with the level 2 standards for screening set forth in chapter 435. The applicant must comply with the procedures for level 2 background screening as set forth in chapter 435.

(b) The agency may require background screening of any other individual who is an applicant if the agency has probable cause to believe that he or she has been convicted of a crime or has committed any other offense prohibited under the level 2 standards for screening set forth in chapter 435.

(c) Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years in compliance with any other health care or assisted living licensure requirements of this state is acceptable in fulfillment of the requirements of paragraph (a).

(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the Department of Law Enforcement background check, but the agency has not yet received background screening results from the Federal Bureau of Investigation, or a request for a disqualification exemption has been submitted to the agency as set forth in chapter 435, but a response has not yet been issued. A standard license may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation. However, the person may not continue to serve if the report

indicates any violation of background screening standards and a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

(f) Each applicant must submit to the agency a description and explanation of any conviction of an offense prohibited under the level 2 standards of chapter 435 by a member of the board of directors of the applicant, its officers, or any individual owning 5 percent or more of the applicant. This requirement does not apply to a director of a not-for-profit corporation or organization if the director serves solely in a voluntary capacity for the corporation or organization, does not regularly take part in the day-to-day operational decisions of the corporation or organization, receives no remuneration for his or her services on the corporation or organization's board of directors, and has no financial interest and has no family members with a financial interest in the corporation or organization, provided that the director and the not-for-profit corporation or organization include in the application a statement affirming that the director's relationship to the corporation satisfies the requirements of this paragraph.

(g) A license may not be granted to an applicant if the applicant or managing employee has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to, any offense prohibited under the level 2 standards for screening set forth in chapter 435, unless an exemption from disqualification has been granted by the agency as set forth in chapter 435.

Section 52. For the purpose of incorporating the amendment to section 435.04, Florida Statutes, in references thereto, paragraphs (a), (b), (c), (d), (f), and (g) of subsection (3) of section 400.805, Florida Statutes, are reenacted to read:

400.805 Transitional living facilities.—

(3) Each applicant for licensure must comply with the following requirements:

(a) Upon receipt of a completed, signed, and dated application, the agency shall require background screening, in accordance with the level 2 standards for screening set forth in chapter 435, of the managing employee, or other similarly titled individual who is responsible for the daily operation of the facility, and of the financial officer, or other similarly titled individual who is responsible for the financial operation of the facility, including billings for client care and services. The applicant must comply with the procedures for level 2 background screening as set forth in chapter 435.

(b) The agency may require background screening of any other individual who is an applicant if the agency has probable cause to believe that he or she has been convicted of a crime or has committed any other offense prohibited under the level 2 standards for screening set forth in chapter 435.

(c) Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years

in compliance with any other health care or assisted living licensure requirements of this state is acceptable in fulfillment of the requirements of paragraph (a).

(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the Department of Law Enforcement background check, but the agency has not yet received background screening results from the Federal Bureau of Investigation, or a request for a disqualification exemption has been submitted to the agency as set forth in chapter 435, but a response has not yet been issued. A standard license may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation. However, the person may not continue to serve if the report indicates any violation of background screening standards and a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

(f) Each applicant must submit to the agency a description and explanation of any conviction of an offense prohibited under the level 2 standards of chapter 435 by a member of the board of directors of the applicant, its officers, or any individual owning 5 percent or more of the applicant. This requirement does not apply to a director of a not-for-profit corporation or organization if the director serves solely in a voluntary capacity for the corporation or organization, does not regularly take part in the day-to-day operational decisions of the corporation or organization, receives no remuneration for his or her services on the corporation or organization's board of directors, and has no financial interest and has no family members with a financial interest in the corporation or organization, provided that the director and the not-for-profit corporation or organization include in the application a statement affirming that the director's relationship to the corporation satisfies the requirements of this paragraph.

(g) A license may not be granted to an applicant if the applicant or managing employee has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to, any offense prohibited under the level 2 standards for screening set forth in chapter 435, unless an exemption from disqualification has been granted by the agency as set forth in chapter 435.

Section 53. For the purpose of incorporating the amendment to section 435.04, Florida Statutes, in references thereto, paragraphs (a), (b), (c), (d), (f), and (g) of subsection (5) of section 400.906, Florida Statutes, are re-enacted to read:

400.906 Initial application for license.—

(5) Each applicant for licensure must comply with the following requirements:

(a) Upon receipt of a completed, signed, and dated application, the agency shall require background screening, in accordance with the level 2 standards for screening set forth in chapter 435, of the operator, and of the financial officer, or other similarly titled individual who is responsible for the financial operation of the center, including billings for patient care and services. The applicant must comply with the procedures for level 2 background screening as set forth in chapter 435, as well as the requirements of s. 435.03(3).

(b) The agency may require background screening of any other individual who is an applicant if the agency has a reasonable basis for believing that he or she has been convicted of a crime or has committed any other offense prohibited under the level 2 standards for screening set forth in chapter 435.

(c) Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years in compliance with any other health care licensure requirements of this state is acceptable in fulfillment of the requirements of paragraph (a).

(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the Department of Law Enforcement background check, but the agency has not yet received background screening results from the Federal Bureau of Investigation, or a request for a disqualification exemption has been submitted to the agency as set forth in chapter 435, but a response has not yet been issued. A standard license may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation. However, the person may not continue to serve if the report indicates any violation of background screening standards and a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

(f) Each applicant must submit to the agency a description and explanation of any conviction of an offense prohibited under the level 2 standards of chapter 435 by a member of the board of directors of the applicant, its officers, or any individual owning 5 percent or more of the applicant. This requirement does not apply to a director of a not-for-profit corporation or organization if the director serves solely in a voluntary capacity for the corporation or organization, does not regularly take part in the day-to-day operational decisions of the corporation or organization, receives no remuneration for his or her services on the corporation or organization's board of directors, and has no financial interest and has no family members with a financial interest in the corporation or organization, provided that the direc-

tor and the not-for-profit corporation or organization include in the application a statement affirming that the director's relationship to the corporation satisfies the requirements of this paragraph.

(g) A license may not be granted to an applicant if the applicant or managing employee has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to, any offense prohibited under the level 2 standards for screening set forth in chapter 435, unless an exemption from disqualification has been granted by the agency as set forth in chapter 435.

Section 54. For the purpose of incorporating the amendment to section 435.04, Florida Statutes, in references thereto, paragraphs (a), (b), (c), (e), and (f) of subsection (5) of section 400.931, Florida Statutes, are reenacted to read:

400.931 Application for license; fee; provisional license; temporary permit.—

(5) Each applicant for licensure must comply with the following requirements:

(a) Upon receipt of a completed, signed, and dated application, the agency shall require background screening of the applicant, in accordance with the level 2 standards for screening set forth in chapter 435. As used in this subsection, the term "applicant" means the general manager and the financial officer or similarly titled individual who is responsible for the financial operation of the licensed facility.

(b) The agency may require background screening for a member of the board of directors of the licensee or an officer or an individual owning 5 percent or more of the licensee if the agency has probable cause to believe that such individual has been convicted of an offense prohibited under the level 2 standards for screening set forth in chapter 435.

(c) Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years in compliance with any other health care licensure requirements of this state is acceptable in fulfillment of paragraph (a).

(e) Each applicant must submit to the agency a description and explanation of any conviction of an offense prohibited under the level 2 standards of chapter 435 by a member of the board of directors of the applicant, its officers, or any individual owning 5 percent or more of the applicant. This requirement does not apply to a director of a not-for-profit corporation or organization if the director serves solely in a voluntary capacity for the corporation or organization, does not regularly take part in the day-to-day operational decisions of the corporation or organization, receives no remuneration for his or her services on the corporation's or organization's board of directors, and has no financial interest and has no family members with a financial interest in the corporation or organization, provided that the director and the not-for-profit corporation or organization include in the



application a statement affirming that the director's relationship to the corporation satisfies the requirements of this provision.

(f) A license may not be granted to any potential licensee if any applicant, administrator, or financial officer has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to, any offense prohibited under the level 2 standards for screening set forth in chapter 435, unless an exemption from disqualification has been granted by the agency as set forth in chapter 435.

Section 55. For the purpose of incorporating the amendment to section 435.04, Florida Statutes, in references thereto, paragraphs (a), (b), (c), (d), and (f) of subsection (10) of section 400.962, Florida Statutes, are reenacted to read:

400.962 License required; license application.—

(10)(a) Upon receipt of a completed, signed, and dated application, the agency shall require background screening of the applicant, in accordance with the level 2 standards for screening set forth in chapter 435. As used in this subsection, the term "applicant" means the facility administrator, or similarly titled individual who is responsible for the day-to-day operation of the licensed facility, and the facility financial officer, or similarly titled individual who is responsible for the financial operation of the licensed facility.

(b) The agency may require background screening for a member of the board of directors of the licensee or an officer or an individual owning 5 percent or more of the licensee if the agency has probable cause to believe that such individual has been convicted of an offense prohibited under the level 2 standards for screening set forth in chapter 435.

(c) Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years in compliance with any other licensure requirements under this chapter satisfies the requirements of paragraph (a). Proof of compliance with background screening which has been submitted within the previous 5 years to fulfill the requirements of the Financial Services Commission and the Office of Insurance Regulation under chapter 651 as part of an application for a certificate of authority to operate a continuing care retirement community satisfies the requirements for the Department of Law Enforcement and Federal Bureau of Investigation background checks.

(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the Department of Law Enforcement background check, but the agency has not yet received background screening results from the Federal Bureau of Investigation, or a request for a disqualification exemption has been submitted to the agency as set forth in chapter 435, but a response has not yet been issued. A license may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards

have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation; however, the person may not continue to serve if the report indicates any violation of background screening standards and a disqualification exemption has not been granted by the agency as set forth in chapter 435.

(f) Each applicant must submit to the agency a description and explanation of any conviction of an offense prohibited under the level 2 standards of chapter 435 by a member of the board of directors of the applicant, its officers, or any individual owning 5 percent or more of the applicant. This requirement does not apply to a director of a not-for-profit corporation or organization if the director serves solely in a voluntary capacity for the corporation or organization, does not regularly take part in the day-to-day operational decisions of the corporation or organization, receives no remuneration for his or her services on the corporation's or organization's board of directors, and has no financial interest and has no family members with a financial interest in the corporation or organization, provided that the director and the not-for-profit corporation or organization include in the application a statement affirming that the director's relationship to the corporation satisfies the requirements of this paragraph.

Section 56. For the purpose of incorporating the amendment to section 435.04, Florida Statutes, in references thereto, paragraphs (b) and (d) of subsection (7) of section 400.991, Florida Statutes, are reenacted to read:

400.991 License requirements; background screenings; prohibitions.—

(7) Each applicant for licensure shall comply with the following requirements:

(b) Upon receipt of a completed, signed, and dated application, the agency shall require background screening of the applicant, in accordance with the level 2 standards for screening set forth in chapter 435. Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years in compliance with any other health care licensure requirements of this state is acceptable in fulfillment of this paragraph.

(d) A license may not be granted to a clinic if the applicant has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to, any offense prohibited under the level 2 standards for screening set forth in chapter 435, or a violation of insurance fraud under s. 817.234, within the past 5 years. If the applicant has been convicted of an offense prohibited under the level 2 standards or insurance fraud in any jurisdiction, the applicant must show that his or her civil rights have been restored prior to submitting an application.

Section 57. For the purpose of incorporating the amendment to section 435.04, Florida Statutes, in references thereto, paragraph (e) of subsection (2) of section 402.302, Florida Statutes, is reenacted to read:

## 402.302 Definitions.—

(2) “Child care facility” includes any child care center or child care arrangement which provides child care for more than five children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit. The following are not included:

(e) Operators of transient establishments, as defined in chapter 509, which provide child care services solely for the guests of their establishment or resort, provided that all child care personnel of the establishment are screened according to the level 2 screening requirements of chapter 435.

Section 58. For the purpose of incorporating the amendment to section 435.04, Florida Statutes, in references thereto, paragraph (a) of subsection (2) of section 402.305, Florida Statutes, is reenacted to read:

## 402.305 Licensing standards; child care facilities.—

(2) PERSONNEL.—Minimum standards for child care personnel shall include minimum requirements as to:

(a) Good moral character based upon screening. This screening shall be conducted as provided in chapter 435, using the level 2 standards for screening set forth in that chapter.

Section 59. For the purpose of incorporating the amendment to section 435.04, Florida Statutes, in references thereto, subsection (3) of section 402.3054, Florida Statutes, is reenacted to read:

## 402.3054 Child enrichment service providers.—

(3) A child enrichment service provider shall be of good moral character based upon screening. This screening shall be conducted as provided in chapter 435, using the level 2 standards for screening set forth in that chapter. A child enrichment service provider must meet the screening requirements prior to providing services to a child in a child care facility. A child enrichment service provider who has met the screening standards shall not be required to be under the direct and constant supervision of child care personnel.

Section 60. For the purpose of incorporating the amendment to section 435.04, Florida Statutes, in references thereto, paragraphs (a), (b), (c), (d), (f), and (g) of subsection (2) of section 483.30, Florida Statutes, are reenacted to read:

## 483.30 Licensing of centers.—

(2) Each applicant for licensure must comply with the following requirements:

(a) Upon receipt of a completed, signed, and dated application, the agency shall require background screening, in accordance with the level 2 standards for screening set forth in chapter 435, of the managing employee,

or other similarly titled individual who is responsible for the daily operation of the center, and of the financial officer, or other similarly titled individual who is responsible for the financial operation of the center, including billings for patient services. The applicant must comply with the procedures for level 2 background screening as set forth in chapter 435, as well as the requirements of s. 435.03(3).

(b) The agency may require background screening of any other individual who is an applicant if the agency has probable cause to believe that he or she has been convicted of a crime or has committed any other offense prohibited under the level 2 standards for screening set forth in chapter 435.

(c) Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years in compliance with any other health care licensure requirements of this state is acceptable in fulfillment of the requirements of paragraph (a).

(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the Department of Law Enforcement background check, but the agency has not yet received background screening results from the Federal Bureau of Investigation, or a request for a disqualification exemption has been submitted to the agency as set forth in chapter 435 but a response has not yet been issued. A license may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation. However, the person may not continue to serve if the report indicates any violation of background screening standards and a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

(f) Each applicant must submit to the agency a description and explanation of any conviction of an offense prohibited under the level 2 standards of chapter 435 by a member of the board of directors of the applicant, its officers, or any individual owning 5 percent or more of the applicant. This requirement does not apply to a director of a not-for-profit corporation or organization if the director serves solely in a voluntary capacity for the corporation or organization, does not regularly take part in the day-to-day operational decisions of the corporation or organization, receives no remuneration for his or her services on the corporation or organization's board of directors, and has no financial interest and has no family members with a financial interest in the corporation or organization, provided that the director and the not-for-profit corporation or organization include in the application a statement affirming that the director's relationship to the corporation satisfies the requirements of this paragraph.

(g) A license may not be granted to an applicant if the applicant or managing employee has been found guilty of, regardless of adjudication, or

has entered a plea of nolo contendere or guilty to, any offense prohibited under the level 2 standards for screening set forth in chapter 435, unless an exemption from disqualification has been granted by the agency as set forth in chapter 435.

Section 61. For the purpose of incorporating the amendment to section 435.04, Florida Statutes, in references thereto, paragraphs (a), (b), (c), (d), (f), and (g) of subsection (2) of section 483.101, Florida Statutes, are reenacted to read:

483.101 Application for clinical laboratory license.—

(2) Each applicant for licensure must comply with the following requirements:

(a) Upon receipt of a completed, signed, and dated application, the agency shall require background screening, in accordance with the level 2 standards for screening set forth in chapter 435, of the managing director or other similarly titled individual who is responsible for the daily operation of the laboratory and of the financial officer, or other similarly titled individual who is responsible for the financial operation of the laboratory, including billings for patient services. The applicant must comply with the procedures for level 2 background screening as set forth in chapter 435, as well as the requirements of s. 435.03(3).

(b) The agency may require background screening of any other individual who is an applicant if the agency has probable cause to believe that he or she has been convicted of a crime or has committed any other offense prohibited under the level 2 standards for screening set forth in chapter 435.

(c) Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years in compliance with any other health care licensure requirements of this state is acceptable in fulfillment of the requirements of paragraph (a).

(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the Department of Law Enforcement background check but the agency has not yet received background screening results from the Federal Bureau of Investigation, or a request for a disqualification exemption has been submitted to the agency as set forth in chapter 435 but a response has not yet been issued. A license may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation. However, the person may not continue to serve if the report indicates any violation of background screening standards and a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

(f) Each applicant must submit to the agency a description and explanation of any conviction of an offense prohibited under the level 2 standards of chapter 435 by a member of the board of directors of the applicant, its officers, or any individual owning 5 percent or more of the applicant. This requirement does not apply to a director of a not-for-profit corporation or organization if the director serves solely in a voluntary capacity for the corporation or organization, does not regularly take part in the day-to-day operational decisions of the corporation or organization, receives no remuneration for his or her services on the corporation or organization's board of directors, and has no financial interest and has no family members with a financial interest in the corporation or organization, provided that the director and the not-for-profit corporation or organization include in the application a statement affirming that the director's relationship to the corporation satisfies the requirements of this paragraph.

(g) A license may not be granted to an applicant if the applicant or managing employee has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to, any offense prohibited under the level 2 standards for screening set forth in chapter 435, unless an exemption from disqualification has been granted by the agency as set forth in chapter 435.

Section 62. For the purpose of incorporating the amendment to section 435.04, Florida Statutes, in references thereto, subsection (5) of section 744.1085, Florida Statutes, is reenacted to read:

744.1085 Regulation of professional guardians; application; bond required; educational requirements.—

(5) As required in s. 744.3135, each professional guardian shall allow a level 2 background screening of the guardian and employees of the guardian in accordance with the provisions of s. 435.04.

Section 63. For the purpose of incorporating the amendment to section 435.04, Florida Statutes, in references thereto, paragraph (b) of subsection (2) of section 984.01, Florida Statutes, is reenacted to read:

984.01 Purposes and intent; personnel standards and screening.—

(2) The Department of Juvenile Justice or the Department of Children and Family Services, as appropriate, may contract with the Federal Government, other state departments and agencies, county and municipal governments and agencies, public and private agencies, and private individuals and corporations in carrying out the purposes of, and the responsibilities established in, this chapter.

(b) The Department of Juvenile Justice and the Department of Children and Family Services shall require employment screening pursuant to chapter 435, using the level 2 standards set forth in that chapter for personnel in programs for children or youths.

Section 64. For the purpose of incorporating the amendment to section 435.04, Florida Statutes, in references thereto, paragraph (b) of subsection (2) of section 985.01, Florida Statutes, is reenacted to read:

985.01 Purposes and intent; personnel standards and screening.—

(2) The Department of Juvenile Justice or the Department of Children and Family Services, as appropriate, may contract with the Federal Government, other state departments and agencies, county and municipal governments and agencies, public and private agencies, and private individuals and corporations in carrying out the purposes of, and the responsibilities established in, this chapter.

(b) The Department of Juvenile Justice and the Department of Children and Family Services shall require employment screening pursuant to chapter 435, using the level 2 standards set forth in that chapter for personnel in programs for children or youths.

Section 65. For the purpose of incorporating the amendment to section 435.04, Florida Statutes, in references thereto, paragraphs (a) and (b) of subsection (7) of section 1002.36, Florida Statutes, are reenacted to read:

1002.36 Florida School for the Deaf and the Blind.—

(7) PERSONNEL SCREENING.—

(a) The Board of Trustees of the Florida School for the Deaf and the Blind shall, because of the special trust or responsibility of employees of the school, require all employees and applicants for employment to undergo personnel screening and security background investigations as provided in chapter 435, using the level 2 standards for screening set forth in that chapter, as a condition of employment and continued employment. The cost of a personnel screening and security background investigation for an employee of the school shall be paid by the school. The cost of such a screening and investigation for an applicant for employment may be paid by the school.

(b) As a prerequisite for initial and continuing employment at the Florida School for the Deaf and the Blind:

1. The applicant or employee shall submit to the Florida School for the Deaf and the Blind a complete set of fingerprints taken by an authorized law enforcement agency or an employee of the Florida School for the Deaf and the Blind who is trained to take fingerprints. The Florida School for the Deaf and the Blind shall submit the fingerprints to the Department of Law Enforcement for state processing and the Federal Bureau of Investigation for federal processing.

2.a. The applicant or employee shall attest to the minimum standards for good moral character as contained in chapter 435, using the level 2 standards set forth in that chapter under penalty of perjury.

b. New personnel shall be on a probationary status pending a determination of compliance with such minimum standards for good moral character. This paragraph is in addition to any probationary status provided for by Florida law or Florida School for the Deaf and the Blind rules or collective bargaining contracts.

3. The Florida School for the Deaf and the Blind shall review the record of the applicant or employee with respect to the crimes contained in s. 435.04 and shall notify the applicant or employee of its findings. When disposition information is missing on a criminal record, it shall be the responsibility of the applicant or employee, upon request of the Florida School for the Deaf and the Blind, to obtain and supply within 30 days the missing disposition information to the Florida School for the Deaf and the Blind. Failure to supply missing information within 30 days or to show reasonable efforts to obtain such information shall result in automatic disqualification of an applicant and automatic termination of an employee.

4. After an initial personnel screening and security background investigation, written notification shall be given to the affected employee within a reasonable time prior to any subsequent screening and investigation.

Section 66. For the purpose of incorporating the amendments to sections 943.0585 and 943.059, Florida Statutes, in references thereto, paragraph (a) of subsection (2) and subsection (6) of section 943.0582, Florida Statutes, are reenacted to read:

943.0582 Prearrest, postarrest, or teen court diversion program expunction.—

(2)(a) As used in this section, the term “expunction” has the same meaning ascribed in and effect as s. 943.0585, except that:

1. The provisions of s. 943.0585(4)(a) do not apply, except that the criminal history record of a person whose record is expunged pursuant to this section shall be made available only to criminal justice agencies for the purpose of determining eligibility for prearrest, postarrest, or teen court diversion programs; when the record is sought as part of a criminal investigation; or when the subject of the record is a candidate for employment with a criminal justice agency. For all other purposes, a person whose record is expunged under this section may lawfully deny or fail to acknowledge the arrest and the charge covered by the expunged record.

2. Records maintained by local criminal justice agencies in the county in which the arrest occurred that are eligible for expunction pursuant to this section shall be sealed as the term is used in s. 943.059.

(6) Expunction or sealing granted under this section does not prevent the minor who receives such relief from petitioning for the expunction or sealing of a later criminal history record as provided for in ss. 943.0585 and 943.059, if the minor is otherwise eligible under those sections.

Section 67. For the purpose of incorporating the amendment to section 943.059, Florida Statutes, in references thereto, subsections (7), (8), and (9) of section 943.053, Florida Statutes, are reenacted to read:

943.053 Dissemination of criminal justice information; fees.—

(7) Notwithstanding the provisions of s. 943.0525, and any user agreements adopted pursuant thereto, and notwithstanding the confidentiality of



sealed records as provided for in s. 943.059, the sheriff of any county that has contracted with a private entity to operate a county detention facility pursuant to the provisions of s. 951.062 shall provide that private entity, in a timely manner, copies of the Florida criminal history records for its inmates. The sheriff may assess a charge for the Florida criminal history records pursuant to the provisions of chapter 119. Sealed records received by the private entity under this section remain confidential and exempt from the provisions of s. 119.07(1).

(8) Notwithstanding the provisions of s. 943.0525, and any user agreements adopted pursuant thereto, and notwithstanding the confidentiality of sealed records as provided for in s. 943.059, the Department of Corrections shall provide, in a timely manner, copies of the Florida criminal history records for inmates housed in a private state correctional facility to the private entity under contract to operate the facility pursuant to the provisions of s. 944.105 or s. 957.03. The department may assess a charge for the Florida criminal history records pursuant to the provisions of chapter 119. Sealed records received by the private entity under this section remain confidential and exempt from the provisions of s. 119.07(1).

(9) Notwithstanding the provisions of s. 943.0525 and any user agreements adopted pursuant thereto, and notwithstanding the confidentiality of sealed records as provided for in s. 943.059, the Department of Juvenile Justice or any other state or local criminal justice agency may provide copies of the Florida criminal history records for juvenile offenders currently or formerly detained or housed in a contracted juvenile assessment center or detention facility or serviced in a contracted treatment program and for employees or other individuals who will have access to these facilities, only to the entity under direct contract with the Department of Juvenile Justice to operate these facilities or programs pursuant to the provisions of s. 985.411. The criminal justice agency providing such data may assess a charge for the Florida criminal history records pursuant to the provisions of chapter 119. Sealed records received by the private entity under this section remain confidential and exempt from the provisions of s. 119.07(1). Information provided under this section shall be used only for the criminal justice purpose for which it was requested and may not be further disseminated.

Section 68. The creation of sections 393.135, 394.4593, and 916.1075, Florida Statutes, by this act shall apply to offenses committed on or after the effective date of this act.

Section 69. Paragraph (b) of subsection (4) of section 20.19, Florida Statutes, is amended to read:

20.19 Department of Children and Family Services.—There is created a Department of Children and Family Services.

(4) PROGRAM OFFICES AND SUPPORT OFFICES.—

(b) The following program offices are established:

1. Adult Services.
2. Child Care Services.
3. Domestic Violence ~~Developmental Disabilities~~.
4. Economic Self-Sufficiency Services.
5. Family Safety.
6. Mental Health.
7. Refugee Services.
8. Substance Abuse.

Section 70. Section 20.197, Florida Statutes, is created to read:

20.197 Agency for Persons with Disabilities.—There is created the Agency for Persons with Disabilities, housed within the Department of Children and Family Services for administrative purposes only. The agency shall be a separate budget entity not subject to control, supervision, or direction by the Department of Children and Family Services in any manner, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters.

(1) The director of the agency shall be the agency head for all purposes and shall be appointed by the Governor and serve at the pleasure of the Governor. The director shall administer the affairs of the agency and establish administrative units as needed and may, within available resources, employ assistants, professional staff, and other employees as necessary to discharge the powers and duties of the agency.

(2) The agency shall be responsible for the provision of all services provided to persons with developmental disabilities pursuant to chapter 393, including the operation of all state institutional programs and the programmatic management of Medicaid waivers established to provide services to persons with developmental disabilities.

(3) The agency shall engage in such other administrative activities as are deemed necessary to effectively and efficiently address the needs of the agency's clients.

(4) The agency shall enter into an interagency agreement that delineates the responsibilities of the Agency for Health Care Administration for the following:

(a) The terms, and execution of contracts with Medicaid providers for the provision of services provided through Medicaid, including federally approved waiver programs.

(b) The billing, payment, and reconciliation of claims for Medicaid services reimbursed by the agency.

(c) The implementation of utilization management measures, including the prior authorization of services plans and the streamlining and consolidation of waivers services, to ensure the cost-effective provision of needed Medicaid services and to maximize the number of persons with access to such services.

(d) A system of approving each client's plan of care to ensure that the services on the plan of care are those that without which the client would require the services of an intermediate care facility for the developmentally disabled.

Section 71. Section 393.063, Florida Statutes, is amended to read:

393.063 Definitions.—For the purposes of this chapter:

~~(1) “Active treatment” means the provision of services by an interdisciplinary team necessary to maximize a client’s individual independence or prevent regression or loss of functional status.~~

~~(1)(2) “Agency” means the Agency for Persons with Disabilities Health Care Administration.~~

~~(2)(3) “Autism” means a pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and nonverbal communication and imaginative ability, and a markedly restricted repertoire of activities and interests.~~

~~(3)(4) “Cerebral palsy” means a group of disabling symptoms of extended duration which results from damage to the developing brain that may occur before, during, or after birth and that results in the loss or impairment of control over voluntary muscles. For the purposes of this definition, cerebral palsy does not include those symptoms or impairments resulting solely from a stroke.~~

~~(4)(5) “Client” means any person determined eligible by the agency department for developmental services under this chapter.~~

~~(5)(6) “Client advocate” means a friend or relative of the client, or of the client’s immediate family, who advocates for the best interests of the client in any proceedings under this chapter in which the client or his or her family has the right or duty to participate.~~

~~(6)(7) “Comprehensive assessment” means the process which is used to determine eligibility for developmental services under this chapter and develop the family or individual support plan. The term includes review and evaluation of information provided by the applicant, the individual receiving supports or services through developmental services, or the family, and others providing supports or services to the individual or family, as well as the use of formal assessment instruments.~~

~~(7)(8) “Comprehensive transitional education program” means a group of jointly operating centers or units, the collective purpose of which is to pro-~~

vide a sequential series of educational care, training, treatment, habilitation, and rehabilitation services to persons who have developmental disabilities, ~~as defined in subsection (12), and who have severe or moderate maladaptive behaviors. However, nothing in this subsection shall require such comprehensive transitional education programs to provide services only to persons with developmental disabilities, as defined in subsection (12).~~ All such services shall be temporary in nature and delivered in a structured residential setting with the primary goal of incorporating the normalizing principle to establish permanent residence for persons with maladaptive behaviors in facilities not associated with the comprehensive transitional education program. The staff shall include psychologists and teachers who, and such staff personnel shall be available to provide services in each component center or unit of the program. The psychologists shall be individuals who are licensed in this state and certified as behavior analysts in this state, or individuals who ~~meet the professional requirements established by the department for district behavior analysts and~~ are certified as behavior analysts pursuant to s. 393.17 ~~in this state.~~

(a) Comprehensive transitional education programs shall include a minimum of two component centers or units, ~~as defined in this paragraph,~~ one of which shall be either an intensive treatment and educational center or a transitional training and educational center, which provide services to persons with maladaptive behaviors in the following sequential order:

1. Intensive treatment and educational center. This component is a self-contained residential unit providing intensive psychological and educational programming for persons with severe maladaptive behaviors, whose behaviors preclude placement in a less restrictive environment due to the threat of danger or injury to themselves or others.

2. Transitional training and educational center. This component is a residential unit for persons with moderate maladaptive behaviors, providing concentrated psychological and educational programming emphasizing a transition toward a less restrictive environment.

3. Community transition residence. This component is a residential center providing educational programs and such support services, training, and care as are needed to assist persons with maladaptive behaviors to avoid regression to more restrictive environments while preparing them for more independent living. Continuous-shift staff shall be required for this component.

4. Alternative living center. This component is a residential unit providing an educational and family living environment for persons with maladaptive behaviors, in a moderately unrestricted setting. Residential staff shall be required for this component.

5. Independent living education center. This component is a facility providing a family living environment for persons with maladaptive behaviors, in a largely unrestricted setting which includes education and monitoring appropriate to support the development of independent living skills ~~by the students.~~

(b) Centers or units that are components of a comprehensive transitional education program are subject to the license issued to the comprehensive transitional education program and may be located on either single or multiple sites.

(c) Comprehensive transitional education programs shall develop individual education plans for each person with maladaptive behaviors who receives services therein. Such individual education plans shall be developed in accordance with the criteria specified included in Pub. L. No. 94-142, 20 U.S.C. ss. 401 et seq., and 34 C.F.R. part 300.

(d) In no instance shall the total number of persons with maladaptive behaviors being provided services in a comprehensive transitional education program exceed 120.

(e) This subsection shall authorize licensure for comprehensive transitional education programs which by July 1, 1989:

1. Are in actual operation; or

2. Own a fee simple interest in real property for which a county or city government has approved zoning allowing for the placement of the facilities described in this subsection, and have registered an intent with the department to operate a comprehensive transitional education program. However, nothing shall prohibit the assignment by such a registrant to another entity at a different site within the state, so long as there is compliance with all criteria of the comprehensive transitional education program and local zoning requirements and provided that each residential facility within the component centers or units of the program authorized under this subparagraph shall not exceed a capacity of 15 persons.

~~(9) "Day service" means the care, protection, and supervision of a client for a period of less than 24 hours a day on a regular basis which supplements for the client, in accordance with his or her individual needs, daily care, enrichment opportunities, and health supervision.~~

~~(8)(10)~~ "Day habilitation facility" means any nonresidential facility which provides day habilitation services.

~~(9)~~ "Day habilitation service" means assistance with the acquisition, retention, or improvement in self-help, socialization, and adaptive skills which takes place in a nonresidential setting, separate from the home or facility in which the individual resides. Day habilitation services shall focus on enabling the individual to attain or maintain his or her maximum functional level and shall be coordinated with any physical, occupational, or speech therapies listed in the plan of care.

~~(11)~~ "Department" means the Department of Children and Family Services.

~~(10)(12)~~ "Developmental disability" means a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

~~(11)~~(13) “Developmental disabilities services institution” means a state-owned and state-operated facility, formerly known as a “Sunland Center,” providing for the care, habilitation, and rehabilitation of clients with developmental disabilities.

~~(14)~~ “Developmental training facility” means ~~any nonresidential facility which provides basic training and habilitation to clients.~~

~~(12)~~(15) “Direct service provider,” also known as “caregiver” in chapters 39 and 415 or “caretaker” in provisions relating to employment security checks, means a person 18 years of age or older who has direct contact with individuals with developmental disabilities, or has access to a client’s living areas or to a client’s funds or personal property, and is not a relative of such unrelated to the individuals with developmental disabilities.

~~(a)~~ The term “direct service provider” also includes ~~any person, including members of the direct service provider’s family, over 12 years of age who resides with the direct service provider when:~~

~~1. The direct service provider provides supports or services in his or her residence;~~

~~2. The direct service provider provides supports or services in a facility adjacent to his or her residence; or~~

~~3. The person residing with the direct service provider has direct contact with the individual with developmental disabilities during the hours of provision of supports or services.~~

~~(b)~~ Persons residing with the direct service provider, including family members, who are between the ages of 12 years and 18 years are not required to be fingerprinted, but shall be screened for delinquency records.

~~(c)~~ A volunteer who assists on an intermittent basis for less than 40 hours per month is not a direct service provider for the purposes of screening if the volunteer is under the direct and constant supervision of persons who meet the personnel requirements of s. 393.0655.

~~(d)~~ A physician, nurse, or other professional licensed and regulated by the Department of Business and Professional Regulation is not a direct service provider for the purposes of screening if the service he or she is providing to a client is within the scope of practice for which he or she is licensed.

~~(e)~~ A person selected by the family or the individual with developmental disabilities and paid by the family or the individual to provide supports or services is not a direct service provider for the purpose of screening.

~~(16)~~ “District” means a service district of the department.

~~(13)~~(17) “Domicile” means the place where a client legally resides, which place is his or her permanent home. Domicile may be established as provided in s. 222.17. Domicile may not be established in Florida by a minor who has

no parent domiciled in Florida, or by a minor who has no legal guardian domiciled in Florida, or by any alien not classified as a resident alien.

(14)(18) “Enclave” means a work station in public or private business or industry where a small group of persons with developmental disabilities is employed and receives training and support services or follow-along services among nonhandicapped workers.

(15)(19) “Epilepsy” means a chronic brain disorder of various causes which is characterized by recurrent seizures due to excessive discharge of cerebral neurons. When found concurrently with retardation, autism, or cerebral palsy, epilepsy is considered a secondary disability for which the client is eligible to receive services to ameliorate this condition pursuant according to the provisions of this chapter.

(16)(20) “Express and informed consent” means consent voluntarily given in writing with sufficient knowledge and comprehension of the subject matter involved to enable the person giving consent to make an understanding and enlightened decision without any element of force, fraud, deceit, duress, or other form of constraint or coercion.

(17)(21) “Family care program” means the program established in s. 393.068 an alternative to residential placement, in which a direct service provider provides a home for a client and assists him or her to the extent necessary for the client to participate in normal activities and to meet the demands of daily living. The program provides the support needed by the client’s family or caretaker to meet the individual needs of the client.

(18)(22) “Follow-along services” means those support services ~~which shall be provided~~ to persons with developmental disabilities in all supported employment programs and may include, but are not limited to, family support, assistance in meeting transportation and medical needs, employer intervention, performance evaluation, advocacy, replacement, retraining or promotional assistance, or other similar support services.

(19)(23) “Foster care facility” means a residential facility which provides a family living environment including supervision and care necessary to meet the physical, emotional, and social needs of its residents. The capacity of such a facility shall not be more than three residents.

(20)(24) “Group home facility” means a residential facility which provides a family living environment including supervision and care necessary to meet the physical, emotional, and social needs of its residents. The capacity of such a facility shall be at least 4 residents but not more than 15 residents. For the purposes of this chapter, group home facilities shall not be considered commercial enterprises.

(21)(25) “Guardian advocate” means a person appointed by the circuit court to represent a person with developmental disabilities in any proceedings brought pursuant to s. 393.12, and excludes the use of the same term as applied to a guardian advocate for mentally ill persons in chapter 394.

(22)(26) “Habilitation” means the process by which a client is assisted to acquire and maintain those life skills which enable the client to cope more

effectively with the demands of his or her condition and environment and to raise the level of his or her physical, mental, and social efficiency. It includes, but is not limited to, programs of formal structured education and treatment.

(23)(27) “High-risk child” means, for the purposes of this chapter, a child from birth to 5 years of age with one or more of the following characteristics:

(a) A developmental delay in cognition, language, or physical development.

(b) A child surviving a catastrophic infectious or traumatic illness known to be associated with developmental delay, when funds are specifically appropriated.

(c) A child with a parent or guardian with developmental disabilities who ~~is developmentally disabled and~~ who requires assistance in meeting the child’s developmental needs.

(d) A child who has a physical or genetic anomaly associated with developmental disability.

(24)(28) “Intermediate care facility for the developmentally disabled” or “ICF/DD” means a residential facility licensed and certified pursuant to part XI of chapter 400 in accordance with state law, and certified by the Federal Government pursuant to the Social Security Act, as a provider of Medicaid services to persons who are developmentally disabled. ~~The capacity of such a facility shall not be more than 120 clients.~~

(25)(29) “Job coach” means a person who provides employment-related training at a work site to individuals with developmental disabilities.

(26)(30) “Medical/dental services” means those services which are provided or ordered for a client by a person licensed pursuant to the provisions of chapter 458, chapter 459, or chapter 466. Such services may include, but are not limited to, prescription drugs, specialized therapies, nursing supervision, hospitalization, dietary services, prosthetic devices, surgery, specialized equipment and supplies, adaptive equipment, and other services as required to prevent or alleviate a medical or dental condition.

(27)(31) “Mobile work crew” means a group of workers employed by an agency that provides services outside the agency, usually under service contracts.

(28)(32) “Normalization principle” means the principle of letting the client obtain an existence as close to the normal as possible, making available to the client patterns and conditions of everyday life which are as close as possible to the norm and patterns of the mainstream of society.

(29)(33) “Personal services” include, but are not limited to, such services as: individual assistance with or supervision of essential activities of daily living for self-care, including ambulation, bathing, dressing, eating, grooming, and toileting, and other similar services that which the agency department ~~may~~ define by rule. “Personal services” shall not be construed to mean



the provision of medical, nursing, dental, or mental health services by the staff of a facility, except as provided in this chapter. In addition, an emergency response device installed in the apartment or living area of a resident shall not be classified as a personal service.

(30)(34) “Prader-Willi syndrome” means an inherited condition typified by neonatal hypotonia with failure to thrive, hyperphagia or an excessive drive to eat which leads to obesity usually at 18 to 36 months of age, mild to moderate retardation, hypogonadism, short stature, mild facial dysmorphism, and a characteristic neurobehavior.

(31)(35) “Reassessment” means a process which periodically develops, through annual review and revision of a client’s family or individual support plan, a knowledgeable statement of current needs and past development for each client.

~~(36) “Rehabilitation workshop facility” means a place operated by a for-profit or nonprofit agency engaged in the manufacture or production of products or provision of services, which provides gainful rehabilitation to severely handicapped persons until such persons can become employed or which provides gainful work to persons who are developmentally disabled.~~

(32)(37) “Relative” means an individual who is connected by affinity or consanguinity to the client and who is 18 years of age or more.

(33)(38) “Resident” means any person who is developmentally disabled residing at a residential facility in the state, whether or not such person is a client of the agency department.

(34)(39) “Residential facility” means a facility providing room and board and personal care for persons with developmental disabilities.

(35) “Residential habilitation” means assistance provided with acquisition, retention, or improvement in skills related to activities of daily living, such as personal grooming and cleanliness, bedmaking and household chores, eating and the preparation of food, and the social and adaptive skills necessary to enable the individual to reside in a noninstitutional setting.

~~(36)(40) “Residential habilitation center” means a community residential facility that provides residential habilitation, operated primarily for the diagnosis, treatment, habilitation, or rehabilitation of its residents, which facility provides, in a structured residential setting, individualized continuing evaluation, planning, 24-hour supervision, and coordination and integration of health or rehabilitative services to help each resident reach his or her maximum functioning capabilities. The capacity of such a facility shall not be fewer less than nine residents. After October 1, 1989, no new residential habilitation centers shall be licensed and the licensed capacity shall not be increased for any existing residential habilitation center.~~

(37)(41) “Respite service” means appropriate, short-term, temporary care that is provided to a person with developmental disabilities to meet the planned or emergency needs of the person ~~with developmental disabilities~~ or the family or other direct service provider.

(38)(42) “Retardation” means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. “Significantly subaverage general intellectual functioning,” for the purpose of this definition, means performance which is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the agency department. “Adaptive behavior,” for the purpose of this definition, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community.

~~(43) “Screening,” for purposes of employment, contracting, or certification, means the act of assessing the background of direct service providers and independent support coordinators, who are not related to clients for whom they provide services, and includes, but is not limited to, employment history checks, local criminal records checks through local law enforcement agencies, fingerprinting for all purposes and checks in this subsection, statewide criminal records checks through the Department of Law Enforcement, and federal criminal records checks through the Federal Bureau of Investigation; except that screening for volunteers included under the definition of personnel includes only local criminal records checks through local law enforcement agencies for current residence and residence immediately prior to employment as a volunteer, if different; and statewide criminal records correspondence checks through the Department of Law Enforcement.~~

(39)(44) “Severe self-injurious behavior” means any chronic behavior that results in injury to the person’s own body, which includes, but is not limited to, self-hitting, head banging, self-biting, scratching, and the ingestion of harmful or potentially harmful nutritive or nonnutritive substances.

(40)(45) “Specialized therapies” means those treatments or activities prescribed by and provided by an appropriately trained, licensed, or certified professional or staff person and may include, but are not limited to, physical therapy, speech therapy, respiratory therapy, occupational therapy, behavior therapy, physical management services, and related specialized equipment and supplies.

(41)(46) “Spina bifida” means, for purposes of this chapter, a person with a medical diagnosis of spina bifida cystica or myelomeningocele.

(42)(47) “Support coordinator” means a person who is designated by the agency department to assist individuals and families in identifying their ~~desires~~, capacities, needs, and resources, as well as finding and gaining access to necessary supports and services; coordinating the delivery of supports and services; advocating on behalf of the individual and family; maintaining relevant records; and monitoring and evaluating the delivery of supports and services to determine the extent to which they meet the needs and expectations identified by the individual, family, and others who participated in the development of the support plan.

(43)(48) “Supported employee” means a person whose ~~developmental disability has traditionally kept him or her from integrated, community-based employment and who requires~~ and receives supported employment ~~ongoing~~

support or follow-along services in order to maintain community-based employment.

(44)(49) “Supported employment” means employment located or provided in a normal employment setting which provides at least 20 hours employment per week in an integrated work setting, with earnings paid on a commensurate wage basis, and for which continued support is ~~or follow-along services are~~ needed for ~~continuing~~ job maintenance.

(45)(50) “Supported living” means a category of individually determined services designed and coordinated in such a manner as to provide assistance to adult clients who require ongoing supports to live as independently as possible in their own homes, to be integrated into the community, and to participate in community life to the fullest extent possible.

(46)(51) “Training” means a planned approach to assisting a client to attain or maintain his or her maximum potential and includes services ranging from sensory stimulation to instruction in skills for independent living and employment.

(47)(52) “Treatment” means the prevention, amelioration, or cure of a client’s physical and mental disabilities or illnesses.

Section 72. Subsections (1), (3), (4), and (5) of section 393.064, Florida Statutes, are amended to read:

393.064 Prevention.—

(1) The agency ~~Department of Children and Family Services~~ shall give priority to the development, planning, and implementation of programs which have the potential to prevent, correct, cure, or reduce the severity of developmental disabilities. The agency department shall direct an interagency interdepartmental and interprogram effort for the continued development of a prevention plan and program. The agency department shall identify, through demonstration projects, through ~~departmental~~ program evaluation, and through monitoring of programs and projects conducted outside of the agency department, any medical, social, economic, or educational methods, techniques, or procedures that ~~which~~ have the potential to effectively ameliorate, correct, or cure developmental disabilities. The program department shall determine the costs and benefits that would be associated with such prevention efforts and shall implement, or recommend the implementation of, those methods, techniques, or procedures which are found likely to be cost-beneficial. ~~The department in its legislative budget request shall identify funding needs for such prevention programs.~~

(3) Other agencies of state government shall cooperate with and assist the agency department, within available resources, in implementing programs which have the potential to prevent, or reduce the severity of, developmental disabilities and shall consider the findings and recommendations of the agency department in developing and implementing agency programs and formulating agency budget requests.

(4) There is created at the developmental services institution in Gainesville a research and education unit. Such unit shall be named the Raymond

C. Philips Research and Education Unit. The functions of such unit shall include:

- (a) Research into the etiology of developmental disabilities.
- (b) Ensuring that new knowledge is rapidly disseminated throughout the developmental services program of the agency ~~Department of Children and Family Services~~.
- (c) Diagnosis of unusual conditions and syndromes associated with developmental disabilities in clients identified throughout the developmental services programs.
- (d) Evaluation of families of clients with developmental disabilities of genetic origin in order to provide them with genetic counseling aimed at preventing the recurrence of the disorder in other family members.
- (e) Ensuring that health professionals in the developmental services institution at Gainesville have access to information systems that will allow them to remain updated on newer knowledge and maintain their postgraduate education standards.
- (f) Enhancing staff training for professionals throughout the agency ~~department~~ in the areas of genetics and developmental disabilities.
- (5) The agency ~~Department of Children and Family Services~~ shall have the authority, within available resources, to contract for the supervision and management of the Raymond C. Philips Research and Education Unit, and such contract shall include specific program objectives.

Section 73. Section 393.0655, Florida Statutes, is amended to read:

393.0655 Screening of direct service providers.—

(1) MINIMUM STANDARDS.—The agency ~~department~~ shall require level 2 employment screening pursuant to chapter 435, using the level 2 standards for screening set forth in that chapter, for direct service providers who are unrelated to their clients, including support coordinators, and managers and supervisors of residential facilities or comprehensive transitional education programs licensed under s. 393.967 and any other person, including volunteers, who provide care or services, who have access to a client's living areas, or who have access to a client's funds or personal property. Background screening shall include employment history checks as provided in s. 435.03(1) and local criminal records checks through local law enforcement agencies.

(a) A volunteer who assists on an intermittent basis for less than 40 hours per month does not have to be screened, if the volunteer is under the direct and constant supervision of persons who meet the screening requirements of this section.

(b) Licensed physicians, nurses, or other professionals licensed and regulated by the Department of Health are not subject to background screening

pursuant to this section if they are providing a service that is within their scope of licensed practice.

(c) A person selected by the family or the individual with developmental disabilities and paid by the family or the individual to provide supports or services is not required to have a background screening under this section.

(d) Persons residing with the direct services provider, including family members, are subject to background screening; however, such persons who are 12 to 18 years of age shall be screened for delinquency records only.

(2) EXEMPTIONS FROM DISQUALIFICATION.—~~The agency department~~ may grant exemptions from disqualification from working with children or adults with developmental disabilities ~~the developmentally disabled~~ as provided in s. 435.07.

(3) PAYMENT FOR PROCESSING OF FINGERPRINTS AND STATE CRIMINAL RECORDS CHECKS.—The costs of processing fingerprints and the state criminal records checks shall be borne by the employer or by the employee or individual who is being screened.

(4) EXCLUSION FROM OWNING, OPERATING, OR BEING EMPLOYED BY A DIRECT SERVICE PROVIDER RESIDENTIAL FACILITY; HEARINGS PROVIDED.—

(a) ~~The agency department~~ shall deny, suspend, terminate, or revoke a license, certification, rate agreement, purchase order, or contract, or pursue other remedies provided in s. 393.0673, s. 393.0675, or s. 393.0678 in addition to or in lieu of denial, suspension, termination, or revocation for failure to comply with this section.

(b) When the ~~agency department~~ has reasonable cause to believe that grounds for denial or termination of employment exist, it shall notify, in writing, the employer and the direct service provider affected, stating the specific record which indicates noncompliance with the standards in this section.

(c) The procedures established for hearing under chapter 120 shall be available to the employer and the direct service provider in order to present evidence relating either to the accuracy of the basis of exclusion or to the denial of an exemption from disqualification.

(d) Refusal on the part of an employer to dismiss a direct service provider who has been found to be in noncompliance with standards of this section shall result in automatic denial, termination, or revocation of the license, certification, rate agreement, purchase order, or contract, in addition to any other remedies pursued by the agency department.

Section 74. Section 393.066, Florida Statutes, is amended to read:

393.066 Community services and treatment for persons who are developmentally disabled.—

(1) The agency ~~Department of Children and Family Services~~ shall plan, develop, organize, and implement its programs of services and treatment for persons who are developmentally disabled ~~along district lines~~. ~~The goal of such programs shall be to allow clients to live as independently as possible in their own homes or communities and to achieve productive lives as close to normal as possible.~~

~~(2) All programs of services and treatment for clients shall be administered through the districts and shall serve all clients regardless of the type of residential setting in which the client lives. All elements of community-based services shall be made available, in each service district and eligibility for these services shall be consistent across the state districts. In addition, all purchased services shall be approved by the agency district.~~

~~(2)(3) All services needed shall be purchased instead of provided directly by the agency department, when such arrangement is more cost-efficient than having those services provided directly by the department.~~

~~(3)(4) Community-based services that are medically necessary to prevent institutionalization shall, to the extent of available resources, include:~~

- ~~(a) Day habilitation services, including developmental training services.~~
- ~~(b) Family care services.~~
- ~~(c) Guardian advocate referral services.~~
- ~~(d) Medical/dental services, except that medical services shall not be provided to clients with spina bifida except as specifically appropriated by the Legislature.~~
- ~~(e) Parent training.~~
- ~~(f) Recreation.~~
- ~~(g) Residential services.~~
- ~~(h) Respite services.~~
- ~~(i) Social services.~~
- ~~(j) Specialized therapies.~~
- ~~(k) Supported employment, including enclave, job coach, mobile work crew, and follow-along services.~~
- ~~(l) Supported living.~~
- ~~(m) Training, including behavioral programming.~~
- ~~(n) Transportation.~~
- ~~(o) Other habilitative and rehabilitative services as needed.~~

Services to clients with spina bifida shall not include medical services except as appropriated by the Legislature.

~~(5) Provided it is consistent with the intent of the Legislature, the department shall prioritize increased appropriations provided for community-based services for developmentally disabled individuals toward individualized, community-based supports and services for consumers and their families. Further, the department's 5-year plan for Developmental Services shall reflect a priority toward individualized, community-based supports and services for consumers and their families.~~

~~(4)(6) The agency department shall utilize the services of private businesses, not-for-profit organizations, and units of local government whenever such services are more cost-efficient than such services provided directly by the department, including arrangements for provision of residential facilities.~~

~~(5)(7) In order to improve the potential for utilization of more cost-effective, community-based residential facilities, the agency department shall promote the statewide development of day habilitation services for clients who live with a direct service provider in a community-based residential facility and who do not require 24-hour-a-day care in a hospital or other health care institution, but who may, in the absence of day habilitation services, require admission to a developmental disabilities services institution. Each day service facility shall provide a protective physical environment for clients, ensure that direct service providers meet the minimum screening standards for good moral character as required contained in s. 393.0655, make available to all day habilitation service participants at least one meal on each day of operation, provide facilities to enable participants to obtain needed rest while attending the program, as appropriate, and provide social and educational activities designed to stimulate interest and provide socialization skills.~~

~~(6) To promote independence and productivity, the agency shall provide supports and services, within available resources, to assist clients enrolled in Medicaid waivers who choose to pursue gainful employment.~~

~~(7)(8) For the purpose of making needed community-based residential facilities available at the least possible cost to the state, the agency department is authorized to lease privately owned residential facilities under long-term rental agreements, if such rental agreements are projected to be less costly to the state over the useful life of the facility than state purchase or state construction of such a facility. In addition, the department is authorized to permit, on any public land to which the department holds the lease, construction of a residential facility for which the department has entered into a long-term rental agreement as specified in this subsection.~~

~~(8)(9) The agency department may adopt rules to ensure compliance with federal laws or regulations that apply to services provided pursuant to this section.~~

Section 75. Section 393.0661, Florida Statutes, is amended to read:

393.0661 Home and community-based services delivery system; comprehensive redesign.—The Legislature finds that the home and community-based services delivery system for persons with developmental disabilities and the availability of appropriated funds are two of the critical elements in making services available. Therefore, it is the intent of the Legislature that the Agency for Persons with Disabilities Department of Children and Family Services shall develop and implement a comprehensive redesign of the system.

(1) The redesign of the home and community-based services system shall include, at a minimum, all actions necessary to achieve an appropriate rate structure, client choice within a specified service package, appropriate assessment strategies, an efficient billing process that contains reconciliation and monitoring components, a redefined role for support coordinators that avoids potential conflicts of interest, and ensures that family/client budgets are linked to levels of need. Prior to the release of funds in the lump-sum appropriation, the department shall present a plan to the Executive Office of the Governor, the House Fiscal Responsibility Council, and the Senate Appropriations Committee. The plan must result in a full implementation of the redesigned system no later than July 1, 2003. At a minimum, the plan must provide that the portions related to direct provider enrollment and billing will be operational no later than March 31, 2003. The plan must further provide that a more effective needs assessment instrument will be deployed by January 1, 2003, and that all clients will be assessed with this device by June 30, 2003.

(a) In no event may The agency shall use department select an assessment instrument without appropriate evidence that is it will be reliable and valid. Once such evidence has been obtained, however, The agency may contract with department shall determine the feasibility of contracting with an external vendor to apply the new assessment device to all clients receiving services through the Medicaid waiver. In lieu of using an external vendor or, the department may use support coordinators to complete client for the assessments if it develops sufficient safeguards and training to ensure ongoing significantly improve the inter-rater reliability of the support coordinators administering the assessment.

(b) The agency, with the concurrence of the Agency for Health Care Administration, may contract for the determination of medical necessity and establishment of individual budgets.

(2) A provider of services rendered to persons with developmental disabilities pursuant to a federally-approved waiver shall be reimbursed according to a rate methodology based upon an analysis of the expenditure history and prospective costs of providers participating in the waiver program, or under any other methodology developed by the Agency for Health Care Administration, in consultation with the Agency for Persons with Disabilities, and approved by the Federal Government in accordance with the waiver.

(3) Pending the adoption of rate methodologies pursuant to non-emergency rulemaking under s. 120.54, the Agency for Health Care Administration may, at any time, adopt emergency rules under s. 120.54(4) in order



to comply with subsection (4). In adopting such emergency rules, the agency need not make the findings required by s. 120.54(4)(a), and such rules shall be exempt from time limitations provided in s. 120.54(4)(c) and shall remain in effect until replaced by another emergency rule or the non-emergency adoption of the rate methodology.

(4) Nothing in this section or in any administrative rule shall be construed to prevent or limit the Agency for Health Care Administration, in consultation with the Agency for Persons with Disabilities, from adjusting fees, reimbursement rates, lengths of stay, number of visits, or number of services, or from limiting enrollment, or making any other adjustment necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act. If at any time, based upon an analysis by the Agency for Health Care Administration in consultation with the Agency for Persons with Disabilities, the cost of home and community-based waiver services are expected to exceed the appropriated amount, the Agency for Health Care Administration may implement any adjustment, including provider rate reductions, within 30 days in order to remain within the appropriation.

Section 76. Section 393.068, Florida Statutes, is amended to read:

393.068 Family care program.—

(1) The family care program is established for the purpose of providing services and support to families and individuals with developmental disabilities in order to maintain the individual in the home environment and avoid costly out-of-home residential placement. ~~The Legislature recognizes the importance of family support in the long-range success of deinstitutionalization.~~ Services and support available to families and individuals with developmental disabilities shall emphasize community living and enable individuals with developmental disabilities to enjoy typical lifestyles. ~~Support and flexibility in coordinating support and services are core elements in caring for the individual who is developmentally disabled.~~ One way to accomplish this is to recognize that families are the greatest resource available to individuals who have developmental disabilities and ~~that families~~ must be supported in their role as primary care givers.

(2) Services and support authorized under this program shall, to the extent of available resources, include the services listed under s. 393.066(4) and, in addition, shall include, but not be limited to:

- (a) Attendant care.
- (b) Barrier-free modifications to the home.
- (c) Home visitation by agency workers.
- (d) In-home subsidies.
- (e) Low-interest loans.
- ~~(f) Parent training.~~

~~(g)~~ Respite care.

~~(f)~~(h) Modifications for vehicles used to transport the individual with a developmental disability.

~~(g)~~(i) Facilitated communication.

~~(h)~~(j) Family counseling.

~~(i)~~(k) Equipment and supplies.

~~(j)~~(l) Self-advocacy training.

~~(k)~~(m) Roommate services.

~~(l)~~(n) Integrated community activities.

~~(m)~~(o) Emergency services.

~~(n)~~(p) Support coordination.

(o) Supported employment.

~~(p)~~(q) Other support services as identified by the family or individual.

~~(2) Provided it is consistent with the intent of the Legislature, the department shall prioritize increased appropriations provided for family-based services for developmentally disabled individuals toward individualized, family-based supports and services for consumers and their families. Further, the department's 5-year plan for developmental services shall reflect a priority toward individualized, family-based supports and services for consumers and their families.~~

(3) When it is determined by the agency department to be more cost-effective and in the best interest of the client to maintain such client in the home of a direct service provider, the parent or guardian of the client or, if competent, the client may enroll the client in the family care program. The direct service provider of a client enrolled in the family care program shall be reimbursed according to a rate schedule set by the agency department. In-home subsidies cited in paragraph (1)(d) shall be provided according to s. 393.0695 and are not subject to any other payment method or rate schedule provided for in this section.

(4) All existing community resources available to the client shall be utilized to support program objectives. Additional services may be incorporated into the program as appropriate and to the extent that resources are available. The agency department is authorized to accept gifts and grants in order to carry out the program.

(5) The agency department may contract for the provision of any portion of the services required by the program, except for in-home subsidies cited in paragraph ~~(2)(d)~~ ~~(1)(d)~~, which shall be provided pursuant to s. 393.0695. Otherwise, purchase of service contracts shall be used whenever the services so provided are more cost-efficient than those provided by the agency department.

(6) When possible, services shall be obtained under the “Florida Comprehensive Annual Services Program Plan under Title XX of the Social Security Act” and the “Florida Plan for Medical Assistance under Title XIX of the Social Security Act.”

(7) To provide a range of personal services for the client, the use of volunteers shall be maximized. The agency department shall assure appropriate insurance coverage to protect volunteers from personal liability while acting within the scope of their volunteer assignments under the program.

~~(8) The department shall submit to the President of the Senate and the Speaker of the House of Representatives, as part of the biennial plan required by s. 393.14, an evaluation report summarizing the progress of the family care program. The report shall include the information and data necessary for an accurate analysis of the costs and benefits associated with the establishment and operation of the programs that were established.~~

Section 77. Subsections (1) and (3) of section 393.0695, Florida Statutes, are amended to read:

393.0695 Provision of in-home subsidies.—

(1) ~~The agency may pay department shall develop by October 1, 1991, a plan for paying~~ in-home subsidies to clients enrolled in the family care program or supported living when it is determined to be more cost-effective and in the best interest of the client to provide a cash supplement to the client’s income to enable the client to remain in the family home or the client’s own home. Payments may be made to the parent or guardian of the client or, if the client is competent, directly to the client.

(3) In-home subsidies must be based on an individual determination of need and must not exceed maximum amounts set by the agency department and reassessed by the agency annually department quarterly.

Section 78. Subsection (1), paragraph (a) of subsection (2), paragraph (a) of subsection(4), paragraphs (a), (d), and (h) of subsection (5), paragraph (a) of subsection (6), paragraphs (d) and (e) of subsection (8), and subsection (13) of section 393.11, Florida Statutes, are amended to read:

393.11 Involuntary admission to residential services.—

(1) JURISDICTION.—When a person is mentally retarded and requires involuntary admission to residential services provided by the agency developmental services program of the Department of Children and Family Services, the circuit court of the county in which the person resides shall have jurisdiction to conduct a hearing and enter an order involuntarily admitting the person in order that the person may receive the care, treatment, habilitation, and rehabilitation which the person needs. For the purpose of identifying mental retardation, diagnostic capability shall be established by ~~in every program function of the agency department in the districts, including, but not limited to, programs provided by children and families; delinquency services; alcohol, drug abuse, and mental health; and economic services, and by the Department of Labor and Employment Security.~~ Except as otherwise

specified, the proceedings under this section shall be governed by the Florida Rules of Civil Procedure.

(2) PETITION.—

(a) A petition for involuntary admission to residential services may be executed by a petitioning commission. For proposed involuntary admission to residential services arising out of chapter 916, the petition may be filed by a petitioning commission, the agency department, the state attorney of the circuit from which the defendant was committed, or the defendant's attorney.

(4) DEVELOPMENTAL SERVICES PARTICIPATION.—

(a) Upon receiving the petition, the court shall immediately order the developmental services program of the agency department to examine the person being considered for involuntary admission to residential services.

(5) EXAMINING COMMITTEE.—

(a) Upon receiving the petition, the court shall immediately appoint an examining committee to examine the person being considered for involuntary admission to residential services of the developmental services program of the agency department.

(d) Members of the committee shall not be employees of the agency department or be associated with each other in practice or in employer-employee relationships. Members of the committee shall not have served as members of the petitioning commission. Members of the committee shall not be employees of the members of the petitioning commission or be associated in practice with members of the commission.

(h) The agency department shall develop and prescribe by rule one or more standard forms to be used as a guide for members of the examining committee.

(6) COUNSEL; GUARDIAN AD LITEM.—

(a) The person with mental retardation shall be represented by counsel at all stages of the judicial proceeding. In the event the person is indigent and cannot afford counsel, the court shall appoint a public defender not less than 20 working days before the scheduled hearing. The person's counsel shall have full access to the records of the service provider and the agency department. In all cases, the attorney shall represent the rights and legal interests of the person with mental retardation, regardless of who may initiate the proceedings or pay the attorney's fee.

(8) ORDER.—

(d) If an order of involuntary admission to residential services provided by the developmental services program of the agency department is entered by the court, a copy of the written order shall be served upon the person, the person's counsel, the agency department, and the state attorney and the person's defense counsel, if applicable. The order of involuntary admission

sent to the agency department shall also be accompanied by a copy of the examining committee's report and other reports contained in the court file.

(e) Upon receiving the order, the agency department shall, within 45 days, provide the court with a copy of the person's family or individual support plan and copies of all examinations and evaluations, outlining the treatment and rehabilitative programs. The agency department shall document that the person has been placed in the most appropriate, least restrictive and cost-beneficial residential facility. A copy of the family or individual support plan and other examinations and evaluations shall be served upon the person and the person's counsel at the same time the documents are filed with the court.

(13) **HABEAS CORPUS.**—At any time and without notice, any person involuntarily admitted to the developmental services program of the agency department, or the person's parent or legal guardian in his or her behalf, is entitled to a writ of habeas corpus to question the cause, legality, and appropriateness of the person's involuntary admission. Each person, or the person's parent or legal guardian, shall receive specific written notice of the right to petition for a writ of habeas corpus at the time of his or her involuntary placement.

Section 79. Paragraphs (a), (b), and (d) of subsection (2), subsection (3), paragraphs (b), (g), (i), and (j) of subsection (4), and subsection (6) of section 393.13, Florida Statutes, are amended to read:

393.13 Personal treatment of persons who are developmentally disabled.—

(2) **LEGISLATIVE INTENT.**—

(a) The Legislature finds and declares that the system of care provided which the state provides to individuals who are developmentally disabled must be designed to meet the needs of the clients as well as protect the integrity of their legal and human rights. ~~Further, the current system of care for persons who are developmentally disabled is in need of substantial improvement in order to provide truly meaningful treatment and habilitation.~~

(b) The Legislature further finds and declares that the design and delivery of treatment and services to persons who are developmentally disabled should be directed by the principles of normalization and therefore should:

1. Abate the use of large institutions.
2. Continue the development of community-based services which provide reasonable alternatives to institutionalization in settings that are least restrictive to the client.
3. Provide training and education to individuals who are developmentally disabled which will maximize their potential to lead independent and productive lives and which will afford opportunities for outward mobility from institutions.

4. Reduce the use of sheltered workshops and other noncompetitive employment day activities and promote opportunities for gainful employment for persons with developmental disabilities who choose to seek such employment.

(d) It is the intent of the Legislature:

1. To articulate the existing legal and human rights of persons who are developmentally disabled so that they may be exercised and protected. Persons with developmental disabilities shall have all the rights enjoyed by citizens of the state and the United States.

2. To provide a mechanism for the identification, evaluation, and treatment of persons with developmental disabilities.

3. To divert those individuals from institutional commitment who, by virtue of comprehensive assessment, can be placed in less costly, more effective community environments and programs.

~~4. To develop a plan which will indicate the most effective and efficient manner in which to implement treatment programs which are meaningful to individuals with developmental disabilities, while safeguarding and respecting the legal and human rights of such individuals.~~

~~4.5. Once the plan developed under the provisions of subparagraph 4. is presented to the Legislature, To fund improvements in the program in accordance with the availability of state resources and yearly priorities determined by the Legislature.~~

~~5.6. To ensure that persons with developmental disabilities receive treatment and habilitation which fosters the developmental potential of the individual.~~

~~6.7. To provide programs for the proper habilitation and treatment of persons with developmental disabilities which shall include, but not be limited to, comprehensive medical/dental care, education, recreation, specialized therapies, training, social services, transportation, guardianship, family care programs, day habilitation services, and habilitative and rehabilitative services suited to the needs of the individual regardless of age, degree of disability, or handicapping condition. No person with developmental disabilities shall be deprived of these enumerated services by reason of inability to pay.~~

~~7.8. To fully effectuate the normalization principle through the establishment of community services for persons with developmental disabilities as a viable and practical alternative to institutional care at each stage of individual life development. If care in a residential facility becomes necessary, it shall be in the least restrictive setting.~~

(3) RIGHTS OF ALL PERSONS WITH DEVELOPMENTAL DISABILITIES.—The rights described in this subsection shall apply to all persons with developmental disabilities, whether or not such persons are clients of the agency department.

(a) Persons with developmental disabilities shall have a right to dignity, privacy, and humane care, including the right to be free from sexual abuse in residential facilities.

(b) Persons with developmental disabilities shall have the right to religious freedom and practice. Nothing shall restrict or infringe on a person's right to religious preference and practice.

(c) Persons with developmental disabilities shall receive services, within available sources, which protect the personal liberty of the individual and which are provided in the least restrictive conditions necessary to achieve the purpose of treatment.

(d) Persons who are developmentally disabled shall have a right to participate in an appropriate program of quality education and training services, within available resources, regardless of chronological age or degree of disability. Such persons may be provided with instruction in sex education, marriage, and family planning.

(e) Persons who are developmentally disabled shall have a right to social interaction and to participate in community activities.

(f) Persons who are developmentally disabled shall have a right to physical exercise and recreational opportunities.

(g) Persons who are developmentally disabled shall have a right to be free from harm, including unnecessary physical, chemical, or mechanical restraint, isolation, excessive medication, abuse, or neglect.

(h) Persons who are developmentally disabled shall have a right to consent to or refuse treatment, subject to the provisions of s. 393.12(2)(a) or chapter 744.

(i) No otherwise qualified person shall, by reason of having a developmental disability, be excluded from participation in, or be denied the benefits of, or be subject to discrimination under, any program or activity which receives public funds, and all prohibitions set forth under any other statute shall be actionable under this statute.

(j) No otherwise qualified person shall, by reason of having a developmental disability, be denied the right to vote in public elections.

(4) CLIENT RIGHTS.—For purposes of this subsection, the term “client,” as defined in s. 393.063, shall also include any person served in a facility licensed pursuant to s. 393.067.

(b) Each client has the right to the possession and use of his or her own clothing and personal effects, except in those specific instances where the use of some of these items as reinforcers is essential for training the client as part of an appropriately approved behavioral program. The chief administrator of the facility may take temporary custody of such effects when it is essential to do so for medical or safety reasons. Custody of such personal effects shall be promptly recorded in the client's record, and a receipt for

such effects shall be immediately given to the client, if competent, or the client's parent or legal guardian.

1. All money belonging to a client held by the agency department shall be held in compliance with s. 402.17(2).

2. All interest on money received and held for the personal use and benefit of a client shall be the property of that client and shall not accrue to the general welfare of all clients or be used to defray the cost of residential care. Interest so accrued shall be used or conserved for the personal use or benefit of the individual client as provided in s. 402.17(2).

3. Upon the discharge or death of a client, a final accounting shall be made of all personal effects and money belonging to the client held by the agency department. All such personal effects and money, including interest, shall be promptly turned over to the client or his or her heirs.

(g) No client shall be subjected to a treatment program to eliminate bizarre or unusual behaviors without first being examined by a physician who in his or her best judgment determines that such behaviors are not organically caused.

1. Treatment programs involving the use of noxious or painful stimuli shall be prohibited.

2. All alleged violations of this paragraph shall be reported immediately to the chief administrative officer of the facility or the district administrator, the agency department head, and the Florida local advocacy council. A thorough investigation of each incident shall be conducted and a written report of the finding and results of such investigation shall be submitted to the chief administrative officer of the facility or the district administrator and to the agency department head within 24 hours of the occurrence or discovery of the incident.

3. The agency department shall ~~adopt~~ promulgate by rule a system for the oversight of behavioral programs. Such system shall establish guidelines and procedures governing the design, approval, implementation, and monitoring of all behavioral programs involving clients. The system shall ensure statewide and local review by committees of professionals certified as behavior analysts pursuant to s. 393.17. No behavioral program shall be implemented unless reviewed according to the rules established by the agency department under this section. Nothing stated in this section shall prohibit the review of programs by the Florida statewide or local advocacy councils.

(i) Clients shall have the right to be free from unnecessary physical, chemical, or mechanical restraint. Restraints shall be employed only in emergencies or to protect the client from imminent injury to himself or herself or others. Restraints shall not be employed as punishment, for the convenience of staff, or as a substitute for a habilitative plan. Restraints shall impose the least possible restrictions consistent with their purpose and shall be removed when the emergency ends. Restraints shall not cause physical injury to the client and shall be designed to allow the greatest possible comfort.



1. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered restraints, but shall be prescriptively designed and applied under the supervision of a qualified professional with concern for principles of good body alignment, circulation, and allowance for change of position.

2. Totally enclosed cribs and barred enclosures shall be considered restraints.

3. Daily reports on the employment of physical, chemical, or mechanical restraints by those specialists authorized in the use of such restraints shall be made to the appropriate chief administrator of the facility, and a monthly summary of such reports shall be relayed to the district administrator and the Florida local advocacy council. The reports shall summarize all such cases of restraints, the type used, the duration of usage, and the reasons therefor. Districts shall submit districtwide quarterly reports of these summaries to the state Developmental Disabilities Program Office.

4. The agency department shall post a copy of the rules adopted promulgated under this section in each living unit of residential facilities. A copy of the rules adopted promulgated under this section shall be given to all staff members of licensed facilities and made a part of all preservice and inservice training programs.

(j)1. Each client shall have a central record. The record shall include data pertaining to admission and such other information as may be required under rules of the agency department.

2. Unless waived by the client, if competent, or the client's parent or legal guardian if the client is incompetent, the client's central record shall be confidential and exempt from the provisions of s. 119.07(1), and no part of it shall be released except:

a. The record may be released to physicians, attorneys, and government agencies having need of the record to aid the client, as designated by the client, if competent, or the client's parent or legal guardian, if the client is incompetent.

b. The record shall be produced in response to a subpoena or released to persons authorized by order of court, excluding matters privileged by other provisions of law.

c. The record or any part thereof may be disclosed to a qualified researcher, a staff member of the facility, or an employee of the agency department when the administrator of the facility or the director secretary of the agency department deems it necessary for the treatment of the client, maintenance of adequate records, compilation of treatment data, or evaluation of programs.

d. Information from the records may be used for statistical and research purposes if the information is abstracted in such a way to protect the identity of individuals.

3. All central records for each client in residential facilities shall be kept on uniform forms distributed by the agency department. The central record shall accurately summarize each client's history and present condition.

4. The client, if competent, or the client's parent or legal guardian if the client is incompetent, shall be supplied with a copy of the client's central record upon request.

(6) NOTICE OF RIGHTS.—Each person with developmental disabilities, if competent, or parent or legal guardian of such person if the person is incompetent, shall promptly receive from the agency Department of Children and Family Services or the Department of Education a written copy of this act. Each person with developmental disabilities able to comprehend shall be promptly informed, in the language or other mode of communication which such person understands, of the above legal rights of persons with developmental disabilities.

Section 80. Section 393.17, Florida Statutes, is amended to read:

~~393.17 Behavioral programs; certification of behavior analysts; fees.—  
The agency may recognize the certification of behavior analysts awarded by a nonprofit corporation whose mission is to meet professional credentialing needs identified by behavior analysts, state governments, and consumers of behavior analysis services and whose work has the support of the Association for Behavior Analysis International. The department shall by rule implement a certification program to ensure that qualified persons oversee the design and implementation of behavioral programs for persons who are developmentally disabled. Certification and recertification minimum standards must comply with departmental rules and must include, for initial certification, examination of competencies in applying behavior analysis with persons who are developmentally disabled within established competency clusters. These competency clusters shall include, but not be limited to, behavioral assessments, observation and recording, behavioral program development and monitoring, and other areas as determined by professional practitioners of behavior analysis. Fees shall be charged for certification not to exceed the cost of development and administration of the examination and periodic renewal of certification. The department shall establish by rule the procedures for certification and certification renewal.~~

Section 81. Section 393.22, Florida Statutes, is amended to read:

~~393.22 Transfer of appropriations; barriers to services; Financial commitment to community services programs.—~~

~~(1) No funds appropriated for developmental services programs shall be transferred pursuant to s. 216.292, unless there is a finding by the secretary that treatment programs for developmental disabilities will not be adversely affected by the transfer.~~

~~(2) Development of programs for other disabilities shall not effectuate a reduction or dilution of the ongoing financial commitment of the state through appropriations for programs and services for persons with mental retardation, cerebral palsy, autism, or spina bifida.~~

(3) ~~In order to~~ ~~The Department of Children and Family Services and the Agency for Health Care Administration jointly shall ensure that whenever~~ a number of persons move from an institution serving persons with developmental disabilities which is sufficient to allow an entire residential unit within that institution to be closed, no less than 80 percent of the direct costs of providing services to persons who had resided in that unit shall be reallocated for community services.

Section 82. Section 393.502, Florida Statutes, is amended to read:

393.502 Family care councils.—

(1) CREATION.—There shall be established and located within each service area of the agency ~~district of the department~~ a district family care council.

(2) MEMBERSHIP.—

(a) Each local ~~district~~ family care council shall consist of at least 10 and no more than 15 members recommended by a majority vote of the local ~~district~~ family care council and appointed by the Governor.

(b) At least three of the members of the council must be consumers. One such member shall be a consumer who received ~~developmental~~ services within the 4 years prior to the date of recommendation, or the legal guardian of such a consumer. The remainder of the council members shall be parents, guardians, or siblings of persons with developmental disabilities who qualify for ~~developmental~~ services pursuant to this chapter.

(c) A person who is currently serving on another board or council of the agency ~~department~~ may not be appointed to a local ~~district~~ family care council.

(d) Employees of the agency ~~department~~ are not eligible to serve on a local ~~district~~ family care council.

(e) Persons related by consanguinity or affinity within the third degree shall not serve on the same local ~~district~~ family care council at the same time.

(f) A chair for the council shall be chosen by the council members to serve for 1 year. A person may serve no more than four 1-year terms as chair.

(3) TERMS; VACANCIES.—

(a) Council members shall be appointed for a 3-year term, except as provided in subsection (8), and may be reappointed to one additional term.

(b) A member who has served two consecutive terms shall not be eligible to serve again until 12 months have elapsed since ending his or her service on the local ~~district~~ council.

(c) Upon expiration of a term or in the case of any other vacancy, the local ~~district~~ council shall, by majority vote, recommend to the Governor for appointment a person for each vacancy. ~~If the Governor does not act on the~~

council's recommendations within 45 days after receiving them, the persons recommended shall be considered to be appointed.

(4) COMMITTEE APPOINTMENTS.—The chair of the local district family care council may appoint persons to serve on council committees. Such persons may include former members of the council and persons not eligible to serve on the council.

(5) TRAINING.—

(a) The agency department, in consultation with the local district councils, shall establish a training program for local district family care council members. Each local area district shall provide the training program when new persons are appointed to the local district council and at other times as the secretary deems necessary.

(b) The training shall assist the council members to understand the laws, rules, and policies applicable to their duties and responsibilities.

(c) All persons appointed to a local district council must complete this training within 90 days after their appointment. A person who fails to meet this requirement shall be considered to have resigned from the council.

(6) MEETINGS.—Council members shall serve on a voluntary basis without payment for their services but shall be reimbursed for per diem and travel expenses as provided for in s. 112.061. The council shall meet at least six times per year.

(7) PURPOSE.—The purpose of the local district family care councils shall be to advise the agency department and its district advisory boards, to develop a plan for the delivery of developmental services family support services within the local area district, and to monitor the implementation and effectiveness of services and support provided under the plan. The primary functions of the local district family care councils shall be to:

(a) Assist in providing information and outreach to families.

(b) Review the effectiveness of service developmental services programs and make recommendations with respect to program implementation.

(c) Advise the agency district developmental services administrators with respect to policy issues relevant to the community and family support system in the local area district.

(d) Meet and share information with other local district family care councils.

(8) NEW COUNCILS.—When a local district family care council is established for the first time in a local area district, the Governor shall appoint the first four council members, who shall serve 3-year terms. These members shall submit to the Governor, within 90 days after their appointment, recommendations for at least six additional members, selected by majority vote. ~~If the Governor does not act on the recommendations within 45 days after receiving them, the persons recommended shall be considered to be~~

appointed. Those members recommended for appointment by the Governor shall serve for 2 years.

(9) FUNDING; FINANCIAL REVIEW.—The local ~~district~~ family care council may apply for, receive, and accept grants, gifts, donations, bequests, and other payments from any public or private entity or person. Each local ~~district~~ council ~~is shall be~~ subject to an annual financial review by ~~district~~ staff assigned by the agency ~~district~~ administrator. Each local ~~district~~ council shall exercise care and prudence in the expenditure of funds. The local ~~district~~ family care councils shall comply with state expenditure requirements.

Section 83. Section 408.301, Florida Statutes, is amended to read:

408.301 Legislative findings.—The Legislature has found that access to quality, affordable, health care for all Floridians is an important goal for the state. The Legislature recognizes that there are Floridians with special health care and social needs which require particular attention. The people served by the Department of Children and Family Services, the Agency for Persons with Disabilities, and the Department of Health, and the Department of Elderly Affairs are examples of citizens with special needs. The Legislature further recognizes that the Medicaid program is an intricate part of the service delivery system for the special needs citizens ~~served by or through the Department of Children and Family Services and the Department of Health. However,~~ the Agency for Health Care Administration is not a service provider and does not develop or direct programs for the special needs citizens ~~served by or through the Department of Children and Family Services and the Department of Health.~~ Therefore, it is the intent of the Legislature that the Agency for Health Care Administration work closely with the Department of Children and Family Services, the Agency for Persons with Disabilities, and the Department of Health, and the Department of Elderly Affairs in developing plans for assuring access to all Floridians in order to assure that the needs of special citizens are met.

Section 84. Section 408.302, Florida Statutes, is amended to read:

408.302 Interagency agreement.—

(1) The Agency for Health Care Administration shall enter into an interagency agreement with the Department of Children and Family Services, the Agency for Persons with Disabilities, and the Department of Health, and the Department of Elderly Affairs to assure coordination and cooperation in serving special needs citizens. The agreement shall include the requirement that the ~~secretaries or directors~~ secretary of the Department of Children and Family Services, the Agency for Persons with Disabilities, and the ~~secretary~~ of the Department of Health, and the Department of Elderly Affairs approve, prior to adoption, any rule developed by the Agency for Health Care Administration where such rule has a direct impact on the mission of the ~~respective state agencies~~ Department of Children and Family Services and the Department of Health, their programs, or their budgets.

(2) For rules which indirectly impact on the mission of the Department of Children and Family Services, the Agency for Persons with Disabilities,

~~and the Department of Health, and the Department of Elderly Affairs, their programs, or their budgets, the concurrence of the respective secretaries or directors secretary of the Department of Children and Family Services and the secretary of the Department of Health on the rule is required.~~

(3) For all other rules developed by the Agency for Health Care Administration, coordination with the Department of Children and Family Services, the Agency for Persons with Disabilities, and the Department of Health, and the Department of Elderly Affairs is encouraged.

(4) The interagency agreement shall also include any other provisions necessary to ensure a continued cooperative working relationship between the Agency for Health Care Administration and the Department of Children and Family Services, the Agency for Persons with Disabilities, and the Department of Health, and the Department of Elderly Affairs as each strives to meet the needs of the citizens of Florida.

Section 85. Subsection (13) of section 409.906, Florida Statutes, is amended to read:

409.906 Optional Medicaid services.—Subject to specific appropriations, the agency may make payments for services which are optional to the state under Title XIX of the Social Security Act and are furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any optional service that is provided shall be provided only when medically necessary and in accordance with state and federal law. Optional services rendered by providers in mobile units to Medicaid recipients may be restricted or prohibited by the agency. Nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, or number of services, or making any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216. If necessary to safeguard the state's systems of providing services to elderly and disabled persons and subject to the notice and review provisions of s. 216.177, the Governor may direct the Agency for Health Care Administration to amend the Medicaid state plan to delete the optional Medicaid service known as "Intermediate Care Facilities for the Developmentally Disabled." Optional services may include:

(13) HOME AND COMMUNITY-BASED SERVICES.—The agency may pay for home-based or community-based services that are rendered to a recipient in accordance with a federally approved waiver program. The agency may limit or eliminate coverage for certain ~~Project AIDS Care Waiver~~ services, preauthorize high-cost or highly utilized services, or make any other adjustments necessary to comply with any limitations or directions provided for in the General Appropriations Act.

Section 86. Sections 393.14, 393.165, 393.166, and 393.505, Florida Statutes, are repealed.

Section 87. (1) Effective October 1, 2004, the developmental disabilities program and the developmental services institutions in the Department of

Children and Family Services shall be transferred to the Agency for Persons with Disabilities by a type two transfer pursuant to s. 20.06, Florida Statutes. Prior to that date:

(a) The Agency for Persons with Disabilities and the Department of Children and Family Services, in consultation with the Department of Management Services, shall determine the number of positions and resources within the department dedicated to the developmental disabilities program which shall be transferred to the agency and will develop an agreement that delineates who within the Department of Children and Family Services will provide administrative support to the agency.

(b) The Director of the Agency for Persons with Disabilities, in consultation with the Secretaries of the Department of Children and Family Services and the Agency for Health Care Administration or their designees, shall prepare a transition plan that must address, at a minimum, building leases, information support systems, cash ownership and transfer, administrative support functions, inventory and transfers of equipment and structures, expenditure transfers, budget authority and positions, and certifications forward. This plan shall be submitted by September 1, 2004, to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(c) The Agency for Persons with Disabilities and the Department of Children and Family Services shall work with the Agency for Health Care Administration to develop a plan that ensures that all of the necessary electronic and paper-based data of the Developmental Disabilities program is accessible to the Medicaid program and that all electronic records will be migrated to a new data system that is compatible with the Florida Medicaid Management Information System.

(d) The Agency for Persons with Disabilities and the Agency for Health Care Administration shall develop a plan for the orderly relocation of the noncentral-office staff of the Agency for Persons with Disabilities to the area offices of the Agency for Health Care Administration. Such plan shall include a schedule that takes into consideration the availability of space, the expiration of current leases, and the initiation of new leases that can accommodate the relocated staff, as well as appropriate reimbursement for collocation costs, including office space and other operating expenses.

(2) Effective October 1, 2004, the agency shall enter into an interagency agreement with the Department of Children and Family Services for the provision of the necessary day-to-day administrative and operational needs of the agency, including, but not limited to, personnel, purchasing, information technology support, legal support, and other related services. This interagency agreement shall continue until the agency no longer requires the provision of services through such agreement.

(3) This act does not affect the validity of any judicial or administrative proceeding pending on October 30, 2004, and the Agency for Persons with Disabilities is substituted as a real party in interest with respect to any proceeding pending on that date which involves the developmental services programs of the Department of Children and Family Services.

Section 88. The Office of Program Policy Analysis and Government Accountability shall identify and evaluate statewide entities receiving state funding for the purpose of addressing the interests of, but not directly providing services for, persons with disabilities.

(1) The purpose of the analysis shall be to provide information with respect to:

(a) The extent to which activities of these entities are coordinated;

(b) The similarities and differences in the organizational missions of these entities; and

(c) The amount of state funds provided to these entities for the purpose of addressing the interests of persons with disabilities, the uses of these funds, and whether they duplicate the efforts of other private or federally funded entities.

(2) The report shall be completed and provided to the Governor and Legislature by December 2005.

Section 89. Subsection (1) of section 92.53, Florida Statutes, is amended to read:

92.53 Videotaping of testimony of victim or witness under age 16 or person with mental retardation.—

(1) On motion and hearing in camera and a finding that there is a substantial likelihood that a victim or witness who is under the age of 16 or who is a person with mental retardation as defined in s. 393.063(42) would suffer at least moderate emotional or mental harm due to the presence of the defendant if the child or person with mental retardation is required to testify in open court, or that such victim or witness is otherwise unavailable as defined in s. 90.804(1), the trial court may order the videotaping of the testimony of the victim or witness in a case, whether civil or criminal in nature, in which videotaped testimony is to be utilized at trial in lieu of trial testimony in open court.

Section 90. Subsections (1), (2), and (3), paragraph (i) of subsection (4), and subsections (5), (8), (9), (10), (11), (12), (13), (14), and (17) of 393.067, Florida Statutes, are amended to read:

393.067 Licensure of residential facilities and comprehensive transitional education programs.—

(1) The agency department shall provide through its licensing authority a system of provider qualifications, standards, training criteria for meeting standards, and monitoring for residential facilities and comprehensive transitional education programs.

(2) The agency department shall conduct inspections and reviews of residential facilities and comprehensive transitional education programs annually.



(3) An application for a license for a residential facility or a comprehensive transitional education program shall be made to the agency Department of Children and Family Services on a form furnished by it and shall be accompanied by the appropriate license fee.

(4) The application shall be under oath and shall contain the following:

(i) Such other information as the agency department determines is necessary to carry out the provisions of this chapter.

(5) The applicant shall submit evidence which establishes the good moral character of the manager or supervisor of the facility or program and the direct service providers in the facility or program and its component centers or units. A license may be issued if all the screening materials have been timely submitted; however, a license may not be issued or renewed if any of the direct service providers have failed the screening required by s. 393.0655.

(a)1. A licensed residential facility or comprehensive transitional education program which applies for renewal of its license shall submit to the agency department a list of direct service providers who have worked on a continuous basis at the applicant facility or program since submitting fingerprints to the agency or the Department of Children and Family Services, identifying those direct service providers for whom a written assurance of compliance was provided by the agency or department and identifying those direct service providers who have recently begun working at the facility or program and are awaiting the results of the required fingerprint check along with the date of the submission of those fingerprints for processing. The agency department shall by rule determine the frequency of requests to the Department of Law Enforcement to run state criminal records checks for such direct service providers except for those direct service providers awaiting the results of initial fingerprint checks for employment at the applicant facility or program. The agency department shall review the records of the direct service providers at the applicant facility or program with respect to the crimes specified in s. 393.0655 and shall notify the facility or program of its findings. When disposition information is missing on a criminal record, it ~~is~~ shall be the responsibility of the person being screened, upon request of the agency department, to obtain and supply within 30 days the missing disposition information to the agency department. Failure to supply the missing information within 30 days or to show reasonable efforts to obtain such information shall result in automatic disqualification.

2. The applicant shall sign an affidavit under penalty of perjury stating that all new direct service providers have been fingerprinted and that the facility's or program's remaining direct service providers have worked at the applicant facility or program on a continuous basis since being initially screened at that facility or program or have a written assurance of compliance from the agency or department.

(b) As a prerequisite for issuance of the initial license to a residential facility or comprehensive transitional education program:

1. The applicant shall submit to the agency department a complete set of fingerprints, taken by an authorized law enforcement agency or an employee of the agency department who is trained to take fingerprints, for the manager, supervisor, or direct service providers of the facility or program;

2. The agency department shall submit the fingerprints to the Department of Law Enforcement for state processing and for federal processing by the Federal Bureau of Investigation; and

3. The agency department shall review the record of the manager or supervisor with respect to the crimes specified in s. 393.0655(1) and shall notify the applicant of its findings. When disposition information is missing on a criminal record, it ~~is shall be~~ the responsibility of the manager or supervisor, upon request of the agency department, to obtain and supply within 30 days the missing disposition information to the agency department. Failure to supply the missing information within 30 days or to show reasonable efforts to obtain such information shall result in automatic disqualification.

(c) The agency department or a residential facility or comprehensive transitional education program may not use the criminal records or juvenile records of a person obtained under this subsection for any purpose other than determining if that person meets the minimum standards for good moral character for a manager or supervisor of, or direct service provider in, such a facility or program. The criminal records or juvenile records obtained by the agency department or a residential facility or comprehensive transitional education program for determining the moral character of a manager, supervisor, or direct service provider are exempt from s. 119.07(1).

(8) The agency department shall adopt promulgate rules establishing minimum standards for licensure of residential facilities and comprehensive transitional education programs, including rules requiring facilities and programs to train staff to detect and prevent sexual abuse of residents and clients, minimum standards of quality and adequacy of care, and uniform firesafety standards established by the State Fire Marshal which are appropriate to the size of the facility or of the component centers or units of the program.

(9) The agency department and the Agency for Health Care Administration, after consultation with the Department of Community Affairs, shall adopt rules for residential facilities under the respective regulatory jurisdiction of each establishing minimum standards for the preparation and annual update of a comprehensive emergency management plan. At a minimum, the rules must provide for plan components that address emergency evacuation transportation; adequate sheltering arrangements; postdisaster activities, including emergency power, food, and water; postdisaster transportation; supplies; staffing; emergency equipment; individual identification of residents and transfer of records; and responding to family inquiries. The comprehensive emergency management plan for all comprehensive transitional education programs and for homes serving individuals who have complex medical conditions is subject to review and approval by the local emergency management agency. During its review, the local emergency

management agency shall ensure that the following agencies, at a minimum, are given the opportunity to review the plan: the Agency for Health Care Administration, the Agency for Persons with Disabilities ~~Department of Children and Family Services~~, and the Department of Community Affairs. Also, appropriate volunteer organizations must be given the opportunity to review the plan. The local emergency management agency shall complete its review within 60 days and either approve the plan or advise the facility of necessary revisions.

(10) The ~~agency department~~ may conduct unannounced inspections to determine compliance by residential facilities and comprehensive transitional education programs with the applicable provisions of this chapter and the rules adopted pursuant hereto, including the rules adopted for training staff of a facility or a program to detect and prevent sexual abuse of residents and clients. The facility or program shall make copies of inspection reports available to the public upon request.

(11) An alternative living center and an independent living education center, as defined in s. 393.063(8), shall be subject to the provisions of s. 419.001, except that such centers shall be exempt from the 1,000-foot-radius requirement of s. 419.001(2) if:

(a) Such centers are located on a site zoned in a manner so that all the component centers of a comprehensive transition education center may be located thereon; or

(b) There are no more than three such centers within said radius of 1,000 feet.

(12) Each residential facility or comprehensive transitional education program licensed by the ~~agency department~~ shall forward annually to the ~~agency department~~ a true and accurate sworn statement of its costs of providing care to clients funded by the ~~agency department~~.

(13) The ~~agency department~~ may audit the records of any residential facility or comprehensive transitional education program ~~that which~~ it has reason to believe may not be in full compliance with the provisions of this section; provided that, any financial audit of such facility or program shall be limited to the records of clients funded by the ~~agency department~~.

(14) The ~~agency department~~ shall establish, for the purpose of control of licensure costs, a uniform management information system and a uniform reporting system with uniform definitions and reporting categories.

(17) The ~~agency department~~ shall not be required to contract with new facilities licensed after October 1, 1989, pursuant to this chapter. Pursuant to chapter 287, the ~~agency department~~ shall continue to contract within available resources for residential services with facilities licensed prior to October 1, 1989, if such facilities comply with the provisions of this chapter and all other applicable laws and regulations.

Section 91. Subsection (9) of section 397.405, Florida Statutes, is amended to read:

397.405 Exemptions from licensure.—The following are exempt from the licensing provisions of this chapter:

(9) Facilities licensed under s. 393.063~~(8)~~ that, in addition to providing services to persons who are developmentally disabled as defined therein, also provide services to persons developmentally at risk as a consequence of exposure to alcohol or other legal or illegal drugs while in utero.

The exemptions from licensure in this section do not apply to any service provider that receives an appropriation, grant, or contract from the state to operate as a service provider as defined in this chapter or to any substance abuse program regulated pursuant to s. 397.406. Furthermore, this chapter may not be construed to limit the practice of a physician licensed under chapter 458 or chapter 459, a psychologist licensed under chapter 490, or a psychotherapist licensed under chapter 491 who provides substance abuse treatment, so long as the physician, psychologist, or psychotherapist does not represent to the public that he or she is a licensed service provider and does not provide services to clients pursuant to part V of this chapter. Failure to comply with any requirement necessary to maintain an exempt status under this section is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 92. Paragraph (b) of subsection (5) of section 400.464, Florida Statutes, is amended to read:

400.464 Home health agencies to be licensed; expiration of license; exemptions; unlawful acts; penalties.—

(5) The following are exempt from the licensure requirements of this part:

(b) Home health services provided by a state agency, either directly or through a contractor with:

1. The Department of Elderly Affairs.
2. The Department of Health, a community health center, or a rural health network that furnishes home visits for the purpose of providing environmental assessments, case management, health education, personal care services, family planning, or followup treatment, or for the purpose of monitoring and tracking disease.
3. Services provided to persons who have developmental disabilities, as defined in s. 393.063~~(12)~~.
4. Companion and sitter organizations that were registered under s. 400.509(1) on January 1, 1999, and were authorized to provide personal services under s. 393.063(33) under a developmental services provider certificate on January 1, 1999, may continue to provide such services to past, present, and future clients of the organization who need such services, notwithstanding the provisions of this act.
5. The Department of Children and Family Services.

Section 93. Paragraph (d) of subsection (1) of section 419.001, Florida Statutes, is amended to read:

419.001 Site selection of community residential homes.—

(1) For the purposes of this section, the following definitions shall apply:

(d) “Resident” means any of the following: a frail elder as defined in s. 400.618; a physically disabled or handicapped person as defined in s. 760.22(7)(a); a developmentally disabled person as defined in s. 393.063(12); a nondangerous mentally ill person as defined in s. 394.455(18); or a child as defined in s. 39.01(14), s. 984.03(9) or (12), or s. 985.03(8).

Section 94. Section 914.16, Florida Statutes, is amended to read:

914.16 Child abuse and sexual abuse of victims under age 16 or persons with mental retardation; limits on interviews.—The chief judge of each judicial circuit, after consultation with the state attorney and the public defender for the judicial circuit, the appropriate chief law enforcement officer, and any other person deemed appropriate by the chief judge, shall provide by order reasonable limits on the number of interviews that a victim of a violation of s. 794.011, s. 800.04, or s. 827.03 who is under 16 years of age or a victim of a violation of s. 794.011, s. 800.02, s. 800.03, or s. 825.102 who is a person with mental retardation as defined in s. 393.063(42) must submit to for law enforcement or discovery purposes. The order shall, to the extent possible, protect the victim from the psychological damage of repeated interrogations while preserving the rights of the public, the victim, and the person charged with the violation.

Section 95. Subsection (2) of section 914.17, Florida Statutes, is amended to read:

914.17 Appointment of advocate for victims or witnesses who are minors or persons with mental retardation.—

(2) An advocate shall be appointed by the court to represent a person with mental retardation as defined in s. 393.063(42) in any criminal proceeding if the person with mental retardation is a victim of or witness to abuse or neglect, or if the person with mental retardation is a victim of a sexual offense or a witness to a sexual offense committed against a minor or person with mental retardation. The court may appoint an advocate in any other criminal proceeding in which a person with mental retardation is involved as either a victim or a witness. The advocate shall have full access to all evidence and reports introduced during the proceedings, may interview witnesses, may make recommendations to the court, shall be noticed and have the right to appear on behalf of the person with mental retardation at all proceedings, and may request additional examinations by medical doctors, psychiatrists, or psychologists. It is the duty of the advocate to perform the following services:

(a) To explain, in language understandable to the person with mental retardation, all legal proceedings in which the person shall be involved;

(b) To act, as a friend of the court, to advise the judge, whenever appropriate, of the person with mental retardation's ability to understand and cooperate with any court proceedings; and

(c) To assist the person with mental retardation and the person's family in coping with the emotional effects of the crime and subsequent criminal proceedings in which the person with mental retardation is involved.

Section 96. Subsection (1) of section 918.16, Florida Statutes, is amended to read:

918.16 Sex offenses; testimony of person under age 16 or person with mental retardation; testimony of victim; courtroom cleared; exceptions.—

(1) Except as provided in subsection (2), in the trial of any case, civil or criminal, when any person under the age of 16 or any person with mental retardation as defined in s. 393.063(42) is testifying concerning any sex offense, the court shall clear the courtroom of all persons except parties to the cause and their immediate families or guardians, attorneys and their secretaries, officers of the court, jurors, newspaper reporters or broadcasters, court reporters, and, at the request of the victim, victim or witness advocates designated by the state attorney's office.

Section 97. Paragraph (a) of subsection (4) of section 943.0585, Florida Statutes, is amended to read:

943.0585 Court-ordered expunction of criminal history records.—The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and received a certificate of eligibility for expunction pursuant to subsection (2). A criminal history record that relates to a violation of s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, or a violation enumerated in s. 907.041 may not be expunged, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, the offense as a delinquent act. The court may only order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge

a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to expunction, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the sole discretion of the court.

(4) **EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.**—Any criminal history record of a minor or an adult which is ordered expunged by a court of competent jurisdiction pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record; except that any criminal history record in the custody of the department must be retained in all cases. A criminal history record ordered expunged that is retained by the department is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and not available to any person or entity except upon order of a court of competent jurisdiction. A criminal justice agency may retain a notation indicating compliance with an order to expunge.

(a) The person who is the subject of a criminal history record that is expunged under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the expunged record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;
2. Is a defendant in a criminal prosecution;
3. Concurrently or subsequently petitions for relief under this section or s. 943.059;
4. Is a candidate for admission to The Florida Bar;
5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. 110.1127(3), s. 393.063(15), s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s. 985.407, or chapter 400; or
6. Is seeking to be employed or licensed by the Office of Teacher Education, Certification, Staff Development, and Professional Practices of the Department of Education, any district school board, or any local governmental entity that licenses child care facilities.

Section 98. Paragraph (a) of subsection (4) of section 943.059, Florida Statutes, is amended to read:

943.059 Court-ordered sealing of criminal history records.—The courts of this state shall continue to have jurisdiction over their own procedures, including the maintenance, sealing, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to seal the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to seal a criminal history record until the person seeking to seal a criminal history record has applied for and received a certificate of eligibility for sealing pursuant to subsection (2). A criminal history record that relates to a violation of s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, or a violation enumerated in s. 907.041 may not be sealed, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed or pled guilty or nolo contendere to committing the offense as a delinquent act. The court may only order sealing of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the sealing of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the sealing of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not seal any record pertaining to such additional arrests if the order to seal does not articulate the intention of the court to seal records pertaining to more than one arrest. This section does not prevent the court from ordering the sealing of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to sealing, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the sealing of any criminal history record, and any request for sealing a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal history record of a minor or an adult which is ordered sealed by a court of competent jurisdiction pursuant to this section is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and is available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective criminal justice purposes, or to those entities set forth in subparagraphs (a)1., 4., 5., and 6. for their respective licensing and employment purposes.

(a) The subject of a criminal history record sealed under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the sealed record, except when the subject of the record:



1. Is a candidate for employment with a criminal justice agency;
2. Is a defendant in a criminal prosecution;
3. Concurrently or subsequently petitions for relief under this section or s. 943.0585;
4. Is a candidate for admission to The Florida Bar;
5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. 110.1127(3), s. 393.063(15), s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s. 415.103, s. 985.407, or chapter 400; or
6. Is seeking to be employed or licensed by the Office of Teacher Education, Certification, Staff Development, and Professional Practices of the Department of Education, any district school board, or any local governmental entity which licenses child care facilities.

Section 99. Subsections (3) and (4) of section 393.0641, Florida Statutes, are amended to read:

393.0641 Program for the prevention and treatment of severe self-injurious behavior.—

(3) The agency ~~department~~ may contract for the provision of any portion or all of the services required by the program.

(4) The agency has ~~department shall have~~ the authority to license this program and shall adopt ~~promulgate~~ rules to implement the program.

Section 100. Section 393.065, Florida Statutes, is amended to read:

393.065 Application and eligibility determination.—

(1) Application for services shall be made in writing to the agency ~~Department of Children and Family Services~~, in the district in which the applicant resides. Employees of the agency's ~~department's~~ developmental services program shall review each applicant for eligibility within 45 days after the date the application is signed for children under 6 years of age and within 60 days after the date the application is signed for all other applicants. When necessary to definitively identify individual conditions or needs, the agency ~~department~~ shall provide a comprehensive assessment. Only individuals whose domicile is in Florida are ~~shall be~~ eligible for services. Information accumulated by other agencies, including professional reports and collateral data, shall be considered in this process when available.

(2) In order to provide immediate services or crisis intervention to applicants, the agency ~~department~~ shall arrange for emergency eligibility deter-

mination, with a full eligibility review to be accomplished within 45 days of the emergency eligibility determination.

(3) The ~~agency department~~ shall notify each applicant, in writing, of its eligibility decision. Any applicant determined by the ~~agency department~~ to be ineligible for developmental services ~~has shall have~~ the right to appeal this decision pursuant to ss. 120.569 and 120.57.

(4) The ~~agency department~~ shall assess the level of need and medical necessity for prospective residents of intermediate-care facilities for the developmentally disabled after October 1, 1999. The ~~agency department~~ may enter into an agreement with the Department of Elderly Affairs for its Comprehensive Assessment and Review for Long-Term-Care Services (CARES) program to conduct assessments to determine the level of need and medical necessity for long-term-care services under this chapter. To the extent permissible under federal law, the assessments must be funded under Title XIX of the Social Security Act.

Section 101. Section 393.0651, Florida Statutes, is amended to read:

393.0651 Family or individual support plan.—The ~~agency department~~ shall provide for an appropriate family support plan for children ages birth to 18 years of age and an individual support plan for each client. The parent or guardian of the client or, if competent, the client, or, when appropriate, the client advocate, shall be consulted in the development of the plan and shall receive a copy of the plan. Each plan shall include the most appropriate, least restrictive, and most cost-beneficial environment for accomplishment of the objectives for client progress and a specification of all services authorized. The plan shall include provisions for the most appropriate level of care for the client. Within the specification of needs and services for each client, when residential care is necessary, the ~~agency department~~ shall move toward placement of clients in residential facilities based within the client's community. The ultimate goal of each plan, whenever possible, shall be to enable the client to live a dignified life in the least restrictive setting, be that in the home or in the community. For children under 6 years of age, the family support plan shall be developed within the 45-day application period as specified in s. 393.065(1); for all applicants 6 years of age or older, the family or individual support plan shall be developed within the 60-day period as specified in that subsection.

(1) The ~~agency department~~ shall develop and specify by rule the core components of support plans to be used by each district.

(2)(a) The family or individual support plan shall be integrated with the individual education plan (IEP) for all clients who are public school students entitled to a free appropriate public education under the Individuals with Disabilities Education Act, I.D.E.A., as amended. The family or individual support plan and IEP shall be implemented to maximize the attainment of educational and habilitation goals. If the IEP for a student enrolled in a public school program indicates placement in a public or private residential program is necessary to provide special education and related services to a client, the local education agency shall provide for the costs of that service in accordance with the requirements of the Individuals with Disabilities

Education Act, I.D.E.A., as amended. This shall not preclude local education agencies and the agency department from sharing the residential service costs of students who are clients and require residential placement. Under no circumstances shall clients entitled to a public education or their parents be assessed a fee by the agency department under s. 402.33 for placement in a residential program.

(b) For clients who are entering or exiting the school system, an interdepartmental staffing team composed of representatives of the agency department and the local school system shall develop a written transitional living and training plan with the participation of the client or with the parent or guardian of the client, or the client advocate, as appropriate.

(3) Each family or individual support plan shall be facilitated through case management designed solely to advance the individual needs of the client.

(4) In the development of the family or individual support plan, a client advocate may be appointed by the support planning team for a client who is a minor or for a client who is not capable of express and informed consent when:

- (a) The parent or guardian cannot be identified;
- (b) The whereabouts of the parent or guardian cannot be discovered; or
- (c) The state is the only legal representative of the client.

Such appointment shall not be construed to extend the powers of the client advocate to include any of those powers delegated by law to a legal guardian.

(5) The agency department shall place a client in the most appropriate and least restrictive, and cost-beneficial, residential facility according to his or her individual habilitation plan. The parent or guardian of the client or, if competent, the client, or, when appropriate, the client advocate, and the administrator of the residential facility to which placement is proposed shall be consulted in determining the appropriate placement for the client. Considerations for placement shall be made in the following order:

(a) Client's own home or the home of a family member or direct service provider.

(b) Foster care facility.

(c) Group home facility.

(d) Intermediate care facility for the developmentally disabled.

(e) Other facilities licensed by the agency department which offer special programs for people with developmental disabilities.

(f) Developmental services institution.

(6) In developing a client's annual family or individual support plan, the individual or family with the assistance of the support planning team shall identify measurable objectives for client progress and shall specify a time period expected for achievement of each objective.

(7) The individual, family, and support coordinator shall review progress in achieving the objectives specified in each client's family or individual support plan, and shall revise the plan annually, following consultation with the client, if competent, or with the parent or guardian of the client, or, when appropriate, the client advocate. The agency department shall annually report in writing to the client, if competent, or to the parent or guardian of the client, or to the client advocate, when appropriate, with respect to the client's habilitative and medical progress.

(8) Any client, or any parent of a minor client, or guardian, authorized guardian advocate, or client advocate for a client, who is substantially affected by the client's initial family or individual support plan, or the annual review thereof, shall have the right to file a notice to challenge the decision pursuant to ss. 120.569 and 120.57. Notice of such right to appeal shall be included in all support plans provided by the agency department.

Section 102. Section 393.0673, Florida Statutes, is amended to read:

393.0673 Denial, suspension, revocation of license; moratorium on admissions; administrative fines; procedures.—

(1) The agency Department of Children and Family Services may deny, revoke, or suspend a license or impose an administrative fine, not to exceed \$1,000 per violation per day, for a violation of any provision of s. 393.0655 or s. 393.067 or rules adopted pursuant thereto. All hearings shall be held within the county in which the licensee or applicant operates or applies for a license to operate a facility as defined herein.

(2) The agency department, as a part of any final order issued by it under the provisions of this chapter, may impose such fine as it deems proper, except that such fine may not exceed \$1,000 for each violation. Each day a violation of this chapter occurs constitutes a separate violation and is subject to a separate fine, but in no event may the aggregate amount of any fine exceed \$10,000. Fines paid by any facility licensee under the provisions of this subsection shall be deposited in the Resident Protection Trust Fund and expended as provided in s. 400.063.

(3) The agency department may issue an order immediately suspending or revoking a license when it determines that any condition in the facility presents a danger to the health, safety, or welfare of the residents in the facility.

(4) The agency department may impose an immediate moratorium on admissions to any facility when the department determines that any condition in the facility presents a threat to the health, safety, or welfare of the residents in the facility.

Section 103. Subsections (1) and (3) of section 393.0675, Florida Statutes, are amended to read:

393.0675 Injunctive proceedings authorized.—

(1) The agency ~~Department of Children and Family Services~~ may institute injunctive proceedings in a court of competent jurisdiction to:

(a) Enforce the provisions of this chapter or any minimum standard, rule, regulation, or order issued or entered pursuant thereto; or

(b) Terminate the operation of facilities licensed pursuant to this chapter when any of the following conditions exist:

1. Failure by the facility to take preventive or corrective measures in accordance with any order of the agency ~~department~~.

2. Failure by the facility to abide by any final order of the agency ~~department~~ once it has become effective and binding.

3. Any violation by the facility constituting an emergency requiring immediate action as provided in s. 393.0673.

(3) The agency ~~department~~ may institute proceedings for an injunction in a court of competent jurisdiction to terminate the operation of a provider of supports or services if such provider has willfully and knowingly refused to comply with the screening requirement for direct service providers or has refused to terminate direct service providers found not to be in compliance with the requirements for good moral character.

Section 104. Subsection (1), paragraphs (b), (c), and (d) of subsection (2), and paragraph(e) of subsection (3) of section 393.0678, Florida Statutes, are amended to read:

393.0678 Receivership proceedings.—

(1) The agency ~~department~~ may petition a court of competent jurisdiction for the appointment of a receiver for an intermediate care facility for the developmentally disabled, a residential habilitation center, or a group home facility owned and operated by a corporation or partnership when any of the following conditions exist:

(a) Any person is operating a facility without a license and refuses to make application for a license as required by s. 393.067 or, in the case of an intermediate care facility for the developmentally disabled, as required by ss. 393.067 and 400.062.

(b) The licensee is closing the facility or has informed the department that it intends to close the facility; and adequate arrangements have not been made for relocation of the residents within 7 days, exclusive of weekends and holidays, of the closing of the facility.

(c) The agency ~~department~~ determines that conditions exist in the facility which present an imminent danger to the health, safety, or welfare of the residents of the facility or which present a substantial probability that death or serious physical harm would result therefrom. Whenever possible, the agency ~~department~~ shall facilitate the continued operation of the program.

(d) The licensee cannot meet its financial obligations to provide food, shelter, care, and utilities. Evidence such as the issuance of bad checks or the accumulation of delinquent bills for such items as personnel salaries, food, drugs, or utilities constitutes prima facie evidence that the ownership of the facility lacks the financial ability to operate the home in accordance with the requirements of this chapter and all rules promulgated thereunder.

(2)

(b) A hearing shall be conducted within 5 days of the filing of the petition, at which time all interested parties shall have the opportunity to present evidence pertaining to the petition. The agency department shall notify the owner or operator of the facility named in the petition of its filing and the date set for the hearing.

(c) The court shall grant the petition only upon finding that the health, safety, or welfare of residents of the facility would be threatened if a condition existing at the time the petition was filed is permitted to continue. A receiver may not be appointed ex parte unless the court determines that one or more of the conditions in subsection (1) exist; that the facility owner or operator cannot be found; that all reasonable means of locating the owner or operator and notifying him or her of the petition and hearing have been exhausted; or that the owner or operator after notification of the hearing chooses not to attend. After such findings, the court may appoint any person qualified by education, training, or experience to carry out the responsibilities of receiver pursuant to this section, except that the court may not appoint any owner or affiliate of the facility which is in receivership. Before the appointment as receiver of a person who is the operator, manager, or supervisor of another facility, the court shall determine that the person can reasonably operate, manage, or supervise more than one facility. The receiver may be appointed for up to 90 days with the option of petitioning the court for 30-day extensions. The receiver may be selected from a list of persons qualified to act as receivers developed by the agency department and presented to the court with each petition for receivership. Under no circumstances may the agency department or designated agency departmental employee be appointed as a receiver for more than 60 days; however, the agency departmental receiver may petition the court for 30-day extensions. The court shall grant an extension upon a showing of good cause. The agency department may petition the court to appoint a substitute receiver.

(d) During the first 60 days of the receivership, the agency department may not take action to decertify or revoke the license of a facility unless conditions causing imminent danger to the health and welfare of the residents exist and a receiver has been unable to remove those conditions. After the first 60 days of receivership, and every 60 days thereafter until the receivership is terminated, the agency department shall submit to the court the results of an assessment of the ability of the facility to assure the safety and care of the residents. If the conditions at the facility or the intentions of the owner indicate that the purpose of the receivership is to close the facility rather than to facilitate its continued operation, the agency department shall place the residents in appropriate alternate residential settings as quickly as possible. If, in the opinion of the court, the agency department

has not been diligent in its efforts to make adequate arrangements for placement, the court shall find the agency department to be in contempt and shall order the agency department to submit its plans for moving the residents.

(3) The receiver shall make provisions for the continued health, safety, and welfare of all residents of the facility and:

(e) May use the building, fixtures, furnishings, and any accompanying consumable goods in the provision of care and services to residents and to any other persons receiving services from the facility at the time the petition for receivership was filed. The receiver shall collect payments for all goods and services provided to residents or others during the period of the receivership at the same rate of payment charged by the owner at the time the petition for receivership was filed, or at a fair and reasonable rate otherwise approved by the court for private, paying residents. The receiver may apply to the agency department for a rate increase for residents under Title XIX of the Social Security Act if the facility is not receiving the state reimbursement cap and if expenditures justify an increase in the rate.

Section 105. Section 393.071, Florida Statutes, is amended to read:

393.071 Client fees.—~~The agency Department of Children and Family Services shall charge fees for services provided to clients in accordance with s. 402.33.~~

Section 106. Subsection (2) of section 393.075, Florida Statutes, is amended to read:

393.075 General liability coverage.—

(2) The Division of Risk Management of the Department of Financial Services shall provide coverage through the agency Department of Children and Family Services to any person who owns or operates a foster care facility or group home facility solely for the agency Department of Children and Family Services, who cares for children placed by developmental services staff of the agency department, and who is licensed pursuant to s. 393.067 to provide such supervision and care in his or her place of residence. The coverage shall be provided from the general liability account of the State Risk Management Trust Fund. The coverage is limited to general liability claims arising from the provision of supervision and care of children in a foster care facility or group home facility pursuant to an agreement with the agency department and pursuant to guidelines established through policy, rule, or statute. Coverage shall be subject to the limits provided in ss. 284.38 and 284.385, and the exclusions set forth therein, together with other exclusions as may be set forth in the certificate of coverage issued by the trust fund. A person covered under the general liability account pursuant to this subsection shall immediately notify the Division of Risk Management of the Department of Financial Services of any potential or actual claim.

Section 107. Section 393.115, Florida Statutes, is amended to read:

393.115 Discharge.—

## (1) DISCHARGE AT THE AGE OF MAJORITY.—

(a) When any residential client reaches his or her 18th birthday, the agency department shall give the resident or legal guardian the option to continue residential services or to be discharged from residential services.

(b) If the resident appears to meet the criteria for involuntary admission to residential services, as defined in s. 393.11, the agency department shall file a petition to determine the appropriateness of continued residential placement on an involuntary basis. The agency department shall file the petition for involuntary admission in the county in which the client resides. If the resident was originally involuntarily admitted to residential services pursuant to s. 393.11, then the agency department shall file the petition in the court having continuing jurisdiction over the case.

(c) Nothing in this section shall in any way limit or restrict the resident's right to a writ of habeas corpus or the right of the agency department to transfer a resident receiving residential care to a program of appropriate services provided by the agency department when such program is the appropriate habilitative setting for the resident.

(2) DISCHARGE AFTER CRIMINAL OR JUVENILE COMMITMENT.—Any person with developmental disabilities committed to the custody of the agency department pursuant to the provisions of the applicable criminal or juvenile court law shall be discharged in accordance with the requirements of the applicable criminal or juvenile court law.

Section 108. Subsection (3) of section 393.12, Florida Statutes, is amended to read:

393.12 Capacity; appointment of guardian advocate.—

(3) COURT COSTS.—In all proceedings under this section, no court costs shall be charged against the agency department.

Section 109. Section 393.125, Florida Statutes, is amended to read:

393.125 Hearing rights.—

(1) REVIEW OF AGENCY DEPARTMENT DECISIONS.—

(a) Any developmental services applicant or client, or his or her parent, guardian, guardian advocate, or authorized representative, who has any substantial interest determined by the agency department, ~~has~~ shall have the right to request an administrative hearing pursuant to ss. 120.569 and 120.57.

(b) Notice of the right to an administrative hearing shall be given, both verbally and in writing, to the applicant or client, and his or her parent, guardian, guardian advocate, or authorized representative, at the same time that the agency department gives the applicant or client notice of the agency's department's action. The notice shall be given, both verbally and in writing, in the language of the client or applicant and in English.



(c) A request for a hearing under this section shall be made to the agency department, in writing, within 30 days of the applicant's or client's receipt of the notice.

(2) REVIEW OF PROVIDER DECISIONS.—The agency department shall ~~adopt promulgate~~ rules to establish uniform guidelines for the agency department and service providers relevant to termination, suspension, or reduction of client services by the service provider. The rules shall ensure the due process rights of service providers and clients.

Section 110. Subsections (3), (4), (5), and (6) of section 393.15, Florida Statutes, are amended to read:

393.15 Legislative intent; Community Resources Development Trust Fund.—

(3) There is created a Community Resources Development Trust Fund in the State Treasury to be used by the agency Department of Children and Family Services for the purpose of granting loans to eligible programs for the initial costs of development of the programs. Loans shall be made only to those facilities which are in compliance with the zoning regulations of the local community. Costs of development may include structural modification, the purchase of equipment and fire and safety devices, preoperational staff training, and the purchase of insurance. Such costs shall not include the actual construction of a facility.

(4) The agency department may grant to an eligible program a lump-sum loan in one payment not to exceed the cost to the program of providing 2 months' services, care, or maintenance to each person who is developmentally disabled to be placed in the program by the agency department, or the actual cost of firesafety renovations to a facility required by the state, whichever is greater. Loans granted to programs shall not be in lieu of payment for maintenance, services, or care provided, but shall stand separate and distinct. The agency department shall ~~adopt promulgate~~ rules, as provided in chapter 120, to determine the standards under which a program shall be eligible to receive a loan as provided in this section and criteria for the equitable allocation of loan trust funds when eligible applications exceed the funds available.

(5) Any loan granted by the agency department under this section shall be repaid by the program within 5 years. A program ~~that which~~ operates as a nonprofit corporation meeting the requirements of s. 501(c)(3) of the Internal Revenue Code, and ~~that which~~ seeks forgiveness of its loan shall submit to the agency department a statement setting forth the service it has provided during the year together with such other information as the agency department by rule shall require, and, upon approval of each such annual statement, the agency department shall forgive 20 percent of the principal of any such loan granted after June 30, 1975.

(6) If any program ~~that which~~ has received a loan under this section ceases to accept, or provide care, services, or maintenance to persons placed in the program by the department, or if such program ~~files shall file~~ papers

of bankruptcy, at that point in time the loan shall become an interest-bearing loan at the rate of 5 percent per annum on the entire amount of the initial loan which shall be repaid within a 1-year period from the date on which the program ceases to provide care, services, or maintenance, or files papers in bankruptcy, and the amount of the loan due plus interest shall constitute a lien in favor of the state against all real and personal property of the program. The lien shall be perfected by the appropriate officer of the agency department by executing and acknowledging a statement of the name of the program and the amount due on the loan and a copy of the promissory note, which shall be recorded by the agency department with the clerk of the circuit court in the county wherein the program is located. If the program has filed a petition for bankruptcy, the agency department shall file and enforce the lien in the bankruptcy proceedings. Otherwise, the lien shall be enforced in the manner provided in s. 85.011. All funds received by the agency department from the enforcement of the lien shall be deposited in the Community Resources Development Trust Fund.

Section 111. Subsection (1) of section 393.501, Florida Statutes, is amended to read:

393.501 Rulemaking.—

(1) The agency department shall adopt rules to carry out the provisions of this chapter.

Section 112. Section 393.503, Florida Statutes, is amended to read:

393.503 Respite and family care subsidy expenditures; funding.—~~The agency Department of Children and Family Services~~ shall determine the amount of expenditures per fiscal year for the respite and family care subsidy to families and individuals with developmental disabilities living in their own homes. This information shall be made available to the family care councils and to others requesting the information. The family care councils shall review the expenditures and make recommendations to the agency department with respect to any new funds that are made available for family care.

Section 113. Subsection (2) of section 393.506, Florida Statutes, is amended to read:

393.506 Administration of medication.—

(2) Each facility, institution, or program must include in its policies and procedures a plan for training designated staff to ensure the safe handling, storage, and administration of prescription medication. These policies and procedures must be approved by the agency department before unlicensed direct care services staff assist with medication.

Section 114. (1) In the Department of Children and Family Services' Economic Self-Sufficiency Services program, the department may provide its eligibility determination functions either with department staff or through contract with at least two private vendors, with the following restrictions:

(a) With the exception of information technology, no contract shall be for a geographic area larger than a combined seven districts or combined three zones without the prior approval of the Legislative Budget Commission; and

(b) Department employees must provide the functions in at least one area of the state if their proposed cost is competitive with private vendors.

(2) This section shall take effect upon this act becoming a law.

Section 115. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2004.

Approved by the Governor May 28, 2004.

Filed in Office Secretary of State May 28, 2004.