CHAPTER 2007-230

Senate Bill No. 992

An act relating to the licensure of health care providers regulated by the Agency for Health Care Administration; amending s. 112.0455, F.S.; providing applicability of licensure requirements under pt. II of ch. 408, F.S., to drug-testing standards of laboratories; authorizing the Agency for Health Care Administration to adopt rules to implement pt. II of ch. 408, F.S., relating to the Drug-Free Workplace Act; revising a license fee; amending s. 381.78, F.S.; conforming a cross-reference; amending s. 383.301, F.S.; providing applicability of licensure requirements under pt. II of ch. 408, F.S., to birth centers; repealing s. 383.304, F.S., relating to the licensure requirement for birth centers; amending s. 383.305, F.S.; providing applicability of licensure requirements under pt. II of ch. 408, F.S., to birth centers; providing for licensure fees to be established by rule; amending s. 383.309, F.S.; authorizing the agency to adopt and enforce rules to administer pt. II of ch. 408, F.S., relating to standards for birth centers; amending s. 383.315, F.S.; revising a provision relating to consultation agreements for birth centers; amending s. 383.324, F.S.; revising provisions relating to inspections and investigations of birth center facilities; amending s. 383.33, F.S.; revising provisions relating to administrative fines, penalties, emergency orders, and moratoriums on admissions; repealing s. 383.331, F.S., relating to injunctive relief; amending s. 383.332, F.S.; providing applicability of licensure requirements under pt. II of ch. 408, F.S.; amending s. 383.335, F.S.; providing an exemption from pt. II of ch. 408, F.S., for specified birth centers; amending s. 383.50, F.S.; conforming a cross-reference; amending s. 390.011, F.S.; revising a definition; amending s. 390.012, F.S.; revising rulemaking authority of the agency for abortion clinics; repealing s. 390.013, F.S., relating to effective date of rules applicable to abortion clinics; amending s. 390.014, F.S.; providing applicability of licensure requirements under pt. II of ch. 408, F.S., to abortion clinics; amending s. 390.015, F.S.; revising provisions to applications for a license; repealing s. 390.016, F.S., relating to expiration and renewal of a license; repealing s. 390.017, F.S., relating to grounds for suspension or revocation of a license; amending s. 390.018, F.S.; providing applicability of licensure requirements under pt. II of ch. 408, F.S., to administrative fines; repealing s. 390.019, F.S., relating an to administrative penalty in lieu of revocation or suspension of a license to operate an abortion clinic; repealing s. 390.021, F.S., relating to instituting injunction proceedings against an abortion clinic; amending s. 394.455, F.S.; revising a definition; amending s. 394.4787, F.S.; conforming a cross-reference; amending s. 394.67, F.S.; deleting, revising, and providing definitions; amending ss. 394.74 and 394.82, F.S.; conforming cross-references; amending s. 394.875, F.S.; providing the purpose of short-term residential treatment facilities; providing applicability of licensure requirements under pt. II of ch. 408, F.S., to crisis stabilization units, short-term residential treatment facilities, residential treatment facilities, and residential treatment cen-

ters for children and adolescents; providing an exemption from licensure requirements for hospitals licensed under ch. 395, F.S., and certain programs operated therein; amending s. 394.876, F.S.; revising provisions relating to an application for licensure to provide community substance abuse and mental health services; amending s. 394.877, F.S.; providing applicability of pt. II of ch. 408, F.S., to license fees; repealing s. 394.878, F.S., relating to issuance and renewal of licenses; amending s. 394.879, F.S.; providing rulemaking authority to the Department of Children and Family Services; deleting a reference to deposit of certain fines in the Mental Health Facility Trust Fund; amending s. 394.90, F.S.; revising provisions relating to inspections of crisis stabilization units and residential treatment facilities; amending s. 394.902, F.S.; revising provisions relating to the moratorium on admissions for unsafe or unlawful provision of community substance abuse and mental health services; amending s. 394.907, F.S., relating to access to records of community mental health centers; providing for the department to determine licensee compliance with quality assurance programs; amending s. 395.002, F.S.; deleting a definition; conforming cross-references; amending ss. 395.003, 395.004, and 395.0161, F.S.; providing applicability of licensure requirements under pt. II of ch. 408, F.S., to hospitals, ambulatory surgical centers, and mobile surgical facilities; repealing s. 395.0055, F.S., relating to background screening of personnel of hospitals and other licensed facilities; amending s. 395.0163, F.S.; deleting a provision requiring the deposit of fees charged for review of plans for construction of hospitals and other licensed facilities in the Planning and Regulation Trust Fund; amending ss. 395.0193 and 395.0197, F.S.; providing for the applicability of the reporting requirements of pt. II of ch. 408, F.S., to hospitals and other licensed facilities; conforming cross-references; amending ss. 395.0199 and 395.1046, F.S.; providing applicability of licensure requirements under pt. II of ch. 408, F.S., to health care utilization review and complaint investigation procedures; amending s. 395.1055, F.S.; providing applicability of licensure requirements under pt. II of ch. 408, F.S., to the adoption and enforcement of rules; amending ss. 395.1065, 395.10973, and 395.10974, F.S.; providing applicability of licensure requirements under pt. II of ch. 408, F.S., to administrative penalties and injunctions, rulemaking, and health care risk managers; amending ss. 395.602, 395.701, 400.0073, and 400.0074, F.S.; conforming cross-references; amending s. 400.021, F.S.; deleting definitions; amending s. 400.022, F.S.; providing applicability of licensure requirements under pt. II of ch. 408, F.S., to grounds for action for a violation of residents' rights; amending s. 400.051, F.S.; conforming a cross-reference; amending s. 400.062, F.S.; providing applicability of licensure requirements under pt. II of ch. 408, F.S., to nursing homes and related health care facilities; revising provisions relating to license fees; amending s. 400.063, F.S.; conforming a cross-reference; amending ss. 400.071 and 400.0712, F.S.; providing applicability of licensure requirements under pt. II of ch. 408, F.S., to license applications; revising provisions governing inactive licenses; amending s. 400.102, F.S.;

providing applicability of licensure requirements under pt. II of ch. 408, F.S., to grounds for action by the agency against a licensee; amending s. 400.111, F.S.; providing applicability of licensure requirements under pt. II of ch. 408, F.S., to the disclosure of a controlling interest of a nursing home facility; requiring a licensee to disclose certain holdings of a controlling interest; amending s. 400.1183, F.S.; revising grievance procedures for nursing home residents; deleting a provision relating to an administrative fine; amending s. 400.121, F.S.; providing applicability of licensure requirements under pt. II of ch. 408, F.S., to the denial, suspension, or revocation of a nursing home facility license, fines imposed, and procedures for conducting hearings; repealing s. 400.125, F.S., relating to instituting injunction proceedings against a nursing home; amending s. 400.141, F.S.; conforming a cross-reference; amending s. 400.179, F.S.; revising provisions relating to liability for Medicaid underpayments and overpayments; requiring that certain licensure fees be paid annually; amending s. 400.18, F.S.; revising provisions relating to the closing of a nursing home facility; amending s. 400.19, F.S.; providing applicability of licensure requirements under pt. II of ch. 408, F.S., to nursing home facility inspections; amending s. 400.191, F.S.; revising provisions relating to the availability, distribution, and posting of reports and records; amending s. 400.23, F.S.; providing applicability of pt. II of ch. 408, F.S., to rulemaking for nursing home facilities; amending s. 400.241, F.S.; deleting provisions relating to prohibited acts involving the establishment, operation, or advertisement of nursing home facilities; amending ss. 400.464, 400.471, 400.474, and 400.484, F.S.; providing applicability of licensure requirements under pt. II of ch. 408, F.S., to home health agencies; repealing s. 400.495, F.S., relating to the notice of a toll-free telephone number for the central abuse hotline; amending ss. 400.497, 400.506, 400.509, 400.602, 400.605, 400.606, 400.6065, 400.607, 400.801, 400.805, 400.903, 400.905, 400.907, 400.908, 400.912, 400.914, and 400.915, F.S.; providing applicability of licensure requirements under pt. II of ch. 408, F.S., to the toll-free central abuse hotline, rules establishing minimum standards for home health aides, nurse registries, the registration of companion or homemaker service providers that are exempt from licensure, hospices, homes for special services, transitional living facilities, and prescribed pediatric extended care (PPEC) centers; amending s. 400.512, F.S.; revising provisions relating to the screening of home health agency, nurse registry, companion, and homemaker personnel; repealing s. 400.515, F.S., relating to instituting injunction proceedings against a home health agency or nurse registry; amending s. 400.6095, F.S.; clarifying provisions relating to protection from liability for hospice staff; amending s. 400.902, F.S.; revising a definition; amending s. 400.906, F.S.; revising provisions relating to applications for a license to operate a PPEC center; repealing s. 400.910, F.S., relating to expiration and renewal of a license and the issuance of a conditional license or permit to operate a PPEC center; repealing s. 400.911, F.S., relating to instituting injunction proceedings against a PPEC center; repealing s. 400.913, F.S., relating to

right to enter and inspect a PPEC center; amending s. 400.916, F.S.; revising provisions relating to prohibited acts and penalties applicable to a PPEC center; repealing s. 400.917, F.S., relating to disposition of moneys from fines and fees imposed on a PPEC center; amending s. 400.925, F.S.; deleting and revising definitions; amending ss. 400.93, 400.931, 400.932, 400.933, 400.935, and 400.955, F.S.; providing applicability of licensure requirements under pt. II of ch. 408, F.S., to home medical equipment providers; repealing s. 400.95, F.S., relating to notice of the toll-free telephone number for the central abuse hotline; repealing s. 400.956, F.S., relating to instituting injunction proceedings against a home medical equipment provider; amending ss. 400.962, 400.967, 400.968, and 400.969, F.S.; providing applicability of licensure requirements under pt. II of ch. 408, F.S., to intermediate care facilities for developmentally disabled persons; repealing s. 400.963, F.S., relating to instituting injunction proceedings against an intermediate care facility for developmentally disabled persons; repealing s. 400.965, F.S., relating to agency action against an intermediate care facility for developmentally disabled persons; amending s. 400.980, F.S.; providing applicability of licensure requirements under pt. II of ch. 408, F.S., to health care services pools; amending s. 400.9905, F.S.; revising the definition of the term "clinic" for purposes of pt. X of ch. 400, F.S., relating to clinic licensure; amending ss. 400.991, 400.9915, 400.9925, 400.993, 400.9935, and 400.995, F.S.; providing applicability of licensure requirements under pt. II of ch. 408, F.S., to health care clinics; repealing s. 400.992, F.S., relating to license renewal, transfer of ownership, and provisional license of a health care clinic; repealing s. 400.994, F.S., relating to instituting injunctive proceedings against a health care clinic; repealing s. 400.9945, F.S., relating to review of agency licensure enforcement actions; amending ss. 408.802 and 408.832, F.S.; revising provisions to conform to changes made by the act; amending ss. 409.221, 409.815, 409.905, and 409.907, F.S.; conforming cross-references; amending ss. 429.02, 429.07, 429.075, 429.08, 429.11, 429.12, 429.14, 429.17, 429.174, 429.176, 429.18, 429.19, 429.22, 429.26, 429.31, 429.34, 429.35, 429.41, and 429.47, F.S.; providing applicability of licensure requirements under pt. II of ch. 408, F.S., to assisted living facilities; repealing s. 429.15, F.S., relating to imposing a moratorium on admissions to an assisted living facility and notice thereof; repealing s. 429.21, F.S., relating to instituting injunctive proceedings against an assisted living facility; repealing s. 429.51, F.S., relating to the time for an existing assisted living facility to comply with newly adopted rules and standards; amending ss. 429.67, 429.69, 429.71, and 429.73, F.S.; providing applicability of licensure requirements under pt. II of ch. 408, F.S., to adult family-care homes; repealing s. 429.77, F.S., relating to instituting injunctive proceedings against an adult family-care home; amending ss. 429.901, 429.907, 429.909, 429.911, 429.913, 429.915, 429.919, 429.925, 429.927, and 429.929, F.S.; providing applicability of licensure requirements under pt. II of ch. 408, F.S., to adult day care centers; repealing s. 429.921, F.S., relating to the disposition of fees and administrative fines imposed

on adult day care centers; repealing s. 429.923, F.S., relating to instituting injunctive proceedings against an adult day care center; repealing s. 429.933, F.S., relating to prohibited acts and penalties applicable to adult day care centers; amending s. 440.102, F.S.; providing applicability of licensure requirements under pt. II of ch. 408, F.S., to drug-testing laboratories; amending ss. 468.505 and 483.106, F.S.; conforming cross-references; amending ss. 483.035, 483.051, 483.061, 483.091, 483.101, 483.111, 483.172, 483.201, and 483.221, F.S.; providing applicability of licensure requirements under pt. II of ch. 408, F.S., to certain clinical laboratories; repealing s. 483.131, F.S., relating to display of the clinical laboratory license; repealing s. 483.25, F.S., relating to instituting injunctive proceedings against a clinical laboratory; amending ss. 483.291, 483.294, 483.30, 483.302, 483.317, 483.32, and 483.322, F.S.; providing applicability of licensure requirements under pt. II of ch. 408, F.S., to multiphasic health testing centers; repealing s. 483.311, F.S., relating to the display of a multiphasic health testing center license; amending s. 483.317, F.S.; repealing s. 483.328, F.S., relating to instituting injunctive proceedings against a multiphasic health testing center; amending s. 765.541, F.S.; conforming provisions relating to cadaveric organ and tissue procurement; amending s. 765.542, F.S.; providing applicability of licensure requirements under pt. II of ch. 408, F.S., to organ procurement organizations and tissue and eye banks; amending s. 765.544, F.S.; conforming provisions relating to application fees from organizations and tissue and eye banks; amending ss. 766.118, 766.316, and 812.014, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsections (12) and (17) and paragraph (a) of subsection (13) of section 112.0455, Florida Statutes, are amended to read:

112.0455 Drug-Free Workplace Act.—

(12) DRUG-TESTING STANDARDS; LABORATORIES.—

(a) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this section and part II of chapter 408 and to entities licensed by or applying for such licensure from the Agency for Health Care Administration pursuant to this section. A license issued by the agency is required in order to operate a laboratory.

(b)~~(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 and in accordance with part II of chapter 408. Each applicant for licensure and licensee must comply with all requirements of part II of chapter 408. ~~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 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 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.

(c)~~(b)~~ A laboratory shall disclose to the employer a written test result report within 7 working days after receipt of the sample. All laboratory reports of a drug test result shall, at a minimum, state:

1. The name and address of the laboratory which performed the test and the positive identification of the person tested.

2. Positive results on confirmation tests only, or negative results, as applicable.

3. A list of the drugs for which the drug analyses were conducted.

4. The type of tests conducted for both initial and confirmation tests and the minimum cutoff levels of the tests.

5. Any correlation between medication reported by the employee or job applicant pursuant to subparagraph (8)(b)2. and a positive confirmed drug test result.

No report shall disclose the presence or absence of any drug other than a specific drug and its metabolites listed pursuant to this section.

(d)~~(c)~~ The laboratory shall submit to the Agency for Health Care Administration a monthly report with statistical information regarding the testing of employees and job applicants. The reports shall include information on the methods of analyses conducted, the drugs tested for, the number of positive and negative results for both initial and confirmation tests, and any other information deemed appropriate by the Agency for Health Care Administration. No monthly report shall identify specific employees or job applicants.

(e)~~(d)~~ Laboratories shall provide technical assistance to the employer, employee, or job applicant for the purpose of interpreting any positive confirmed test results which could have been caused by prescription or nonprescription medication taken by the employee or job applicant.

(13) RULES.—

(a) The Agency for Health Care Administration may adopt additional rules to support this law and part II of chapter 408, using criteria established by the United States Department of Health and Human Services as general guidelines for modeling drug-free workplace laboratories ~~the state drug-testing program~~, concerning, but not limited to:

1. Standards for drug-testing laboratory licensing and denial, suspension, and revocation of a license.

2. Urine, hair, blood, and other body specimens and minimum specimen amounts which are appropriate for drug testing, not inconsistent with other provisions established by law.

3. Methods of analysis and procedures to ensure reliable drug-testing results, including standards for initial tests and confirmation tests, not inconsistent with other provisions established by law.

4. Minimum cutoff detection levels for drugs or their metabolites for the purposes of determining a positive test result, not inconsistent with other provisions established by law.

5. Chain-of-custody procedures to ensure proper identification, labeling, and handling of specimens being tested, not inconsistent with other provisions established by law.

6. Retention, storage, and transportation procedures to ensure reliable results on confirmation tests and retests.

7. A list of the most common medications by brand name or common name, as applicable, as well as by chemical name, which may alter or affect a drug test.

This section shall not be construed to eliminate the bargainable rights as provided in the collective bargaining process where applicable.

(17) LICENSE FEE.—Fees from licensure of drug-testing laboratories shall be sufficient to carry out the responsibilities of the Agency for Health Care Administration for the regulation of drug-testing laboratories. In accordance with s. 408.805, applicants and licensees shall pay a fee for each license application submitted under this part, part II of chapter 408, and applicable rules. The fee shall be not less than $16,000 or more than $20,000 per biennium and shall be established by rule. ~~The Agency for Health Care Administration shall collect fees for all licenses issued under this part. Each nonrefundable fee shall be due at the time of application and shall be payable to the Agency for Health Care Administration to be deposited in a trust fund administered by the Agency for Health Care Administration and used only for the purposes of this section. The fee schedule is as follows: For licensure as a drug-testing laboratory, an annual fee of not less than $8,000 or more than $10,000 per fiscal year; for late filing of an application for renewal, an additional fee of $500 per day shall be charged.~~

Section 2. Paragraph (b) of subsection (4) of section 381.78, Florida Statutes, is amended to read:

381.78 Advisory council on brain and spinal cord injuries.—

(4) The council shall:

(b) Annually appoint a five-member committee composed of one individual who has a brain injury or has a family member with a brain injury, one individual who has a spinal cord injury or has a family member with a spinal cord injury, and three members who shall be chosen from among these representative groups: physicians, other allied health professionals, administrators of brain and spinal cord injury programs, and representatives from support groups with expertise in areas related to the rehabilitation of individuals who have brain or spinal cord injuries, except that one and only one member of the committee shall be an administrator of a transitional living facility. Membership on the council is not a prerequisite for membership on this committee.

1. The committee shall perform onsite visits to those transitional living facilities identified by the Agency for Health Care Administration as being in possible violation of the statutes and rules regulating such facilities. The committee members have the same rights of entry and inspection granted

under s. 400.805(4) ~~s. 400.805(8)~~ to designated representatives of the agency.

2. Factual findings of the committee resulting from an onsite investigation of a facility pursuant to subparagraph 1. shall be adopted by the agency in developing its administrative response regarding enforcement of statutes and rules regulating the operation of the facility.

3. Onsite investigations by the committee shall be funded by the Health Care Trust Fund.

4. Travel expenses for committee members shall be reimbursed in accordance with s. 112.061.

5. Members of the committee shall recuse themselves from participating in any investigation that would create a conflict of interest under state law, and the council shall replace the member, either temporarily or permanently.

Section 3. Section 383.301, Florida Statutes, is amended to read:

383.301 Licensure and regulation of birth centers; legislative intent.—It is the intent of the Legislature to provide for the protection of public health and safety in the establishment, maintenance, and operation of birth centers by providing for licensure of birth centers and for the development, establishment, and enforcement of minimum standards with respect to birth centers. The requirements of part II of chapter 408 shall apply to the provision of services that require licensure pursuant to ss. 383.30-383.335 and part II of chapter 408 and to entities licensed by or applying for such licensure from the Agency for Health Care Administration pursuant to ss. 383.30-383.335. A license issued by the agency is required in order to operate a birth center in this state.

Section 4. Section 383.304, Florida Statutes, is repealed.

Section 5. Section 383.305, Florida Statutes, is amended to read:

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

(1)~~(a)~~ In accordance with s. 408.805, an applicant or a licensee shall pay a fee for each license application submitted under ss. 383.30-383.335 and part II of chapter 408. The amount of the fee shall be established by rule. ~~Upon receipt of an application for a license and the license fee, the agency shall issue a license if the applicant and facility have received all approvals required by law and meet the requirements established under ss. 383.30-383.335 and by rules promulgated hereunder.~~

~~(b) A provisional license may be issued to any birth center that is in substantial compliance with ss. 383.30-383.335 and with the rules of the agency. A provisional license may be granted for a period of no more than 1 year from the effective date of rules adopted by the agency, shall expire automatically at the end of its term, and may not be renewed.~~

~~(c) A license, unless sooner suspended or revoked, automatically expires 1 year from its date of issuance and is renewable upon application for renewal and payment of the fee prescribed, provided the applicant and the birth center meet the requirements established under ss. 383.30-383.335 and by rules promulgated hereunder. A complete application for renewal of a license shall be made 90 days prior to expiration of the license on forms provided by the agency.~~

~~(2) An application for a license, or renewal thereof, shall be made to the agency upon forms provided by it and shall contain such information as the agency reasonably requires, which may include affirmative evidence of ability to comply with applicable laws and rules.~~

~~(3)(a) Each application for a birth center license, or renewal thereof, shall be accompanied by a license fee. Fees shall be established by rule of the agency. Such fees are payable to the agency and shall be deposited in a trust fund administered by the agency, to be used for the sole purpose of carrying out the provisions of ss. 383.30-383.335.~~

~~(b) The fees established pursuant to ss. 383.30-383.335 shall be based on actual costs incurred by the agency in the administration of its duties under such sections.~~

~~(4) Each license is valid only for the person or governmental unit to whom or which it is issued; is not subject to sale, assignment, or other transfer, voluntary or involuntary; and is not valid for any premises other than those for which it was originally issued.~~

~~(5) Each license shall be posted in a conspicuous place on the licensed premises.~~

~~(6) Whenever the agency finds that there has been a substantial failure to comply with the requirements established under ss. 383.30-383.335 or in rules adopted under those sections, it is authorized to deny, suspend, or revoke a license.~~

(2)~~(7)~~ Each applicant for licensure and each licensee must comply with the ~~following~~ requirements of this chapter and part II of chapter 408.~~:~~

~~(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.~~

~~(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 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.~~

~~(h) The agency may deny or revoke licensure if the applicant:~~

~~1. Has falsely represented a material fact in the application required by paragraph (e) or paragraph (f), or has omitted any material fact from the application required by paragraph (e) or paragraph (f); or~~

~~2. Has had prior action taken against the applicant under the Medicaid or Medicare program as set forth in paragraph (e).~~

~~(i) An application for license renewal must contain the information required under paragraphs (e) and (f).~~

Section 6. Section 383.309, Florida Statutes, is amended to read:

383.309 Minimum standards for birth centers; rules and enforcement.—

(1) The agency shall adopt and enforce rules to administer ss. 383.30-383.335 and part II of chapter 408, which rules shall include, but are not limited to, reasonable and fair minimum standards for ensuring that:

(a) Sufficient numbers and qualified types of personnel and occupational disciplines are available at all times to provide necessary and adequate patient care and safety.

(b) Infection control, housekeeping, sanitary conditions, disaster plan, and medical record procedures that will adequately protect patient care and provide safety are established and implemented.

(c) Licensed facilities are established, organized, and operated consistent with established programmatic standards.

~~(2) Any licensed facility that is in operation at the time of adoption of any applicable rule under ss. 383.30-383.335 shall be given a reasonable time under the particular circumstances, not to exceed 1 year after the date of such adoption, within which to comply with such rule.~~

(2)~~(3)~~ The agency may not establish any rule governing the design, construction, erection, alteration, modification, repair, or demolition of birth centers. It is the intent of the Legislature to preempt that function to the Florida Building Commission and the State Fire Marshal through adoption and maintenance of the Florida Building Code and the Florida Fire Prevention Code. However, the agency shall provide technical assistance to the commission and the State Fire Marshal in updating the construction standards of the Florida Building Code and the Florida Fire Prevention Code which govern birth centers. In addition, the agency may enforce the special-occupancy provisions of the Florida Building Code and the Florida Fire Prevention Code which apply to birth centers in conducting any inspection authorized under this chapter or part II of chapter 408.

Section 7. Subsection (1) of section 383.315, Florida Statutes, is amended to read:

383.315 Agreements with consultants for advice or services; maintenance.—

(1) A birth center shall maintain in writing a consultation agreement, signed within the current license period ~~year~~, with each consultant who has agreed to provide advice and services to the birth center as requested.

Section 8. Section 383.324, Florida Statutes, is amended to read:

383.324 Inspections and investigations; inspection fees.—

~~(1) The agency shall make or cause to be made such inspections and investigations as it deems necessary.~~

~~(2)~~ Each facility licensed under s. 383.305 shall pay to the agency~~, at the time of inspection,~~ an inspection fee established by rule of the agency. In addition to the requirements of part II of chapter 408,

~~(3)~~ the agency shall coordinate all periodic inspections for licensure made by the agency to ensure that the cost to the facility of such inspections and the disruption of services by such inspections is minimized.

Section 9. Section 383.33, Florida Statutes, is amended to read:

383.33 Administrative penalties; ~~emergency orders;~~ moratorium on admissions.—

(1)~~(a)~~ In addition to the requirements of part II of chapter 408, the agency may ~~deny, revoke, or suspend a license, or~~ impose an administrative fine not to exceed $500 per violation per day~~,~~ for the violation of any provision of ss. 383.30-383.335, part II of chapter 408, or applicable rules ~~or any rule adopted under ss. 383.30-383.335~~. ~~Each day of violation constitutes a separate violation and is subject to a separate fine.~~

(2)~~(b)~~ In determining the amount of the fine to be levied for a violation, as provided in this section ~~paragraph (a)~~, the following factors shall be considered:

(a)~~1.~~ The severity of the violation, including the probability that death or serious harm to the health or safety of any person will result or has resulted; the severity of the actual or potential harm; and the extent to which the provisions of ss. 383.30-383.335, part II of chapter 408, or applicable rules were violated.

(b)~~2.~~ Actions taken by the licensee to correct the violations or to remedy complaints.

(c)~~3.~~ Any previous violations by the licensee.

~~(c) All amounts collected pursuant to this section shall be deposited into a trust fund administered by the agency to be used for the sole purpose of carrying out the provisions of ss.383.30-383.335.~~

~~(2) The agency may issue an emergency order immediately suspending or revoking a license when it determines that any condition in the licensed facility presents a clear and present danger to the public health and safety.~~

(2)~~(3)~~ In accordance with part II of chapter 408, the agency may impose an immediate moratorium on elective admissions to any licensed facility, building or portion thereof, or service when the agency determines that any condition in the facility presents a threat to the public health or safety.

Section 10. Section 383.331, Florida Statutes, is repealed.

Section 11. Section 383.332, Florida Statutes, is amended to read:

383.332 Establishing, managing, or operating a birth center without a license; penalty.—Any person who establishes, conducts, manages, or operates any birth center facility without a license issued under s. 383.305 and part II of chapter 408 commits ~~is guilty of~~ a misdemeanor and, upon conviction, shall be fined not more than $100 for the first offense and not more than $500 for each subsequent offense; and each day of continuing violation after conviction shall be considered a separate offense.

Section 12. Subsection (1) of section 383.335, Florida Statutes, is amended to read:

383.335 Partial exemptions.—

(1) Any facility that ~~which~~ was providing obstetrical and gynecological surgical services and was owned and operated by a board-certified obstetrician on June 15, 1984, and that would ~~which is~~ otherwise be subject to licensure under ss. 383.30-383.335 as a birth center, is exempt from the provisions of ss. 383.30-383.335 and part II of chapter 408 which restrict the provision of surgical services and outlet forceps delivery and the administration of anesthesia at birth centers. The agency shall adopt rules specifically related to the performance of such services and the administration of anesthesia at such facilities.

Section 13. Subsection (4) of section 383.50, Florida Statutes, is amended to read:

383.50 Treatment of abandoned newborn infant.—

(4) Each hospital of this state subject to s. 395.1041 shall, and any other hospital may, admit and provide all necessary emergency services and care, as defined in s. 395.002(9)~~(10)~~, to any newborn infant left with the hospital in accordance with this section. The hospital or any of its licensed health care professionals shall consider these actions as implied consent for treatment, and a hospital accepting physical custody of a newborn infant has implied consent to perform all necessary emergency services and care. The hospital or any of its licensed health care professionals is immune from criminal or civil liability for acting in good faith in accordance with this section. Nothing in this subsection limits liability for negligence.

Section 14. Subsection (5) of section 390.011, Florida Statutes, is amended to read:

390.011 Definitions.—As used in this chapter, the term:

(5) "Hospital" means a facility as defined in s. 395.002(12) and licensed under chapter 395 and part II of chapter 408.

Section 15. Subsection (1) of section 390.012, Florida Statutes, is amended to read:

390.012 Powers of agency; rules; disposal of fetal remains.—

(1) The agency may ~~shall have the authority to~~ develop and enforce rules pursuant to ss. 390.001-390.018 and part II of chapter 408 for the health, care, and treatment of persons in abortion clinics and for the safe operation of such clinics.

(a) The rules shall be reasonably related to the preservation of maternal health of the clients.

(b) The rules shall be in accordance with s. 797.03 and may not impose an unconstitutional burden on a woman's freedom to decide whether to terminate her pregnancy.

(c) The rules shall provide for:

1. The performance of pregnancy termination procedures only by a licensed physician.

2. The making, protection, and preservation of patient records, which shall be treated as medical records under chapter 458.

Section 16. Section 390.013, Florida Statutes, is repealed.

Section 17. Section 390.014, Florida Statutes, is amended to read:

390.014 Licenses; fees~~, display, etc~~.—

(1) The requirements of part II of chapter 408 shall apply to the provision of services that require licensure pursuant to ss. 390.011-390.018 and part II of chapter 408 and to entities licensed by or applying for such licensure from the Agency for Health Care Administration pursuant to ss. 390.011-390.018. A license issued by the agency is required in order to operate a clinic in this state. ~~No abortion clinic shall operate in this state without a currently effective license issued by the agency.~~

(2) A separate license shall be required for each clinic maintained on separate premises, even though it is operated by the same management as another clinic; but a separate license shall not be required for separate buildings on the same premises.

(3) In accordance with s. 408.805, an applicant or licensee shall pay a fee for each license application submitted under this part and part II of chapter 408. The amount of the fee shall be established by rule and ~~The annual license fee required for a clinic shall be nonrefundable and shall be reasonably calculated to cover the cost of regulation under this chapter, but~~ may not be less than $70 or ~~$35 nor~~ more than $500 ~~$250~~.

(4) Counties and municipalities applying for licenses under this act shall be exempt from the payment of the license fees.

~~(5) The license shall be displayed in a conspicuous place inside the clinic.~~

~~(6) A license shall be valid only for the clinic to which it is issued, and it shall not be subject to sale, assignment, or other transfer, voluntary or involuntary. No license shall be valid for any premises other than those for which it was originally issued.~~

Section 18. Section 390.015, Florida Statutes, is amended to read:

390.015 Application for license.—

~~(1)~~ In addition to the requirements of part II of chapter 408, an application for a license to operate an abortion clinic shall be made to the agency and must include ~~on a form furnished by it for that purpose. The application shall be accompanied by the applicable license fee.~~

~~(2) The application, which shall be made under oath, shall contain, among other things, the following:~~

~~(a) The name and address of the applicant if the applicant is an individual; or if the applicant is a firm, partnership, or association, the name and address of each member thereof; or if the applicant is a corporation, its name and address and the name and address of each of its officers.~~

~~(b) The name by which the clinic is to be known.~~

~~(c)~~ the location of the clinic for which application is made and a statement that local zoning ordinances permit such location.

~~(d) The name of the person or persons under whose management or supervision the clinic will be operated.~~

~~(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.~~

~~(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 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.~~

~~(h) The agency may deny or revoke licensure if the applicant:~~

~~1. Has falsely represented a material fact in the application required by paragraph (e) or paragraph (f), or has omitted any material fact from the application required by paragraph (e) or paragraph (f); or~~

~~2. Has had prior action taken against the applicant under the Medicaid or Medicare program as set forth in paragraph (e).~~

~~(i) An application for license renewal must contain the information required under paragraphs (e) and (f).~~

Section 19. Section 390.016, Florida Statutes, is repealed.

Section 20. Section 390.017, Florida Statutes, is repealed.

Section 21. Section 390.018, Florida Statutes, is amended to read:

390.018 Administrative fine ~~penalty in lieu of revocation or suspension~~.—In addition to the requirements of part II of chapter 408 ~~If the agency finds that one or more grounds exist for the revocation or suspension of a license issued to an abortion clinic~~, the agency may~~, in lieu of such suspension or revocation,~~ impose a fine upon the clinic in an amount not to exceed $1,000 for each violation of any provision of this part, part II of chapter 408, or applicable rules. ~~The fine shall be paid to the agency within 60 days from the date of entry of the administrative order. If the licensee fails to pay the fine in its entirety to the agency within the period allowed, the license of the licensee shall stand suspended, revoked, or renewal or continuation may be refused, as the case may be, upon expiration of such period and without any further administrative or judicial proceedings.~~

Section 22. Section 390.019, Florida Statutes, is repealed.

Section 23. Section 390.021, Florida Statutes, is repealed.

Section 24. Subsection (13) of section 394.455, Florida Statutes, is amended to read:

394.455 Definitions.—As used in this part, unless the context clearly requires otherwise, the term:

(13) "Hospital" means a facility as defined in s. 395.002 and licensed under chapter 395 and part II of chapter 408.

Section 25. Subsection (7) of section 394.4787, Florida Statutes, is amended to read:

394.4787 Definitions; ss. 394.4786, 394.4787, 394.4788, and 394.4789.—As used in this section and ss. 394.4786, 394.4788, and 394.4789:

(7) "Specialty psychiatric hospital" means a hospital licensed by the agency pursuant to s. 395.002(28) and part II of chapter 408 ~~s. 395.002(29)~~ as a specialty psychiatric hospital.

Section 26. Subsections (3) through (25) of section 394.67, Florida Statutes, are renumbered as subsections (2) through (24), respectively, and present subsections (2) and (4) of that section are amended to read:

394.67 Definitions.—As used in this part, the term:

~~(2) "Applicant" means an individual applicant, or any officer, director, agent, managing employee, or affiliated person, or any partner or shareholder having an ownership interest equal to a 5-percent or greater interest in the corporation, partnership, or other business entity.~~

(3)~~(4)~~ "Crisis services" means short-term evaluation, stabilization, and brief intervention services provided to a person who is experiencing an acute mental or emotional crisis, as defined in subsection (17) ~~(18)~~, or an acute substance abuse crisis, as defined in subsection (18) ~~(19)~~, to prevent further deterioration of the person's mental health. Crisis services are provided in settings such as a crisis stabilization unit, an inpatient unit, a short-term residential treatment program, a detoxification facility, or an addictions receiving facility; at the site of the crisis by a mobile crisis response team; or at a hospital on an outpatient basis.

Section 27. Subsection (3) of section 394.74, Florida Statutes, is amended to read:

394.74 Contracts for provision of local substance abuse and mental health programs.—

(3) Contracts shall include, but are not limited to:

(a) A provision that, within the limits of available resources, substance abuse and mental health crisis services, as defined in s. 394.67(3)~~(4)~~, shall be available to any individual residing or employed within the service area, regardless of ability to pay for such services, current or past health condition, or any other factor;

(b) A provision that such services be available with priority of attention being given to individuals who exhibit symptoms of chronic or acute substance abuse or mental illness and who are unable to pay the cost of receiving such services;

(c) A provision that every reasonable effort to collect appropriate reimbursement for the cost of providing substance abuse and mental health services to persons able to pay for services, including first-party payments and third-party payments, shall be made by facilities providing services pursuant to this act;

(d) A program description and line-item operating budget by program service component for substance abuse and mental health services, provided the entire proposed operating budget for the service provider will be displayed;

(e) A provision that client demographic, service, and outcome information required for the department's Mental Health and Substance Abuse Data System be submitted to the department by a date specified in the contract. The department may not pay the provider unless the required information has been submitted by the specified date; and

(f) A requirement that the contractor must conform to department rules and the priorities established thereunder.

Section 28. Subsections (1) and (4) of section 394.82, Florida Statutes, are amended to read:

394.82 Funding of expanded services.—

(1) Pursuant to the General Appropriations Acts for the 2001-2002 and 2002-2003 fiscal years, funds appropriated to the Department of Children and Family Services for the purpose of expanding community mental health services must be used to implement programs that emphasize crisis services as defined in s. 394.67(3)~~(4)~~ and treatment services, rehabilitative services, support services, and case management services, as defined in s. 394.67(15)~~(16)~~. Following the 2002-2003 fiscal year, the Department of Children and Family Services must continue to expand the provision of these community mental health services.

(4) By January 1, 2004, the crisis services defined in s. 394.67(3)~~(4)~~ shall be implemented, as appropriate, in the state's public community mental health system to serve children and adults who are experiencing an acute mental or emotional crisis, as defined in s. 394.67(17)~~(18)~~. By January 1, 2006, the mental health services defined in s. 394.67(15)~~(16)~~ shall be implemented, as appropriate, in the state's public community mental health system to serve adults and older adults who have a severe and persistent mental illness and to serve children who have a serious emotional disturbance or mental illness, as defined in s. 394.492(6).

Section 29. Section 394.875, Florida Statutes, is amended to read:

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

(1)(a) The purpose of a crisis stabilization unit is to stabilize and redirect a client to the most appropriate and least restrictive community setting available, consistent with the client's needs. Crisis stabilization units may screen, assess, and admit for stabilization persons who present themselves to the unit and persons who are brought to the unit under s. 394.463. Clients may be provided 24-hour observation, medication prescribed by a physician or psychiatrist, and other appropriate services. Crisis stabilization units shall provide services regardless of the client's ability to pay and shall be limited in size to a maximum of 30 beds.

(b) The purpose of a residential treatment facility is to be a part of a comprehensive treatment program for mentally ill individuals in a community-based residential setting.

(c) The purpose of a residential treatment center for children and adolescents is to provide mental health assessment and treatment services pursuant to ss. 394.491, 394.495, and 394.496 to children and adolescents who meet the target population criteria specified in s. 394.493(1)(a), (b), or (c).

(2) The requirements of part II of chapter 408 apply to the provision of services that require licensure under ss. 394.455-394.904 and part II of chapter 408 and to entities licensed by or applying for such licensure from the Agency for Health Care Administration pursuant to ss. 394.455-394.904. A license issued by the agency is required in order to operate ~~It is unlawful for any entity to hold itself out as~~ a crisis stabilization unit, a residential treatment facility, or a residential treatment center for children and adolescents, or to act as a crisis stabilization unit, a residential treatment facility, or a residential treatment center for children and adolescents in this state~~, unless it is licensed by the agency pursuant to this chapter~~.

~~(3) Any person who violates subsection (2) is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.~~

~~(4) The agency may maintain an action in circuit court to enjoin the unlawful operation of a crisis stabilization unit, a residential treatment facility, or a residential treatment center for children and adolescents if the agency first gives the violator 14 days' notice of its intention to maintain such action and if the violator fails to apply for licensure within such 14-day period.~~

(3)~~(5)~~ The following are exempt from licensure as required in ss. 394.455-394.904 ~~Subsection (2) does not apply to~~:

(a) Homes for special services licensed under chapter 400.~~; or~~

(b) Nursing homes licensed under chapter 400.

(c) Comprehensive transitional education programs licensed under s. 393.067.

(4)~~(6)~~ The department, in consultation with the agency, may establish multiple license classifications for residential treatment facilities.

(5)~~(7)~~ The agency may not issue a license to a crisis stabilization unit unless the unit receives state mental health funds and is affiliated with a designated public receiving facility.

(6)~~(8)~~ The agency may issue a license for a crisis stabilization unit or short-term residential treatment facility, certifying the number of authorized beds for such facility as indicated by existing need and available appropriations. The agency may disapprove an application for such a license if it determines that a facility should not be licensed pursuant to the provisions of this chapter. Any facility operating beds in excess of those authorized by the agency shall, upon demand of the agency, reduce the number of beds to the authorized number, forfeit its license, or provide evidence of a license issued pursuant to chapter 395 for the excess beds.

(7)~~(9)~~ A children's crisis stabilization unit which does not exceed 20 licensed beds and which provides separate facilities or a distinct part of a facility, separate staffing, and treatment exclusively for minors may be located on the same premises as a crisis stabilization unit serving adults. The department, in consultation with the agency, shall adopt rules govern-

ing facility construction, staffing and licensure requirements, and the operation of such units for minors.

(8)~~(10)~~ The department, in consultation with the agency, must adopt rules governing a residential treatment center for children and adolescents which specify licensure standards for: admission; length of stay; program and staffing; discharge and discharge planning; treatment planning; seclusion, restraints, and time-out; rights of patients under s. 394.459; use of psychotropic medications; and standards for the operation of such centers.

(9)~~(11)~~ Notwithstanding the provisions of subsection (6) ~~(8)~~, crisis stabilization units may not exceed their licensed capacity by more than 10 percent, nor may they exceed their licensed capacity for more than 3 consecutive working days or for more than 7 days in 1 month.

(10)~~(12)~~ Notwithstanding the other provisions of this section, any facility licensed under former chapter 396 and chapter 397 for detoxification, residential level I care, and outpatient treatment may elect to license concurrently all of the beds at such facility both for that purpose and as a long-term residential treatment facility pursuant to this section, if all of the following conditions are met:

(a) The licensure application is received by the department prior to January 1, 1993.

(b) On January 1, 1993, the facility was licensed under former chapter 396 and chapter 397 as a facility for detoxification, residential level I care, and outpatient treatment of substance abuse.

(c) The facility restricted its practice to the treatment of law enforcement personnel for a period of at least 12 months beginning after January 1, 1992.

(d) The number of beds to be licensed under this chapter is equal to or less than the number of beds licensed under former chapter 396 and chapter 397 as of January 1, 1993.

(e) The licensee agrees in writing to a condition placed upon the license that the facility will limit its treatment exclusively to law enforcement personnel and their immediate families who are seeking admission on a voluntary basis and who are exhibiting symptoms of posttraumatic stress disorder or other mental health problems, including drug or alcohol abuse, which are directly related to law enforcement work and which are amenable to verbal treatment therapies; the licensee agrees to coordinate the provision of appropriate postresidential care for discharged individuals; and the licensee further agrees in writing that a failure to meet any condition specified in this paragraph shall constitute grounds for a revocation of the facility's license as a residential treatment facility.

(f) The licensee agrees that the facility will meet all licensure requirements for a residential treatment facility, including minimum standards for compliance with lifesafety requirements, except those licensure requirements which are in express conflict with the conditions and other provisions specified in this subsection.

(g) The licensee agrees that the conditions stated in this subsection must be agreed to in writing by any person acquiring the facility by any means.

Any facility licensed under this subsection is not required to provide any services to any persons except those included in the specified conditions of licensure, and is exempt from any requirements related to the 60-day or greater average length of stay imposed on community-based residential treatment facilities otherwise licensed under this chapter.

~~(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.~~

~~(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 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.~~

~~(h) The agency may deny or revoke licensure if the applicant:~~

~~1. Has falsely represented a material fact in the application required by paragraph (e) or paragraph (f), or has omitted any material fact from the application required by paragraph (e) or paragraph (f); or~~

~~2. Has had prior action taken against the applicant under the Medicaid or Medicare program as set forth in paragraph (e).~~

~~(i) An application for license renewal must contain the information required under paragraphs (e) and (f).~~

Section 30. Section 394.876, Florida Statutes, is amended to read:

394.876 Applications.—

(1) <u>In addition to the requirements of part II of chapter 408,</u> any person desiring to be licensed under this chapter shall apply to the agency <u>and</u> ~~on forms provided by the agency.~~ the application <u>must</u> ~~shall~~ contain ~~the following~~:

~~(a) The name and address of the applicant, the name of the unit or facility, and the address of the unit or facility.~~

~~(b)1. If the applicant is a partnership, association, or other form of entity other than an individual or a corporation, the name and address of each member or owner of the entity.~~

~~2. If the applicant is a corporation, the name and address of each director or officer and the name and address of each person holding at least 5 percent ownership interest in the corporation.~~

~~(c)~~ such information as the department and the agency find necessary to determine the ability of the applicant to carry out its responsibilities under this chapter.

~~(2) The applicant shall furnish proof satisfactory to the agency of its financial ability to operate the unit or facility in accordance with this chapter. An applicant for an original license shall submit a balance sheet and a statement projecting revenues, expenses, taxes, extraordinary items, and other credits and charges for the first 6 months of operation.~~

(2)~~(3)~~ The applicant shall provide proof of liability insurance coverage in amounts set by the department and the agency by rule.

~~(4) The agency shall accept proof of accreditation by the Joint Commission on Accreditation of Hospitals in lieu of the information required by subsection (1).~~

Section 31. Section 394.877, Florida Statutes, is amended to read:

394.877 Fees.—

~~(1)~~ In accordance with s. 408.805, an applicant or licensee shall pay a fee for each license application submitted under this part, part II of chapter 408, and applicable rules. The amount of the fee shall be established by rule. ~~Each application for licensure or renewal must be accompanied by a fee set by the department, in consultation with the agency, by rule.~~ Such fees shall be reasonably calculated to cover only the cost of regulation under this chapter.

~~(2) All fees collected under this section shall be deposited in the Health Care Trust Fund.~~

Section 32. Section 394.878, Florida Statutes, is repealed.

Section 33. Subsections (1), (3), (4), and (5) of section 394.879, Florida Statutes, are amended to read:

394.879 Rules; enforcement.—

(1) The agency, in consultation with the department, may adopt rules to administer the requirements of part II of chapter 408. The department, in consultation with the agency, shall adopt rules pursuant to ss. 120.536(1) and 120.54 to administer ~~implement~~ the provisions of this chapter, including, at a minimum, rules providing standards to ensure that:

(a) Sufficient numbers and types of qualified personnel are on duty and available at all times to provide necessary and adequate client safety and care.

(b) Adequate space is provided each client of a licensed facility.

(c) Licensed facilities are limited to an appropriate number of beds.

(d) Each licensee establishes and implements adequate infection control, housekeeping, sanitation, disaster planning, and medical recordkeeping.

(e) Licensed facilities are established, organized, and operated in accordance with programmatic standards of the department.

(f) The operation and purposes of these facilities assure individuals' health, safety, and welfare.

(g) The use of restraint and seclusion is consistent with recognized best practices and professional judgment; that inherently dangerous restraint or seclusion procedures are prohibited; that limitations are established on the use and duration of restraint and seclusion; that measures are established to ensure the safety of program participants and staff during an incident of restraint or seclusion; that procedures are created for staff to follow before, during, and after incidents of restraint or seclusion; that professional qualifications and training are established for staff who may order or be engaged in the use of restraint or seclusion; and that mandatory reporting, data collection, and data dissemination procedures and requirements are instituted. Rules adopted under this section must require that any instance of the use of restraint or seclusion shall be documented in the record of the client.

(3) The department, in consultation with the agency, shall allow any licensed facility in operation at the time of adoption of any rule a reasonable period, not to exceed 1 year, to bring itself into compliance with <u>department rules</u> ~~such rule~~.

(4) <u>In accordance with part II of chapter 408,</u> the agency may impose an administrative penalty of no more than $500 per day against any licensee that violates any rule adopted pursuant to this section and may suspend <u>and</u> ~~or~~ revoke the license <u>and</u> ~~or~~ deny the renewal application of such licensee. In imposing such penalty, the agency shall consider the severity of the violation, actions taken by the licensee to correct the violation, and previous violations by the licensee. ~~Fines collected under this subsection shall be deposited in the Mental Health Facility Licensing Trust Fund.~~

(5) The agency or the department may not adopt any rule governing the design, construction, erection, alteration, modification, repair, or demolition of crisis stabilization units. It is the intent of the Legislature to preempt that function to the Florida Building Commission and the State Fire Marshal through adoption and maintenance of the Florida Building Code and the Florida Fire Prevention Code. However, the agency shall provide technical assistance to the commission and the State Fire Marshal in updating the construction standards of the Florida Building Code and the Florida Fire Prevention Code which govern crisis stabilization units. In addition, the agency may enforce the special-occupancy provisions of the Florida Building Code and the Florida Fire Prevention Code which apply to crisis stabilization units in conducting any inspection authorized under this part <u>or part II of chapter 408</u>.

Section 34. Paragraph (a) of subsection (1) of section 394.90, Florida Statutes, is amended to read:

394.90 Inspection; right of entry; records.—

(1)(a) The ~~department and the~~ agency, in accordance with s. 408.811, and the department may enter and inspect at any time a licensed facility to determine whether the facility is in compliance with this chapter, part II of chapter 408, and applicable ~~the~~ rules ~~of the department~~.

Section 35. Section 394.902, Florida Statutes, is amended to read:

394.902 Moratorium on admissions ~~Denial, suspension, and revocation; other remedies.—~~

~~(1) The agency may issue an emergency order suspending or revoking a license if the agency determines that the continued operation of the licensed facility presents a clear and present danger to the public health or safety.~~

~~(2)~~ In accordance with part II of chapter 408, the agency may impose a moratorium on elective admissions to a licensee or any program or portion of a licensed facility if the agency determines that any condition in the facility presents a threat to the public health or safety.

~~(3) If the agency determines that an applicant or licensee is not in compliance with this chapter or the rules adopted under this chapter, the agency may deny, suspend, or revoke the license or application or may suspend, revoke, or impose reasonable restrictions on any portion of the license. If a license is revoked, the licensee is barred from submitting any application for licensure to the agency for a period of 6 months following revocation.~~

~~(4) The agency may maintain an action in circuit court to enjoin the operation of any licensed or unlicensed facility in violation of this chapter or the rules adopted under this chapter.~~

~~(5) License denial, suspension, or revocation procedures shall be in accordance with chapter 120.~~

Section 36. Subsection (7) of section 394.907, Florida Statutes, is amended to read:

394.907 Community mental health centers; quality assurance programs.—

(7) The department shall have access to all records necessary to determine licensee ~~agency~~ compliance with the provisions of this section. The records of quality assurance programs which relate solely to actions taken in carrying out the provisions of this section, and records obtained by the department to determine licensee ~~agency~~ compliance with this section, are confidential and exempt from s. 119.07(1). Such records are not admissible in any civil or administrative action, except in disciplinary proceedings by the Department of Business and Professional Regulation and the appropriate regulatory board, nor shall such records be available to the public as part of the record of investigation for, and prosecution in disciplinary proceedings

made available to the public by the Department of Business and Professional Regulation or the appropriate regulatory board. Meetings or portions of meetings of quality assurance program committees that relate solely to actions taken pursuant to this section are exempt from s. 286.011.

Section 37. Subsections (5) through (33) of section 395.002, Florida Statutes, are renumbered as subsections (4) through (32), respectively, and present subsections (4), (11), and (29) of that section are amended to read:

395.002 Definitions.—As used in this chapter:

~~(4) "Applicant" means an individual applicant, or any officer, director, or agent, or any partner or shareholder having an ownership interest equal to a 5-percent or greater interest in the corporation, partnership, or other business entity.~~

(10)~~(11)~~ "General hospital" means any facility which meets the provisions of subsection (12) ~~(13)~~ and which regularly makes its facilities and services available to the general population.

(28)~~(29)~~ "Specialty hospital" means any facility which meets the provisions of subsection (12) ~~(13)~~, and which regularly makes available either:

(a) The range of medical services offered by general hospitals, but restricted to a defined age or gender group of the population;

(b) A restricted range of services appropriate to the diagnosis, care, and treatment of patients with specific categories of medical or psychiatric illnesses or disorders; or

(c) Intensive residential treatment programs for children and adolescents as defined in subsection (15) ~~(16)~~.

Section 38. Section 395.003, Florida Statutes, is amended to read:

395.003 Licensure; ~~issuance, renewal,~~ denial, ~~modification,~~ suspension, and revocation.—

(1)(a) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to ss. 395.001-395.1065 and part II of chapter 408 and to entities licensed by or applying for such licensure from the Agency for Health Care Administration pursuant to ss. 395.001-395.1065. A license issued by the agency is required in order to operate ~~A person may not establish, conduct, or maintain~~ a hospital, ambulatory surgical center, or mobile surgical facility in this state ~~without first obtaining a license under this part~~.

(b)1. It is unlawful for a person to use or advertise to the public, in any way or by any medium whatsoever, any facility as a "hospital," "ambulatory surgical center," or "mobile surgical facility" unless such facility has first secured a license under the provisions of this part.

2. This part does not apply to veterinary hospitals or to commercial business establishments using the word "hospital," "ambulatory surgical

center," or "mobile surgical facility" as a part of a trade name if no treatment of human beings is performed on the premises of such establishments.

(c)~~3.~~ Until July 1, 2006, additional emergency departments located off the premises of licensed hospitals may not be authorized by the agency.

~~(2)(a) Upon the receipt of an application for a license and the license fee, the agency shall issue a license if the applicant and facility have received all approvals required by law and meet the requirements established under this part and in rules. Such license shall include all beds and services located on the premises of the facility.~~

~~(b) A provisional license may be issued to a new facility or a facility that is in substantial compliance with this part and with the rules of the agency. A provisional license shall be granted for a period of no more than 1 year and shall expire automatically at the end of its term. A provisional license may not be renewed.~~

~~(c) A license, unless sooner suspended or revoked, shall automatically expire 2 years from the date of issuance and shall be renewable biennially upon application for renewal and payment of the fee prescribed by s. 395.004(2), provided the applicant and licensed facility meet the requirements established under this part and in rules. An application for renewal of a license shall be made 90 days prior to expiration of the license, on forms provided by the agency.~~

(a)~~(d)~~ In addition to the requirements in part II of chapter 408, the agency shall, at the request of a licensee, issue a single license to a licensee for facilities located on separate premises. Such a license shall specifically state the location of the facilities, the services, and the licensed beds available on each separate premises. If a licensee requests a single license, the licensee shall designate which facility or office is responsible for receipt of information, payment of fees, service of process, and all other activities necessary for the agency to carry out the provisions of this part.

(b)~~(e)~~ The agency shall, at the request of a licensee that is a teaching hospital as defined in s. 408.07(45), issue a single license to a licensee for facilities that have been previously licensed as separate premises, provided such separately licensed facilities, taken together, constitute the same premises as defined in s. 395.002(23)~~(24)~~. Such license for the single premises shall include all of the beds, services, and programs that were previously included on the licenses for the separate premises. The granting of a single license under this paragraph shall not in any manner reduce the number of beds, services, or programs operated by the licensee.

(c)~~(f)~~ Intensive residential treatment programs for children and adolescents which have received accreditation from an accrediting organization as defined in s. 395.002(1) and which meet the minimum standards developed by rule of the agency for such programs shall be licensed by the agency under this part.

~~(3)(a) Each license shall be valid only for the person to whom it is issued and shall not be sold, assigned, or otherwise transferred, voluntarily or~~

~~involuntarily. A license is only valid for the premises for which it was originally issued.~~

~~(b)1. An application for a new license is required if ownership, a majority of the ownership, or controlling interest of a licensed facility is transferred or assigned and when a lessee agrees to undertake or provide services to the extent that legal liability for operation of the facility rests with the lessee. The application for a new license showing such change shall be made at least 60 days prior to the date of the sale, transfer, assignment, or lease.~~

(3)~~2.~~ In addition to the requirements of s. 408.807, after a change of ownership has been approved by the agency, the transferee shall be liable for any liability to the state, regardless of when identified, resulting from changes to allowable costs affecting provider reimbursement for Medicaid participation or Public Medical Assistance Trust Fund Assessments, and related administrative fines. ~~The transferee, simultaneously with the transfer of ownership, shall pay or make arrangements to pay to the agency or the department any amount owed to the agency or the department; payment assurances may be in the form of an irrevocable credit instrument or payment bond acceptable to the agency or the department provided by or on behalf of the transferor. The issuance of a license to the transferee shall be delayed pending payment or until arrangement for payment acceptable to the agency or the department is made.~~

(4) The agency shall issue a license which specifies the service categories and the number of hospital beds in each bed category for which a license is received. Such information shall be listed on the face of the license. All beds which are not covered by any specialty-bed-need methodology shall be specified as general beds. A licensed facility shall not operate a number of hospital beds greater than the number indicated by the agency on the face of the license without approval from the agency under conditions established by rule.

(5)(a) Adherence to patient rights, standards of care, and examination and placement procedures provided under part I of chapter 394 shall be a condition of licensure for hospitals providing voluntary or involuntary medical or psychiatric observation, evaluation, diagnosis, or treatment.

(b) Any hospital that provides psychiatric treatment to persons under 18 years of age who have emotional disturbances shall comply with the procedures pertaining to the rights of patients prescribed in part I of chapter 394.

(c) A hospital that provides birthing services shall affirm in writing as part of the application for a new, provisional, or renewal license that the hospital shall comply with s. 382.013(2)(c), which includes assisting unmarried parents who request assistance in executing a voluntary acknowledgment of paternity. No fine or other sanction under s. 395.1065 may be imposed on a hospital for noncompliance with s. 382.013(2)(c).

(6) No specialty hospital shall provide any service or regularly serve any population group beyond those services or groups specified in its license.

~~(7) Licenses shall be posted in a conspicuous place on each of the licensed premises.~~

(7)~~(8)~~ In addition to the requirements of part II of chapter 408, whenever the agency finds that there has been a substantial failure to comply with the requirements established under this part or in rules, the agency is authorized to deny, modify, suspend, and ~~or~~ revoke:

(a) A license;

(b) That part of a license which is limited to a separate premises, as designated on the license; or

(c) Licensure approval limited to a facility, building, or portion thereof, or a service, within a given premises.

(8)~~(9)~~ A hospital may not be licensed or relicensed if:

(a) The diagnosis-related groups for 65 percent or more of the discharges from the hospital, in the most recent year for which data is available to the Agency for Health Care Administration pursuant to s. 408.061, are for diagnosis, care, and treatment of patients who have:

1. Cardiac-related diseases and disorders classified as diagnosis-related groups 103-145, 478-479, 514-518, or 525-527;

2. Orthopedic-related diseases and disorders classified as diagnosis-related groups 209-256, 471, 491, 496-503, or 519-520;

3. Cancer-related diseases and disorders classified as diagnosis-related groups 64, 82, 172, 173, 199, 200, 203, 257-260, 274, 275, 303, 306, 307, 318, 319, 338, 344, 346, 347, 363, 366, 367, 400-414, 473, or 492; or

4. Any combination of the above discharges.

(b) The hospital restricts its medical and surgical services to primarily or exclusively cardiac, orthopedic, surgical, or oncology specialties.

(9)~~(10)~~ A hospital licensed as of June 1, 2004, shall be exempt from subsection (8) ~~(9)~~ as long as the hospital maintains the same ownership, facility street address, and range of services that were in existence on June 1, 2004. Any transfer of beds, or other agreements that result in the establishment of a hospital or hospital services within the intent of this section, shall be subject to subsection (8) ~~(9)~~. Unless the hospital is otherwise exempt under subsection (8) ~~(9)~~, the agency shall deny or revoke the license of a hospital that violates any of the criteria set forth in that subsection.

(10)~~(11)~~ The agency may adopt rules implementing the licensure requirements set forth in subsection (8) ~~(9)~~. Within 14 days after rendering its decision on a license application or revocation, the agency shall publish its proposed decision in the Florida Administrative Weekly. Within 21 days after publication of the agency's decision, any authorized person may file a request for an administrative hearing. In administrative proceedings challenging the approval, denial, or revocation of a license pursuant to subsec-

tion (8) ~~(9)~~, the hearing must be based on the facts and law existing at the time of the agency's proposed agency action. Existing hospitals may initiate or intervene in an administrative hearing to approve, deny, or revoke licensure under subsection (8) ~~(9)~~ based upon a showing that an established program will be substantially affected by the issuance or renewal of a license to a hospital within the same district or service area.

Section 39. Section 395.004, Florida Statutes, is amended to read:

395.004 Application for license;~~,~~ fees~~; expenses~~.—

~~(1)~~ In accordance with s. 408.805, an applicant or licensee shall pay a fee for each license application submitted under this part, part II of chapter 408, and applicable rules. The amount of the fee shall be established by rule. ~~An application for a license or renewal thereof shall be made under oath to the agency, upon forms provided by it, and shall contain such information as the agency reasonably requires, which may include affirmative evidence of ability to comply with applicable laws and rules.~~

~~(2) Each application for a general hospital license, specialty hospital license, ambulatory surgical center license, or mobile surgical facility license, or renewal thereof, shall be accompanied by a license fee, in accordance with the following schedule:~~

~~(a)~~ The ~~biennial license, provisional license, and~~ license ~~renewal~~ fee required of a facility licensed under this part shall be ~~reasonably calculated to cover the cost of regulation under this part and shall be~~ established by rule at the rate of not less than $9.50 per hospital bed, nor more than $30 per hospital bed, except that the minimum license fee shall be $1,500 ~~and the total fees collected from all licensed facilities may not exceed the cost of properly carrying out the provisions of this part~~.

~~(b) Such fees shall be paid to the agency and shall be deposited in the Planning and Regulation Trust Fund of the agency, which is hereby created, for the sole purpose of carrying out the provisions of this part.~~

Section 40. Section 395.0055, Florida Statutes, is repealed.

Section 41. Section 395.0161, Florida Statutes, is amended to read:

395.0161 Licensure inspection.—

(1) In addition to the requirement of s. 408.811, the agency shall make or cause to be made such inspections and investigations as it deems necessary, including:

(a) Inspections directed by the federal Centers for Medicare and Medicaid Services ~~Health Care Financing Administration~~.

(b) Validation inspections.

(c) Lifesafety inspections.

(d) Licensure complaint investigations, including full licensure investigations with a review of all licensure standards as outlined in the adminis-

trative rules. Complaints received by the agency from individuals, organizations, or other sources are subject to review and investigation by the agency.

(e) Emergency access complaint investigations.

(f) Inspections of mobile surgical facilities at each time a facility establishes a new location, prior to the admission of patients. However, such inspections shall not be required when a mobile surgical facility is moved temporarily to a location where medical treatment will not be provided.

(2) The agency shall accept, in lieu of its own periodic inspections for licensure, the survey or inspection of an accrediting organization, provided the accreditation of the licensed facility is not provisional and provided the licensed facility authorizes release of, and the agency receives the report of, the accrediting organization. The agency shall develop, and adopt by rule, criteria for accepting survey reports of accrediting organizations in lieu of conducting a state licensure inspection.

(3) In accordance with s. 408.805, an applicant or licensee shall pay a fee for each license application submitted under this part, part II of chapter 408, and applicable rules. With the exception of state-operated licensed facilities, each facility licensed under this part shall pay to the agency, at the time of inspection, the following fees:

(a) Inspection for licensure.—A fee shall be paid which is not less than $8 per hospital bed, nor more than $12 per hospital bed, except that the minimum fee shall be $400 per facility.

(b) Inspection for lifesafety only.—A fee shall be paid which is not less than 75 cents per hospital bed, nor more than $1.50 per hospital bed, except that the minimum fee shall be $40 per facility.

(4) The agency shall coordinate all periodic inspections for licensure made by the agency to ensure that the cost to the facility of such inspections and the disruption of services by such inspections is minimized.

Section 42. Subsections (2) and (3) of section 395.0163, Florida Statutes, are amended to read:

395.0163 Construction inspections; plan submission and approval; fees.—

(2)~~(a)~~ The agency is authorized to charge an initial fee of $2,000 for review of plans and construction on all projects, no part of which is refundable. The agency may also collect a fee, not to exceed 1 percent of the estimated construction cost or the actual cost of review, whichever is less, for the portion of the review which encompasses initial review through the initial revised construction document review. The agency is further authorized to collect its actual costs on all subsequent portions of the review and construction inspections. The initial fee payment shall accompany the initial submission of plans and specifications. Any subsequent payment that is due is payable upon receipt of the invoice from the agency.

~~(b) Notwithstanding any other provisions of law to the contrary, all moneys received by the agency pursuant to the provisions of this section shall be deposited in the Planning and Regulation Trust Fund, as created by s. 395.004, to be held and applied solely for the operations required under this section.~~

(3) In addition to the requirements of s. 408.811, the agency shall inspect a mobile surgical facility at initial licensure and at each time the facility establishes a new location, prior to admission of patients. However, such inspections shall not be required when a mobile surgical facility is moved temporarily to a location where medical treatment will not be provided.

Section 43. Subsection (6) of section 395.0193, Florida Statutes, is amended to read:

395.0193 Licensed facilities; peer review; disciplinary powers; agency or partnership with physicians.—

(6) For a single incident or series of isolated incidents that are nonwillful violations of the reporting requirements of this section or part II of chapter 408, the agency shall first seek to obtain corrective action by the facility. If correction is not demonstrated within the timeframe established by the agency or if there is a pattern of nonwillful violations of this section or part II of chapter 408, the agency may impose an administrative fine, not to exceed $5,000 for any violation of the reporting requirements of this section or part II of chapter 408. The administrative fine for repeated nonwillful violations may ~~shall~~ not exceed $10,000 for any violation. The administrative fine for each intentional and willful violation may not exceed $25,000 per violation, per day. The fine for an intentional and willful violation of this section or part II of chapter 408 may not exceed $250,000. In determining the amount of fine to be levied, the agency shall be guided by s. 395.1065(2)(b).

Section 44. Subsection (12) of section 395.0197, Florida Statutes, is amended to read:

395.0197 Internal risk management program.—

(12) In addition to any penalty imposed pursuant to this section or part II of chapter 408, the agency shall require a written plan of correction from the facility. For a single incident or series of isolated incidents that are nonwillful violations of the reporting requirements of this section or part II of chapter 408, the agency shall first seek to obtain corrective action by the facility. If the correction is not demonstrated within the timeframe established by the agency or if there is a pattern of nonwillful violations of this section or part II of chapter 408, the agency may impose an administrative fine, not to exceed $5,000 for any violation of the reporting requirements of this section or part II of chapter 408. The administrative fine for repeated nonwillful violations may ~~shall~~ not exceed $10,000 for any violation. The administrative fine for each intentional and willful violation may not exceed $25,000 per violation, per day. The fine for an intentional and willful violation of this section or part II of chapter 408 may not exceed $250,000. In

determining the amount of fine to be levied, the agency shall be guided by s. 395.1065(2)(b).

Section 45. Section 395.0199, Florida Statutes, is amended to read:

395.0199 Private utilization review.—

(1) The purpose of this section is to:

(a) Promote the delivery of quality health care in a cost-effective manner.

(b) Foster greater coordination between providers and health insurers performing utilization review.

(c) Protect patients and insurance providers by ensuring that private review agents are qualified to perform utilization review activities and to make informed decisions on the appropriateness of medical care.

(d) This section does not regulate the activities of private review agents, health insurers, health maintenance organizations, or hospitals, except as expressly provided herein, or authorize regulation or intervention as to the correctness of utilization review decisions of insurers or private review agents.

(2) The requirements of part II of chapter 408 apply to the provision of services that require registration or licensure pursuant to this section and part II of chapter 408 and to persons registered by or applying for such registration from the Agency for Health Care Administration pursuant to this section. Registration or a license issued by the agency is required in order to perform as a private review agent conducting utilization review as to health care services in this state ~~performed or proposed to be performed in this state shall register with the agency in accordance with this section~~.

(3) In accordance with s. 408.805, an applicant for registration or the registrant shall pay a fee for each registration application submitted under this section, part II of chapter 408, and applicable rules. The amount of the fee shall be established by rule and ~~Registration shall be made annually with the agency on forms furnished by the agency and shall be accompanied by the appropriate registration fee as set by the agency. The fee~~ shall be sufficient to pay for the administrative costs of registering the agent, but may ~~shall~~ not exceed $500 ~~$250~~. ~~The agency may also charge reasonable fees, reflecting actual costs, to persons requesting copies of registration.~~

~~(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.~~

~~(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 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.~~

~~(h) The agency may deny or revoke the registration if any applicant:~~

~~1. Has falsely represented a material fact in the application required by paragraph (e) or paragraph (f), or has omitted any material fact from the application required by paragraph (e) or paragraph (f); or~~

~~2. Has had prior action taken against the applicant under the Medicaid or Medicare program as set forth in paragraph (e).~~

~~(i) An application for registration renewal must contain the information required under paragraphs (e) and (f).~~

(4)~~(5)~~ In addition to the requirements of part II of chapter 408, registration shall include the following:

(a) A description of the review policies and procedures to be used in evaluating proposed or delivered hospital care.

(b) The name, address, and telephone number of the utilization review agent performing utilization review, who shall be at least:

1. A licensed practical nurse or licensed registered nurse, or other similarly qualified medical records or health care professionals, for performing initial review when information is necessary from the physician or hospital to determine the medical necessity or appropriateness of hospital services; or

2. A licensed physician, or a licensed physician practicing in the field of psychiatry for review of mental health services, for an initial denial determination prior to a final denial determination by the health insurer and which shall include the written evaluation and findings of the reviewing physician.

(c) A description of an appeal procedure for patients or health care providers whose services are under review, who may appeal an initial denial determination prior to a final determination by the health insurer with whom the private review agent has contracted. The appeal procedure shall provide for review by a licensed physician, or by a licensed physician practicing in the field of psychiatry for review of mental health services, and shall include the written evaluation and findings of the reviewing physician.

(d) A designation of the times when the staff of the utilization review agent will be available by toll-free telephone, which shall include at least 40 hours per week during the normal business hours of the agent.

(e) An acknowledgment and agreement that any private review agent which, as a general business practice, fails to adhere to the policies, procedures, and representations made in its application for registration shall have its registration revoked.

(f) Disclosure of any incentive payment provision or quota provision which is contained in the agent's contract with a health insurer and is based on reduction or denial of services, reduction of length of stay, or selection of treatment setting.

(g) Updates of any material changes to review policies or procedures.

~~(6) The agency may impose fines or suspend or revoke the registration of any private review agent in violation of this section. Any private review agent failing to register or update registration as required by this section shall be deemed to be within the jurisdiction of the agency and subject to an administrative penalty not to exceed $1,000. The agency may bring actions to enjoin activities of private review agents in violation of this section.~~

(5)~~(7)~~ No insurer shall knowingly contract with or utilize a private review agent which has failed to register as required by this section or which has had a registration revoked by the agency.

(6)~~(8)~~ A private review agent which operates under contract with the federal or state government for utilization review of patients eligible for hospital or other services under Title XVIII or Title XIX of the Social Security Act is exempt from the provisions of this section for services provided under such contract. A private review agent which provides utilization review services to the federal or state government and a private insurer shall not be exempt for services provided to nonfederally funded patients. This section shall not apply to persons who perform utilization review services for medically necessary hospital services provided to injured workers pursuant to chapter 440 and shall not apply to self-insurance funds or service companies authorized pursuant to chapter 440 or part VII of chapter 626.

(7)~~(9)~~ Facilities licensed under this chapter shall promptly comply with the requests of utilization review agents or insurers which are reasonably necessary to facilitate prompt accomplishment of utilization review activities.

(8)~~(10)~~ The agency shall adopt rules to implement the provisions of this section.

Section 46. Subsection (1) of section 395.1046, Florida Statutes, is amended to read:

395.1046 Complaint investigation procedures.—

(1) In addition to the requirements of s. 408.811, the agency shall investigate any complaint against a hospital for any violation of s. 395.1041 which ~~that~~ the agency reasonably believes to be legally sufficient. A complaint is legally sufficient if it contains ultimate facts showing ~~which show~~ that a violation of this chapter, or any rule adopted under this chapter by the agency, has occurred. The agency may investigate, or continue to investigate, and may take appropriate final action on a complaint, even though the original complainant withdraws his or her complaint or otherwise indicates his or her desire not to cause it to be investigated to completion. When an investigation of any person or facility is undertaken, the agency shall notify

such person in writing of the investigation and inform the person or facility in writing of the substance, the facts showing ~~which show~~ that a violation has occurred, and the source of any complaint filed against him or her. The agency may conduct an investigation without notification to any person if the act under investigation is a criminal offense. The agency shall have access to all records necessary for the investigation of the complaint.

Section 47. Paragraph (f) of subsection (1) of section 395.1055, Florida Statutes, is amended, and subsection (9) is added to that section, to read:

395.1055 Rules and enforcement.—

(1) The agency shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part, which shall include reasonable and fair minimum standards for ensuring that:

(f) All hospitals submit such data as necessary to conduct certificate-of-need reviews required under part I of chapter 408 ~~ss. 408.031-408.045~~. Such data shall include, but shall not be limited to, patient origin data, hospital utilization data, type of service reporting, and facility staffing data. The agency may ~~shall~~ not collect data that identifies or could disclose the identity of individual patients. The agency shall utilize existing uniform statewide data sources when available and shall minimize reporting costs to hospitals.

(9) The agency may adopt rules to administer the requirements of part II of chapter 408.

Section 48. Section 395.1065, Florida Statutes, is amended to read:

395.1065 Criminal and administrative penalties; ~~injunctions; emergency orders;~~ moratorium.—

(1) In addition to s. 408.812, any person establishing, conducting, managing, or operating any facility without a license under this part commits ~~is guilty of~~ a misdemeanor and, upon conviction, shall be fined not more than $500 for the first offense and not more than $1,000 for each subsequent offense, and each day of continuing violation after conviction shall be considered a separate offense.

(2)(a) The agency may ~~deny, revoke, or suspend a license or~~ impose an administrative fine, not to exceed $1,000 per violation, per day, for the violation of any provision of this part, part II of chapter 408, or applicable rules ~~adopted under this part~~. Each day of violation constitutes a separate violation and is subject to a separate fine.

(b) In determining the amount of fine to be levied for a violation, as provided in paragraph (a), the following factors shall be considered:

1. The severity of the violation, including the probability that death or serious harm to the health or safety of any person will result or has resulted, the severity of the actual or potential harm, and the extent to which the provisions of this part were violated.

2. Actions taken by the licensee to correct the violations or to remedy complaints.

3. Any previous violations of the licensee.

~~(c) All amounts collected pursuant to this section shall be deposited into the Planning and Regulation Trust Fund, as created by s. 395.004.~~

(c)~~(d)~~ The agency may impose an administrative fine for the violation of s. 641.3154 or, if sufficient claims due to a provider from a health maintenance organization do not exist to enable the take-back of an overpayment, as provided under s. 641.3155(5), for the violation of s. 641.3155(5). The administrative fine for a violation cited in this paragraph shall be in the amounts specified in s. 641.52(5), and the provisions of paragraph (a) do not apply.

~~(3) Notwithstanding the existence or pursuit of any other remedy, the agency may maintain an action in the name of the state for injunction or other process to enforce the provisions of this part and rules promulgated hereunder.~~

~~(4) The agency may issue an emergency order immediately suspending or revoking a license when it determines that any condition in the licensed facility presents a clear and present danger to public health and safety.~~

(3)~~(5)~~ In accordance with part II of chapter 408, the agency may impose an immediate moratorium on elective admissions to any licensed facility, building, or portion thereof, or service, when the agency determines that any condition in the facility presents a threat to public health or safety.

(4)~~(6)~~ In seeking to impose penalties against a facility as defined in s. 394.455 for a violation of part I of chapter 394, the agency is authorized to rely on the investigation and findings by the Department of Health in lieu of conducting its own investigation.

(5)~~(7)~~ The agency shall impose a fine of $500 for each instance of the facility's failure to provide the information required by rules adopted pursuant to s. 395.1055(1)(h).

Section 49. Subsections (1) and (8) of section 395.10973, Florida Statutes, are amended to read:

395.10973 Powers and duties of the agency.—It is the function of the agency to:

(1) Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part and part II of chapter 408 conferring duties upon it.

(8) Enforce the special-occupancy provisions of the Florida Building Code which apply to hospitals, intermediate residential treatment facilities, and ambulatory surgical centers in conducting any inspection authorized by this chapter and part II of chapter 408.

Section 50. Section 395.10974, Florida Statutes, is amended to read:

395.10974 Health care risk managers; qualifications, licensure, fees.—

(1) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to ss. 395.10971-395.10975, and part II of chapter 408 and to entities licensed by or applying for such licensure from the Agency for Health Care Administration pursuant to ss. 395.10971-395.10975. A license issued by the agency is required in order to perform as a health care risk manager in this state. ~~Any person desiring to be licensed as a health care risk manager shall submit an application on a form provided by the agency.~~ In order to qualify for licensure, the applicant shall submit evidence satisfactory to the agency which demonstrates the applicant's competence, by education or experience, in the following areas:

(a) Applicable standards of health care risk management.

(b) Applicable federal, state, and local health and safety laws and rules.

(c) General risk management administration.

(d) Patient care.

(e) Medical care.

(f) Personal and social care.

(g) Accident prevention.

(h) Departmental organization and management.

(i) Community interrelationships.

(j) Medical terminology.

Each applicant for licensure and each licensee must comply with all provisions of part II of chapter 408. The agency may require such additional information, from the applicant or any other person, as may be reasonably required to verify the information contained in the application.

(2) The agency shall not grant or issue a license as a health care risk manager to any individual unless from the application it affirmatively appears that the applicant:

(a) Is 18 years of age or over;

(b) Is a high school graduate or equivalent; and

(c)1. Has fulfilled the requirements of a 1-year program or its equivalent in health care risk management training which may be developed or approved by the agency;

2. Has completed 2 years of college-level studies which would prepare the applicant for health care risk management, to be further defined by rule; or

3. Has obtained 1 year of practical experience in health care risk management.

(3) The agency shall issue a license to practice health care risk management to any applicant who qualifies under this section. In accordance with s. 408.805, an applicant or licensee shall pay a fee for each license application submitted under this part, part II of chapter 408, and applicable rules. The amount of the fee shall be established by rule as follows: ~~and submits~~ an application fee of not more than $75, a background-screening ~~fingerprinting~~ fee of not more than $75, and a license fee of not more than $100. ~~The agency shall by rule establish fees and procedures for the issuance and cancellation of licenses.~~

~~(4) The agency shall renew a health care risk manager license upon receipt of a biennial renewal application and fees. The agency shall by rule establish a procedure for the biennial renewal of licenses.~~

Section 51. Paragraph (c) of subsection (2) of section 395.602, Florida Statutes, is amended to read:

395.602 Rural hospitals.—

(2) DEFINITIONS.—As used in this part:

(c) "Inactive rural hospital bed" means a licensed acute care hospital bed, as defined in s. 395.002(13)~~(14)~~, that is inactive in that it cannot be occupied by acute care inpatients.

Section 52. Paragraph (c) of subsection (1) of section 395.701, Florida Statutes, is amended to read:

395.701 Annual assessments on net operating revenues for inpatient and outpatient services to fund public medical assistance; administrative fines for failure to pay assessments when due; exemption.—

(1) For the purposes of this section, the term:

(c) "Hospital" means a health care institution as defined in s. 395.002(12)~~(13)~~, but does not include any hospital operated by the agency or the Department of Corrections.

Section 53. Subsection (4) of section 400.0073, Florida Statutes, is amended to read:

400.0073 State and local ombudsman council investigations.—

(4) If the ombudsman or any state or local council member is not allowed to enter a long-term care facility, the administrator of the facility shall be considered to have interfered with a representative of the office, the state council, or the local council in the performance of official duties as described in s. 400.0083(1) and to have committed a violation of this part. The ombudsman shall report a facility's refusal to allow entry to the agency, and the agency shall record the report and take it into consideration when determin-

ing actions allowable under s. 400.102, s. 400.121, s. 429.14 ~~400.414~~, s. 429.19 ~~400.419~~, s. 429.69 ~~400.6194~~, or s.429.71 ~~400.6196~~.

Section 54. Subsection (4) of section 400.0074, Florida Statutes, is amended to read:

400.0074 Local ombudsman council onsite administrative assessments.—

(4) An onsite administrative assessment may not be accomplished by forcible entry. However, if the ombudsman or a state or local council member is not allowed to enter a long-term care facility, the administrator of the facility shall be considered to have interfered with a representative of the office, the state council, or the local council in the performance of official duties as described in s. 400.0083(1) and to have committed a violation of this part. The ombudsman shall report the refusal by a facility to allow entry to the agency, and the agency shall record the report and take it into consideration when determining actions allowable under s. 400.102, s. 400.121, s. 429.14 ~~400.414~~, s. 429.19 ~~400.419~~, s. 429.69 ~~400.6194~~, or s. 429.71 ~~400.6196~~.

Section 55. Subsections (6) through (19) of section 400.021, Florida Statutes, are renumbered as subsections (5) through (18), respectively, and present subsections (5) and (20) of that section are amended to read:

400.021 Definitions.—When used in this part, unless the context otherwise requires, the term:

~~(5) "Controlling interest" means:~~

~~(a) The applicant for licensure or a licensee;~~

~~(b) A person or entity that serves as an officer of, is on the board of directors of, or has a 5 percent or greater ownership interest in the management company or other entity, related or unrelated, which the applicant or licensee may contract with to operate the facility; or~~

~~(c) A person or entity that serves as an officer of, is on the board of directors of, or has a 5 percent or greater ownership interest in the applicant or licensee.~~

~~The term does not include a voluntary board member.~~

~~(20) "Voluntary board member" means a director of a not-for-profit corporation or organization who serves solely in a voluntary capacity for the corporation or organization, does not receive any remuneration for his or her services on the board of directors, and has no financial interest in the corporation or organization. The agency shall recognize a person as a voluntary board member following submission of a statement to the agency by the director and the not-for-profit corporation or organization which affirms that the director conforms to this definition. The statement affirming the status of the director must be submitted to the agency on a form provided by the agency.~~

Section 56. Subsection (3) of section 400.022, Florida Statutes, is amended to read:

400.022 Residents' rights.—

(3) Any violation of the resident's rights set forth in this section shall constitute grounds for action by the agency under the provisions of s. 400.102, s. 400.121, or part II of chapter 408. In order to determine whether the licensee is adequately protecting residents' rights, the licensure ~~annual~~ inspection of the facility shall include private informal conversations with a sample of residents to discuss residents' experiences within the facility with respect to rights specified in this section and general compliance with standards, and consultation with the ombudsman council in the local planning and service area of the Department of Elderly Affairs in which the nursing home is located.

Section 57. Paragraph (b) of subsection (1) of section 400.051, Florida Statutes, is amended to read:

400.051 Homes or institutions exempt from the provisions of this part.—

(1) The following shall be exempt from the provisions of this part:

(b) Any hospital, as defined in s. 395.002~~(11)~~, that is licensed under chapter 395.

Section 58. Section 400.062, Florida Statutes, is amended to read:

400.062 License required; fee; disposition~~; display; transfer~~.—

(1) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this part and part II of chapter 408 and to entities licensed by or applying for such licensure from the Agency for Health Care Administration pursuant to this part. A license issued by the agency is required for the operation of a nursing home in this state. ~~It is unlawful to operate or maintain a facility without first obtaining from the agency a license authorizing such operation.~~

(2) Separate licenses shall be required for facilities maintained in separate premises, even though operated under the same management. However, a separate license shall not be required for separate buildings on the same grounds.

(3) In accordance with s. 408.805, an applicant or licensee shall pay a fee for each license application submitted under this part, part II of chapter 408, and applicable rules. The ~~annual~~ license fee ~~required for each license issued under this part~~ shall be comprised of two parts. Part I of the license fee shall be the basic license fee. The rate per bed for the basic license fee shall be established biennially ~~annually~~ and shall be $100 ~~$50~~ per bed unless modified by rule. ~~The agency may adjust the per bed licensure fees by the Consumer Price Index based on the 12 months immediately preceding the increase to cover the cost of regulation under this part.~~ Part II of the license fee shall be the resident protection fee, which shall be at the rate of not less

than 50 ~~25~~ cents per bed. The rate per bed shall be the minimum rate per bed, and such rate shall remain in effect until the effective date of a rate per bed adopted by rule by the agency pursuant to this part. At such time as the amount on deposit in the Resident Protection Trust Fund is less than $1 million, the agency may adopt rules to establish a rate which may not exceed $20 ~~$10~~ per bed. The rate per bed shall revert back to the minimum rate per bed when the amount on deposit in the Resident Protection Trust Fund reaches $1 million, except that any rate established by rule shall remain in effect until such time as the rate has been equally required for each license issued under this part. Any amount in the fund in excess of $2 million shall revert to the Health Care Trust Fund and may not be expended without prior approval of the Legislature. The agency may prorate the biennial ~~annual~~ license fee for those licenses which it issues under this part for less than 2 years ~~1 year~~. ~~Funds generated by license fees collected in accordance with this section shall be deposited in the following manner:~~

~~(a) The basic license fee collected shall be deposited in the Health Care Trust Fund, established for the sole purpose of carrying out this part. When the balance of the account established in the Health Care Trust Fund for the deposit of fees collected as authorized under this section exceeds one-third of the annual cost of regulation under this part, the excess shall be used to reduce the licensure fees in the next year.~~

~~(b)~~ The resident protection fee collected shall be deposited in the Resident Protection Trust Fund for the sole purpose of paying, in accordance with the provisions of s. 400.063, for the appropriate alternate placement, care, and treatment of a resident removed from a nursing home facility on a temporary, emergency basis or for the maintenance and care of residents in a nursing home facility pending removal and alternate placement.

(4) Counties or municipalities applying for licenses under this part are exempt from license fees authorized under this section.

~~(5) The license shall be displayed in a conspicuous place inside the facility.~~

~~(6) A license shall be valid only in the hands of the individual, firm, partnership, association, or corporation to whom it is issued and shall not be subject to sale, assignment, or other transfer, voluntary or involuntary, nor shall a license be valid for any premises other than those for which originally issued.~~

Section 59. Subsection (1) of section 400.063, Florida Statutes, is amended to read:

400.063 Resident Protection Trust Fund.—

(1) A Resident Protection Trust Fund shall be established for the purpose of collecting and disbursing funds generated from the license fees and administrative fines as provided for in ss. 393.0673(2), 400.062(3)~~(b), 400.111(1)~~, 400.121(2), and 400.23(8). Such funds shall be for the sole purpose of paying for the appropriate alternate placement, care, and treatment of residents who are removed from a facility licensed under this part or a

facility specified in s. 393.0678(1) in which the agency determines that existing conditions or practices constitute an immediate danger to the health, safety, or security of the residents. If the agency determines that it is in the best interest of the health, safety, or security of the residents to provide for an orderly removal of the residents from the facility, the agency may utilize such funds to maintain and care for the residents in the facility pending removal and alternative placement. The maintenance and care of the residents shall be under the direction and control of a receiver appointed pursuant to s. 393.0678(1) or s. 400.126(1). However, funds may be expended in an emergency upon a filing of a petition for a receiver, upon the declaration of a state of local emergency pursuant to s. 252.38(3)(a)5., or upon a duly authorized local order of evacuation of a facility by emergency personnel to protect the health and safety of the residents.

Section 60. Section 400.071, Florida Statutes, is amended to read:

400.071 Application for license.—

~~(1) An application for a license as required by s. 400.062 shall be made to the agency on forms furnished by it and shall be accompanied by the appropriate license fee.~~

(1)~~(2)~~ In addition to the requirements of part II of chapter 408, the application for a license shall be under oath and must ~~shall~~ contain the following:

~~(a) The name, address, and social security number of the applicant if an individual; if the applicant is a firm, partnership, or association, its name, address, and employer identification number (EIN), and the name and address of any controlling interest; and the name by which the facility is to be known.~~

~~(b) The name of any person whose name is required on the application under the provisions of paragraph (a) and who owns at least a 10-percent interest in any professional service, firm, association, partnership, or corporation providing goods, leases, or services to the facility for which the application is made, and the name and address of the professional service, firm, association, partnership, or corporation in which such interest is held.~~

(a)~~(c)~~ The location of the facility for which a license is sought and an indication, as in the original application, that such location conforms to the local zoning ordinances.

~~(d) The name of the person or persons under whose management or supervision the facility will be conducted and the name of the administrator.~~

(b)~~(e)~~ A signed affidavit disclosing any financial or ownership interest that a controlling interest as defined in part II of chapter 408 ~~person or entity described in paragraph (a) or paragraph (d)~~ has held in the last 5 years in any entity licensed by this state or any other state to provide health or residential care which has closed voluntarily or involuntarily; has filed for bankruptcy; has had a receiver appointed; has had a license denied, suspended, or revoked; or has had an injunction issued against it which was initiated by a regulatory agency. The affidavit must disclose the reason any such entity was closed, whether voluntarily or involuntarily.

(c)~~(f)~~ The total number of beds and the total number of Medicare and Medicaid certified beds.

(d)~~(g)~~ Information relating to ~~the number, experience, and training of the employees of the facility and of the moral character of~~ the applicant and employees which the agency requires by rule~~, including the name and address of any nursing home with which the applicant or employees have been affiliated through ownership or employment within 5 years of the date of the application for a license and the record of any criminal convictions involving the applicant and any criminal convictions involving an employee if known by the applicant after inquiring of the employee~~. The applicant must demonstrate that sufficient numbers of qualified staff, by training or experience, will be employed to properly care for the type and number of residents who will reside in the facility.

(e)~~(h)~~ Copies of any civil verdict or judgment involving the applicant rendered within the 10 years preceding the application, relating to medical negligence, violation of residents' rights, or wrongful death. As a condition of licensure, the licensee agrees to provide to the agency copies of any new verdict or judgment involving the applicant, relating to such matters, within 30 days after filing with the clerk of the court. The information required in this paragraph shall be maintained in the facility's licensure file and in an agency database which is available as a public record.

~~(3) The applicant shall submit evidence which establishes the good moral character of the applicant, manager, supervisor, and administrator. No applicant, if the applicant is an individual; no member of a board of directors or officer of an applicant, if the applicant is a firm, partnership, association, or corporation; and no licensed nursing home administrator shall have been convicted, or found guilty, regardless of adjudication, of a crime in any jurisdiction which affects or may potentially affect residents in the facility.~~

~~(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.~~

~~(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 disclosure of ownership and control interest requirements of 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 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.~~

~~(g) An application for license renewal must contain the information required under paragraphs (e) and (f).~~

~~(5) The applicant shall furnish satisfactory proof of financial ability to operate and conduct the nursing home in accordance with the requirements of this part and all rules adopted under this part, and the agency shall establish standards for this purpose, including information reported under paragraph (2)(e). The agency also shall establish documentation requirements, to be completed by each applicant, that show anticipated facility revenues and expenditures, the basis for financing the anticipated cash-flow requirements of the facility, and an applicant's access to contingency financing.~~

~~(6) If the applicant offers continuing care agreements as defined in chapter 651, proof shall be furnished that such applicant has obtained a certificate of authority as required for operation under that chapter.~~

(2)~~(7)~~ As a condition of licensure, each licensee, except one offering continuing care agreements as defined in chapter 651, must agree to accept recipients of Title XIX of the Social Security Act on a temporary, emergency basis. The persons whom the agency may require such licensees to accept are those recipients of Title XIX of the Social Security Act who are residing in a facility in which existing conditions constitute an immediate danger to the health, safety, or security of the residents of the facility.

(3)~~(8) The agency may not issue a license to a nursing home that fails to receive a certificate of need under the provisions of ss. 408.031-408.045.~~ It is the intent of the Legislature that, in reviewing a certificate-of-need application to add beds to an existing nursing home facility, preference be given to the application of a licensee who has been awarded a Gold Seal as provided for in s. 400.235, if the applicant otherwise meets the review criteria specified in s. 408.035.

(4)~~(9)~~ The agency may develop an abbreviated survey for licensure renewal applicable to a licensee that has continuously operated as a nursing facility since 1991 or earlier, has operated under the same management for at least the preceding 30 months, and has had during the preceding 30 months no class I or class II deficiencies.

(5)~~(10)~~ As a condition of licensure, each facility must establish and submit with its application a plan for quality assurance and for conducting risk management.

~~(11) The applicant must provide the agency with proof of a legal right to occupy the property before a license may be issued. Proof may include, but is not limited to, copies of warranty deeds, lease or rental agreements, contracts for deeds, or quitclaim deeds.~~

Section 61. Section 400.0712, Florida Statutes, is amended to read:

400.0712 Application for inactive license.—

(1) As specified in s. 408.321(4) and this section, the agency may issue an inactive license to a nursing home facility for all or a portion of its beds. Any request by a licensee that a nursing home or portion of a nursing home become inactive must be submitted to the agency in the approved format.

The facility may not initiate any suspension of services, notify residents, or initiate inactivity ~~facility closure~~ before receiving approval from the agency; and a licensee ~~facility~~ that violates this provision may ~~shall~~ not be issued an inactive license. ~~Upon agency approval of an inactive license, the nursing home shall notify residents of any necessary discharge or transfer as provided in s. 400.0255.~~

(2) The agency may issue an inactive license to a nursing home that chooses to use an unoccupied contiguous portion of the facility for an alternative use to meet the needs of elderly persons through the use of less restrictive, less institutional services.

(a) An inactive license issued under this subsection may be granted for a period not to exceed the current licensure expiration date ~~12 months~~ but may be renewed ~~annually~~ by the agency at the time of licensure renewal ~~for 12 months~~.

(b) A request to extend the inactive license must be submitted to the agency in the approved format and approved by the agency in writing.

(c) Nursing homes that receive an inactive license to provide alternative services shall not receive preference for participation in the Assisted Living for the Elderly Medicaid waiver.

~~(3) The agency may issue an inactive license to a nursing home that will be temporarily unable to provide services but is reasonably expected to resume services.~~

~~(a) An inactive license issued under this subsection may be issued for a period not to exceed 12 months and may be renewed by the agency for an additional 6 months upon demonstration of progress toward reopening.~~

~~(b) All licensure fees must be current and paid in full, and may be prorated as provided by agency rule, before the inactive license is issued.~~

~~(c) Reactivation of an inactive license requires that the applicant pay all licensure fees and be inspected by the agency to confirm that all of the requirements of this part and applicable rules are met.~~

(3)~~(4)~~ The agency shall adopt rules pursuant to ss. 120.536(1) and 120.54 necessary to implement this section.

Section 62. Section 400.102, Florida Statutes, is amended to read:

400.102 Action by agency against licensee; grounds.—

~~(1)~~ In addition to the grounds listed in part II of chapter 408, any of the following conditions shall be grounds for action by the agency against a licensee:

(1)~~(a)~~ An intentional or negligent act materially affecting the health or safety of residents of the facility;

(2)~~(b)~~ Misappropriation or conversion of the property of a resident of the facility;

(3)~~(c)~~ Failure to follow the criteria and procedures provided under part I of chapter 394 relating to the transportation, voluntary admission, and involuntary examination of a nursing home resident; or

~~(d) Violation of provisions of this part or rules adopted under this part;~~

(4)~~(e)~~ Fraudulent altering, defacing, or falsifying any medical or nursing home records, or causing or procuring any of these offenses to be committed.~~; or~~

~~(f) Any act constituting a ground upon which application for a license may be denied.~~

~~(2) If the agency has reasonable belief that any of such conditions exist, it shall take the following action:~~

~~(a) In the case of an applicant for original licensure, denial action as provided in s. 400.121.~~

~~(b) In the case of an applicant for relicensure or a current licensee, administrative action as provided in s. 400.121 or injunctive action as authorized by s. 400.125.~~

~~(c) In the case of a facility operating without a license, injunctive action as authorized in s. 400.125.~~

Section 63. Section 400.111, Florida Statutes, is amended to read:

400.111 Disclosure of controlling interest ~~Expiration of license; renewal.—~~

~~(1) A license issued for the operation of a facility, unless sooner suspended or revoked, shall expire on the date set forth by the agency on the face of the license or 1 year from the date of issuance, whichever occurs first. Ninety days prior to the expiration date, an application for renewal shall be submitted to the agency. A license shall be renewed upon the filing of an application on forms furnished by the agency if the applicant has first met the requirements established under this part and all rules adopted under this part. The failure to file an application within the period established in this subsection shall result in a late fee charged to the licensee by the agency in an amount equal to 50 percent of the fee in effect on the last preceding regular renewal date. A late fee shall be levied for each and every day the filing of the license application is delayed, but in no event shall such fine aggregate more than $5,000. If an application is received after the required filing date and exhibits a hand-canceled postmark obtained from a United States Post Office dated on or before the required filing date, no fine will be levied.~~

~~(2) A licensee against whom a revocation or suspension proceeding, or any judicial proceeding instituted by the agency under this part, is pending at the time of license renewal may be issued a temporary license effective until final disposition by the agency of such proceeding. If judicial relief is sought from the aforesaid administrative order, the court having jurisdic-~~

~~tion may issue such orders regarding the issuance of a temporary permit during the pendency of the judicial proceeding.~~

~~(3) The agency may not renew a license if the applicant has failed to pay any fines assessed by final order of the agency or final order of the Health Care Financing Administration under requirements for federal certification. The agency may renew the license of an applicant following the assessment of a fine by final order if such fine has been paid into an escrow account pending an appeal of a final order.~~

~~(4)~~ In addition to the requirements of part II of chapter 408, the licensee shall submit a signed affidavit disclosing any financial or ownership interest that a controlling interest ~~licensee~~ has held within the last 5 years in any entity licensed by the state or any other state to provide health or residential care which entity has closed voluntarily or involuntarily; has filed for bankruptcy; has had a receiver appointed; has had a license denied, suspended, or revoked; or has had an injunction issued against it which was initiated by a regulatory agency. The affidavit must disclose the reason such entity was closed, whether voluntarily or involuntarily.

Section 64. Subsections (2) and (5) of section 400.1183, Florida Statutes, are amended to read:

400.1183 Resident grievance procedures.—

(2) Each facility shall maintain records of all grievances and shall report ~~annually~~ to the agency at the time of relicensure the total number of grievances handled during the prior licensure period, a categorization of the cases underlying the grievances, and the final disposition of the grievances.

~~(5) The agency may impose an administrative fine, in accordance with s. 400.121, against a nursing home facility for noncompliance with this section.~~

Section 65. Section 400.121, Florida Statutes, is amended to read:

400.121 Denial, suspension, revocation of license; ~~moratorium on admissions;~~ administrative fines; procedure; order to increase staffing.—

(1) The agency may deny an application, revoke or suspend a license, and ~~or~~ impose an administrative fine, not to exceed $500 per violation per day for the violation of any provision of this part, part II of chapter 408, or applicable rules, against any applicant or licensee for the following violations by the applicant, licensee, or other controlling interest:

(a) A violation of any provision of this part, part II of chapter 408, or applicable rules ~~s. 400.102(1)~~; or

~~(b) A demonstrated pattern of deficient practice;~~

~~(c) Failure to pay any outstanding fines assessed by final order of the agency or final order of the Health Care Financing Administration pursuant to requirements for federal certification. The agency may renew or approve the license of an applicant following the assessment of a fine by final order~~

~~if such fine has been paid into an escrow account pending an appeal of a final order;~~

~~(d) Exclusion from the Medicare or Medicaid program; or~~

(b)~~(e)~~ An adverse action by a regulatory agency against any other licensed facility that has a common controlling interest with the licensee or applicant against whom the action under this section is being brought. If the adverse action involves solely the management company, the applicant or licensee shall be given 30 days to remedy before final action is taken. If the adverse action is based solely upon actions by a controlling interest, the applicant or licensee may present factors in mitigation of any proposed penalty based upon a showing that such penalty is inappropriate under the circumstances.

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) Except as provided in s. 400.23(8), a $500 fine shall be imposed for each violation. Each day a violation of this part or part II of chapter 408 occurs constitutes a separate violation and is subject to a separate fine, but in no event may any fine aggregate more than $5,000. A fine may be levied pursuant to this section in lieu of and notwithstanding the provisions of s. 400.23. Fines paid shall be deposited in the Resident Protection Trust Fund and expended as provided in s. 400.063.

(3) The agency shall revoke or deny a nursing home license if the licensee or controlling interest operates a facility in this state that:

(a) Has had two moratoria issued pursuant to this part or part II of chapter 408 which are imposed by final order for substandard quality of care, as defined by 42 C.F.R. part 483, within any 30-month period;

(b) Is conditionally licensed for 180 or more continuous days;

(c) Is cited for two class I deficiencies arising from unrelated circumstances during the same survey or investigation; or

(d) Is cited for two class I deficiencies arising from separate surveys or investigations within a 30-month period.

The licensee may present factors in mitigation of revocation, and the agency may make a determination not to revoke a license based upon a showing that revocation is inappropriate under the circumstances.

~~(4) The agency 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.~~

~~(5)(a) The agency may impose an immediate moratorium on admissions to any facility when the agency determines that any condition in the facility presents a threat to the health, safety, or welfare of the residents in the facility.~~

(4)~~(b)~~ If ~~Where~~ the agency has placed a moratorium pursuant to this part or part II of chapter 408 ~~on admissions~~ on any facility two times within a 7-year period, the agency may suspend the nursing home license ~~of the nursing home and the facility's management company, if any~~. ~~During the suspension, the agency shall take the facility into receivership and shall operate the facility.~~

(5)~~(6)~~ An action taken by the agency to deny, suspend, or revoke a facility's license under this part or part II of chapter 408 shall be heard by the Division of Administrative Hearings of the Department of Management Services within 60 days after the assignment of an administrative law judge, unless the time limitation is waived by both parties. The administrative law judge must render a decision within 30 days after receipt of a proposed recommended order.

(6)~~(7)~~ The agency is authorized to require a facility to increase staffing beyond the minimum required by law, if the agency has taken administrative action against the facility for care-related deficiencies directly attributable to insufficient staff. Under such circumstances, the facility may request an expedited interim rate increase. The agency shall process the request within 10 days after receipt of all required documentation from the facility. A facility that fails to maintain the required increased staffing is subject to a fine of $500 per day for each day the staffing is below the level required by the agency.

~~(8) An administrative proceeding challenging an action taken by the agency pursuant to this section shall be reviewed on the basis of the facts and conditions that resulted in such agency action.~~

(7)~~(9)~~ Notwithstanding any other provision of law to the contrary, agency action in an administrative proceeding under this section may be overcome by the licensee upon a showing by a preponderance of the evidence to the contrary.

(8)~~(10)~~ In addition to any other sanction imposed under this part or part II of chapter 408, in any final order that imposes sanctions, the agency may assess costs related to the investigation and prosecution of the case. Payment of agency costs shall be deposited into the Health Care Trust Fund.

Section 66. Section 400.125, Florida Statutes, is repealed.

Section 67. Subsection (14) of section 400.141, Florida Statutes, is amended to read:

400.141 Administration and management of nursing home facilities.—Every licensed facility shall comply with all applicable standards and rules of the agency and shall:

(14) Submit to the agency the information specified in s. 400.071(1)(b)~~(2)(e)~~ for a management company within 30 days after the effective date of the management agreement.

Facilities that have been awarded a Gold Seal under the program established in s. 400.235 may develop a plan to provide certified nursing assistant training as prescribed by federal regulations and state rules and may apply to the agency for approval of their program.

Section 68. Section 400.179, Florida Statutes, is amended to read:

400.179 ~~Sale or transfer of ownership of a nursing facility;~~ Liability for Medicaid underpayments and overpayments.—

(1) It is the intent of the Legislature to protect the rights of nursing home residents and the security of public funds when a nursing facility is sold or the ownership is transferred.

~~(2) Whenever a nursing facility is sold or the ownership is transferred, including leasing, the transferee shall make application to the agency for a new license at least 90 days prior to the date of transfer of ownership.~~

~~(3) The transferor shall notify the agency in writing at least 90 days prior to the date of transfer of ownership. The transferor shall be responsible and liable for the lawful operation of the nursing facility and the welfare of the residents domiciled in the facility until the date the transferee is licensed by the agency. The transferor shall be liable for any and all penalties imposed against the facility for violations occurring prior to the date of transfer of ownership.~~

~~(4) The transferor shall, prior to transfer of ownership, repay or make arrangements to repay to the agency or the Department of Children and Family Services any amounts owed to the agency or the department. Should the transferor fail to repay or make arrangements to repay the amounts owed to the agency or the department prior to the transfer of ownership, the issuance of a license to the transferee shall be delayed until repayment or until arrangements for repayment are made.~~

(2)~~(5)~~ Because any transfer of a nursing facility may expose the fact that Medicaid may have underpaid or overpaid the transferor, and because in most instances, any such underpayment or overpayment can only be determined following a formal field audit, the liabilities for any such underpayments or overpayments shall be as follows:

(a) The Medicaid program shall be liable to the transferor for any underpayments owed during the transferor's period of operation of the facility.

(b) Without regard to whether the transferor had leased or owned the nursing facility, the transferor shall remain liable to the Medicaid program for all Medicaid overpayments received during the transferor's period of operation of the facility, regardless of when determined.

(c) Where the facility transfer takes any form of a sale of assets, in addition to the transferor's continuing liability for any such overpayments, if the transferor fails to meet these obligations, the transferee shall be liable for all liabilities that can be readily identifiable 90 days in advance of the transfer. Such liability shall continue in succession until the debt is ultimately paid or otherwise resolved. It shall be the burden of the transferee

to determine the amount of all such readily identifiable overpayments from the Agency for Health Care Administration, and the agency shall cooperate in every way with the identification of such amounts. Readily identifiable overpayments shall include overpayments that will result from, but not be limited to:

1. Medicaid rate changes or adjustments;

2. Any depreciation recapture;

3. Any recapture of fair rental value system indexing; or

4. Audits completed by the agency.

The transferor shall remain liable for any such Medicaid overpayments that were not readily identifiable 90 days in advance of the nursing facility transfer.

(d) Where the transfer involves a facility that has been leased by the transferor:

1. The transferee shall, as a condition to being issued a license by the agency, acquire, maintain, and provide proof to the agency of a bond with a term of 30 months, renewable annually, in an amount not less than the total of 3 months' Medicaid payments to the facility computed on the basis of the preceding 12-month average Medicaid payments to the facility.

2. A leasehold licensee may meet the requirements of subparagraph 1. by payment of a nonrefundable fee, paid at initial licensure, paid at the time of any subsequent change of ownership, and paid annually thereafter ~~at the time of any subsequent annual license renewal~~, in the amount of 1 percent of the total of 3 months' Medicaid payments to the facility computed on the basis of the preceding 12-month average Medicaid payments to the facility. If a preceding 12-month average is not available, projected Medicaid payments may be used. The fee shall be deposited into the Health Care Trust Fund and shall be accounted for separately as a Medicaid nursing home overpayment account. These fees shall be used at the sole discretion of the agency to repay nursing home Medicaid overpayments. Payment of this fee shall not release the licensee from any liability for any Medicaid overpayments, nor shall payment bar the agency from seeking to recoup overpayments from the licensee and any other liable party. As a condition of exercising this lease bond alternative, licensees paying this fee must maintain an existing lease bond through the end of the 30-month term period of that bond. The agency is herein granted specific authority to promulgate all rules pertaining to the administration and management of this account, including withdrawals from the account, subject to federal review and approval. This provision shall take effect upon becoming law and shall apply to any leasehold license application. The financial viability of the Medicaid nursing home overpayment account shall be determined by the agency through annual review of the account balance and the amount of total outstanding, unpaid Medicaid overpayments owing from leasehold licensees to the agency as determined by final agency audits.

3. The leasehold licensee may meet the bond requirement through other arrangements acceptable to the agency. The agency is herein granted specific authority to promulgate rules pertaining to lease bond arrangements.

4. All existing nursing facility licensees, operating the facility as a leasehold, shall acquire, maintain, and provide proof to the agency of the 30-month bond required in subparagraph 1., above, on and after July 1, 1993, for each license renewal.

5. It shall be the responsibility of all nursing facility operators, operating the facility as a leasehold, to renew the 30-month bond and to provide proof of such renewal to the agency annually ~~at the time of application for license renewal~~.

6. Any failure of the nursing facility operator to acquire, maintain, renew annually, or provide proof to the agency shall be grounds for the agency to deny, ~~cancel,~~ revoke, and ~~or~~ suspend the facility license to operate such facility and to take any further action, including, but not limited to, enjoining the facility, asserting a moratorium pursuant to part II of chapter 408, or applying for a receiver, deemed necessary to ensure compliance with this section and to safeguard and protect the health, safety, and welfare of the facility's residents. A lease agreement required as a condition of bond financing or refinancing under s. 154.213 by a health facilities authority or required under s. 159.30 by a county or municipality is not a leasehold for purposes of this paragraph and is not subject to the bond requirement of this paragraph.

Section 69. Subsections (1) and (4) of section 400.18, Florida Statutes, are amended to read:

400.18 Closing of nursing facility.—

(1) In addition to the requirements of part II of chapter 408, ~~Whenever a licensee voluntarily discontinues operation, and during the period when it is preparing for such discontinuance, it shall inform the agency not less than 90 days prior to the discontinuance of operation.~~ the licensee also shall inform each ~~the~~ resident or the next of kin, legal representative, or agency acting on behalf of the resident of the fact, and the proposed time, of ~~such~~ discontinuance of operation and give at least 90 days' notice so that suitable arrangements may be made for the transfer and care of the resident. In the event any resident has no such person to represent him or her, the licensee shall be responsible for securing a suitable transfer of the resident before the discontinuance of operation. The agency shall be responsible for arranging for the transfer of those residents requiring transfer who are receiving assistance under the Medicaid program.

~~(4) Immediately upon discontinuance of operation of a facility, the licensee shall surrender the license therefor to the agency, and the license shall be canceled.~~

Section 70. Subsections (1), (2), and (3) of section 400.19, Florida Statutes, are amended to read:

400.19 Right of entry and inspection.—

(1) In accordance with part II of chapter 408, the agency and any duly designated officer or employee thereof or a member of the State Long-Term Care Ombudsman Council or the local long-term care ombudsman council shall have the right to enter upon and into the premises of any facility licensed pursuant to this part, or any distinct nursing home unit of a hospital licensed under chapter 395 or any freestanding facility licensed under chapter 395 that provides extended care or other long-term care services, at any reasonable time in order to determine the state of compliance with the provisions of this part, part II of chapter 408, and applicable rules in force pursuant thereto. ~~The right of entry and inspection shall also extend to any premises which the agency has reason to believe is being operated or maintained as a facility without a license, but no such entry or inspection of any premises shall be made without the permission of the owner or person in charge thereof, unless a warrant is first obtained from the circuit court authorizing same. Any application for a facility license or renewal thereof, made pursuant to this part, shall constitute permission for and complete acquiescence in any entry or inspection of the premises for which the license is sought, in order to facilitate verification of the information submitted on or in connection with the application; to discover, investigate, and determine the existence of abuse or neglect; or to elicit, receive, respond to, and resolve complaints.~~ The agency shall, within 60 days after receipt of a complaint made by a resident or resident's representative, complete its investigation and provide to the complainant its findings and resolution.

(2) The agency shall coordinate nursing home facility licensing activities and responsibilities of any duly designated officer or employee involved in nursing home facility inspection to assure necessary, equitable, and consistent supervision of inspection personnel without unnecessary duplication of inspections, consultation services, or complaint investigations. ~~To facilitate such coordination, all rules promulgated by the agency pursuant to this part shall be distributed to nursing homes licensed under s. 400.062 30 days prior to implementation. This requirement does not apply to emergency rules.~~

(3) The agency shall every 15 months conduct at least one unannounced inspection to determine compliance by the licensee with statutes, and with rules promulgated under the provisions of those statutes, governing minimum standards of construction, quality and adequacy of care, and rights of residents. The survey shall be conducted every 6 months for the next 2-year period if the facility has been cited for a class I deficiency, has been cited for two or more class II deficiencies arising from separate surveys or investigations within a 60-day period, or has had three or more substantiated complaints within a 6-month period, each resulting in at least one class I or class II deficiency. In addition to any other fees or fines in this part, the agency shall assess a fine for each facility that is subject to the 6-month survey cycle. The fine for the 2-year period shall be $6,000, one-half to be paid at the completion of each survey. The agency may adjust this fine by the change in the Consumer Price Index, based on the 12 months immediately preceding the increase, to cover the cost of the additional surveys. The agency shall verify through subsequent inspection that any deficiency identified during ~~the annual~~ inspection is corrected. However, the agency may verify the

correction of a class III or class IV deficiency unrelated to resident rights or resident care without reinspecting the facility if adequate written documentation has been received from the facility, which provides assurance that the deficiency has been corrected. The giving or causing to be given of advance notice of such unannounced inspections by an employee of the agency to any unauthorized person shall constitute cause for suspension of not fewer than 5 working days according to the provisions of chapter 110.

Section 71. Subsection (1) of section 400.191, Florida Statutes, is amended to read:

400.191 Availability, distribution, and posting of reports and records.—

(1) The agency shall provide information to the public about all of the licensed nursing home facilities operating in the state. The agency shall, within 60 days after a licensure ~~an annual~~ inspection visit or within 30 days after any interim visit to a facility, send copies of the inspection reports to the local long-term care ombudsman council, the agency's local office, and a public library or the county seat for the county in which the facility is located. The agency may provide electronic access to inspection reports as a substitute for sending copies.

Section 72. Subsections (1), (2), (7), and (8) of section 400.23, Florida Statutes, are amended to read:

400.23 Rules; evaluation and deficiencies; licensure status.—

(1) It is the intent of the Legislature that rules published and enforced pursuant to this part and part II of chapter 408 shall include criteria by which a reasonable and consistent quality of resident care may be ensured and the results of such resident care can be demonstrated and by which safe and sanitary nursing homes can be provided. It is further intended that reasonable efforts be made to accommodate the needs and preferences of residents to enhance the quality of life in a nursing home. In addition, efforts shall be made to minimize the paperwork associated with the reporting and documentation requirements of these rules.

(2) Pursuant to the intention of the Legislature, the agency, in consultation with the Department of Health and the Department of Elderly Affairs, shall adopt and enforce rules to implement this part and part II of chapter 408, which shall include reasonable and fair criteria in relation to:

(a) The location of the facility and housing conditions that will ensure the health, safety, and comfort of residents, including an adequate call system. In making such rules, the agency shall be guided by criteria recommended by nationally recognized reputable professional groups and associations with knowledge of such subject matters. The agency shall update or revise such criteria as the need arises. The agency may require alterations to a building if it determines that an existing condition constitutes a distinct hazard to life, health, or safety. In performing any inspections of facilities authorized by this part or part II of chapter 408, the agency may enforce the special-occupancy provisions of the Florida Building Code and the Florida Fire Prevention Code which apply to nursing homes. Residents or their

representatives shall be able to request a change in the placement of the bed in their room, provided that at admission they are presented with a room that meets requirements of the Florida Building Code. The location of a bed may be changed if the requested placement does not infringe on the resident's roommate or interfere with the resident's care or safety as determined by the care planning team in accordance with facility policies and procedures. In addition, the bed placement may not be used as a restraint. Each facility shall maintain a log of resident rooms with beds that are not in strict compliance with the Florida Building Code in order for such log to be used by surveyors and nurse monitors during inspections and visits. A resident or resident representative who requests that a bed be moved shall sign a statement indicating that he or she understands the room will not be in compliance with the Florida Building Code, but they would prefer to exercise their right to self-determination. The statement must be retained as part of the resident's care plan. Any facility that offers this option must submit a letter signed by the nursing home administrator of record to the agency notifying it of this practice with a copy of the policies and procedures of the facility. The agency is directed to provide assistance to the Florida Building Commission in updating the construction standards of the code relative to nursing homes.

(b) The number and qualifications of all personnel, including management, medical, nursing, and other professional personnel, and nursing assistants, orderlies, and support personnel, having responsibility for any part of the care given residents.

(c) All sanitary conditions within the facility and its surroundings, including water supply, sewage disposal, food handling, and general hygiene which will ensure the health and comfort of residents.

(d) The equipment essential to the health and welfare of the residents.

(e) A uniform accounting system.

(f) The care, treatment, and maintenance of residents and measurement of the quality and adequacy thereof, based on rules developed under this chapter and the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No. 100-203) (December 22, 1987), Title IV (Medicare, Medicaid, and Other Health-Related Programs), Subtitle C (Nursing Home Reform), as amended.

(g) The preparation and annual update of a comprehensive emergency management plan. The agency shall adopt rules establishing minimum criteria for the plan after consultation with the Department of Community Affairs. 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 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 Department of Elderly Affairs, the Department of Health, the

Agency for Health Care Administration, 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.

(h) The availability, distribution, and posting of reports and records pursuant to s. 400.191 and the Gold Seal Program pursuant to s. 400.235.

(7) The agency shall, at least every 15 months, evaluate all nursing home facilities and make a determination as to the degree of compliance by each licensee with the established rules adopted under this part as a basis for assigning a licensure status to that facility. The agency shall base its evaluation on the most recent inspection report, taking into consideration findings from other official reports, surveys, interviews, investigations, and inspections. In addition to license categories authorized under part II of chapter 408, the agency shall assign a licensure status of standard or conditional to each nursing home.

(a) A standard licensure status means that a facility has no class I or class II deficiencies and has corrected all class III deficiencies within the time established by the agency.

(b) A conditional licensure status means that a facility, due to the presence of one or more class I or class II deficiencies, or class III deficiencies not corrected within the time established by the agency, is not in substantial compliance at the time of the survey with criteria established under this part or with rules adopted by the agency. If the facility has no class I, class II, or class III deficiencies at the time of the followup survey, a standard licensure status may be assigned.

(c) In evaluating the overall quality of care and services and determining whether the facility will receive a conditional or standard license, the agency shall consider the needs and limitations of residents in the facility and the results of interviews and surveys of a representative sampling of residents, families of residents, ombudsman council members in the planning and service area in which the facility is located, guardians of residents, and staff of the nursing home facility.

(d) The current licensure status of each facility must be indicated in bold print on the face of the license. A list of the deficiencies of the facility shall be posted in a prominent place that is in clear and unobstructed public view at or near the place where residents are being admitted to that facility. Licensees receiving a conditional licensure status for a facility shall prepare, within 10 working days after receiving notice of deficiencies, a plan for correction of all deficiencies and shall submit the plan to the agency for approval.

~~(e) Each licensee shall post its license in a prominent place that is in clear and unobstructed public view at or near the place where residents are being admitted to the facility.~~

(e)~~(f)~~ The agency shall adopt rules that:

1. Establish uniform procedures for the evaluation of facilities.

2. Provide criteria in the areas referenced in paragraph (c).

3. Address other areas necessary for carrying out the intent of this section.

(8) The agency shall adopt rules pursuant to this part and part II of chapter 408 to provide that, when the criteria established under subsection (2) are not met, such deficiencies shall be classified according to the nature and the scope of the deficiency. The scope shall be cited as isolated, patterned, or widespread. An isolated deficiency is a deficiency affecting one or a very limited number of residents, or involving one or a very limited number of staff, or a situation that occurred only occasionally or in a very limited number of locations. A patterned deficiency is a deficiency where more than a very limited number of residents are affected, or more than a very limited number of staff are involved, or the situation has occurred in several locations, or the same resident or residents have been affected by repeated occurrences of the same deficient practice but the effect of the deficient practice is not found to be pervasive throughout the facility. A widespread deficiency is a deficiency in which the problems causing the deficiency are pervasive in the facility or represent systemic failure that has affected or has the potential to affect a large portion of the facility's residents. The agency shall indicate the classification on the face of the notice of deficiencies as follows:

(a) A class I deficiency is a deficiency that the agency determines presents a situation in which immediate corrective action is necessary because the facility's noncompliance has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in a facility. The condition or practice constituting a class I violation shall be abated or eliminated immediately, unless a fixed period of time, as determined by the agency, is required for correction. A class I deficiency is subject to a civil penalty of $10,000 for an isolated deficiency, $12,500 for a patterned deficiency, and $15,000 for a widespread deficiency. The fine amount shall be doubled for each deficiency if the facility was previously cited for one or more class I or class II deficiencies during the last licensure ~~annual~~ inspection or any inspection or complaint investigation since the last licensure ~~annual~~ inspection. A fine must be levied notwithstanding the correction of the deficiency.

(b) A class II deficiency is a deficiency that the agency determines has compromised the resident's ability to maintain or reach his or her highest practicable physical, mental, and psychosocial well-being, as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services. A class II deficiency is subject to a civil penalty of $2,500 for an isolated deficiency, $5,000 for a patterned deficiency, and $7,500 for a widespread deficiency. The fine amount shall be doubled for each deficiency if the facility was previously cited for one or more class I or class II deficiencies during the last licensure ~~annual~~ inspection or any inspection or

complaint investigation since the last licensure ~~annual~~ inspection. A fine shall be levied notwithstanding the correction of the deficiency.

(c) A class III deficiency is a deficiency that the agency determines will result in no more than minimal physical, mental, or psychosocial discomfort to the resident or has the potential to compromise the resident's ability to maintain or reach his or her highest practical physical, mental, or psychosocial well-being, as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services. A class III deficiency is subject to a civil penalty of $1,000 for an isolated deficiency, $2,000 for a patterned deficiency, and $3,000 for a widespread deficiency. The fine amount shall be doubled for each deficiency if the facility was previously cited for one or more class I or class II deficiencies during the last licensure ~~annual~~ inspection or any inspection or complaint investigation since the last licensure ~~annual~~ inspection. A citation for a class III deficiency must specify the time within which the deficiency is required to be corrected. If a class III deficiency is corrected within the time specified, a ~~no~~ civil penalty may not ~~shall~~ be imposed.

(d) A class IV deficiency is a deficiency that the agency determines has the potential for causing no more than a minor negative impact on the resident. If the class IV deficiency is isolated, no plan of correction is required.

Section 73. Section 400.241, Florida Statutes, is amended to read:

400.241 Prohibited acts; penalties for violations.—

~~(1) It is unlawful for any person or public body to establish, conduct, manage, or operate a home as defined in this part without obtaining a valid current license.~~

~~(2) It is unlawful for any person or public body to offer or advertise to the public, in any way by any medium whatever, nursing home care or service or custodial services without obtaining a valid current license. It is unlawful for any holder of a license issued pursuant to the provisions of this part to advertise or hold out to the public that it holds a license for a facility other than that for which it actually holds a license.~~

(1)~~(3)~~ It is unlawful for any person, long-term care facility, or other entity to willfully interfere with the unannounced inspections mandated by s. 400.19(3) or part II of chapter 408. Alerting or advising a facility of the actual or approximate date of such inspection shall be a per se violation of this subsection.

(2)~~(4)~~ A violation of any provision of this part or of any minimum standard, rule, or regulation adopted pursuant thereto constitutes a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Each day of a continuing violation is ~~shall be considered~~ a separate offense.

Section 74. Subsection (1) and paragraphs (a) and (c) of subsection (4) of section 400.464, Florida Statutes, are amended to read:

400.464 Home health agencies to be licensed; expiration of license; exemptions; unlawful acts; penalties.—

(1) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this part and part II of chapter 408 and entities licensed or registered by or applying for such licensure or registration from the Agency for Health Care Administration pursuant to this part. A license issued by the agency is required in order to operate a home health agency in this state. ~~Any home health agency must be licensed by the agency to operate in this state. A license issued to a home health agency, unless sooner suspended or revoked, expires 2 years after its date of issuance.~~

(4)(a) ~~An organization may not provide, offer, or advertise home health services to the public unless the organization has a valid license or is specifically exempted under this part.~~ An organization that offers or advertises to the public any service for which licensure or registration is required under this part must include in the advertisement the license number or registration number issued to the organization by the agency. The agency shall assess a fine of not less than $100 to any licensee or registrant who fails to include the license or registration number when submitting the advertisement for publication, broadcast, or printing. The fine for a second or subsequent offense is $500. The holder of a license issued under this part may not advertise or indicate to the public that it holds a home health agency or nurse registry license other than the one it has been issued.

(c) A person who violates paragraph (a) is subject to an injunctive proceeding under s. 408.816 ~~s. 400.515~~. A violation of paragraph (a) or s. 408.812 is a deceptive and unfair trade practice and constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act under part II of chapter 501.

Section 75. Section 400.471, Florida Statutes, is amended to read:

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

(1) Each applicant for licensure must comply with all provisions of this part and part II of chapter 408. ~~Application for an initial license or for renewal of an existing license must be made under oath to the agency on forms furnished by it and must be accompanied by the appropriate license fee as provided in subsection (10). The agency must take final action on an initial licensure application within 60 days after receipt of all required documentation.~~

(2) In addition to the requirements of part II of chapter 408, the initial applicant must file with the application satisfactory proof that the home health agency is in compliance with this part and applicable rules, including:

(a) A listing of services to be provided, either directly by the applicant or through contractual arrangements with existing providers.

(b) The number and discipline of professional staff to be employed.

~~(c) Proof of financial ability to operate.~~

(c)~~(d)~~ Completion of questions concerning volume data on the renewal application as determined by rule.

~~(3) An applicant for initial licensure must demonstrate financial ability to operate by submitting a balance sheet and income and expense statement for the first 2 years of operation which provide evidence of having sufficient assets, credit, and projected revenues to cover liabilities and expenses. The applicant shall have demonstrated financial ability to operate if the applicant's assets, credit, and projected revenues meet or exceed projected liabilities and expenses. All documents required under this subsection must be prepared in accordance with generally accepted accounting principles and must be compiled by a certified public accountant.~~

~~(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.~~

~~(e) Each applicant must submit to the agency, with its application, a description and explanation of any exclusions, permanent suspensions, or terminations of the licensee or potential licensee from the Medicare or Medicaid programs. Proof of compliance with the requirements for disclosure of ownership and control interest under the Medicaid or Medicare programs may 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 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.~~

~~(h) The agency may deny or revoke licensure if the applicant has been or is currently excluded, suspended, terminated from, or has involuntarily withdrawn from participation in any governmental or private health care or health insurance program.~~

~~(i) An application for license renewal must contain the information required under paragraphs (e) and (f).~~

~~(5) The agency may deny or revoke licensure if the applicant has falsely represented a material fact, or has omitted any material fact, from the application required by this section.~~

~~(3)(6)~~ In addition to the requirements of s. 408.810, the home health agency must also obtain and maintain the following insurance coverage in

an amount of not less than $250,000 per claim, and the home health agency must submit proof of coverage with an initial application for licensure and with each application for license renewal:

(a) Malpractice insurance as defined in s. 624.605(1)(k).~~;~~

(b) Liability insurance as defined in s. 624.605(1)(b).

~~(7) Sixty days before the expiration date, an application for renewal must be submitted to the agency under oath on forms furnished by it, and a license must be renewed if the applicant has met the requirements established under this part and applicable rules. The home health agency must file with the application satisfactory proof that it is in compliance with this part and applicable rules. If there is evidence of financial instability, the home health agency must submit satisfactory proof of its financial ability to comply with the requirements of this part. The agency shall impose an administrative fine of $50 per day for each day the home health agency fails to file an application within the timeframe specified in this subsection. Each day of continuing violation is a separate violation; however, the aggregate of such fines may not exceed $500.~~

~~(8) When transferring the ownership of a home health agency, the transferee must submit an application for a license at least 60 days before the effective date of the transfer. If the application is filed late, an administrative fine shall be imposed in the amount of $50 per day. Each day of continuing violation is a separate violation; however, the aggregate of such fines may not exceed $500. If the home health agency is being leased, a copy of the lease agreement must be filed with the application.~~

(4)~~(9)~~ The agency shall accept, in lieu of its own periodic licensure survey, submission of the survey of an accrediting organization that is recognized by the agency if the accreditation of the licensed home health agency is not provisional and if the licensed home health agency authorizes release of, and the agency receives the report of, the accrediting organization.

(5)~~(10)~~ In accordance with s. 408.805, an applicant or licensee shall pay a fee for each license application submitted under this part, part II of chapter 408, and applicable rules. The amount of the fee shall be established by rule and shall be set at ~~The license fee and renewal fee required of a home health agency are nonrefundable. The agency shall set the license fees in~~ an amount that is sufficient to cover the agency's ~~its~~ costs in carrying out its responsibilities under this part, but not to exceed $2,000 per biennium. However, state, county, or municipal governments applying for licenses under this part are exempt from the payment of license fees. ~~All fees collected under this part must be deposited in the Health Care Trust Fund for the administration of this part.~~

~~(11) The license must be displayed in a conspicuous place in the administrative office of the home health agency and is valid only while in the possession of the person to which it is issued. The license may not be sold, assigned, or otherwise transferred, voluntarily or involuntarily, and is valid only for the home health agency and location for which originally issued.~~

~~(12) A home health agency against whom a revocation or suspension proceeding is pending at the time of license renewal may be issued a provisional license effective until final disposition by the agency of such proceedings. If judicial relief is sought from the final disposition, the court that has jurisdiction may issue a temporary permit for the duration of the judicial proceeding.~~

(6)~~(13)~~ The agency may not issue a license designated as certified to a home health agency that fails to satisfy the requirements of a Medicare certification survey from the agency.

~~(14) The agency may not issue a license to a home health agency that has any unpaid fines assessed under this part.~~

Section 76. Section 400.474, Florida Statutes, is amended to read:

400.474 Administrative ~~Denial, suspension, revocation of license; injunction; grounds;~~ penalties.—

(1) The agency may deny, revoke, and ~~or~~ suspend a license and~~, or~~ impose an administrative fine in the manner provided in chapter 120~~, or initiate injunctive proceedings under s. 400.515~~.

(2) Any of the following actions by a home health agency or its employee is grounds for disciplinary action by the agency:

(a) Violation of this part, part II of chapter 408, or of applicable rules.

(b) An intentional, reckless, or negligent act that materially affects the health or safety of a patient.

(c) Knowingly providing home health services in an unlicensed assisted living facility or unlicensed adult family-care home, unless the home health agency or employee reports the unlicensed facility or home to the agency within 72 hours after providing the services.

(3) ~~The agency may impose the following penalties for operating without a license upon an applicant or owner who has in the past operated, or who currently operates, a licensed home health agency.~~

~~(a) If a home health agency that is found to be operating without a license wishes to apply for a license, the home health agency may submit an application only after the agency has verified that the home health agency no longer operates an unlicensed home health agency.~~

(a)~~(b)~~ In addition to the requirements of s. 408.813, any person, partnership, or corporation that violates s. 408.813 ~~paragraph (a)~~ and that previously operated a licensed home health agency or concurrently operates both a licensed home health agency and an unlicensed home health agency commits a felony of the third degree punishable as provided in s. 775.082, s. 775.083, or s. 775.084. ~~If an owner has an interest in more than one home health agency and fails to license any one of those home health agencies, the agency must issue a cease and desist order for the activities of the unlicensed home health agency and impose a moratorium on any or all of the licensed~~

~~related home health agencies until the unlicensed home health agency is licensed.~~

(b)~~(c)~~ If any home health agency is found to be operating without a license ~~meets the criteria in paragraph (a) or paragraph (b)~~ and that home health agency has received any government reimbursement for services ~~provided by an unlicensed home health agency~~, the agency shall make a fraud referral to the appropriate government reimbursement program.

~~(4) The agency may deny, revoke, or suspend the license of a home health agency, or may impose on a home health agency administrative fines not to exceed the aggregate sum of $5,000 if:~~

~~(a) The agency is unable to obtain entry to the home health agency to conduct a licensure survey, complaint investigation, surveillance visit, or monitoring visit.~~

~~(b) An applicant or a licensed home health agency has falsely represented a material fact in the application, or has omitted from the application any material fact, including, but not limited to, the fact that the controlling or ownership interest is held by any officer, director, agent, manager, employee, affiliated person, partner, or shareholder who is not eligible to participate.~~

~~(c) An applicant, owner, or person who has a 5 percent or greater interest in a licensed entity:~~

~~1. Has been previously found by any licensing, certifying, or professional standards board or agency to have violated the standards or conditions that relate to home health-related licensure or certification, or to the quality of home health-related services provided; or~~

~~2. Has been or is currently excluded, suspended, terminated from, or has involuntarily withdrawn from, participation in the Medicaid program of this state or any other state, the Medicare program, or any other governmental health care or health insurance program.~~

Section 77. Subsection (1) and paragraphs (a) and (b) of subsection (2) of section 400.484, Florida Statutes, are amended to read:

400.484 Right of inspection; deficiencies; fines.—

(1) In addition to the requirements of s. 408.811, ~~Any duly authorized officer or employee of~~ the agency may make such inspections and investigations as are necessary in order to determine the state of compliance with this part, part II of chapter 408, and ~~with~~ applicable rules. ~~The right of inspection extends to any business that the agency has reason to believe is being operated as a home health agency without a license, but such inspection of any such business may not be made without the permission of the owner or person in charge unless a warrant is first obtained from a circuit court. Any application for a license issued under this part or for license renewal constitutes permission for an appropriate inspection to verify the information submitted on or in connection with the application.~~

(2) The agency shall impose fines for various classes of deficiencies in accordance with the following schedule:

(a) A class I deficiency is any act, omission, or practice that results in a patient's death, disablement, or permanent injury, or places a patient at imminent risk of death, disablement, or permanent injury. Upon finding a class I deficiency, the agency may impose an administrative fine in the amount of $5,000 for each occurrence and each day that the deficiency exists. ~~In addition, the agency may immediately revoke the license, or impose a moratorium on the admission of new patients, until the factors causing the deficiency have been corrected.~~

(b) A class II deficiency is any act, omission, or practice that has a direct adverse effect on the health, safety, or security of a patient. Upon finding a class II deficiency, the agency may impose an administrative fine in the amount of $1,000 for each occurrence and each day that the deficiency exists. ~~In addition, the agency may suspend the license, or impose a moratorium on the admission of new patients, until the deficiency has been corrected.~~

Section 78. Section 400.495, Florida Statutes, is repealed.

Section 79. Section 400.497, Florida Statutes, is amended to read:

400.497 Rules establishing minimum standards.—The agency shall adopt, publish, and enforce rules to implement part II of chapter 408 and this part, including, as applicable, ss. 400.506 and 400.509, which must provide reasonable and fair minimum standards relating to:

(1) The home health aide competency test and home health aide training. The agency shall create the home health aide competency test and establish the curriculum and instructor qualifications for home health aide training. Licensed home health agencies may provide this training and shall furnish documentation of such training to other licensed home health agencies upon request. Successful passage of the competency test by home health aides may be substituted for the training required under this section and any rule adopted pursuant thereto.

(2) Shared staffing. The agency shall allow shared staffing if the home health agency is part of a retirement community that provides multiple levels of care, is located on one campus, is licensed under this chapter or chapter 429, and otherwise meets the requirements of law and rule.

(3) The criteria for the frequency of onsite licensure surveys.

(4) Licensure application and renewal.

(5) The requirements for onsite and electronic accessibility of supervisory personnel of home health agencies.

(6) Information to be included in patients' records.

(7) Geographic service areas.

(8) Preparation of a comprehensive emergency management plan pursuant to s. 400.492.

(a) The Agency for Health Care Administration shall adopt rules establishing minimum criteria for the plan and plan updates, with the concurrence of the Department of Health and in consultation with the Department of Community Affairs.

(b) The rules must address the requirements in s. 400.492. In addition, the rules shall provide for the maintenance of patient-specific medication lists that can accompany patients who are transported from their homes.

(c) The plan is subject to review and approval by the county health department. During its review, the county health department shall contact state and local health and medical stakeholders when necessary. The county health department shall complete its review to ensure that the plan is in accordance with the criteria in the Agency for Health Care Administration rules within 90 days after receipt of the plan and shall approve the plan or advise the home health agency of necessary revisions. If the home health agency fails to submit a plan or fails to submit the requested information or revisions to the county health department within 30 days after written notification from the county health department, the county health department shall notify the Agency for Health Care Administration. The agency shall notify the home health agency that its failure constitutes a deficiency, subject to a fine of $5,000 per occurrence. If the plan is not submitted, information is not provided, or revisions are not made as requested, the agency may impose the fine.

(d) For any home health agency that operates in more than one county, the Department of Health shall review the plan, after consulting with state and local health and medical stakeholders when necessary. The department shall complete its review within 90 days after receipt of the plan and shall approve the plan or advise the home health agency of necessary revisions. The department shall make every effort to avoid imposing differing requirements on a home health agency that operates in more than one county as a result of differing or conflicting comprehensive plan requirements of the counties in which the home health agency operates.

(e) The requirements in this subsection do not apply to:

1. A facility that is certified under chapter 651 and has a licensed home health agency used exclusively by residents of the facility; or

2. A retirement community that consists of residential units for independent living and either a licensed nursing home or an assisted living facility, and has a licensed home health agency used exclusively by the residents of the retirement community, provided the comprehensive emergency management plan for the facility or retirement community provides for continuous care of all residents with special needs during an emergency.

Section 80. Section 400.506, Florida Statutes, is amended to read:

400.506 Licensure of nurse registries; requirements; penalties.—

(1) A nurse registry is exempt from the licensing requirements of a home health agency but must be licensed as a nurse registry. The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to ss. 400.506-400.518 and part II of chapter 408 and to entities licensed by or applying for such license from the Agency for Health Care Administration pursuant to ss. 400.506-400.518. A license issued by the agency is required for the operation of a nurse registry. Each operational site of the nurse registry must be licensed, unless there is more than one site within a county. If there is more than one site within a county, only one license per county is required. Each operational site must be listed on the license.

(2) Each applicant for licensure and each licensee must comply with all provisions of part II of chapter 408 and this section. ~~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.~~

~~(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 may 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 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.~~

~~(h) The agency may deny or revoke the license if any applicant:~~

~~1. Has falsely represented a material fact in the application required by paragraph (e) or paragraph (f), or has omitted any material fact from the application required by paragraph (e) or paragraph (f); or~~

~~2. Has had prior action taken against the applicant under the Medicaid or Medicare program as set forth in paragraph (e).~~

~~(i) An application for license renewal must contain the information required under paragraphs (e) and (f).~~

(3) In accordance with s. 408.805, an applicant or licensee shall pay a fee for each license application submitted under ss. 400.508-400.518, part II of chapter 408, and applicable rules. The amount of the fee shall be established by rule and may not exceed $2,000 per biennium. ~~Application for license must be made to the Agency for Health Care Administration on forms furnished by it and must be accompanied by the appropriate licensure fee, as established by rule and not to exceed the cost of regulation under this part. The licensure fee for nurse registries may not exceed $2,000 and must be deposited in the Health Care Trust Fund.~~

~~(4) The Agency for Health Care Administration may deny, revoke, or suspend a license or impose an administrative fine in the manner provided in chapter 120 against a nurse registry that:~~

~~(a) Fails to comply with this section or applicable rules.~~

~~(b) Commits an intentional, reckless, or negligent act that materially affects the health or safety of a person receiving services.~~

~~(5) A license issued for the operation of a nurse registry, unless sooner suspended or revoked, expires 2 years after its date of issuance. Sixty days before the expiration date, an application for renewal must be submitted to the Agency for Health Care Administration on forms furnished by it. The Agency for Health Care Administration shall renew the license if the applicant has met the requirements of this section and applicable rules. A nurse registry against which a revocation or suspension proceeding is pending at the time of license renewal may be issued a conditional license effective until final disposition by the Agency for Health Care Administration of such proceedings. If judicial relief is sought from the final disposition, the court having jurisdiction may issue a conditional license for the duration of the judicial proceeding.~~

~~(6) The Agency for Health Care Administration may institute injunctive proceedings under s. 400.515.~~

(4)~~(7)~~ A person that provides, offers, or advertises to the public any service for which licensure is required under this section must include in such advertisement the license number issued to it by the Agency for Health Care Administration. The agency shall assess a fine of not less than $100 against any licensee who fails to include the license number when submitting the advertisement for publication, broadcast, or printing. The fine for a second or subsequent offense is $500.

~~(8)(a) It is unlawful for a person to provide, offer, or advertise to the public services as defined by rule without obtaining a valid license from the Agency for Health Care Administration. It is unlawful for any holder of a license to advertise or hold out to the public that he or she holds a license for other than that for which he or she actually holds a license. A person who violates this subsection is subject to injunctive proceedings under s. 400.515.~~

~~(b) A person who violates the provisions of paragraph (a) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Each day of continuing violation is a separate offense.~~

(5)(a)~~(c)~~ In addition to the requirements of s. 408.812, any person who owns, operates, or maintains an unlicensed nurse registry and who, within 10 working days after receiving notification from the agency, fails to cease operation and apply for a license under this part commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Each day of continued operation is a separate offense.

(b)~~(d)~~ If a nurse registry fails to cease operation after agency notification, the agency may impose a fine of $500 for each day of noncompliance.

~~(9) Any duly authorized officer or employee of the Agency for Health Care Administration may make such inspections and investigations as are necessary to respond to complaints or to determine the state of compliance with this section and applicable rules.~~

~~(a) If, in responding to a complaint, an agent or employee of the Agency for Health Care Administration has reason to believe that a crime has been committed, he or she shall notify the appropriate law enforcement agency.~~

~~(b) If, in responding to a complaint, an agent or employee of the Agency for Health Care Administration has reason to believe that abuse, neglect, or exploitation has occurred, according to the definitions in chapter 415, he or she shall file a report under chapter 415.~~

(6)~~(10)~~(a) A nurse registry may refer for contract in private residences registered nurses and licensed practical nurses registered and licensed under part I of chapter 464, certified nursing assistants certified under part II of chapter 464, home health aides who present documented proof of successful completion of the training required by rule of the agency, and companions or homemakers for the purposes of providing those services authorized under s. 400.509(1). Each person referred by a nurse registry must provide current documentation that he or she is free from communicable diseases.

(b) A certified nursing assistant or home health aide may be referred for a contract to provide care to a patient in his or her home only if that patient is under a physician's care. A certified nursing assistant or home health aide referred for contract in a private residence shall be limited to assisting a patient with bathing, dressing, toileting, grooming, eating, physical transfer, and those normal daily routines the patient could perform for himself or herself were he or she physically capable. A certified nursing assistant or home health aide may not provide medical or other health care services that require specialized training and that may be performed only by licensed health care professionals. The nurse registry shall obtain the name and address of the attending physician and send written notification to the physician within 48 hours after a contract is concluded that a certified nursing assistant or home health aide will be providing care for that patient.

(c) When a certified nursing assistant or home health aide is referred to a patient's home by a nurse registry, the nurse registry shall advise the patient, the patient's family, or any other person acting on behalf of the patient at the time the contract for services is made that registered nurses are available to make visits to the patient's home for an additional cost.

(7)~~(11)~~ A person who is referred by a nurse registry for contract in private residences and who is not a nurse licensed under part I of chapter 464 may perform only those services or care to clients that the person has been certified to perform or trained to perform as required by law or rules of the Agency for Health Care Administration or the Department of Business and Professional Regulation. Providing services beyond the scope authorized under this subsection constitutes the unauthorized practice of medicine or a violation of the Nurse Practice Act and is punishable as provided under chapter 458, chapter 459, or part I of chapter 464.

(8)~~(12)~~ Each nurse registry must require every applicant for contract to complete an application form providing the following information:

(a) The name, address, date of birth, and social security number of the applicant.

(b) The educational background and employment history of the applicant.

(c) The number and date of the applicable license or certification.

(d) When appropriate, information concerning the renewal of the applicable license, registration, or certification.

(9)~~(13)~~ Each nurse registry must comply with the procedures set forth in s. 400.512 for maintaining records of the work history of all persons referred for contract and is subject to the standards and conditions set forth in that section. However, an initial screening may not be required for persons who have been continuously registered with the nurse registry since October 1, 2000.

(10)~~(14)~~ The nurse registry must maintain the application on file, and that file must be open to the inspection of the Agency for Health Care Administration. The nurse registry must maintain on file the name and address of the patient or client to whom nurse registry personnel are referred for contract and the amount of the fee received by the nurse registry. A nurse registry must maintain the file that includes the application and other applicable documentation for 3 years after the date of the last file entry of patient-related or client-related information.

(11)~~(15)~~ Nurse registries shall assist persons who would need assistance and sheltering during evacuations because of physical, mental, or sensory disabilities in registering with the appropriate local emergency management agency pursuant to s. 252.355.

(12)~~(16)~~ Each nurse registry shall prepare and maintain a comprehensive emergency management plan that is consistent with the criteria in this subsection and with the local special needs plan. The plan shall be updated annually. The plan shall include the means by which the nurse registry will continue to provide the same type and quantity of services to its patients who evacuate to special needs shelters which were being provided to those patients prior to evacuation. The plan shall specify how the nurse registry shall facilitate the provision of continuous care by persons referred for contract to persons who are registered pursuant to s. 252.355 during an emergency that interrupts the provision of care or services in private residences ~~residencies~~. Nurse registries may establish links to local emergency operations centers to determine a mechanism by which to approach specific areas within a disaster area in order for a provider to reach its clients. Nurse registries shall demonstrate a good faith effort to comply with the requirements of this subsection by documenting attempts of staff to follow procedures outlined in the nurse registry's comprehensive emergency management plan which support a finding that the provision of continuing care has been attempted for patients identified as needing care by the nurse registry and registered under s. 252.355 in the event of an emergency under subsection (1).

(a) All persons referred for contract who care for persons registered pursuant to s. 252.355 must include in the patient record a description of how care will be continued during a disaster or emergency that interrupts the provision of care in the patient's home. It shall be the responsibility of the person referred for contract to ensure that continuous care is provided.

(b) Each nurse registry shall maintain a current prioritized list of patients in private residences who are registered pursuant to s. 252.355 and are under the care of persons referred for contract and who need continued services during an emergency. This list shall indicate, for each patient, if the client is to be transported to a special needs shelter and if the patient is receiving skilled nursing services. Nurse registries shall make this list available to county health departments and to local emergency management agencies upon request.

(c) Each person referred for contract who is caring for a patient who is registered pursuant to s. 252.355 shall provide a list of the patient's medication and equipment needs to the nurse registry. Each person referred for contract shall make this information available to county health departments and to local emergency management agencies upon request.

(d) Each person referred for contract shall not be required to continue to provide care to patients in emergency situations that are beyond the person's control and that make it impossible to provide services, such as when roads are impassable or when patients do not go to the location specified in their patient records.

(e) The comprehensive emergency management plan required by this subsection is subject to review and approval by the county health department. During its review, the county health department shall contact state and local health and medical stakeholders when necessary. The county health department shall complete its review to ensure that the plan complies with the criteria in the Agency for Health Care Administration rules within 90 days after receipt of the plan and shall either approve the plan or advise the nurse registry of necessary revisions. If a nurse registry fails to submit a plan or fails to submit requested information or revisions to the county health department within 30 days after written notification from the county health department, the county health department shall notify the Agency for Health Care Administration. The agency shall notify the nurse registry that its failure constitutes a deficiency, subject to a fine of $5,000 per occurrence. If the plan is not submitted, information is not provided, or revisions are not made as requested, the agency may impose the fine.

(f) The Agency for Health Care Administration shall adopt rules establishing minimum criteria for the comprehensive emergency management plan and plan updates required by this subsection, with the concurrence of the Department of Health and in consultation with the Department of Community Affairs.

(13)~~(17)~~ All persons referred for contract in private residences by a nurse registry must comply with the following requirements for a plan of treatment:

(a) When, in accordance with the privileges and restrictions imposed upon a nurse under part I of chapter 464, the delivery of care to a patient is under the direction or supervision of a physician or when a physician is responsible for the medical care of the patient, a medical plan of treatment must be established for each patient receiving care or treatment provided by a licensed nurse in the home. The original medical plan of treatment must be timely signed by the physician, physician assistant, or advanced registered nurse practitioner, acting within his or her respective scope of practice, and reviewed in consultation with the licensed nurse at least every 2 months. Any additional order or change in orders must be obtained from the physician, physician assistant, or advanced registered nurse practitioner and reduced to writing and timely signed by the physician, physician assistant, or advanced registered nurse practitioner. The delivery of care under a medical plan of treatment must be substantiated by the appropriate nursing notes or documentation made by the nurse in compliance with nursing practices established under part I of chapter 464.

(b) Whenever a medical plan of treatment is established for a patient, the initial medical plan of treatment, any amendment to the plan, additional order or change in orders, and copy of nursing notes must be filed in the office of the nurse registry.

(14)~~(18)~~ The nurse registry must comply with the notice requirements of s. 408.810(5) ~~s. 400.495~~, relating to abuse reporting.

(15)~~(19)~~ In addition to any other penalties imposed pursuant to this section or part, the agency may assess costs related to an investigation that results in a successful prosecution, excluding costs associated with an attorney's time. ~~If the agency imposes such an assessment and the assessment is not paid, and if challenged is not the subject of a pending appeal, prior to the renewal of the license, the license shall not be issued until the assessment is paid or arrangements for payment of the assessment are made.~~

(16)~~(20)~~ The Agency for Health Care Administration shall adopt rules to implement this section and part II of chapter 408.

Section 81. Section 400.509, Florida Statutes, is amended to read:

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

(1) Any organization that provides companion services or homemaker services and does not provide a home health service to a person is exempt from licensure under this part. However, any organization that provides companion services or homemaker services must register with the agency.

(2) The requirements of part II of chapter 408 apply to the provision of services that require registration or licensure pursuant to this section and part II of chapter 408 and entities registered by or applying for such registration from the Agency for Health Care Administration pursuant to this section. Each applicant for registration and each registrant must comply with all provisions of part II of chapter 408. Registration or a license issued by the agency is required for the operation of an organization that provides

companion services or homemaker services. ~~Registration consists of annually filing with the agency, under oath, on forms provided by it, the following information:~~

~~(a) If the registrant is a firm or partnership, the name, address, date of birth, and social security number of every member.~~

~~(b) If the registrant is a corporation or association, its name and address; the name, address, date of birth, and social security number of each of its directors and officers; and the name and address of each person having at least a 5 percent interest in the corporation or association.~~

~~(c) The name, address, date of birth, and social security number of each person employed by or under contract with the organization.~~

(3) In accordance with s. 408.805, applicants and registrants shall pay fees for all registrations issued under this part, part II of chapter 408, and applicable rules. The amount of the fee shall be $50 per biennium. ~~The agency shall charge a registration fee of $25 to be submitted with the information required under subsection (2).~~

~~(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.~~

~~(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 may 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 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.~~

~~(h) The agency may deny or revoke the registration of any applicant who:~~

~~1. Has falsely represented a material fact in the application required by paragraph (e) or paragraph (f), or has omitted any material fact from the application required by paragraph (e) or paragraph (f); or~~

~~2. Has had prior action taken against the applicant under the Medicaid or Medicare program as set forth in paragraph (e).~~

~~(i) An application for licensure renewal must contain the information required under paragraphs (e) and (f).~~

(4)~~(5)~~ Each registrant must obtain the employment or contract history of persons who are employed by or under contract with the organization and who will have contact at any time with patients or clients in their homes by:

(a) Requiring such persons to submit an employment or contractual history to the registrant; and

(b) Verifying the employment or contractual history, unless through diligent efforts such verification is not possible. The agency shall prescribe by rule the minimum requirements for establishing that diligent efforts have been made.

There is no monetary liability on the part of, and no cause of action for damages arises against, a former employer of a prospective employee of or prospective independent contractor with a registrant who reasonably and in good faith communicates his or her honest opinions about the former employee's or contractor's job performance. This subsection does not affect the official immunity of an officer or employee of a public corporation.

~~(6) On or before the first day on which services are provided to a patient or client, any registrant under this part must inform the patient or client and his or her immediate family, if appropriate, of the right to report abusive, neglectful, or exploitative practices. The statewide toll-free telephone number for the central abuse hotline must be provided to patients or clients in a manner that is clearly legible and must include the words: "To report abuse, neglect, or exploitation, please call toll-free (phone number) ." Registrants must establish appropriate policies and procedures for providing such notice to patients or clients.~~

~~(7) The provisions of s. 400.512 regarding screening apply to any person or business entity registered under this section on or after October 1, 1994.~~

~~(8) Upon verification that all requirements for registration have been met, the Agency for Health Care Administration shall issue a certificate of registration valid for no more than 1 year.~~

~~(9) The Agency for Health Care Administration may deny, suspend, or revoke the registration of a person that:~~

~~(a) Fails to comply with this section or applicable rules.~~

~~(b) Commits an intentional, reckless, or negligent act that materially affects the health or safety of a person receiving services.~~

~~(10) The Agency for Health Care Administration may institute injunctive proceedings under s. 400.515.~~

(5)~~(11)~~ A person that offers or advertises to the public a service for which registration is required must include in its advertisement the registration number issued by the Agency for Health Care Administration.

~~(12) It is unlawful for a person to offer or advertise to the public services, as defined by rule, without obtaining a certificate of registration from the Agency for Health Care Administration. It is unlawful for any holder of a certificate of registration to advertise or hold out to the public that he or she holds a certificate of registration for other than that for which he or she~~

~~actually holds a certificate of registration. Any person who violates this subsection is subject to injunctive proceedings under s. 400.515.~~

~~(13) Any duly authorized officer or employee of the Agency for Health Care Administration has the right to make such inspections and investigations as are necessary in order to respond to complaints or to determine the state of compliance with this section and applicable rules.~~

~~(a) If, in responding to a complaint, an officer or employee of the Agency for Health Care Administration has reason to believe that a crime has been committed, he or she shall notify the appropriate law enforcement agency.~~

~~(b) If, in responding to a complaint, an officer or employee of the Agency for Health Care Administration has reason to believe that abuse, neglect, or exploitation has occurred, according to the definitions in chapter 415, he or she shall file a report under chapter 415.~~

(6)~~(14)~~ In addition to any other penalties imposed pursuant to this section or part, the agency may assess costs related to an investigation that results in a successful prosecution, excluding costs associated with an attorney's time. ~~If the agency imposes such an assessment and the assessment is not paid, and if challenged is not the subject of a pending appeal, prior to the renewal of the registration, the registration shall not be issued until the assessment is paid or arrangements for payment of the assessment are made.~~

(7)~~(15)~~ The Agency for Health Care Administration shall adopt rules to administer this section and part II of chapter 408.

Section 82. Subsection (7) of section 400.512, Florida Statutes, is amended 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.

~~(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 speci-~~

~~fied 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 83. Section 400.515, Florida Statutes, is repealed.

Section 84. Section 400.602, Florida Statutes, is amended to read:

400.602 Licensure required; prohibited acts; exemptions; display, transferability of license.—

(1)(a) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this part and part II of chapter 408 and to entities licensed by or applying for such licensure from the agency pursuant to this part. A license issued by the agency is required in order to operate a hospice in this state ~~It is unlawful to operate or maintain a hospice without first obtaining a license from the agency~~.

~~(b) It is unlawful for~~ Any person or legal entity that is not licensed as a hospice under this part may not ~~to~~ use the word "hospice" in its name, or ~~to~~ offer or advertise hospice services or hospice-like services in such a way as to mislead a person to believe that the offeror is a hospice licensed under this part.

(b)~~(c)~~ It is unlawful for any person or legal entity offering, describing, or advertising hospice services or hospice-like services or otherwise holding itself out as a hospice to do so without stating the year of initial licensure as a hospice in the state or the year of initial licensure of the hospice entity or affiliate based in the state that owns the hospice. At a minimum, the year of initial licensure must be stated directly beneath the name of the licensed entity in a type no less than 25 percent of the size of the type used for the name or other indication of hospice services or hospice-like services and must be prominently stated at least one time on any document, item, or other medium offering, describing, or advertising hospice services or hospice-like services. This requirement excludes any materials relating to the care and treatment of an existing hospice patient.

(2) Services provided by a hospital, nursing home, or other health care facility, health care provider, or caregiver, or under the Community Care for the Elderly Act, do not constitute a hospice unless the facility, provider, or caregiver establishes a separate and distinct administrative program to provide home, residential, and homelike inpatient hospice services.

(3)(a) A separately licensed hospice may not use a name which is substantially the same as the name of another hospice licensed under this part.

(b) A licensed hospice which intends to change its name or address must notify the agency at least 60 days before making the change.

~~(4) The license shall be displayed in a conspicuous place inside the hospice program office; shall be valid only in the possession of the person or public agency to which it is issued; shall not be subject to sale, assignment, or other transfer, voluntary or involuntary; and shall not be valid for any hospice other than the hospice for which originally issued.~~

Section 85. Section 400.605, Florida Statutes, is amended to read:

400.605 Administration; forms; fees; rules; inspections; fines.—

(1) The agency, in consultation with the department, may adopt rules to administer the requirements of part II of chapter 408. The department, in consultation with the agency, shall by rule establish minimum standards and procedures for a hospice pursuant to this part. The rules must include:

~~(a) License application procedures and requirements.~~

(a)~~(b)~~ The qualifications of professional and ancillary personnel to ensure the provision of appropriate and adequate hospice care.

(b)~~(c)~~ Standards and procedures for the administrative management of a hospice.

(c)~~(d)~~ Standards for hospice services that ensure the provision of quality patient care.

(d)~~(e)~~ Components of a patient plan of care.

(e)~~(f)~~ Procedures relating to the implementation of advanced directives and do-not-resuscitate orders.

(f)~~(g)~~ Procedures for maintaining and ensuring confidentiality of patient records.

(g)~~(h)~~ Standards for hospice care provided in freestanding inpatient facilities that are not otherwise licensed medical facilities and in residential care facilities such as nursing homes, assisted living facilities, adult family care homes, and hospice residential units and facilities.

(h)~~(i)~~ Components of a comprehensive emergency management plan, developed in consultation with the Department of Health, the Department of Elderly Affairs, and the Department of Community Affairs.

(i)~~(j)~~ Standards and procedures relating to the establishment and activities of a quality assurance and utilization review committee.

(j)~~(k)~~ Components and procedures relating to the collection of patient demographic data and other information on the provision of hospice care in this state.

(2) In accordance with s. 408.805, an applicant or licensee shall pay a fee for each license application submitted under this part, part II of chapter 408, and applicable rules. The amount of the fee shall be established by rule and may not exceed $1,200 per biennium. ~~The agency shall:~~

~~(a) Prepare and furnish all forms necessary under the provisions of this part in relation to applications for licensure or licensure renewals.~~

~~(b) Collect from the applicant at the time of filing an application for a license or at the time of renewal of a license a fee which must be reasonably calculated to cover the cost of regulation under this part, but may not exceed $600 per program. All fees collected under this part shall be deposited in the Health Care Trust Fund for the administration of this part.~~

~~(c) Issue hospice licenses to all applicants which meet the provisions of this part and applicable rules.~~

(3)~~(d)~~ In accordance with s. 408.811, the agency shall conduct annual ~~licensure~~ inspections of all licensees, except that licensure inspections may be conducted biennially for hospices having a 3-year record of substantial compliance.

~~(e)~~ The agency shall conduct such inspections and investigations as are necessary in order to determine the state of compliance with the provisions of this part, part II of chapter 408, and applicable ~~adopted~~ rules. ~~The right of inspection also extends to any program that the agency has reason to believe is offering or advertising itself as a hospice without a license, but no inspection may be made without the permission of the owner or person in charge thereof unless a warrant is first obtained from a circuit court authorizing such inspection. An application for a license or license renewal made pursuant to this part constitutes permission for an inspection of the hospice for which the license is sought in order to facilitate verification of the information submitted on or in connection with the application.~~

(4)~~(f)~~ In accordance with part II of chapter 408, the agency may impose an administrative fine for any violation of the provisions of this part, part II of chapter 408, or applicable rules.

Section 86. Section 400.606, Florida Statutes, is amended to read:

400.606 License; application; renewal; conditional license or permit; certificate of need.—

(1) In addition to the requirements of part II of chapter 408, ~~A license application must be filed on a form provided by the agency and must be accompanied by the appropriate license fee as well as satisfactory proof that the hospice is in compliance with this part and any rules adopted by the department and proof of financial ability to operate and conduct the hospice in accordance with the requirements of this part.~~ the initial application and change of ownership application must be accompanied by a plan for the delivery of home, residential, and homelike inpatient hospice services to terminally ill persons and their families. Such plan must contain, but need not be limited to:

(a) The estimated average number of terminally ill persons to be served monthly.

(b) The geographic area in which hospice services will be available.

(c) A listing of services which are or will be provided, either directly by the applicant or through contractual arrangements with existing providers.

(d) Provisions for the implementation of hospice home care within 3 months after licensure.

(e) Provisions for the implementation of hospice homelike inpatient care within 12 months after licensure.

(f) The number and disciplines of professional staff to be employed.

(g) The name and qualifications of any existing or potential contractee.

(h) A plan for attracting and training volunteers.

(i) The projected annual operating cost of the hospice.

~~(j) A statement of financial resources and personnel available to the applicant to deliver hospice care.~~

If the applicant is an existing licensed health care provider, the application must be accompanied by a copy of the most recent profit-loss statement and, if applicable, the most recent licensure inspection report.

~~(2) Each applicant must submit to the agency with its application a description and explanation of any exclusions, permanent suspensions, or terminations from the Medicaid or Medicare programs of the owner, if an individual; of any officer or board member of the hospice, if the owner is a firm, corporation, partnership, or association; or of any person owning 5 percent or more of the hospice. Proof of compliance with disclosure of ownership and control interest requirements of the Medicaid or Medicare programs may be accepted in lieu of this submission.~~

(2)~~(3)~~ In addition to the requirements of part II of chapter 408, ~~A license issued for the operation of a hospice, unless sooner suspended or revoked, shall expire automatically 1 year from the date of issuance. Sixty days prior to the expiration date, a hospice wishing to renew its license shall submit an application for renewal to the agency on forms furnished by the agency. The agency shall renew the license if the applicant has first met the requirements established under this part and all applicable rules and has provided the information described under this section in addition to the application. However,~~ the application for license renewal shall be accompanied by an update of the plan for delivery of hospice care only if information contained in the plan submitted pursuant to subsection (1) is no longer applicable.

~~(4) A hospice against which a revocation or suspension proceeding is pending at the time of license renewal may be issued a conditional license by the agency effective until final disposition of such proceeding. If judicial relief is sought from the final agency action, the court having jurisdiction may issue a conditional permit for the duration of the judicial proceeding.~~

(3)~~(5)~~ The agency shall not issue a license to a hospice that fails to receive a certificate of need under the provisions of part I of chapter 408 ~~ss. 408.031-408.045~~. A licensed hospice is a health care facility as that term is used in

s. 408.039(5) and is entitled to initiate or intervene in an administrative hearing.

(4)~~(6)~~ A freestanding hospice facility that is primarily engaged in providing inpatient and related services and that is not otherwise licensed as a health care facility shall be required to obtain a certificate of need. However, a freestanding hospice facility with six or fewer beds shall not be required to comply with institutional standards such as, but not limited to, standards requiring sprinkler systems, emergency electrical systems, or special lavatory devices.

(5)~~(7)~~ The agency may deny a license to an applicant that fails to meet any condition for the provision of hospice care or services imposed by the agency on a certificate of need by final agency action, unless the applicant can demonstrate that good cause exists for the applicant's failure to meet such condition.

Section 87. Section 400.6065, Florida Statutes, is amended 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.~~

~~(3) The agency may grant a provisional license to a hospice applying for an initial license when each individual required by this section to undergo screening has completed the Department of Law Enforcement background~~

~~check, but has not yet received results from the Federal Bureau of Investigation.~~

~~(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.

~~(5) The agency may grant exemptions from disqualification from employment under this section as provided in s. 435.07.~~

~~(6) The administration of each hospice must sign an affidavit annually, under penalty of perjury, stating that all personnel employed or contracted with on or after October 1, 1998, who provide hospice services in a facility, or who enter the home of a patient in their service capacity, have been screened.~~

~~(7) 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, at the discretion of the hospice.~~

~~(8)(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 employed or contracted with 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 as specified in this section, or release such information to any other person for any purpose other than screening 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 88. Section 400.607, Florida Statutes, is amended to read:

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

(1) The agency may deny, revoke, and ~~or~~ suspend a license, impose an action under s. 408.814, and ~~or~~ impose an administrative fine, which may not exceed $5,000 per violation, for the violation of any provision of this part,

part II of chapter 408, or applicable rules ~~in the manner provided in chapter 120~~.

(2) Any of the following actions by a licensed hospice or any of its employees shall be grounds for action by the agency against a hospice:

(a) A violation of the provisions of this part, part II of chapter 408, or applicable rules.

(b) An intentional or negligent act materially affecting the health or safety of a patient.

~~(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.~~

~~(b) An officer, board member, or person owning 5 percent or more of the hospice has been excluded, permanently suspended, or terminated from the Medicare or Medicaid programs.~~

(3)~~(4)~~ If, 3 months after the date of obtaining a license, or at any time thereafter, a hospice does not have in operation the home-care component of hospice care, the agency shall immediately revoke the license of such hospice.

(4)~~(5)~~ If, 12 months after the date of obtaining a license pursuant to s. 400.606, or at any time thereafter, a hospice does not have in operation the inpatient components of hospice care, the agency shall immediately revoke the license of such hospice.

~~(6) The agency may institute a civil action in a court of competent jurisdiction to seek injunctive relief to enforce compliance with this part or any rule adopted pursuant to this part.~~

(5)~~(7)~~ The remedies set forth in this section are independent of and cumulative to other remedies provided by law.

Section 89. Subsection (8) of section 400.6095, Florida Statutes, is amended to read:

400.6095 Patient admission; assessment; plan of care; discharge; death.—

(8) The hospice care team may withhold or withdraw cardiopulmonary resuscitation if presented with an order not to resuscitate executed pursuant to s. 401.45. The department shall adopt rules providing for the implementation of such orders. Hospice staff shall not be subject to criminal prosecution or civil liability, nor be considered to have engaged in negligent or unprofessional conduct, for withholding or withdrawing cardiopulmonary resuscitation pursuant to such an order and applicable rules ~~adopted by the department~~. The absence of an order to resuscitate executed pursuant to s. 401.45

does not preclude a physician from withholding or withdrawing cardiopulmonary resuscitation as otherwise permitted by law.

Section 90. Section 400.801, Florida Statutes, is amended to read:

400.801 Homes for special services.—

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

(a) "Agency" means the "Agency for Health Care Administration."

(b) "Home for special services" means a site licensed by the agency prior to January 1, 2006, where specialized health care services are provided, including personal and custodial care, but not continuous nursing services.

(2) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this section and part II of chapter 408 and entities licensed by or applying for such licensure from the agency pursuant to this section. A license issued by the agency is required in order to operate a home for special services in this state. ~~A person must obtain a license from the agency to operate a home for special services. A license is valid for 1 year.~~

(3) In accordance with s. 408.805, an applicant or licensee shall pay a fee for each license application submitted under this part, part II of chapter 408, and applicable rules. The amount of the fee shall be established by rule and may not be more than $2,000 per biennium. ~~The application for a license under this section must be made on a form provided by the agency. A nonrefundable license fee of not more than $1,000 must be submitted with the license application.~~

~~(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.~~

~~(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 may 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 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.~~

~~(h) The agency may deny or revoke licensure if the applicant:~~

~~1. Has falsely represented a material fact in the application required by paragraph (e) or paragraph (f), or has omitted any material fact from the application required by paragraph (e) or paragraph (f); or~~

~~2. Has had prior action taken against the applicant under the Medicaid or Medicare program as set forth in paragraph (e).~~

~~(i) An application for license renewal must contain the information required under paragraphs (e) and (f).~~

~~(5) Application for license renewal must be submitted 90 days before the expiration of the license.~~

~~(6) A change of ownership or control of a home for special services must be reported to the agency in writing at least 60 days before the change is scheduled to take effect.~~

(4)~~(7)~~ The agency may ~~shall~~ adopt rules for implementing and enforcing this section and part II of chapter 408.

~~(8)(a) It is unlawful for any person to establish, conduct, manage, or operate a home for special services without obtaining a license from the agency.~~

~~(b) It is unlawful for any person to offer or advertise to the public, in any medium whatever, specialized health care services without obtaining a license from the agency.~~

~~(c) It is unlawful for a holder of a license issued under this section to advertise or represent to the public that it holds a license for a type of facility other than the facility for which its license is issued.~~

(5)~~(9)~~(a) In addition to the requirements of part II of chapter 408, a violation of any provision of this section, part II of chapter 408, or applicable rules ~~adopted by the agency for implementing this section~~ is punishable by payment of an administrative fine not to exceed $5,000.

(b) A violation of s. 408.812 ~~subsection (8)~~ or rules adopted under that section ~~subsection~~ is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Each day of continuing violation is a separate offense.

Section 91. Section 400.805, Florida Statutes, is amended to read:

400.805 Transitional living facilities.—

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

(a) "Agency" means the Agency for Health Care Administration.

(b) "Department" means the Department of Health.

(c) "Transitional living facility" means a site where specialized health care services are provided, including, but not limited to, rehabilitative services, community reentry training, aids for independent living, and counseling to spinal-cord-injured persons and head-injured persons. This term does not include a hospital licensed under chapter 395 or any federally operated hospital or facility.

(2)(a) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this section and part II of chapter 408 and to entities licensed by or applying for such licensure from the agency pursuant to this section. A license issued by the agency is required for the operation of a transitional living facility in this state. ~~A person must obtain a license from the agency to operate a transitional living facility. A license issued under this section is valid for 1 year.~~

(b) In accordance with this section, an applicant or a licensee shall pay a fee for each license application submitted under this part, part II of chapter 408, and applicable rules. The fee shall consist of a $4,000 license fee and a $78.50 per bed fee per biennium. ~~The application for a license must be made on a form provided by the agency. A nonrefundable license fee of $2,000 and a fee of up to $39.25 per bed must be submitted with the license application.~~

(c) The agency may not issue a license to an applicant until the agency receives notice from the department as provided in paragraph (3)~~(6)~~(b).

~~(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.~~

~~(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 may 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 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.~~

~~(h) The agency may deny or revoke licensure if the applicant:~~

~~1. Has falsely represented a material fact in the application required by paragraph (e) or paragraph (f), or has omitted any material fact from the application required by paragraph (e) or paragraph (f); or~~

~~2. Has had prior action taken against the applicant under the Medicaid or Medicare program as set forth in paragraph (e).~~

~~(i) An application for license renewal must contain the information required under paragraphs (e) and (f).~~

~~(4) An application for renewal of license must be submitted 90 days before the expiration of the license. Upon renewal of licensure, each appli-~~

~~cant must submit to the agency, under penalty of perjury, an affidavit as set forth in paragraph (3)(d).~~

~~(5) A change of ownership or control of a transitional living facility must be reported to the agency in writing at least 60 days before the change is scheduled to take effect.~~

(3)~~(6)~~(a) The agency shall adopt rules in consultation with the department governing the physical plant of transitional living facilities and the fiscal management of transitional living facilities.

(b) The department shall adopt rules in consultation with the agency governing the services provided to clients of transitional living facilities. The department shall enforce all requirements for providing services to the facility's clients. The department must notify the agency when it determines that an applicant for licensure meets the service requirements adopted by the department.

(c) The agency and the department shall enforce requirements under this section and part II of chapter 408, as such requirements relate to them respectively, and their respective adopted rules.

~~(7)(a) It is unlawful for any person to establish, conduct, manage, or operate a transitional living facility without obtaining a license from the agency.~~

~~(b) It is unlawful for any person to offer or advertise to the public, in any medium whatever, services or care defined in paragraph (1)(c) without obtaining a license from the agency.~~

~~(c) It is unlawful for a holder of a license issued under this section to advertise or represent to the public that it holds a license for a type of facility other than the facility for which its license is issued.~~

(4)~~(8)~~ In accordance with s. 408.811, any designated officer or employee of the agency, of the state, or of the local fire marshal may enter unannounced upon and into the premises of any facility licensed under this section in order to determine the state of compliance with this section, part II of chapter 408, and applicable rules ~~and the rules or standards in force under this section~~. ~~The right of entry and inspection also extends to any premises that the agency has reason to believe are being operated or maintained as a facility without a license; but such an entry or inspection may not be made without the permission of the owner or person in charge of the facility unless a warrant that authorizes the entry is first obtained from the circuit court. The warrant requirement extends only to a facility that the agency has reason to believe is being operated or maintained as a facility without a license. An application for a license or renewal thereof which is made under this section constitutes permission for, and acquiescence in, any entry or inspection of the premises for which the license is sought, in order to facilitate verification of the information submitted on or in connection with the application; to discover, investigate, and determine the existence of abuse or neglect; or to elicit, receive, respond to, and resolve complaints.~~

~~A current valid license constitutes unconditional permission for, and acquiescence in, any entry or inspection of the premises by authorized personnel. The agency retains the right of entry and inspection of facilities that have had a license revoked or suspended within the previous 24 months, to ensure that the facility is not operating unlawfully. However, before the facility is entered, a statement of probable cause must be filed with the director of the agency, who must approve or disapprove the action within 48 hours. Probable cause includes, but is not limited to, evidence that the facility holds itself out to the public as a provider of personal assistance services, or the receipt by the advisory council on brain and spinal cord injuries of a complaint about the facility.~~

~~(9) The agency may institute injunctive proceedings in a court of competent jurisdiction for temporary or permanent relief to:~~

~~(a) Enforce this section or any minimum standard, rule, or order issued pursuant thereto if the agency's effort to correct a violation through administrative fines has failed or when the violation materially affects the health, safety, or welfare of residents; or~~

~~(b) Terminate the operation of a facility if a violation of this section or of any standard or rule adopted pursuant thereto exists which materially affects the health, safety, or welfare of residents.~~

~~The Legislature recognizes that, in some instances, action is necessary to protect residents of facilities from immediately life-threatening situations. If it appears by competent evidence or a sworn, substantiated affidavit that a temporary injunction should issue, the court, pending the determination on final hearing, shall enjoin operation of the facility.~~

~~(10) The agency may impose an immediate moratorium on admissions to a facility when the agency determines that any condition in the facility presents a threat to the health, safety, or welfare of the residents in the facility. If a facility's license is denied, revoked, or suspended, the facility may be subject to the immediate imposition of a moratorium on admissions to run concurrently with licensure denial, revocation, or suspension.~~

(5)~~(11)~~(a) In accordance with part II of chapter 408, a violation of any provision of this section, part II of chapter 408, or applicable rules ~~adopted by the agency or department under this section~~ is punishable by payment of an administrative or a civil penalty fine not to exceed $5,000.

(b) Unlicensed activity pursuant to s. 408.812 ~~A violation of subsection (7) or rules adopted under that subsection~~ is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Each day of a continuing violation is a separate offense.

(6) The agency may adopt rules to administer the requirements of part II of chapter 408.

Section 92. Subsection (4) of section 400.902, Florida Statutes, is amended to read:

400.902 Definitions.—As used in this part, the term:

(4) "Owner or operator" means a licensee ~~any individual who has general administrative charge of a PPEC center~~.

Section 93. Subsection (3) is added to section 400.903, Florida Statutes, to read:

400.903 PPEC centers to be licensed; exemptions.—

(3) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this part and part II of chapter 408 and to entities licensed by or applying for such licensure from the agency pursuant to this part. A license issued by the agency is required for the operation of a PPEC center in this state.

Section 94. Section 400.905, Florida Statutes, is amended to read:

400.905 License required; fee; exemption~~; display~~.—

~~(1)(a) It is unlawful to operate or maintain a PPEC center without first obtaining from the agency a license authorizing such operation. The agency is responsible for licensing PPEC centers in accordance with the provisions of this part.~~

~~(b) Any person who violates paragraph (a) is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

(1)~~(2)~~ In addition to the requirements of part II of chapter 408, separate licenses are required for PPEC centers maintained on separate premises, even though they are operated under the same management. Separate licenses are not required for separate buildings on the same grounds.

(2)~~(3)~~ In accordance with s. 408.805, an applicant or licensee shall pay a fee for each license application submitted under this part, part II of chapter 408, and applicable rules. The amount of the fee shall be established by rule and may not be less than $1,000 or more than $3,000 per biennium. ~~The annual license fee required of a PPEC center shall be in an amount determined by the agency to be sufficient to cover the agency's costs in carrying out its responsibilities under this part, but shall not be less than $500 or more than $1,500.~~

(3)~~(4)~~ County-operated or municipally operated PPEC centers applying for licensure under this part are exempt from the payment of license fees.

~~(5) The license shall be displayed in a conspicuous place inside the PPEC center.~~

~~(6) A license shall be valid only in the possession of the individual, firm, partnership, association, or corporation to whom it is issued and shall not be subject to sale, assignment, or other transfer, voluntary or involuntary; nor shall a license be valid for any premises other than that for which originally issued.~~

~~(7) Any license granted by the agency shall state the maximum capacity of the facility, the date the license was issued, the expiration date of the license, and any other information deemed necessary by the agency.~~

Section 95. Section 400.906, Florida Statutes, is amended to read:

400.906 Initial application for license; zoning.—

~~(1) Application for a license shall be made to the agency on forms furnished by it and shall be accompanied by the appropriate license fee unless the applicant is exempt from payment of the fee as provided in s. 400.905.~~

~~(2)~~ In addition to the requirements of part II of chapter 408, the application must ~~shall be under oath and shall~~ contain the ~~following:~~

~~(a) The name and address of the applicant and the name by which the facility is to be known. Pursuant thereto:~~

~~1. If the applicant is a firm, partnership, or association, the application shall contain the name and address of every member thereof.~~

~~2. If the applicant is a corporation, the application shall contain its name and address, the names and addresses of its directors and officers, and the name and address of each person having at least a 10 percent interest in the corporation.~~

~~(b) Information which provides a source to establish the suitable character and competency of the applicant in accordance with the provisions of s. 402.305(2) and, if applicable, of the owner or operator, including the name and address of any licensed facility with which the applicant or owner or operator has been affiliated through ownership or employment within 5 years of the date of the application for a license.~~

~~(c) The names and addresses of other persons of whom the agency may inquire as to the character and reputation of the applicant and, if applicable, of the owner or operator.~~

~~(d) The names and addresses of other persons of whom the agency may inquire as to the financial responsibility of the applicant.~~

~~(e) Such other reasonable information as may be required by the agency to evaluate the ability of the applicant to meet the responsibilities entailed under this part.~~

~~(f) The~~ location of the facility for which a license is sought and documentation, signed by the appropriate local government official, which states that the applicant has met local zoning requirements.

~~(3) The applicant for licensure shall furnish satisfactory proof of financial ability to operate and conduct the PPEC center in accordance with the requirements of this part.~~

~~(4) The applicant for licensure shall furnish proof of adequate liability insurance coverage or protection.~~

~~(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.~~

~~(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 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.~~

~~(h) The agency may deny or revoke licensure if the applicant:~~

~~1. Has falsely represented a material fact in the application required by paragraph (e) or paragraph (f), or has omitted any material fact from the application required by paragraph (e) or paragraph (f); or~~

~~2. Has had prior action taken against the applicant under the Medicaid or Medicare program as set forth in paragraph (e).~~

~~(i) An application for license renewal must contain the information required under paragraphs (e) and (f).~~

Section 96. Section 400.907, Florida Statutes, is amended to read:

400.907 Denial, suspension, revocation of licensure; administrative fines; grounds.—

(1) In accordance with part II of chapter 408, the agency may deny, revoke, and ~~or~~ suspend a license and ~~or~~ impose an administrative fine for the violation of any provision of this part, part II of chapter 408, or applicable rules ~~in the manner provided in chapter 120~~.

(2) Any of the following actions by a PPEC center or its employee is grounds for action by the agency against a PPEC center or its employee:

(a) An intentional or negligent act materially affecting the health or safety of children in the PPEC center.

(b) A violation of the provisions of this part, part II of chapter 408, or applicable rules ~~or of any standards or rules adopted pursuant to this part~~.

(c) Multiple and repeated violations of this part or part II of chapter 408 or of minimum standards or rules adopted pursuant to this part or part II of chapter 408.

~~(3) The agency shall be responsible for all investigations and inspections conducted pursuant to this part.~~

Section 97. Section 400.908, Florida Statutes, is amended to read:

400.908 Administrative fines; disposition of fees and fines.—

(1)(a) If the agency determines that a PPEC center is ~~being operated without a license or is otherwise~~ not in compliance with ~~rules adopted under~~ this part, part II of chapter 408, or applicable rules, the agency~~, notwithstanding any other administrative action it takes, shall make a reasonable attempt to discuss each violation and recommended corrective action with the owner of the PPEC center prior to written notification thereof. The agency~~ may request that the PPEC center submit a corrective action plan that ~~which~~ demonstrates a good faith effort to remedy each violation by a specific date, subject to the approval of the agency.

(b) In accordance with part II of chapter 408, the agency may fine a PPEC center or employee found in violation of ~~rules adopted pursuant to~~ this part, part II of chapter 408, or applicable rules, in an amount not to exceed $500 for each violation. Such fine may not exceed $5,000 in the aggregate.

(c) The failure to correct a violation by the date set by the agency, or the failure to comply with an approved corrective action plan, is a separate violation for each day such failure continues, unless the agency approves an extension to a specific date.

~~(d) If a PPEC center desires to appeal any agency action under this section and the fine is upheld, the violator shall pay the fine, plus interest at the legal rate specified in s. 687.01, for each day beyond the date set by the agency for payment of the fine.~~

(2) In determining if a fine is to be imposed and in fixing the amount of any fine, the agency shall consider the following factors:

(a) The gravity of the violation, including the probability that death or serious physical or emotional harm to a child will result or has resulted, the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or rules were violated.

(b) Actions taken by the owner or operator to correct violations.

(c) Any previous violations.

(d) The financial benefit to the PPEC center of committing or continuing the violation.

~~(3) Fees and fines received by the agency under this part shall be deposited in the Health Care Trust Fund created in s. 408.16.~~

Section 98. Section 400.910, Florida Statutes, is repealed.

Section 99. Section 400.911, Florida Statutes, is repealed.

Section 100. Section 400.912, Florida Statutes, is amended to read:

400.912 Closing of a PPEC center.—

~~(1)~~ Whenever a PPEC center voluntarily discontinues operation, it shall, ~~inform the agency in writing~~ at least 30 days before the discontinuance of operation. ~~The PPEC center shall also, at such time~~, inform each child's legal guardian of the fact and the proposed time of such discontinuance.

~~(2) Immediately upon discontinuance of the operation of a PPEC center, the owner or operator shall surrender the license therefor to the agency and the license shall be canceled.~~

Section 101. Section 400.913, Florida Statutes, is repealed.

Section 102. Subsection (1) of section 400.914, Florida Statutes, is amended to read:

400.914 Rules establishing standards.—

(1) Pursuant to the intention of the Legislature to provide safe and sanitary facilities and healthful programs, the agency in conjunction with the Division of Children's Medical Services Prevention and Intervention of the Department of Health shall adopt and publish rules to implement the provisions of this part and part II of chapter 408, which shall include reasonable and fair standards. Any conflict between these standards and those that may be set forth in local, county, or city ordinances shall be resolved in favor of those having statewide effect. Such standards shall relate to:

(a) The assurance that PPEC services are family centered and provide individualized medical, developmental, and family training services.

(b) The maintenance of PPEC centers, not in conflict with the provisions of chapter 553 and based upon the size of the structure and number of children, relating to plumbing, heating, lighting, ventilation, and other building conditions, including adequate space, which will ensure the health, safety, comfort, and protection from fire of the children served.

(c) The appropriate provisions of the most recent edition of the "Life Safety Code" (NFPA-101) shall be applied.

(d) The number and qualifications of all personnel who have responsibility for the care of the children served.

(e) All sanitary conditions within the PPEC center and its surroundings, including water supply, sewage disposal, food handling, and general hygiene, and maintenance thereof, which will ensure the health and comfort of children served.

(f) Programs and basic services promoting and maintaining the health and development of the children served and meeting the training needs of the children's legal guardians.

(g) Supportive, contracted, other operational, and transportation services.

(h) Maintenance of appropriate medical records, data, and information relative to the children and programs. Such records shall be maintained in the facility for inspection by the agency.

Section 103. Subsection (3) of section 400.915, Florida Statutes, is amended to read:

400.915 Construction and renovation; requirements.—The requirements for the construction or renovation of a PPEC center shall comply with:

(3) The standards or rules adopted pursuant to this part and part II of chapter 408.

Section 104. Section 400.916, Florida Statutes, is amended to read:

400.916 Prohibited acts; penalty for violation.—

~~(1) It is unlawful for any person or public body to offer or advertise to the public, in any way or by any medium, basic services as defined in this part without obtaining a valid current license. It is unlawful for any holder of a license issued pursuant to this part to advertise or hold out to the public that it holds a license for a PPEC center other than that for which it actually holds a license.~~

~~(2)~~ Any person who violates s. 408.812 commits ~~the provisions of subsection (1) is guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.083. Each day of continuing violation is ~~shall be considered~~ a separate offense.

Section 105. Section 400.917, Florida Statutes, is repealed.

Section 106. Section 400.925, Florida Statutes, is amended to read:

400.925 Definitions.—As used in this part, the term:

(1) "Accrediting organizations" means the Joint Commission on Accreditation of Healthcare Organizations or other national accreditation agencies whose standards for accreditation are comparable to those required by this part for licensure.

~~(2) "Affiliated person" means any person who directly or indirectly manages, controls, or oversees the operation of a corporation or other business entity that is a licensee, regardless of whether such person is a partner, shareholder, owner, officer, director, agent, or employee of the entity.~~

(2)~~(3)~~ "Agency" means the Agency for Health Care Administration.

~~(4) "Applicant" means an individual applicant in the case of a sole proprietorship, or any officer, director, agent, managing employee, general manager, or affiliated person, or any partner or shareholder having an ownership interest equal to 5 percent or greater in the corporation, partnership, or other business entity.~~

(3)~~(5)~~ "Consumer" or "patient" means any person who uses home medical equipment in his or her place of residence.

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

(5)~~(7)~~ "General manager" means the individual who has the general administrative charge of the premises of a licensed home medical equipment provider.

(6)~~(8)~~ "Home medical equipment" includes any product as defined by the Federal Drug Administration's Drugs, Devices and Cosmetics Act, any products reimbursed under the Medicare Part B Durable Medical Equipment benefits, or any products reimbursed under the Florida Medicaid durable medical equipment program. Home medical equipment includes oxygen and related respiratory equipment; manual, motorized, or customized wheelchairs and related seating and positioning, but does not include prosthetics or orthotics or any splints, braces, or aids custom fabricated by a licensed health care practitioner; motorized scooters; personal transfer systems; and specialty beds, for use by a person with a medical need.

(7)~~(9)~~ "Home medical equipment provider" means any person or entity that sells or rents or offers to sell or rent to or for a consumer:

(a) Any home medical equipment and services; or

(b) Home medical equipment that requires any home medical equipment services.

(8)~~(10)~~ "Home medical equipment provider personnel" means persons who are employed by or under contract with a home medical equipment provider.

(9)~~(11)~~ "Home medical equipment services" means equipment management and consumer instruction, including selection, delivery, setup, and maintenance of equipment, and other related services for the use of home medical equipment in the consumer's regular or temporary place of residence.

~~(12) "Licensee" means the person or entity to whom a license to operate as a home medical equipment provider is issued by the agency.~~

(10)~~(13)~~ "Life-supporting or life-sustaining equipment" means a device that is essential to, or that yields information that is essential to, the restoration or continuation of a bodily function important to the continuation of human life. Life-supporting or life-sustaining equipment includes apnea monitors, enteral feeding pumps, infusion pumps, portable home dialysis equipment, and ventilator equipment and supplies for all related equipment, including oxygen equipment and related respiratory equipment.

(11)~~(14)~~ "Moratorium" means a mandated temporary cessation or suspension of the sale, rental, or offering of equipment after the imposition of the moratorium, in accordance with part II of chapter 408. Services related to equipment sold or rented prior to the moratorium must be continued without interruption, unless determined ~~deemed~~ otherwise by the agency.

~~(15) "Person" means any individual, firm, partnership, corporation, or association.~~

(12)~~(16)~~ "Premises" means those buildings and equipment which are located at the address of the licensed home medical equipment provider for the provision of home medical equipment services, which are in such reasonable proximity as to appear to the public to be a single provider location, and which comply with zoning ordinances.

(13)~~(17)~~ "Residence" means the consumer's home or place of residence, which may include nursing homes, assisted living facilities, transitional living facilities, adult family-care homes, or other congregate residential facilities.

Section 107. Subsections (3) and subsection (6) of section 400.93, Florida Statutes, are amended to read:

400.93 Licensure required; exemptions; unlawful acts; penalties.—

(3) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this part and part II of chapter 408 and to entities licensed by or applying for such licensure from the agency pursuant to this part. A license issued by the agency is required in order to provide home medical equipment and services in this state. ~~A home medical equipment provider must be licensed by the agency to operate in this state or to provide home medical equipment and services to consumers in this state. A standard license issued to a home medical equipment provider, unless sooner suspended or revoked, expires 2 years after its effective date.~~

(6)

~~(a) It is unlawful for any person to offer or advertise home medical equipment and services to the public unless he or she has a valid license under this part or is exempted from licensure under subsection (5). It is unlawful for any holder of a license issued under this part to advertise or indicate to the public that it holds a home medical equipment provider license other than the one it has been issued.~~

(a)~~(b)~~ ~~A person who violates paragraph (a) is subject to an injunctive proceeding under s. 400.956.~~ A violation of s. 408.812 ~~paragraph (a)~~ is a deceptive and unfair trade practice and constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act.

(b)~~(c)~~ A person who violates s. 408.812 ~~paragraph (a)~~ commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A person who commits a second or subsequent violation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Each day of continuing violation constitutes a separate offense.

~~(d) The following penalties shall be imposed for operating an unlicensed home medical equipment provider:~~

~~1. Any person or entity who operates an unlicensed provider commits a felony of the third degree.~~

~~2. For any person or entity who has received government reimbursement for services provided by an unlicensed provider, the agency shall make a fraud referral to the appropriate government reimbursement program.~~

~~3. For any licensee found to be concurrently operating licensed and unlicensed provider premises, the agency may impose a fine or moratorium, or revoke existing licenses of any or all of the licensee's licensed provider locations until such time as the unlicensed provider premises is licensed.~~

~~(e) A provider found to be operating without a license may apply for licensure, and must cease operations until a license is awarded by the agency.~~

Section 108. Section 400.931, Florida Statutes, is amended to read:

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

~~(1) Application for an initial license or for renewal of an existing license must be made under oath to the agency on forms furnished by it and must be accompanied by the appropriate license fee as provided in subsection (12).~~

(1)~~(2)~~ In addition to the requirements of part II of chapter 408, the applicant must file with the application satisfactory proof that the home medical equipment provider is in compliance with this part and applicable rules, including:

(a) A report, by category, of the equipment to be provided, indicating those offered either directly by the applicant or through contractual arrangements with existing providers. Categories of equipment include:

1. Respiratory modalities.

2. Ambulation aids.

3. Mobility aids.

4. Sickroom setup.

5. Disposables.

(b) A report, by category, of the services to be provided, indicating those offered either directly by the applicant or through contractual arrangements with existing providers. Categories of services include:

1. Intake.

2. Equipment selection.

3. Delivery.

4. Setup and installation.

5. Patient training.

6. Ongoing service and maintenance.

7. Retrieval.

(c) A listing of those with whom the applicant contracts, both the providers the applicant uses to provide equipment or services to its consumers and the providers for whom the applicant provides services or equipment.

(2)~~(3)~~ As an alternative to submitting proof of financial ability to operate as required in s. 408.810(8) ~~The applicant for initial licensure must demonstrate financial ability to operate~~, the applicant may submit ~~which may be accomplished by the submission of~~ a $50,000 surety bond to the agency.

~~(4) An applicant for renewal who has demonstrated financial inability to operate must demonstrate financial ability to operate.~~

~~(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).~~

~~(d) 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 disclosure of ownership and control interest requirements of the Medicaid or Medicare programs shall be accepted in lieu of this submission.~~

~~(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.~~

~~(g) The agency may deny or revoke licensure to any potential licensee if any applicant:~~

~~1. Has falsely represented a material fact in the application required by paragraphs (d) and (e), or has omitted any material fact from the application required by paragraphs (d) and (e); or~~

~~2. Has had prior Medicaid or Medicare action taken against the applicant as set forth in paragraph (d).~~

~~(h) Upon licensure renewal, each applicant must submit to the agency, under penalty of perjury, an affidavit of compliance with the background screening provisions of this section.~~

(3)~~(6)~~ As specified in part II of chapter 408, the home medical equipment provider must also obtain and maintain professional and commercial liability insurance. Proof of liability insurance, as defined in s. 624.605, must be submitted with the application. The agency shall set the required amounts of liability insurance by rule, but the required amount must not be less than $250,000 per claim. In the case of contracted services, it is required that the contractor have liability insurance not less than $250,000 per claim.

~~(7) A provisional license shall be issued to an approved applicant for initial licensure for a period of 90 days, during which time a survey must be conducted demonstrating substantial compliance with this section. A provisional license shall also be issued pending the results of an applicant's Federal Bureau of Investigation report of background screening confirming that all standards have been met. If substantial compliance is demonstrated, a standard license shall be issued to expire 2 years after the effective date of the provisional license.~~

~~(8) Ninety days before the expiration date, an application for license renewal must be submitted to the agency under oath on forms furnished by the agency, and a license shall be renewed if the applicant has met the requirements established under this part and applicable rules. The home medical equipment provider must file with the application satisfactory proof that it is in compliance with this part and applicable rules. The home medical equipment provider must submit satisfactory proof of its financial ability to comply with the requirements of this part.~~

~~(9) When a change of ownership of a home medical equipment provider occurs, the prospective owner must submit an initial application for a license at least 15 days before the effective date of the change of ownership. An~~

~~application for change of ownership of a license is required when ownership, a majority of the ownership, or controlling interest of a licensed home medical equipment provider is transferred or assigned and when a licensee agrees to undertake or provide services to the extent that legal liability for operation of the home medical equipment provider rests with the licensee. A provisional license shall be issued to the new owner for a period of 90 days, during which time all required documentation must be submitted and a survey must be conducted demonstrating substantial compliance with this section. If substantial compliance is demonstrated, a standard license shall be issued to expire 2 years after the issuance of the provisional license.~~

(4)~~(10)~~ When a change of the general manager of a home medical equipment provider occurs, the licensee must notify the agency of the change within 45 days. ~~thereof and must provide evidence of compliance with the background screening requirements in subsection (5); except that a general manager who has met the standards for the Department of Law Enforcement background check, but for whom background screening results from the Federal Bureau of Investigation have not yet been received, may be employed pending receipt of the Federal Bureau of Investigation background screening report. An individual may not continue to serve as general manager if the Federal Bureau of Investigation background screening report indicates any violation of background screening standards.~~

(5)~~(11)~~ In accordance with s. 408.805, an applicant or a licensee shall pay a fee for each license application submitted under this part, part II of chapter 408, and applicable rules. The amount of the fee shall be established by rule and may not exceed $300 per biennium. ~~All licensure fees required of a home medical equipment provider are nonrefundable.~~ The agency shall set the fees in an amount that is sufficient to cover its costs in carrying out its responsibilities under this part. However, state, county, or municipal governments applying for licenses under this part are exempt from the payment of license fees. ~~All fees collected under this part must be deposited in the Health Care Trust Fund for the administration of this part.~~

(6)~~(12)~~ An applicant for initial licensure, renewal, or change of ownership shall also pay ~~a license processing fee not to exceed $300, to be paid by all applicants, and~~ an inspection fee not to exceed $400, which shall ~~to~~ be paid by all applicants except those not subject to licensure inspection by the agency as described in s. 400.933~~(2)~~.

~~(13) When a change is reported which requires issuance of a license, a fee must be assessed. The fee must be based on the actual cost of processing and issuing the license.~~

~~(14) When a duplicate license is issued, a fee must be assessed, not to exceed the actual cost of duplicating and mailing.~~

~~(15) When applications are mailed out upon request, a fee must be assessed, not to exceed the cost of the printing, preparation, and mailing.~~

~~(16) The license must be displayed in a conspicuous place in the administrative office of the home medical equipment provider and is valid only while in the possession of the person or entity to which it is issued. The license may~~

~~not be sold, assigned, or otherwise transferred, voluntarily or involuntarily, and is valid only for the home medical equipment provider and location for which originally issued.~~

~~(17) A home medical equipment provider against whom a proceeding for revocation or suspension, or for denial of a renewal application, is pending at the time of license renewal may be issued a provisional license effective until final disposition by the agency of such proceedings. If judicial relief is sought from the final disposition, the court that has jurisdiction may issue a temporary permit for the duration of the judicial proceeding.~~

Section 109. Section 400.932, Florida Statutes, is amended to read:

400.932 Administrative penalties~~; injunctions; emergency orders; moratoriums~~.—

(1) The agency may deny, revoke, and ~~or~~ suspend a license and~~, or~~ impose an administrative fine not to exceed $5,000 per violation~~, per day, or initiate injunctive proceedings under s. 400.956~~.

(2) Any of the following actions by an employee of a home medical equipment provider are ~~or any of its employees is~~ grounds for administrative action or penalties by the agency:

(a) Violation of this part, part II of chapter 408, or ~~of~~ applicable rules.

(b) An intentional, reckless, or negligent act that materially affects the health or safety of a patient.

(3) The agency may deny or revoke the license of any applicant that:

~~(a) Made a false representation or omission of any material fact in making the application, including the submission of an application that conceals the controlling or ownership interest or any officer, director, agent, managing employee, affiliated person, partner, or shareholder who may not be eligible to participate;~~

(a)~~(b)~~ Has been previously found by any professional licensing, certifying, or standards board or agency to have violated the standards or conditions relating to licensure or certification or the quality of services provided. "Professional licensing, certifying, or standards board or agency" shall include, but is not limited to, practitioners, health care facilities, programs, or services, or residential care, treatment programs, or other human services; or

(b)~~(c)~~ Has been or is currently excluded, suspended, or terminated from, or has involuntarily withdrawn from, ~~participation in Florida's Medicaid program or any other state's Medicaid program, or participation in the Medicare program or~~ any ~~other~~ governmental or private health care or health insurance program.

~~(4) The agency may issue an emergency order immediately suspending or revoking a license when it determines that any condition within the~~

~~responsibility of the home medical equipment provider presents a clear and present danger to public health and safety.~~

~~(5) The agency may impose an immediate moratorium on any licensed home medical equipment provider when the agency determines that any condition within the responsibility of the home medical equipment provider presents a threat to public health or safety.~~

Section 110. Section 400.933, Florida Statutes, is amended to read:

400.933 Licensure inspections and investigations.—

(1) In addition to the requirements of s. 408.811, the agency shall make or cause to be made such inspections and investigations as it considers necessary, including:

(a) Licensure inspections.

(b) Inspections directed by the federal Centers for Medicare and Medicaid Services ~~Health Care Financing Administration~~.

(c) Licensure complaint investigations, including full licensure investigations with a review of all licensure standards as outlined in the administrative rules. Complaints received by the agency from individuals, organizations, or other sources are subject to review and investigation by the agency.

(2) The agency shall accept, in lieu of its own periodic inspections for licensure, submission of the following:

(a) The survey or inspection of an accrediting organization, provided the accreditation of the licensed home medical equipment provider is not provisional and provided the licensed home medical equipment provider authorizes release of, and the agency receives the report of, the accrediting organization; or

(b) A copy of a valid medical oxygen retail establishment permit issued by the Department of Health, pursuant to chapter 499.

Section 111. Section 400.935, Florida Statutes, is amended to read:

400.935 Rules establishing minimum standards.—The agency shall adopt, publish, and enforce rules to implement this part and part II of chapter 408, which must provide reasonable and fair minimum standards relating to:

(1) The qualifications and minimum training requirements of all home medical equipment provider personnel.

~~(2) License application and renewal.~~

~~(3) License and inspection fees.~~

(2)~~(4)~~ Financial ability to operate.

(3)~~(5)~~ The administration of the home medical equipment provider.

(4)~~(6)~~ Procedures for maintaining patient records.

(5)~~(7)~~ Ensuring that the home medical equipment and services provided by a home medical equipment provider are in accordance with the plan of treatment established for each patient, when provided as a part of a plan of treatment.

(6)~~(8)~~ Contractual arrangements for the provision of home medical equipment and services by providers not employed by the home medical equipment provider providing for the consumer's needs.

(7)~~(9)~~ Physical location and zoning requirements.

(8)~~(10)~~ Home medical equipment requiring home medical equipment services.

(9)~~(11)~~ Preparation of the comprehensive emergency management plan under s. 400.934 and the establishment of minimum criteria for the plan, including the maintenance of patient equipment and supply lists that can accompany patients who are transported from their homes. Such rules shall be formulated in consultation with the Department of Health and the Department of Community Affairs.

Section 112. Section 400.95, Florida Statutes, is repealed.

Section 113. Subsection (4) of section 400.955, Florida Statutes, is amended to read:

400.955 Procedures for screening of home medical equipment provider personnel.—

~~(4) The general manager of each home medical equipment provider must sign an affidavit annually, under penalty of perjury, stating that all personnel hired on or after July 1, 1999, have been screened and that its remaining personnel have worked for the home medical equipment provider continuously since before July 1, 1999.~~

Section 114. Section 400.956, Florida Statutes, is repealed.

Section 115. Section 400.962, Florida Statutes, is amended to read:

400.962 License required; license application.—

(1) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this part and part II of chapter 408 and to entities licensed by or applying for such licensure from the Agency for Health Care Administration pursuant to this part. A license issued by the agency is required in order to operate ~~It is unlawful to operate~~ an intermediate care facility for the developmentally disabled in this state ~~without a license~~.

(2) Separate licenses are required for facilities maintained on separate premises even if operated under the same management. However, a separate license is not required for separate buildings on the same grounds.

(3) In accordance with s. 408.805, an applicant or licensee shall pay a fee for each license application submitted under this part, part II of chapter 408, and applicable rules. The amount of the fee shall be $234 per bed unless modified by rule. ~~The basic license fee collected shall be deposited in the Health Care Trust Fund, established for carrying out the purposes of this chapter.~~

~~(4) The license must be conspicuously displayed inside the facility.~~

~~(5) A license is valid only in the hands of the individual, firm, partnership, association, or corporation to whom it is issued. A license is not valid for any premises other than those for which it was originally issued and may not be sold, assigned, or otherwise transferred, voluntarily or involuntarily.~~

~~(6) An application for a license shall be made to the agency on forms furnished by it and must be accompanied by the appropriate license fee.~~

~~(7) The application must be under oath and must contain the following:~~

~~(a) The name, address, and social security number of the applicant if an individual; if the applicant is a firm, partnership, or association, its name, address, and employer identification number (EIN), and the name and address of every member; if the applicant is a corporation, its name, address, and employer identification number (EIN), and the name and address of its director and officers and of each person having at least a 5 percent interest in the corporation; and the name by which the facility is to be known.~~

~~(b) The name of any person whose name is required on the application under paragraph (a) and who owns at least a 10 percent interest in any professional service, firm, association, partnership, or corporation providing goods, leases, or services to the facility for which the application is made, and the name and address of the professional service, firm, association, partnership, or corporation in which such interest is held.~~

~~(c)~~ The application must indicate the location of the facility for which a license is sought and ~~an indication~~ that such location conforms to the local zoning ordinances.

~~(d) The name of the persons under whose management or supervision the facility will be operated.~~

~~(e) The total number of beds.~~

(4)~~(8)~~ The applicant must demonstrate that sufficient numbers of staff, qualified by training or experience, will be employed to properly care for the type and number of residents who will reside in the facility.

~~(9) The applicant must submit evidence that establishes the good moral character of the applicant, manager, supervisor, and administrator. An applicant who is an individual or a member of a board of directors or officer of an applicant that is a firm, partnership, association, or corporation must not have been convicted, or found guilty, regardless of adjudication, of a crime in any jurisdiction which affects or may potentially affect residents in the facility.~~

~~(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 or chapter 429 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.~~

~~(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 disclosure of ownership and control interest requirements of 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'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.~~

~~(g) An application for license renewal must contain the information required under paragraphs (e) and (f).~~

~~(11) The applicant must furnish satisfactory proof of financial ability to operate and conduct the facility in accordance with the requirements of this part and all rules adopted under this part, and the agency shall establish standards for this purpose.~~

(5)~~(12)~~ The applicant must agree to provide or arrange for active treatment services by an interdisciplinary team to maximize individual independence or prevent regression or loss of functional status. Standards for active treatment shall be adopted by the Agency for Health Care Administration by rule pursuant to ss. 120.536(1) and 120.54. Active treatment services shall be provided in accordance with the individual support plan and shall be reimbursed as part of the per diem rate as paid under the Medicaid program.

Section 116. Section 400.963, Florida Statutes, is repealed.

Section 117. Section 400.965, Florida Statutes, is repealed.

Section 118. Section 400.967, Florida Statutes, is amended to read:

400.967 Rules and classification of deficiencies.—

(1) It is the intent of the Legislature that rules adopted and enforced under this part and part II of chapter 408 include criteria by which a reasonable and consistent quality of resident care may be ensured, the results of such resident care can be demonstrated, and safe and sanitary facilities can be provided.

(2) Pursuant to the intention of the Legislature, the agency, in consultation with the Agency for Persons with Disabilities and the Department of Elderly Affairs, shall adopt and enforce rules to administer this part and part II of chapter 408, which shall include reasonable and fair criteria governing:

(a) The location and construction of the facility; including fire and life safety, plumbing, heating, cooling, lighting, ventilation, and other housing conditions that will ensure the health, safety, and comfort of residents. The

agency shall establish standards for facilities and equipment to increase the extent to which new facilities and a new wing or floor added to an existing facility after July 1, 2000, are structurally capable of serving as shelters only for residents, staff, and families of residents and staff, and equipped to be self-supporting during and immediately following disasters. The Agency for Health Care Administration shall work with facilities licensed under this part and report to the Governor and the Legislature by April 1, 2000, its recommendations for cost-effective renovation standards to be applied to existing facilities. In making such rules, the agency shall be guided by criteria recommended by nationally recognized, reputable professional groups and associations having knowledge concerning such subject matters. The agency shall update or revise such criteria as the need arises. All facilities must comply with those lifesafety code requirements and building code standards applicable at the time of approval of their construction plans. The agency may require alterations to a building if it determines that an existing condition constitutes a distinct hazard to life, health, or safety. The agency shall adopt fair and reasonable rules setting forth conditions under which existing facilities undergoing additions, alterations, conversions, renovations, or repairs are required to comply with the most recent updated or revised standards.

(b) The number and qualifications of all personnel, including management, medical nursing, and other personnel, having responsibility for any part of the care given to residents.

(c) All sanitary conditions within the facility and its surroundings, including water supply, sewage disposal, food handling, and general hygiene, which will ensure the health and comfort of residents.

(d) The equipment essential to the health and welfare of the residents.

(e) A uniform accounting system.

(f) The care, treatment, and maintenance of residents and measurement of the quality and adequacy thereof.

(g) The preparation and annual update of a comprehensive emergency management plan. The agency shall adopt rules establishing minimum criteria for the plan after consultation with the Department of Community Affairs. 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 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 Department of Elderly Affairs, the Agency for Persons with Disabilities, the Agency for Health Care Administration, 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.

~~(h) The posting of licenses. Each licensee shall post its license in a prominent place that is in clear and unobstructed public view at or near the place where residents are being admitted to the facility.~~

(h)~~(i)~~ The use of restraint and seclusion. Such rules must be consistent with recognized best practices; prohibit inherently dangerous restraint or seclusion procedures; establish limitations on the use and duration of restraint and seclusion; establish measures to ensure the safety of clients and staff during an incident of restraint or seclusion; establish procedures for staff to follow before, during, and after incidents of restraint or seclusion, including individualized plans for the use of restraints or seclusion in emergency situations; establish professional qualifications of and training for staff who may order or be engaged in the use of restraint or seclusion; establish requirements for facility data collection and reporting relating to the use of restraint and seclusion; and establish procedures relating to the documentation of the use of restraint or seclusion in the client's facility or program record.

(3) The agency shall adopt rules to provide that, when the criteria established under this part and part II of chapter 408 ~~subsection (2)~~ are not met, such deficiencies shall be classified according to the nature of the deficiency. The agency shall indicate the classification on the face of the notice of deficiencies as follows:

(a) Class I deficiencies are those which the agency determines present an ~~and~~ imminent danger to the residents or guests of the facility or a substantial probability that death or serious physical harm would result therefrom. The condition or practice constituting a class I violation must be abated or eliminated immediately, unless a fixed period of time, as determined by the agency, is required for correction. ~~Notwithstanding s. 400.121(2),~~ A class I deficiency is subject to a civil penalty in an amount not less than $5,000 and not exceeding $10,000 for each deficiency. A fine may be levied notwithstanding the correction of the deficiency.

(b) Class II deficiencies are those which the agency determines have a direct or immediate relationship to the health, safety, or security of the facility residents, other than class I deficiencies. A class II deficiency is subject to a civil penalty in an amount not less than $1,000 and not exceeding $5,000 for each deficiency. A citation for a class II deficiency shall specify the time within which the deficiency must be corrected. If a class II deficiency is corrected within the time specified, no civil penalty shall be imposed, unless it is a repeated offense.

(c) Class III deficiencies are those which the agency determines to have an indirect or potential relationship to the health, safety, or security of the facility residents, other than class I or class II deficiencies. A class III deficiency is subject to a civil penalty of not less than $500 and not exceeding $1,000 for each deficiency. A citation for a class III deficiency shall specify the time within which the deficiency must be corrected. If a class III defi-

ciency is corrected within the time specified, no civil penalty shall be imposed, unless it is a repeated offense.

~~(4) Civil penalties paid by any licensee under subsection (3) shall be deposited in the Health Care Trust Fund and expended as provided in s. 400.063.~~

(4)~~(5)~~ The agency shall approve or disapprove the plans and specifications within 60 days after receipt of the final plans and specifications. The agency may be granted one 15-day extension for the review period, if the secretary of the agency so approves. If the agency fails to act within the specified time, it is deemed to have approved the plans and specifications. When the agency disapproves plans and specifications, it must set forth in writing the reasons for disapproval. Conferences and consultations may be provided as necessary.

(5)~~(6)~~ The agency may charge an initial fee of $2,000 for review of plans and construction on all projects, no part of which is refundable. The agency may also collect a fee, not to exceed 1 percent of the estimated construction cost or the actual cost of review, whichever is less, for the portion of the review which encompasses initial review through the initial revised construction document review. The agency may collect its actual costs on all subsequent portions of the review and construction inspections. Initial fee payment must accompany the initial submission of plans and specifications. Any subsequent payment that is due is payable upon receipt of the invoice from the agency. Notwithstanding any other provision of law, all money received by the agency under this section shall be deemed to be trust funds, to be held and applied solely for the operations required under this section.

Section 119. Section 400.968, Florida Statutes, is amended to read:

400.968 Right of entry~~; protection of health, safety, and welfare~~.—

~~(1)~~ In addition to the requirements of s. 408.811, any designated officer or employee of the agency, or any officer or employee of the state~~,~~ or of the local fire marshal, may enter unannounced the premises of any facility licensed under this part in order to determine the state of compliance with this part, part II of chapter 408, and applicable rules ~~and the rules or standards in force under this part~~. ~~The right of entry and inspection also extends to any premises that the agency has reason to believe are being operated or maintained as a facility without a license; but such an entry or inspection may not be made without the permission of the owner or person in charge of the facility unless a warrant that authorizes the entry is first obtained from the circuit court. The warrant requirement extends only to a facility that the agency has reason to believe is being operated or maintained as a facility without a license. An application for a license or renewal thereof which is made under this section constitutes permission for, and acquiescence in, any entry or inspection of the premises for which the license is sought, in order to facilitate verification of the information submitted in connection with the application; to discover, investigate, and determine the existence of abuse or neglect; or to elicit, receive, respond to, and resolve complaints. A current valid license constitutes unconditional permission for, and acquiescence in, any entry or inspection of the premises by authorized~~

~~personnel. The agency retains the right of entry and inspection of facilities that have had a license revoked or suspended within the previous 24 months, to ensure that the facility is not operating unlawfully. However, before the facility is entered, a statement of probable cause must be filed with the director of the agency, who must approve or disapprove the action within 48 hours.~~

~~(2) The agency may institute injunctive proceedings in a court of competent jurisdiction for temporary or permanent relief to:~~

~~(a) Enforce this section or any minimum standard, rule, or order issued pursuant thereto if the agency's effort to correct a violation through administrative fines has failed or when the violation materially affects the health, safety, or welfare of residents; or~~

~~(b) Terminate the operation of a facility if a violation of this section or of any standard or rule adopted pursuant thereto exists which materially affects the health, safety, or welfare of residents.~~

~~The Legislature recognizes that, in some instances, action is necessary to protect residents of facilities from immediately life-threatening situations. If it appears by competent evidence or a sworn, substantiated affidavit that a temporary injunction should issue, the court, pending the determination on final hearing, shall enjoin operation of the facility.~~

~~(3) The agency may impose an immediate moratorium on admissions to a facility when the agency determines that any condition in the facility presents a threat to the health, safety, or welfare of the residents in the facility. If a facility's license is denied, revoked, or suspended, the facility may be subject to the immediate imposition of a moratorium on admissions to run concurrently with licensure denial, revocation, or suspension.~~

Section 120. Subsection (1) of section 400.969, Florida Statutes, is amended to read:

400.969 Violation of part; penalties.—

(1) In addition to the requirements of part II of chapter 408, and except as provided in s. 400.967(3), a violation of any provision of this part, part II of chapter 408, or applicable rules ~~adopted by the agency under this part~~ is punishable by payment of an administrative or civil penalty not to exceed $5,000.

Section 121. Section 400.980, Florida Statutes, is amended to read:

400.980 Health care services pools.—

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

(a) "Agency" means the Agency for Health Care Administration.

(b) "Health care services pool" means any person, firm, corporation, partnership, or association engaged for hire in the business of providing temporary employment in health care facilities, residential facilities, and agencies

for licensed, certified, or trained health care personnel including, without limitation, nursing assistants, nurses' aides, and orderlies. However, the term does not include nursing registries, a facility licensed under this chapter or chapter 429, a health care services pool established within a health care facility to provide services only within the confines of such facility, or any individual contractor directly providing temporary services to a health care facility without use or benefit of a contracting agent.

(2) The requirements of part II of chapter 408 apply to the provision of services that require licensure or registration pursuant to this part and part II of chapter 408 and to entities registered by or applying for such registration from the agency pursuant to this part. Registration or a license issued by the agency is required for the operation of ~~Each person who operates~~ a health care services pool in this state. In accordance with s. 408.805, an applicant or licensee shall pay a fee for each license application submitted using this part, part II of chapter 408, and applicable rules. ~~must register each separate business location with the agency.~~ The agency shall adopt rules and provide forms required for such registration and shall impose a registration fee in an amount sufficient to cover the cost of administering this part and part II of chapter 408 ~~section~~. In addition to the requirements in part II of chapter 408, the registrant must provide the agency with any change of information contained on the original registration application within 14 days prior to the change. ~~The agency may inspect the offices of any health care services pool at any reasonable time for the purpose of determining compliance with this section or the rules adopted under this section.~~

~~(3) Each application for registration must include:~~

~~(a) The name and address of any person who has an ownership interest in the business, and, in the case of a corporate owner, copies of the articles of incorporation, bylaws, and names and addresses of all officers and directors of the corporation.~~

~~(b) Any other information required by the agency.~~

(3)~~(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 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 controlling interests under the Medicaid or Medicare programs may 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 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.~~

~~(h) Failure to provide all required documentation within 30 days after a written request from the agency will result in denial of the application for registration.~~

~~(i) The agency must take final action on an application for registration within 60 days after receipt of all required documentation.~~

~~(j) The agency may deny, revoke, or suspend the registration of any applicant or registrant who:~~

~~1. Has falsely represented a material fact in the application required by paragraph (e) or paragraph (f), or has omitted any material fact from the application required by paragraph (e) or paragraph (f); or~~

~~2. Has had prior action taken against the applicant under the Medicaid or Medicare program as set forth in paragraph (e).~~

~~3. Fails to comply with this section or applicable rules.~~

~~4. Commits an intentional, reckless, or negligent act that materially affects the health or safety of a person receiving services.~~

~~(5) 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:~~

~~(a) 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 an applicant's qualifications to be a contractor under this section;~~

~~(b) Operate or attempt to operate an entity registered under this part with persons who do not meet the minimum standards of chapter 435 as contained in this section; or~~

~~(c) Use information from the criminal records obtained under this section for any purpose other than screening an applicant for temporary 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.~~

~~(6) 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.~~

~~(7) It is unlawful for a person to offer or advertise services, as defined by rule, to the public without obtaining a certificate of registration from the Agency for Health Care Administration. It is unlawful for any holder of a certificate of registration to advertise or hold out to the public that he or she holds a certificate of registration for other than that for which he or she actually holds a certificate of registration. Any person who violates this subsection is subject to injunctive proceedings under s. 400.515.~~

~~(8) Each registration shall be for a period of 2 years. The application for renewal must be received by the agency at least 30 days before the expiration date of the registration. An application for a new registration is required~~

~~within 30 days prior to the sale of a controlling interest in a health care services pool.~~

(4)~~(9)~~ A health care services pool may not require an employee to recruit new employees from persons employed at a health care facility to which the health care services pool employee is assigned. Nor shall a health care facility to which employees of a health care services pool are assigned recruit new employees from the health care services pool.

(5)~~(10)~~ A health care services pool shall document that each temporary employee provided to a health care facility has met the licensing, certification, training, or continuing education requirements, as established by the appropriate regulatory agency, for the position in which he or she will be working.

(6)~~(11)~~ When referring persons for temporary employment in health care facilities, a health care services pool shall comply with all pertinent state and federal laws, rules, and regulations relating to health, background screening, and other qualifications required of persons working in a facility of that type.

(7)~~(12)~~(a) As a condition of registration and prior to the issuance or renewal of a certificate of registration, a health care services pool applicant must prove financial responsibility to pay claims, and costs ancillary thereto, arising out of the rendering of services or failure to render services by the pool or by its employees in the course of their employment with the pool. The agency shall promulgate rules establishing minimum financial responsibility coverage amounts which shall be adequate to pay potential claims and costs ancillary thereto.

(b) Each health care services pool shall give written notification to the agency within 20 days after any change in the method of assuring financial responsibility or upon cancellation or nonrenewal of professional liability insurance. Unless the pool demonstrates that it is otherwise in compliance with the requirements of this subsection ~~section~~, the agency shall suspend the registration of the pool pursuant to s. 408.814 ~~ss. 120.569 and 120.57~~. Any suspension under this section shall remain in effect until the pool demonstrates compliance with the requirements of this subsection ~~section~~.

(c) Proof of financial responsibility must be demonstrated to the satisfaction of the agency, through one of the following methods:

1. Establishing and maintaining an escrow account consisting of cash or assets eligible for deposit in accordance with s. 625.52;

2. Obtaining and maintaining an unexpired irrevocable letter of credit established pursuant to chapter 675. Such letters of credit shall be nontransferable and nonassignable and shall be issued by any bank or savings association organized and existing under the laws of this state or any bank or savings association organized under the laws of the United States that has its principal place of business in this state or has a branch office which is authorized under the laws of this state or of the United States to receive deposits in this state; or

3. Obtaining and maintaining professional liability coverage from one of the following:

a. An authorized insurer as defined under s. 624.09;

b. An eligible surplus lines insurer as defined under s. 626.918(2);

c. A risk retention group or purchasing group as defined under s. 627.942; or

d. A plan of self-insurance as provided in s. 627.357.

(d) If financial responsibility requirements are met by maintaining an escrow account or letter of credit, as provided in this subsection ~~section~~, upon the entry of an adverse final judgment arising from a medical malpractice arbitration award from a claim of medical malpractice either in contract or tort, or from noncompliance with the terms of a settlement agreement arising from a claim of medical malpractice either in contract or tort, the financial institution holding the escrow account or the letter of credit shall pay directly to the claimant the entire amount of the judgment together with all accrued interest or the amount maintained in the escrow account or letter of credit as required by this subsection ~~section~~, whichever is less, within 60 days after the date such judgment became final and subject to execution, unless otherwise mutually agreed to in writing by the parties. If timely payment is not made, the agency shall suspend the registration of the pool pursuant to procedures set forth by the agency through rule. Nothing in this paragraph shall abrogate a judgment debtor's obligation to satisfy the entire amount of any judgment.

(e) Each health care services pool carrying claims-made coverage must demonstrate proof of extended reporting coverage through either tail or nose coverage, in the event the policy is canceled, replaced, or not renewed. Such extended coverage shall provide coverage for incidents that occurred during the claims-made policy period but were reported after the policy period.

(f) The financial responsibility requirements of this subsection ~~section~~ shall apply to claims for incidents that occur on or after January 1, 1991, or the initial date of registration in this state, whichever is later.

(g) Meeting the financial responsibility requirements of this subsection ~~section~~ must be established at the time of issuance or renewal of a certificate of registration.

(8)~~(13)~~ In addition to the requirements of part II of chapter 408, the agency shall adopt rules to implement this part ~~section~~, including rules providing for the establishment of:

(a) Minimum standards for the operation and administration of health care personnel pools, including procedures for recordkeeping and personnel.

(b) Fines for the violation of this part, part II of chapter 408, or applicable rules ~~section~~ in an amount not to exceed $2,500 ~~and suspension or revocation of registration~~.

~~(c) Disciplinary sanctions for failure to comply with this section or the rules adopted under this section.~~

Section 122. Paragraph (a) of subsection (4) of section 400.9905, Florida Statutes, is amended, and paragraph (l) is added to that subsection, to read:

400.9905 Definitions.—

(4) "Clinic" means an entity at which health care services are provided to individuals and which tenders charges for reimbursement for such services, including a mobile clinic and a portable equipment provider. For purposes of this part, the term does not include and the licensure requirements of this part do not apply to:

(a) Entities licensed or registered by the state under chapter 395; or entities licensed or registered by the state and providing only health care services within the scope of services authorized under their respective licenses granted under ss. 383.30-383.335, chapter 390, chapter 394, chapter 397, this chapter except part X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, part I of chapter 483, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U; or providers certified under 42 C.F.R. part 485, subpart B or subpart H; or any entity that provides neonatal or pediatric hospital-based health care services <u>or other health care services</u> by licensed practitioners solely within a hospital licensed under chapter 395.

<u>(l) Orthotic or prosthetic clinical facilities that are a publicly traded corporation or that are wholly owned, directly or indirectly, by a publicly traded corporation. As used in this paragraph, a publicly traded corporation is a corporation that issues securities traded on an exchange registered with the United States Securities and Exchange Commission as a national securities exchange.</u>

Section 123. Section 400.991, Florida Statutes, is amended to read:

400.991 License requirements; background screenings; prohibitions.—

(1)(a) <u>The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this part and part II of chapter 408 and to entities licensed by or applying for such licensure from the agency pursuant to this part. A license issued by the agency is required in order to operate a clinic in this state.</u> ~~Each clinic, as defined in s. 400.9905, must be licensed and shall at all times maintain a valid license with the agency.~~ Each clinic location shall be licensed separately regardless of whether the clinic is operated under the same business name or management as another clinic.

(b) Each mobile clinic must obtain a separate health care clinic license and must provide to the agency, at least quarterly, its projected street location to enable the agency to locate and inspect such clinic. A portable equipment provider must obtain a health care clinic license for a single administrative office and is not required to submit quarterly projected street locations.

(2) The initial clinic license application shall be filed with the agency by all clinics, as defined in s. 400.9905, on or before July 1, 2004. ~~A clinic license must be renewed biennially.~~

~~(3) Applicants that submit an application on or before July 1, 2004, which meets all requirements for initial licensure as specified in this section shall receive a temporary license until the completion of an initial inspection verifying that the applicant meets all requirements in rules authorized in s. 400.9925. However, a clinic engaged in magnetic resonance imaging services may not receive a temporary license unless it presents evidence satisfactory to the agency that such clinic is making a good faith effort and substantial progress in seeking accreditation required under s. 400.9935.~~

~~(4) Application for an initial clinic license or for renewal of an existing license shall be notarized on forms furnished by the agency and must be accompanied by the appropriate license fee as provided in s. 400.9925. The agency shall take final action on an initial license application within 60 days after receipt of all required documentation.~~

(3)~~(5)~~ The application shall contain information that includes, but need not be limited to, information pertaining to the name, residence and business address, phone number, social security number, and license number of the medical or clinic director, of the licensed medical providers employed or under contract with the clinic~~, and of each person who, directly or indirectly, owns or controls 5 percent or more of an interest in the clinic, or general partners in limited liability partnerships~~.

(4)~~(6)~~ In addition to the requirements of part II of chapter 408, the applicant must file with the application satisfactory proof that the clinic is in compliance with this part and applicable rules, including:

(a) A listing of services to be provided either directly by the applicant or through contractual arrangements with existing providers;

(b) The number and discipline of each professional staff member to be employed; and

(c) Proof of financial ability to operate as required under s. 408.810(8). ~~An applicant must demonstrate financial ability to operate a clinic by submitting a balance sheet and an income and expense statement for the first year of operation which provide evidence of the applicant's having sufficient assets, credit, and projected revenues to cover liabilities and expenses. The applicant shall have demonstrated financial ability to operate if the applicant's assets, credit, and projected revenues meet or exceed projected liabilities and expenses. All documents required under this subsection must be prepared in accordance with generally accepted accounting principles, may be in a compilation form, and the financial statement must be signed by a certified public accountant.~~ As an alternative to submitting proof of financial ability to operate as required under s. 408.810(8) ~~a balance sheet and an income and expense statement for the first year of operation~~, the applicant may file a surety bond of at least $500,000 which guarantees that the clinic will act in full conformity with all legal requirements for operating a clinic,

payable to the agency. The agency may adopt rules to specify related requirements for such surety bond.

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

(a) As used in this subsection, the term "applicant" means individuals owning or controlling, directly or indirectly, 5 percent or more of an interest in a clinic; the medical or clinic director, or a similarly titled person who is responsible for the day-to-day operation of the licensed clinic; the financial officer or similarly titled individual who is responsible for the financial operation of the clinic; and licensed health care practitioners at the clinic.

(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. Applicants who own less than 10 percent of a health care clinic are not required to submit fingerprints under this section.

(c) Each applicant must submit to the agency, with the application, a description and explanation of any exclusions, permanent suspensions, or terminations of an applicant from the Medicare or Medicaid programs. Proof of compliance with the requirements for disclosure of ownership and control interest under the Medicaid or Medicare programs may be accepted in lieu of this submission. The description and explanation may indicate whether such exclusions, suspensions, or terminations were voluntary or not voluntary on the part of the applicant.

(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.

~~(e) The agency may deny or revoke licensure if the applicant has falsely represented any material fact or omitted any material fact from the application required by this part.~~

~~(8) Requested information omitted from an application for licensure, license renewal, or transfer of ownership must be filed with the agency within 21 days after receipt of the agency's request for omitted information, or the application shall be deemed incomplete and shall be withdrawn from further consideration.~~

~~(9) The failure to file a timely renewal application shall result in a late fee charged to the facility in an amount equal to 50 percent of the current license fee.~~

Section 124. Section 400.9915, Florida Statutes, is amended to read:

400.9915 ~~Clinic inspections;~~ Emergency suspension; costs.—

~~(1) Any authorized officer or employee of the agency shall make inspections of the clinic as part of the initial license application or renewal application. The application for a clinic license issued under this part or for a renewal license constitutes permission for an appropriate agency inspection to verify the information submitted on or in connection with the application or renewal.~~

~~(2) An authorized officer or employee of the agency may make unannounced inspections of clinics licensed pursuant to this part as are necessary to determine that the clinic is in compliance with this part and with applicable rules. A licensed clinic shall allow full and complete access to the premises and to billing records or information to any representative of the agency who makes an inspection to determine compliance with this part and with applicable rules.~~

(1)~~(3)~~ Failure ~~by a clinic licensed under this part to allow full and complete access to the premises and to billing records or information to any representative of the agency who makes a request to inspect the clinic to determine compliance with this part or failure~~ by a clinic to employ a qualified medical director or clinic director constitutes a ground for emergency suspension of the license by the agency pursuant to s. 408.814 ~~s. 120.60(6)~~.

(2)~~(4)~~ In addition to any administrative fines imposed pursuant to this part or part II of chapter 408, the agency may assess a fee equal to the cost of conducting a complaint investigation.

Section 125. Section 400.992, Florida Statutes, is repealed.

Section 126. Section 400.9925, Florida Statutes, is amended to read:

400.9925 Rulemaking authority; license fees.—

(1) The agency shall adopt rules necessary to administer the clinic administration, regulation, and licensure program, including rules pursuant to this part and part II of chapter 408, establishing the specific licensure requirements, procedures, forms, and fees. It shall adopt rules establishing a procedure for the biennial renewal of licenses. The agency may issue initial licenses for less than the full 2-year period by charging a prorated licensure fee and specifying a different renewal date than would otherwise be required for biennial licensure. The rules shall specify the expiration dates of licenses, the process of tracking compliance with financial responsibility requirements, and any other conditions of renewal required by law or rule.

(2) The agency shall adopt rules specifying limitations on the number of licensed clinics and licensees for which a medical director or a clinic director may assume responsibility for purposes of this part. In determining the quality of supervision a medical director or a clinic director can provide, the agency shall consider the number of clinic employees, the clinic location, and the health care services provided by the clinic.

(3) In accordance with s. 408.805, an applicant or a licensee shall pay a fee for each license application submitted under this part, part II of chapter 408, and applicable rules. The amount of the fee shall be established by rule and may not exceed $2,000. ~~License application and renewal fees must be reasonably calculated by the agency to cover its costs in carrying out its responsibilities under this part, including the cost of licensure, inspection, and regulation of clinics, and must be of such amount that the total fees collected do not exceed the cost of administering and enforcing compliance with this part. Clinic licensure fees are nonrefundable and may not exceed $2,000. The agency shall adjust the license fee annually by not more than the change in the Consumer Price Index based on the 12 months immediately preceding the increase. All fees collected under this part must be deposited in the Health Care Trust Fund for the administration of this part.~~

Section 127. Section 400.993, Florida Statutes, is amended to read:

400.993 Unlicensed clinics; reporting ~~penalties; fines; verification of licensure status.—~~

~~(1) It is unlawful to own, operate, or maintain a clinic without obtaining a license under this part.~~

(1)~~(2)~~ Any person who violates s. 408.812 regarding unlicensed activity ~~owns, operates, or maintains an unlicensed clinic~~ commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Each day of continued operation is a separate offense.

(2)~~(3)~~ Any person found guilty of violating s. 408.812 ~~subsection (2)~~ a second or subsequent time commits a felony of the second degree, punishable as provided under s. 775.082, s. 775.083, or s. 775.084. Each day of continued operation is a separate offense.

~~(4) Any person who owns, operates, or maintains an unlicensed clinic due to a change in this part or a modification in agency rules within 6 months after the effective date of such change or modification and who, within 10 working days after receiving notification from the agency, fails to cease operation or apply for a license under this part commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Each day of continued operation is a separate offense.~~

~~(5) Any clinic that fails to cease operation after agency notification may be fined for each day of noncompliance pursuant to this part.~~

~~(6) When a person has an interest in more than one clinic, and fails to obtain a license for any one of these clinics, the agency may revoke the license, impose a moratorium, or impose a fine pursuant to this part on any or all of the licensed clinics until such time as the unlicensed clinic is licensed or ceases operation.~~

~~(7) Any person aware of the operation of an unlicensed clinic must report that facility to the agency.~~

(3)~~(8)~~ In addition to the requirements of part II of chapter 408, any health care provider who is aware of the operation of an unlicensed clinic shall

report that facility to the agency. Failure to report a clinic that the provider knows or has reasonable cause to suspect is unlicensed shall be reported to the provider's licensing board.

~~(9) The agency may not issue a license to a clinic that has any unpaid fines assessed under this part.~~

Section 128. Section 400.9935, Florida Statutes, is amended to read:

400.9935 Clinic responsibilities.—

(1) Each clinic shall appoint a medical director or clinic director who shall agree in writing to accept legal responsibility for the following activities on behalf of the clinic. The medical director or the clinic director shall:

(a) Have signs identifying the medical director or clinic director posted in a conspicuous location within the clinic readily visible to all patients.

(b) Ensure that all practitioners providing health care services or supplies to patients maintain a current active and unencumbered Florida license.

(c) Review any patient referral contracts or agreements executed by the clinic.

(d) Ensure that all health care practitioners at the clinic have active appropriate certification or licensure for the level of care being provided.

(e) Serve as the clinic records owner as defined in s. 456.057.

(f) Ensure compliance with the recordkeeping, office surgery, and adverse incident reporting requirements of chapter 456, the respective practice acts, and rules adopted under this part <u>and part II of chapter 408</u>.

(g) Conduct systematic reviews of clinic billings to ensure that the billings are not fraudulent or unlawful. Upon discovery of an unlawful charge, the medical director or clinic director shall take immediate corrective action. If the clinic performs only the technical component of magnetic resonance imaging, static radiographs, computed tomography, or positron emission tomography, and provides the professional interpretation of such services, in a fixed facility that is accredited by the Joint Commission on Accreditation of Healthcare Organizations or the Accreditation Association for Ambulatory Health Care, and the American College of Radiology; and if, in the preceding quarter, the percentage of scans performed by that clinic which was billed to all personal injury protection insurance carriers was less than 15 percent, the chief financial officer of the clinic may, in a written acknowledgment provided to the agency, assume the responsibility for the conduct of the systematic reviews of clinic billings to ensure that the billings are not fraudulent or unlawful.

(h) Not refer a patient to the clinic if the clinic performs magnetic resonance imaging, static radiographs, computed tomography, or positron emission tomography. The term "refer a patient" means the referral of one or more patients of the medical or clinical director or a member of the medical

or clinical director's group practice to the clinic for magnetic resonance imaging, static radiographs, computed tomography, or positron emission tomography. A medical director who is found to violate this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

~~(2) Any business that becomes a clinic after commencing operations must, within 5 days after becoming a clinic, file a license application under this part and shall be subject to all provisions of this part applicable to a clinic.~~

(2)~~(3)~~ Any contract to serve as a medical director or a clinic director entered into or renewed by a physician or a licensed health care practitioner in violation of this part is void as contrary to public policy. This subsection shall apply to contracts entered into or renewed on or after March 1, 2004.

(3)~~(4)~~ All charges or reimbursement claims made by or on behalf of a clinic that is required to be licensed under this part, but that is not so licensed, or that is otherwise operating in violation of this part, are unlawful charges, and therefore are noncompensable and unenforceable.

(4)~~(5)~~ In addition to the requirements of s. 408.812, any person establishing, operating, or managing an unlicensed clinic otherwise required to be licensed under this part or part II of chapter 408, or any person who knowingly files a false or misleading license application or license renewal application, or false or misleading information related to such application or department rule, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5)~~(6)~~ Any licensed health care provider who violates this part is subject to discipline in accordance with this chapter and his or her respective practice act.

~~(7) The agency may fine, or suspend or revoke the license of, any clinic licensed under this part for operating in violation of the requirements of this part or the rules adopted by the agency.~~

~~(8) The agency shall investigate allegations of noncompliance with this part and the rules adopted under this part.~~

(6)~~(9)~~ Any person or entity providing health care services which is not a clinic, as defined under s. 400.9905, may voluntarily apply for a certificate of exemption from licensure under its exempt status with the agency on a form that sets forth its name or names and addresses, a statement of the reasons why it cannot be defined as a clinic, and other information deemed necessary by the agency. An exemption is not transferable. The agency may charge an applicant for a certificate of exemption in an amount equal to $100 or the actual cost of processing the certificate, whichever is less.

~~(10) The clinic shall display its license in a conspicuous location within the clinic readily visible to all patients.~~

(7)~~(11)~~(a) Each clinic engaged in magnetic resonance imaging services must be accredited by the Joint Commission on Accreditation of Healthcare

Organizations, the American College of Radiology, or the Accreditation Association for Ambulatory Health Care, within 1 year after licensure. However, a clinic may request a single, 6-month extension if it provides evidence to the agency establishing that, for good cause shown, such clinic can not be accredited within 1 year after licensure, and that such accreditation will be completed within the 6-month extension. After obtaining accreditation as required by this subsection, each such clinic must maintain accreditation as a condition of renewal of its license.

(b) The agency may deny the application or revoke the license of any entity formed for the purpose of avoiding compliance with the accreditation provisions of this subsection and whose principals were previously principals of an entity that was unable to meet the accreditation requirements within the specified timeframes. The agency may adopt rules as to the accreditation of magnetic resonance imaging clinics.

(8)~~(12)~~ The agency shall give full faith and credit pertaining to any past variance and waiver granted to a magnetic resonance imaging clinic from rule 64-2002, Florida Administrative Code, by the Department of Health, until September 2004. After that date, such clinic must request a variance and waiver from the agency under s. 120.542.

(9)~~(13)~~ In addition to the requirements of part II of chapter 408, the clinic shall display a sign in a conspicuous location within the clinic readily visible to all patients indicating that, pursuant to s. 626.9892, the Department of Financial Services may pay rewards of up to $25,000 to persons providing information leading to the arrest and conviction of persons committing crimes investigated by the Division of Insurance Fraud arising from violations of s. 440.105, s. 624.15, s. 626.9541, s. 626.989, or s. 817.234. An authorized employee of the Division of Insurance Fraud may make unannounced inspections of a clinic licensed under this part as necessary to determine whether the clinic is in compliance with this subsection. A licensed clinic shall allow full and complete access to the premises to such authorized employee of the division who makes an inspection to determine compliance with this subsection.

Section 129. Section 400.994, Florida Statutes, is repealed.

Section 130. Section 400.9945, Florida Statutes, is repealed.

Section 131. Section 400.995, Florida Statutes, is amended to read:

400.995 Agency administrative penalties.—

(1) In addition to the requirements of part II of chapter 408, the agency may deny the application for a license renewal, revoke and ~~or~~ suspend the license, and impose administrative fines of up to $5,000 per violation for violations of the requirements of this part or rules of the agency. In determining if a penalty is to be imposed and in fixing the amount of the fine, the agency shall consider the following factors:

(a) The gravity of the violation, including the probability that death or serious physical or emotional harm to a patient will result or has resulted,

the severity of the action or potential harm, and the extent to which the provisions of the applicable laws or rules were violated.

(b) Actions taken by the owner, medical director, or clinic director to correct violations.

(c) Any previous violations.

(d) The financial benefit to the clinic of committing or continuing the violation.

(2) Each day of continuing violation after the date fixed for termination of the violation, as ordered by the agency, constitutes an additional, separate, and distinct violation.

(3) Any action taken to correct a violation shall be documented in writing by the owner, medical director, or clinic director of the clinic and verified through followup visits by agency personnel. The agency may impose a fine and, in the case of an owner-operated clinic, revoke or deny a clinic's license when a clinic medical director or clinic director knowingly misrepresents actions taken to correct a violation.

~~(4) For fines that are upheld following administrative or judicial review, the violator shall pay the fine, plus interest at the rate as specified in s. 55.03, for each day beyond the date set by the agency for payment of the fine.~~

~~(5) Any unlicensed clinic that continues to operate after agency notification is subject to a $1,000 fine per day.~~

(4)~~(6)~~ Any licensed clinic whose owner, medical director, or clinic director concurrently operates an unlicensed clinic shall be subject to an administrative fine of $5,000 per day.

(5)~~(7)~~ Any clinic whose owner fails to apply for a change-of-ownership license in accordance with s. 400.992 and operates the clinic under the new ownership is subject to a fine of $5,000.

(6)~~(8)~~ The agency, as an alternative to or in conjunction with an administrative action against a clinic for violations of this part and adopted rules, shall make a reasonable attempt to discuss each violation and recommended corrective action with the owner, medical director, or clinic director of the clinic, prior to written notification. The agency, instead of fixing a period within which the clinic shall enter into compliance with standards, may request a plan of corrective action from the clinic which demonstrates a good faith effort to remedy each violation by a specific date, subject to the approval of the agency.

~~(9) Administrative fines paid by any clinic under this section shall be deposited into the Health Care Trust Fund.~~

~~(10) If the agency issues a notice of intent to deny a license application after a temporary license has been issued pursuant to s. 400.991(3), the temporary license shall expire on the date of the notice and may not be~~

~~extended during any proceeding for administrative or judicial review pursuant to chapter 120.~~

Section 132. Section 408.802, Florida Statutes, is amended to read:

408.802 Applicability.—The provisions of this part apply to the provision of services that require licensure as defined in this part and to the following entities licensed, registered, or certified by the agency, as described in chapters 112, 383, 390, 394, 395, 400, 429, 440, 483, and 765:

(1) Laboratories authorized to perform testing under the Drug-Free Workplace Act, as provided under ss. 112.0455 and 440.102.

(2) Birth centers, as provided under chapter 383.

(3) Abortion clinics, as provided under chapter 390.

(4) Crisis stabilization units, as provided under parts I and IV of chapter 394.

(5) Short-term residential treatment facilities, as provided under parts I and IV of chapter 394.

(6) Residential treatment facilities, as provided under part IV of chapter 394.

(7) Residential treatment centers for children and adolescents, as provided under part IV of chapter 394.

(8) Hospitals, as provided under part I of chapter 395.

(9) Ambulatory surgical centers, as provided under part I of chapter 395.

(10) Mobile surgical facilities, as provided under part I of chapter 395.

(11) Private review agents, as provided under part I of chapter 395.

(12) Health care risk managers, as provided under part I of chapter 395.

(13) Nursing homes, as provided under part II of chapter 400.

(14) Assisted living facilities, as provided under part I ~~III~~ of chapter 429 ~~400~~.

(15) Home health agencies, as provided under part III ~~IV~~ of chapter 400.

(16) Nurse registries, as provided under part III ~~IV~~ of chapter 400.

(17) Companion services or homemaker services providers, as provided under part III ~~IV~~ of chapter 400.

(18) Adult day care centers, as provided under part III ~~V~~ of chapter 429 ~~400~~.

(19) Hospices, as provided under part IV ~~VI~~ of chapter 400.

(20) Adult family-care homes, as provided under part II ~~VII~~ of chapter 429 ~~400~~.

(21) Homes for special services, as provided under part V ~~VIII~~ of chapter 400.

(22) Transitional living facilities, as provided under part V ~~VIII~~ of chapter 400.

(23) Prescribed pediatric extended care centers, as provided under part VI ~~IX~~ of chapter 400.

(24) Home medical equipment providers, as provided under part VII ~~X~~ of chapter 400.

(25) Intermediate care facilities for persons with developmental disabilities, as provided under part VIII ~~XI~~ of chapter 400.

(26) Health care services pools, as provided under part IX ~~XII~~ of chapter 400.

(27) Health care clinics, as provided under part X ~~XIII~~ of chapter 400.

(28) Clinical laboratories, as provided under part I of chapter 483.

(29) Multiphasic health testing centers, as provided under part II of chapter 483.

(30) Organ and tissue procurement agencies, as provided under chapter 765.

Section 133. Section 408.832, Florida Statutes, is amended to read:

408.832 Conflicts.—In case of conflict between the provisions of part II of chapter 408 and the authorizing statutes governing the licensure of health care providers by the Agency for Health Care Administration found in s. 112.0455 and chapters 383, 390, 394, 395, 400, 429, 440, 483, and 765, the provisions of part II of chapter 408 shall prevail.

Section 134. Paragraph (e) of subsection (4) of section 409.221, Florida Statutes, is amended to read:

409.221 Consumer-directed care program.—

(4) CONSUMER-DIRECTED CARE.—

(e) Services.—Consumers shall use the budget allowance only to pay for home and community-based services that meet the consumer's long-term care needs and are a cost-efficient use of funds. Such services may include, but are not limited to, the following:

1. Personal care.

2. Homemaking and chores, including housework, meals, shopping, and transportation.

3. Home modifications and assistive devices which may increase the consumer's independence or make it possible to avoid institutional placement.

4. Assistance in taking self-administered medication.

5. Day care and respite care services, including those provided by nursing home facilities pursuant to s. 400.141(6) or by adult day care facilities licensed pursuant to s. 429.907 ~~400.554~~.

6. Personal care and support services provided in an assisted living facility.

Section 135. Paragraph (g) of subsection (2) of section 409.815, Florida Statutes, is amended to read:

409.815 Health benefits coverage; limitations.—

(2) BENCHMARK BENEFITS.—In order for health benefits coverage to qualify for premium assistance payments for an eligible child under ss. 409.810-409.820, the health benefits coverage, except for coverage under Medicaid and Medikids, must include the following minimum benefits, as medically necessary.

(g) Behavioral health services.—

1. Mental health benefits include:

a. Inpatient services, limited to not more than 30 inpatient days per contract year for psychiatric admissions, or residential services in facilities licensed under s. 394.875(6)~~(8)~~ or s. 395.003 in lieu of inpatient psychiatric admissions; however, a minimum of 10 of the 30 days shall be available only for inpatient psychiatric services when authorized by a physician; and

b. Outpatient services, including outpatient visits for psychological or psychiatric evaluation, diagnosis, and treatment by a licensed mental health professional, limited to a maximum of 40 outpatient visits each contract year.

2. Substance abuse services include:

a. Inpatient services, limited to not more than 7 inpatient days per contract year for medical detoxification only and 30 days of residential services; and

b. Outpatient services, including evaluation, diagnosis, and treatment by a licensed practitioner, limited to a maximum of 40 outpatient visits per contract year.

Section 136. Subsection (8) of section 409.905, Florida Statutes, is amended to read:

409.905 Mandatory Medicaid services.—The agency may make payments for the following services, which are required of the state by Title XIX of the Social Security Act, furnished by Medicaid providers to recipients who

are determined to be eligible on the dates on which the services were provided. Any service under this section shall be provided only when medically necessary and in accordance with state and federal law. Mandatory services rendered by providers in mobile units to Medicaid recipients may be restricted 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, number of services, or 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.

(8) NURSING FACILITY SERVICES.—The agency shall pay for 24-hour-a-day nursing and rehabilitative services for a recipient in a nursing facility licensed under part II of chapter 400 or in a rural hospital, as defined in s. 395.602, or in a Medicare certified skilled nursing facility operated by a hospital, as defined by s. 395.002(10)~~(11)~~, that is licensed under part I of chapter 395, and in accordance with provisions set forth in s. 409.908(2)(a), which services are ordered by and provided under the direction of a licensed physician. However, if a nursing facility has been destroyed or otherwise made uninhabitable by natural disaster or other emergency and another nursing facility is not available, the agency must pay for similar services temporarily in a hospital licensed under part I of chapter 395 provided federal funding is approved and available. The agency shall pay only for bed-hold days if the facility has an occupancy rate of 95 percent or greater. The agency is authorized to seek any federal waivers to implement this policy.

Section 137. Subsection (7) of section 409.907, Florida Statutes, is amended 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.

(7) The agency may require, as a condition of participating in the Medicaid program and before entering into the provider agreement, that the provider submit information, in an initial and any required renewal applications, concerning the professional, business, and personal background of the provider and permit an onsite inspection of the provider's service location by agency staff or other personnel designated by the agency to perform this function. The agency shall perform a random onsite inspection, within 60 days after receipt of a fully complete new provider's application, of the provider's service location prior to making its first payment to the provider for Medicaid services to determine the applicant's ability to provide the services that the applicant is proposing to provide for Medicaid reimbursement. The agency is not required to perform an onsite inspection of a provider or program that is licensed by the agency, that provides services under waiver programs for home and community-based services, or that is licensed as a medical foster home by the Department of Children and Family Services. As a continuing condition of participation in the Medicaid program,

a provider shall immediately notify the agency of any current or pending bankruptcy filing. Before entering into the provider agreement, or as a condition of continuing participation in the Medicaid program, the agency may also require that Medicaid providers reimbursed on a fee-for-services basis or fee schedule basis which is not cost-based, post a surety bond not to exceed $50,000 or the total amount billed by the provider to the program during the current or most recent calendar year, whichever is greater. For new providers, the amount of the surety bond shall be determined by the agency based on the provider's estimate of its first year's billing. If the provider's billing during the first year exceeds the bond amount, the agency may require the provider to acquire an additional bond equal to the actual billing level of the provider. A provider's bond shall not exceed $50,000 if a physician or group of physicians licensed under chapter 458, chapter 459, or chapter 460 has a 50 percent or greater ownership interest in the provider or if the provider is an assisted living facility licensed under chapter 429. The bonds permitted by this section are in addition to the bonds referenced in s. 400.179(2)~~(5)~~(d). If the provider is a corporation, partnership, association, or other entity, the agency may require the provider to submit information concerning the background of that entity and of any principal of the entity, including any partner or shareholder having an ownership interest in the entity equal to 5 percent or greater, and any treating provider who participates in or intends to participate in Medicaid through the entity. The information must include:

(a) Proof of holding a valid license or operating certificate, as applicable, if required by the state or local jurisdiction in which the provider is located or if required by the Federal Government.

(b) Information concerning any prior violation, fine, suspension, termination, or other administrative action taken under the Medicaid laws, rules, or regulations of this state or of any other state or the Federal Government; any prior violation of the laws, rules, or regulations relating to the Medicare program; any prior violation of the rules or regulations of any other public or private insurer; and any prior violation of the laws, rules, or regulations of any regulatory body of this or any other state.

(c) Full and accurate disclosure of any financial or ownership interest that the provider, or any principal, partner, or major shareholder thereof, may hold in any other Medicaid provider or health care related entity or any other entity that is licensed by the state to provide health or residential care and treatment to persons.

(d) If a group provider, identification of all members of the group and attestation that all members of the group are enrolled in or have applied to enroll in the Medicaid program.

Section 138. Subsections (6) through (27) of section 429.02, Florida Statutes, are renumbered as subsections (5) through (26), respectively, and present subsections (5) and (12) of that section are amended to read:

429.02 Definitions.—When used in this part, the term:

~~(5) "Applicant" means an individual owner, corporation, partnership, firm, association, or governmental entity that applies for a license.~~

(11)~~(12)~~ "Extended congregate care" means acts beyond those authorized in subsection (16) ~~(17)~~ that may be performed pursuant to part I of chapter 464 by persons licensed thereunder while carrying out their professional duties, and other supportive services which may be specified by rule. The purpose of such services is to enable residents to age in place in a residential environment despite mental or physical limitations that might otherwise disqualify them from residency in a facility licensed under this part.

Section 139. Section 429.07, Florida Statutes, is amended to read:

429.07 License required; fee~~, display~~.—

(1) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this part and part II of chapter 408 and to entities licensed by or applying for such licensure from the agency pursuant to this part. A license issued by the agency is required in order to operate ~~for~~ an assisted living facility ~~operating~~ in this state.

(2) Separate licenses shall be required for facilities maintained in separate premises, even though operated under the same management. A separate license shall not be required for separate buildings on the same grounds.

(3) In addition to the requirements of s. 408.806, each ~~Any~~ license granted by the agency must state ~~the maximum resident capacity of the facility,~~ the type of care for which the license is granted~~, the date the license is issued, the expiration date of the license, and any other information deemed necessary by the agency~~. Licenses shall be issued for one or more of the following categories of care: standard, extended congregate care, limited nursing services, or limited mental health.

(a) A standard license shall be issued to facilities providing one or more of the personal services identified in s. 429.02. Such facilities may also employ or contract with a person licensed under part I of chapter 464 to administer medications and perform other tasks as specified in s. 429.255.

(b) An extended congregate care license shall be issued to facilities providing, directly or through contract, services beyond those authorized in paragraph (a), including acts performed pursuant to part I of chapter 464 by persons licensed thereunder, and supportive services defined by rule to persons who otherwise would be disqualified from continued residence in a facility licensed under this part.

1. In order for extended congregate care services to be provided in a facility licensed under this part, the agency must first determine that all requirements established in law and rule are met and must specifically designate, on the facility's license, that such services may be provided and whether the designation applies to all or part of a facility. Such designation may be made at the time of initial licensure or relicensure, or upon request in writing by a licensee under this part and part II of chapter 408. Notification of approval or denial of such request shall be made in accordance with

part II of chapter 408 ~~within 90 days after receipt of such request and all necessary documentation~~. Existing facilities qualifying to provide extended congregate care services must have maintained a standard license and may not have been subject to administrative sanctions during the previous 2 years, or since initial licensure if the facility has been licensed for less than 2 years, for any of the following reasons:

a. A class I or class II violation;

b. Three or more repeat or recurring class III violations of identical or similar resident care standards as specified in rule from which a pattern of noncompliance is found by the agency;

c. Three or more class III violations that were not corrected in accordance with the corrective action plan approved by the agency;

d. Violation of resident care standards resulting in a requirement to employ the services of a consultant pharmacist or consultant dietitian;

e. Denial, suspension, or revocation of a license for another facility under this part in which the applicant for an extended congregate care license has at least 25 percent ownership interest; or

f. Imposition of a moratorium pursuant to this part or part II of chapter 408 ~~on admissions~~ or initiation of injunctive proceedings.

2. Facilities that are licensed to provide extended congregate care services shall maintain a written progress report on each person who receives such services, which report describes the type, amount, duration, scope, and outcome of services that are rendered and the general status of the resident's health. A registered nurse, or appropriate designee, representing the agency shall visit such facilities at least quarterly to monitor residents who are receiving extended congregate care services and to determine if the facility is in compliance with this part, part II of chapter 408, and ~~with~~ rules that relate to extended congregate care. One of these visits may be in conjunction with the regular survey. The monitoring visits may be provided through contractual arrangements with appropriate community agencies. A registered nurse shall serve as part of the team that inspects such facility. The agency may waive one of the required yearly monitoring visits for a facility that has been licensed for at least 24 months to provide extended congregate care services, if, during the inspection, the registered nurse determines that extended congregate care services are being provided appropriately, and if the facility has no class I or class II violations and no uncorrected class III violations. Before such decision is made, the agency shall consult with the long-term care ombudsman council for the area in which the facility is located to determine if any complaints have been made and substantiated about the quality of services or care. The agency may not waive one of the required yearly monitoring visits if complaints have been made and substantiated.

3. Facilities that are licensed to provide extended congregate care services shall:

a. Demonstrate the capability to meet unanticipated resident service needs.

b. Offer a physical environment that promotes a homelike setting, provides for resident privacy, promotes resident independence, and allows sufficient congregate space as defined by rule.

c. Have sufficient staff available, taking into account the physical plant and firesafety features of the building, to assist with the evacuation of residents in an emergency, as necessary.

d. Adopt and follow policies and procedures that maximize resident independence, dignity, choice, and decisionmaking to permit residents to age in place to the extent possible, so that moves due to changes in functional status are minimized or avoided.

e. Allow residents or, if applicable, a resident's representative, designee, surrogate, guardian, or attorney in fact to make a variety of personal choices, participate in developing service plans, and share responsibility in decisionmaking.

f. Implement the concept of managed risk.

g. Provide, either directly or through contract, the services of a person licensed pursuant to part I of chapter 464.

h. In addition to the training mandated in s. 429.52, provide specialized training as defined by rule for facility staff.

4. Facilities licensed to provide extended congregate care services are exempt from the criteria for continued residency as set forth in rules adopted under s. 429.41. Facilities so licensed shall adopt their own requirements within guidelines for continued residency set forth by ~~the department in~~ rule. However, such facilities may not serve residents who require 24-hour nursing supervision. Facilities licensed to provide extended congregate care services shall provide each resident with a written copy of facility policies governing admission and retention.

5. The primary purpose of extended congregate care services is to allow residents, as they become more impaired, the option of remaining in a familiar setting from which they would otherwise be disqualified for continued residency. A facility licensed to provide extended congregate care services may also admit an individual who exceeds the admission criteria for a facility with a standard license, if the individual is determined appropriate for admission to the extended congregate care facility.

6. Before admission of an individual to a facility licensed to provide extended congregate care services, the individual must undergo a medical examination as provided in s. 429.26(4) and the facility must develop a preliminary service plan for the individual.

7. When a facility can no longer provide or arrange for services in accordance with the resident's service plan and needs and the facility's policy, the

facility shall make arrangements for relocating the person in accordance with s. 429.28(1)(k).

8. Failure to provide extended congregate care services may result in denial of extended congregate care license renewal.

9. No later than January 1 of each year, the department, in consultation with the agency, shall prepare and submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of appropriate legislative committees, a report on the status of, and recommendations related to, extended congregate care services. The status report must include, but need not be limited to, the following information:

a. A description of the facilities licensed to provide such services, including total number of beds licensed under this part.

b. The number and characteristics of residents receiving such services.

c. The types of services rendered that could not be provided through a standard license.

d. An analysis of deficiencies cited during licensure inspections.

e. The number of residents who required extended congregate care services at admission and the source of admission.

f. Recommendations for statutory or regulatory changes.

g. The availability of extended congregate care to state clients residing in facilities licensed under this part and in need of additional services, and recommendations for appropriations to subsidize extended congregate care services for such persons.

h. Such other information as the department considers appropriate.

(c) A limited nursing services license shall be issued to a facility that provides services beyond those authorized in paragraph (a) and as specified in this paragraph.

1. In order for limited nursing services to be provided in a facility licensed under this part, the agency must first determine that all requirements established in law and rule are met and must specifically designate, on the facility's license, that such services may be provided. Such designation may be made at the time of initial licensure or relicensure, or upon request in writing by a licensee under this part and part II of chapter 408. Notification of approval or denial of such request shall be made in accordance with part II of chapter 408 ~~within 90 days after receipt of such request and all necessary documentation~~. Existing facilities qualifying to provide limited nursing services shall have maintained a standard license and may not have been subject to administrative sanctions that affect the health, safety, and welfare of residents for the previous 2 years or since initial licensure if the facility has been licensed for less than 2 years.

2. Facilities that are licensed to provide limited nursing services shall maintain a written progress report on each person who receives such nursing services, which report describes the type, amount, duration, scope, and outcome of services that are rendered and the general status of the resident's health. A registered nurse representing the agency shall visit such facilities at least twice a year to monitor residents who are receiving limited nursing services and to determine if the facility is in compliance with applicable provisions of this part, part II of chapter 408, and ~~with~~ related rules. The monitoring visits may be provided through contractual arrangements with appropriate community agencies. A registered nurse shall also serve as part of the team that inspects such facility.

3. A person who receives limited nursing services under this part must meet the admission criteria established by the agency for assisted living facilities. When a resident no longer meets the admission criteria for a facility licensed under this part, arrangements for relocating the person shall be made in accordance with s. 429.28(1)(k), unless the facility is licensed to provide extended congregate care services.

(4) In accordance with s. 408.805, an applicant or licensee shall pay a fee for each license application submitted under this part, part II of chapter 408, and applicable rules. The amount of the fee shall be established by rule.

(a) The biennial license fee required of a facility is $300 per license, with an additional fee of $50 per resident based on the total licensed resident capacity of the facility, except that no additional fee will be assessed for beds designated for recipients of optional state supplementation payments provided for in s. 409.212. The total fee may not exceed $10,000~~, no part of which shall be returned to the facility~~. ~~The agency shall adjust the per bed license fee and the total licensure fee annually by not more than the change in the consumer price index based on the 12 months immediately preceding the increase.~~

(b) In addition to the total fee assessed under paragraph (a), the agency shall require facilities that are licensed to provide extended congregate care services under this part to pay an additional fee per licensed facility. The amount of the biennial fee shall be $400 per license, with an additional fee of $10 per resident based on the total licensed resident capacity of the facility. ~~No part of this fee shall be returned to the facility. The agency may adjust the per bed license fee and the annual license fee once each year by not more than the average rate of inflation for the 12 months immediately preceding the increase.~~

(c) In addition to the total fee assessed under paragraph (a), the agency shall require facilities that are licensed to provide limited nursing services under this part to pay an additional fee per licensed facility. The amount of the biennial fee shall be $250 per license, with an additional fee of $10 per resident based on the total licensed resident capacity of the facility. ~~No part of this fee shall be returned to the facility. The agency may adjust the per bed license fee and the biennial license fee once each year by not more than the average rate of inflation for the 12 months immediately preceding the increase.~~

(5) Counties or municipalities applying for licenses under this part are exempt from the payment of license fees.

~~(6) The license shall be displayed in a conspicuous place inside the facility.~~

~~(7) A license shall be valid only in the possession of the individual, firm, partnership, association, or corporation to which it is issued and shall not be subject to sale, assignment, or other transfer, voluntary or involuntary; nor shall a license be valid for any premises other than that for which originally issued.~~

~~(8) A fee may be charged to a facility requesting a duplicate license. The fee shall not exceed the actual cost of duplication and postage.~~

Section 140. Subsection (1) of section 429.075, Florida Statutes, is amended to read:

429.075 Limited mental health license.—An assisted living facility that serves three or more mental health residents must obtain a limited mental health license.

(1) To obtain a limited mental health license, a facility must hold a standard license as an assisted living facility, must not have any current uncorrected deficiencies or violations, and must ensure that, within 6 months after receiving a limited mental health license, the facility administrator and the staff of the facility who are in direct contact with mental health residents must complete training of no less than 6 hours related to their duties. Such designation may be made at the time of initial licensure or relicensure or upon request in writing by a licensee under this part and part II of chapter 408. Notification of approval or denial of such request shall be made in accordance with this part, part II of chapter 408, and applicable rules. This training will be provided by or approved by the Department of Children and Family Services.

Section 141. Section 429.08, Florida Statutes, is amended to read:

429.08 Unlicensed facilities; referral of person for residency to unlicensed facility; penalties; verification of licensure status.—

(1)(a) This section applies to the unlicensed operation of an assisted living facility in addition to the requirements of part II of chapter 408. ~~It is unlawful to own, operate, or maintain an assisted living facility without obtaining a license under this part.~~

(b) Except as provided under paragraph (d), any person who owns, operates, or maintains an unlicensed assisted living facility commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Each day of continued operation is a separate offense.

(c) Any person found guilty of violating paragraph (a) a second or subsequent time commits a felony of the second degree, punishable as provided under s. 775.082, s. 775.083, or s. 775.084. Each day of continued operation is a separate offense.

(d) Any person who owns, operates, or maintains an unlicensed assisted living facility due to a change in this part or a modification in ~~department~~ rule within 6 months after the effective date of such change and who, within 10 working days after receiving notification from the agency, fails to cease operation or apply for a license under this part commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Each day of continued operation is a separate offense.

~~(e) Any facility that fails to cease operation after agency notification may be fined for each day of noncompliance pursuant to s. 429.19.~~

~~(f) When a licensee has an interest in more than one assisted living facility, and fails to license any one of these facilities, the agency may revoke the license, impose a moratorium, or impose a fine pursuant to s. 429.19, on any or all of the licensed facilities until such time as the unlicensed facility is licensed or ceases operation.~~

~~(g) If the agency determines that an owner is operating or maintaining an assisted living facility without obtaining a license and determines that a condition exists in the facility that poses a threat to the health, safety, or welfare of a resident of the facility, the owner is subject to the same actions and fines imposed against a licensed facility as specified in ss. 429.14 and 429.19.~~

(e)~~(h) Any person aware of the operation of an unlicensed assisted living facility must report that facility to the agency.~~ The agency shall provide to the department's elder information and referral providers a list, by county, of licensed assisted living facilities, to assist persons who are considering an assisted living facility placement in locating a licensed facility.

(2)~~(i)~~ Each field office of the Agency for Health Care Administration shall establish a local coordinating workgroup which includes representatives of local law enforcement agencies, state attorneys, the Medicaid Fraud Control Unit of the Department of Legal Affairs, local fire authorities, the Department of Children and Family Services, the district long-term care ombudsman council, and the district human rights advocacy committee to assist in identifying the operation of unlicensed facilities and to develop and implement a plan to ensure effective enforcement of state laws relating to such facilities. The workgroup shall report its findings, actions, and recommendations semiannually to the Director of Health Quality Assurance ~~Facility Regulation~~ of the agency.

(3)~~(2)~~ It is unlawful to knowingly refer a person for residency to an unlicensed assisted living facility; to an assisted living facility the license of which is under denial or has been suspended or revoked; or to an assisted living facility that has a moratorium pursuant to part II of chapter 408 ~~on admissions~~. Any person who violates this subsection commits a noncriminal violation, punishable by a fine not exceeding $500 as provided in s. 775.083.

(a) Any health care practitioner, as defined in s. 456.001, who is aware of the operation of an unlicensed facility shall report that facility to the agency. Failure to report a facility that the practitioner knows or has reason-

able cause to suspect is unlicensed shall be reported to the practitioner's licensing board.

(b) Any hospital or community mental health center licensed under chapter 395 or chapter 394 which knowingly discharges a patient or client to an unlicensed facility is subject to sanction by the agency.

(c) Any employee of the agency or department, or the Department of Children and Family Services, who knowingly refers a person for residency to an unlicensed facility; to a facility the license of which is under denial or has been suspended or revoked; or to a facility that has a moratorium pursuant to part II of chapter 408 ~~on admissions~~ is subject to disciplinary action by the agency or department, or the Department of Children and Family Services.

(d) The employer of any person who is under contract with the agency or department, or the Department of Children and Family Services, and who knowingly refers a person for residency to an unlicensed facility; to a facility the license of which is under denial or has been suspended or revoked; or to a facility that has a moratorium pursuant to part II of chapter 408 ~~on admissions~~ shall be fined and required to prepare a corrective action plan designed to prevent such referrals.

(e) The agency shall provide the department and the Department of Children and Family Services with a list of licensed facilities within each county and shall update the list at least quarterly.

(f) At least annually, the agency shall notify, in appropriate trade publications, physicians licensed under chapter 458 or chapter 459, hospitals licensed under chapter 395, nursing home facilities licensed under part II of chapter 400, and employees of the agency or the department, or the Department of Children and Family Services, who are responsible for referring persons for residency, that it is unlawful to knowingly refer a person for residency to an unlicensed assisted living facility and shall notify them of the penalty for violating such prohibition. The department and the Department of Children and Family Services shall, in turn, notify service providers under contract to the respective departments who have responsibility for resident referrals to facilities. Further, the notice must direct each noticed facility and individual to contact the appropriate agency office in order to verify the licensure status of any facility prior to referring any person for residency. Each notice must include the name, telephone number, and mailing address of the appropriate office to contact.

Section 142. Section 429.11, Florida Statutes, is amended to read:

429.11 Initial application for license; provisional license.—

(1) Each applicant for licensure must comply with all provisions of part II of chapter 408 and must: ~~Application for a license shall be made to the agency on forms furnished by it and shall be accompanied by the appropriate license fee.~~

~~(2) The applicant may be an individual owner, a corporation, a partnership, a firm, an association, or a governmental entity.~~

~~(3) The application must be signed by the applicant under oath and must contain the following:~~

~~(a) The name, address, date of birth, and social security number of the applicant and the name by which the facility is to be known. If the applicant is a firm, partnership, or association, the application shall contain the name, address, date of birth, and social security number of every member thereof. If the applicant is a corporation, the application shall contain the corporation's name and address; the name, address, date of birth, and social security number of each of its directors and officers; and the name and address of each person having at least a 5-percent ownership interest in the corporation.~~

~~(b) The name and address of any professional service, firm, association, partnership, or corporation that is to provide goods, leases, or services to the facility if a 5-percent or greater ownership interest in the service, firm, association, partnership, or corporation is owned by a person whose name must be listed on the application under paragraph (a).~~

~~(c) The name and address of any long-term care facility with which the applicant, administrator, or financial officer has been affiliated through ownership or employment within 5 years of the date of this license application; and a signed affidavit disclosing any financial or ownership interest that the applicant, or any person listed in paragraph (a), holds or has held within the last 5 years in any facility licensed under this part, or in any other entity licensed by this state or another state to provide health or residential care, which facility or entity closed or ceased to operate as a result of financial problems, or has had a receiver appointed or a license denied, suspended or revoked, or was subject to a moratorium on admissions, or has had an injunctive proceeding initiated against it.~~

~~(d) A description and explanation of any exclusions, permanent suspensions, or terminations of the applicant from the Medicare or Medicaid programs. Proof of compliance with disclosure of ownership and control interest requirements of the Medicaid or Medicare programs shall be accepted in lieu of this submission.~~

~~(e) The names and addresses of persons of whom the agency may inquire as to the character, reputation, and financial responsibility of the owner and, if different from the applicant, the administrator and financial officer.~~

(a)~~(f)~~ Identify ~~Identification of~~ all other homes or facilities, including the addresses and the license or licenses under which they operate, if applicable, which are currently operated by the applicant or administrator and which provide housing, meals, and personal services to residents.

(b)~~(g)~~ Provide the location of the facility for which a license is sought and documentation, signed by the appropriate local government official, which states that the applicant has met local zoning requirements.

(c)~~(h)~~ Provide the name, address, date of birth, social security number, education, and experience of the administrator, if different from the applicant.

~~(4) The applicant shall furnish satisfactory proof of financial ability to operate and conduct the facility in accordance with the requirements of this part. A certificate of authority, pursuant to chapter 651, may be provided as proof of financial ability.~~

~~(5) If the applicant is a continuing care facility certified under chapter 651, a copy of the facility's certificate of authority must be provided.~~

(2)~~(6)~~ The applicant shall provide proof of liability insurance as defined in s. 624.605.

(3)~~(7)~~ If the applicant is a community residential home, the applicant must provide proof that it has met the requirements specified in chapter 419.

~~(8) The applicant must provide the agency with proof of legal right to occupy the property.~~

(4)~~(9)~~ The applicant must furnish proof that the facility has received a satisfactory firesafety inspection. The local authority having jurisdiction or the State Fire Marshal must conduct the inspection within 30 days after written request by the applicant.

(5)~~(10)~~ The applicant must furnish documentation of a satisfactory sanitation inspection of the facility by the county health department.

~~(11) The applicant must furnish proof of compliance with level 2 background screening as required under s. 429.174.~~

(6)~~(12)~~ In addition to the license categories available in s. 408.808, a provisional license may be issued to an applicant making initial application for licensure or making application for a change of ownership. A provisional license shall be limited in duration to a specific period of time not to exceed 6 months, as determined by the agency.

(7)~~(13)~~ A county or municipality may not issue an occupational license that is being obtained for the purpose of operating a facility regulated under this part without first ascertaining that the applicant has been licensed to operate such facility at the specified location or locations by the agency. The agency shall furnish to local agencies responsible for issuing occupational licenses sufficient instruction for making such determinations.

Section 143. Section 429.12, Florida Statutes, is amended to read:

429.12 Sale or transfer of ownership of a facility.—It is the intent of the Legislature to protect the rights of the residents of an assisted living facility when the facility is sold or the ownership thereof is transferred. Therefore, in addition to the requirements of part II of chapter 408, whenever a facility is sold or the ownership thereof is transferred, including leasing:

~~(1) The transferee shall make application to the agency for a new license at least 60 days before the date of transfer of ownership. The application must comply with the provisions of s. 429.11.~~

~~(2)(a) The transferor shall notify the agency in writing at least 60 days before the date of transfer of ownership.~~

(1)~~(b)~~ The transferee ~~new owner~~ shall notify the residents, in writing, of the change ~~transfer~~ of ownership within 7 days after ~~of his or her~~ receipt of the new license.

~~(3) The transferor shall be responsible and liable for:~~

~~(a) The lawful operation of the facility and the welfare of the residents domiciled in the facility until the date the transferee is licensed by the agency.~~

~~(b) Any and all penalties imposed against the facility for violations occurring before the date of transfer of ownership unless the penalty imposed is a moratorium on admissions or denial of licensure. The moratorium on admissions or denial of licensure remains in effect after the transfer of ownership, unless the agency has approved the transferee's corrective action plan or the conditions which created the moratorium or denial have been corrected, and may be grounds for denial of license to the transferee in accordance with chapter 120.~~

~~(c) Any outstanding liability to the state, unless the transferee has agreed, as a condition of sale or transfer, to accept the outstanding liabilities and to guarantee payment therefor; except that, if the transferee fails to meet these obligations, the transferor shall remain liable for the outstanding liability.~~

(2)~~(4)~~ The transferor of a facility the license of which is denied pending an administrative hearing shall, as a part of the written change-of-ownership ~~transfer-of-ownership~~ contract, advise the transferee that a plan of correction must be submitted by the transferee and approved by the agency at least 7 days before the change ~~transfer~~ of ownership and that failure to correct the condition which resulted in the moratorium pursuant to part II of chapter 408 ~~on admissions~~ or denial of licensure is grounds for denial of the transferee's license.

~~(5) The transferee must provide the agency with proof of legal right to occupy the property before a license may be issued. Proof may include, but is not limited to, copies of warranty deeds, or copies of lease or rental agreements, contracts for deeds, quitclaim deeds, or other such documentation.~~

Section 144. Section 429.14, Florida Statutes, is amended to read:

429.14 ~~Denial, revocation, or suspension of license; imposition of~~ Administrative penalties ~~fine; grounds~~.—

(1) In addition to the requirements of part II of chapter 408, the agency may deny, revoke, and ~~or~~ suspend any license issued under this part and, ~~or~~ impose an administrative fine in the manner provided in chapter 120 against a licensee of an assisted living facility for a violation of any provision of this part, part II of chapter 408, or applicable rules, or for any of the

following actions by a licensee of an assisted living facility, for the actions of any person subject to level 2 background screening under s. 408.809 ~~s. 429.174~~, or for the actions of any facility employee:

(a) An intentional or negligent act seriously affecting the health, safety, or welfare of a resident of the facility.

(b) The determination by the agency that the owner lacks the financial ability to provide continuing adequate care to residents.

(c) Misappropriation or conversion of the property of a resident of the facility.

(d) Failure to follow the criteria and procedures provided under part I of chapter 394 relating to the transportation, voluntary admission, and involuntary examination of a facility resident.

(e) A citation of any of the following deficiencies as defined in s. 429.19:

1. One or more cited class I deficiencies.

2. Three or more cited class II deficiencies.

3. Five or more cited class III deficiencies that have been cited on a single survey and have not been corrected within the times specified.

(f) A determination that a person subject to level 2 background screening under s. 408.809 ~~s. 429.174(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. 429.174~~(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.

(h) Violation of a moratorium.

(i) Failure of the license applicant, the licensee during relicensure, or a licensee that holds a provisional license to meet the minimum license requirements of this part, or related rules, at the time of license application or renewal.

~~(j) A fraudulent statement or omission of any material fact on an application for a license or any other document required by the agency, including the submission of a license application that conceals the fact that any board member, officer, or person owning 5 percent or more of the facility may not meet the background screening requirements of s. 429.174, or that the applicant has been excluded, permanently suspended, or terminated from the Medicaid or Medicare programs.~~

(j)~~(k)~~ An intentional or negligent life-threatening act in violation of the uniform firesafety standards for assisted living facilities or other firesafety standards that threatens the health, safety, or welfare of a resident of a facility, as communicated to the agency by the local authority having jurisdiction or the State Fire Marshal.

~~(l) Exclusion, permanent suspension, or termination from the Medicare or Medicaid programs.~~

(k)~~(m)~~ Knowingly operating any unlicensed facility or providing without a license any service that must be licensed under this chapter or chapter 400.

(l)~~(n)~~ Any act constituting a ground upon which application for a license may be denied.

~~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.~~

(2) Upon notification by the local authority having jurisdiction or by the State Fire Marshal, the agency may deny or revoke the license of an assisted living facility that fails to correct cited fire code violations that affect or threaten the health, safety, or welfare of a resident of a facility.

(3) The agency may deny a license to any applicant or controlling interest as defined in part II of chapter 408 which ~~to any officer or board member of an applicant who is a firm, corporation, partnership, or association or who owns 5 percent or more of the facility, if the applicant, officer, or board member~~ has or had a 25-percent or greater financial or ownership interest in any other facility licensed under this part, or in any entity licensed by this state or another state to provide health or residential care, which facility or entity during the 5 years prior to the application for a license closed due to financial inability to operate; had a receiver appointed or a license denied, suspended, or revoked; was subject to a moratorium ~~on admissions~~; or had an injunctive proceeding initiated against it~~; or has an outstanding fine assessed under this chapter or chapter 400~~.

(4) The agency shall deny or revoke the license of an assisted living facility that has two or more class I violations that are similar or identical to violations identified by the agency during a survey, inspection, monitoring visit, or complaint investigation occurring within the previous 2 years.

(5) An action taken by the agency to suspend, deny, or revoke a facility's license under this part or part II of chapter 408, in which the agency claims that the facility owner or an employee of the facility has threatened the health, safety, or welfare of a resident of the facility be heard by the Division of Administrative Hearings of the Department of Management Services within 120 days after receipt of the facility's request for a hearing, unless that time limitation is waived by both parties. The administrative law judge must render a decision within 30 days after receipt of a proposed recommended order.

(6) The agency shall provide to the Division of Hotels and Restaurants of the Department of Business and Professional Regulation, on a monthly basis, a list of those assisted living facilities that have had their licenses denied, suspended, or revoked or that are involved in an appellate proceeding pursuant to s. 120.60 related to the denial, suspension, or revocation of a license.

(7) Agency notification of a license suspension or revocation, or denial of a license renewal, shall be posted and visible to the public at the facility.

~~(8) The agency may issue a temporary license pending final disposition of a proceeding involving the suspension or revocation of an assisted living facility license.~~

Section 145. Section 429.15, Florida Statutes, is repealed.

Section 146. Section 429.17, Florida Statutes, is amended to read:

429.17 Expiration of license; renewal; conditional license.—

(1) ~~Biennial licenses, unless sooner suspended or revoked, shall expire 2 years from the date of issuance.~~ Limited nursing, extended congregate care, and limited mental health licenses shall expire at the same time as the facility's standard license, regardless of when issued. ~~The agency shall notify the facility at least 120 days prior to expiration that a renewal license is necessary to continue operation. The notification must be provided electronically or by mail delivery. Ninety days prior to the expiration date, an application for renewal shall be submitted to the agency. Fees must be prorated. The failure to file a timely renewal application shall result in a late fee charged to the facility in an amount equal to 50 percent of the current fee.~~

(2) A license shall be renewed in accordance with part II of chapter 408 ~~within 90 days upon the timely filing of an application on forms furnished by the agency~~ and the provision of satisfactory proof of ability to operate and conduct the facility in accordance with the requirements of this part and adopted rules, including proof that the facility has received a satisfactory firesafety inspection, conducted by the local authority having jurisdiction or the State Fire Marshal, within the preceding 12 months ~~and an affidavit of compliance with the background screening requirements of s. 429.174~~.

(3) In addition to the requirements of part II of chapter 408, ~~An applicant for renewal of a license who has complied with the provisions of s. 429.11 with respect to proof of financial ability to operate shall not be required to provide further proof unless the facility or any other facility owned or operated in whole or in part by the same person has demonstrated financial instability as provided under s. 429.47(2) or unless the agency suspects that the facility is not financially stable as a result of the annual survey or complaints from the public or a report from the State Long-Term Care Ombudsman Council.~~ each facility must report to the agency any adverse court action concerning the facility's financial viability, within 7 days after its occurrence. The agency shall have access to books, records, and any other financial documents maintained by the facility to the extent necessary to determine the facility's financial stability. ~~A license for the operation of a~~

~~facility shall not be renewed if the licensee has any outstanding fines assessed pursuant to this part which are in final order status.~~

~~(4) A licensee against whom a revocation or suspension proceeding is pending at the time of license renewal may be issued a conditional license effective until final disposition by the agency. If judicial relief is sought from the final disposition, the court having jurisdiction may issue a conditional license for the duration of the judicial proceeding.~~

(4)~~(5)~~ In addition to the license categories available in s. 408.808, a conditional license may be issued to an applicant for license renewal if the applicant fails to meet all standards and requirements for licensure. A conditional license issued under this subsection shall be limited in duration to a specific period of time not to exceed 6 months, as determined by the agency, and shall be accompanied by an agency-approved plan of correction.

(5)~~(6)~~ When an extended care or limited nursing license is requested during a facility's biennial license period, the fee shall be prorated in order to permit the additional license to expire at the end of the biennial license period. The fee shall be calculated as of the date the additional license application is received by the agency.

(6)~~(7)~~ The department may by rule establish renewal procedures, identify forms, and specify documentation necessary to administer this section. The agency, in consultation with the department, may adopt rules to administer the requirements of part II of chapter 408.

Section 147. Section 429.174, Florida Statutes, is amended to read:

429.174 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. 429.02(16)~~(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:

(1)~~(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.

(2)~~(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.

(3)~~(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 148. Section 429.176, Florida Statutes, is amended to read:

429.176 Notice of change of administrator.—If, during the period for which a license is issued, the owner changes administrators, the owner must notify the agency of the change within 10 days and provide documentation

within 90 days that the new administrator has completed the applicable core educational requirements under s. 429.52. ~~Background screening shall be completed on any new administrator as specified in s. 429.174.~~

Section 149. Section 429.18, Florida Statutes, is amended to read:

429.18 Disposition of fees and administrative fines.—

~~(1)~~ Income from ~~license~~ fees~~, inspection fees, late fees,~~ and ~~administrative~~ fines collected under this part ~~generated pursuant to ss. 429.07, 429.08, 429.17, 429.19, and 429.31 shall be deposited in the Health Care Trust Fund administered by the agency. Such funds~~ shall be directed to and used by the agency for the following purposes:

(1)~~(a)~~ Up to 50 percent of the trust funds accrued each fiscal year under this part may be used to offset the expenses of receivership, pursuant to s. 429.22, if the court determines that the income and assets of the facility are insufficient to provide for adequate management and operation.

(2)~~(b)~~ An amount of $5,000 of the trust funds accrued each year under this part shall be allocated to pay for inspection-related physical and mental health examinations requested by the agency pursuant to s. 429.26 for residents who are either recipients of supplemental security income or have monthly incomes not in excess of the maximum combined federal and state cash subsidies available to supplemental security income recipients, as provided for in s. 409.212. Such funds shall only be used where the resident is ineligible for Medicaid.

(3)~~(c)~~ Any trust funds accrued each year under this part and not used for the purposes specified in subsections (1) and (2) ~~paragraphs (a) and (b)~~ shall be used to offset the costs of the licensure program, ~~including the costs of conducting background investigations,~~ verifying information submitted, defraying the costs of processing the names of applicants, and conducting inspections and monitoring visits pursuant to this part and part II of chapter 408.

~~(2) Income from fees generated pursuant to s. 429.41(5) shall be deposited in the Health Care Trust Fund and used to offset the costs of printing and postage.~~

Section 150. Section 429.19, Florida Statutes, is amended to read:

429.19 Violations; imposition of administrative fines; grounds.—

(1) In addition to the requirements of part II of chapter 408, the agency shall impose an administrative fine in the manner provided in chapter 120 for the violation of any provision of this part, part II of chapter 408, and applicable rules ~~any of the actions or violations as set forth within this section~~ by an assisted living facility, for the actions of any person subject to level 2 background screening under s. 408.809 ~~s. 429.174~~, for the actions of any facility employee, or for an intentional or negligent act seriously affecting the health, safety, or welfare of a resident of the facility.

(2) Each violation of this part and adopted rules shall be classified according to the nature of the violation and the gravity of its probable effect on facility residents. The agency shall indicate the classification on the written notice of the violation as follows:

(a) Class "I" violations are those conditions or occurrences related to the operation and maintenance of a facility or to the personal care of residents which the agency determines present an imminent danger to the residents or guests of the facility or a substantial probability that death or serious physical or emotional harm would result therefrom. The condition or practice constituting a class I violation shall be abated or eliminated within 24 hours, unless a fixed period, as determined by the agency, is required for correction. The agency shall impose an administrative fine for a cited class I violation in an amount not less than $5,000 and not exceeding $10,000 for each violation. A fine may be levied notwithstanding the correction of the violation.

(b) Class "II" violations are those conditions or occurrences related to the operation and maintenance of a facility or to the personal care of residents which the agency determines directly threaten the physical or emotional health, safety, or security of the facility residents, other than class I violations. The agency shall impose an administrative fine for a cited class II violation in an amount not less than $1,000 and not exceeding $5,000 for each violation. A fine shall be levied notwithstanding the correction of the violation.

(c) Class "III" violations are those conditions or occurrences related to the operation and maintenance of a facility or to the personal care of residents which the agency determines indirectly or potentially threaten the physical or emotional health, safety, or security of facility residents, other than class I or class II violations. The agency shall impose an administrative fine for a cited class III violation in an amount not less than $500 and not exceeding $1,000 for each violation. A citation for a class III violation must specify the time within which the violation is required to be corrected. If a class III violation is corrected within the time specified, no fine may be imposed, unless it is a repeated offense.

(d) Class "IV" violations are those conditions or occurrences related to the operation and maintenance of a building or to required reports, forms, or documents that do not have the potential of negatively affecting residents. These violations are of a type that the agency determines do not threaten the health, safety, or security of residents of the facility. The agency shall impose an administrative fine for a cited class IV violation in an amount not less than $100 and not exceeding $200 for each violation. A citation for a class IV violation must specify the time within which the violation is required to be corrected. If a class IV violation is corrected within the time specified, no fine shall be imposed. Any class IV violation that is corrected during the time an agency survey is being conducted will be identified as an agency finding and not as a violation.

(3) <u>For purposes of this section,</u> in determining if a penalty is to be imposed and in fixing the amount of the fine, the agency shall consider the following factors:

(a) The gravity of the violation, including the probability that death or serious physical or emotional harm to a resident will result or has resulted, the severity of the action or potential harm, and the extent to which the provisions of the applicable laws or rules were violated.

(b) Actions taken by the owner or administrator to correct violations.

(c) Any previous violations.

(d) The financial benefit to the facility of committing or continuing the violation.

(e) The licensed capacity of the facility.

(4) Each day of continuing violation after the date fixed for termination of the violation, as ordered by the agency, constitutes an additional, separate, and distinct violation.

(5) Any action taken to correct a violation shall be documented in writing by the owner or administrator of the facility and verified through followup visits by agency personnel. The agency may impose a fine and, in the case of an owner-operated facility, revoke or deny a facility's license when a facility administrator fraudulently misrepresents action taken to correct a violation.

~~(6) For fines that are upheld following administrative or judicial review, the violator shall pay the fine, plus interest at the rate as specified in s. 55.03, for each day beyond the date set by the agency for payment of the fine.~~

~~(7) Any unlicensed facility that continues to operate after agency notification is subject to a $1,000 fine per day.~~

~~(8) Any licensed facility whose owner or administrator concurrently operates an unlicensed facility shall be subject to an administrative fine of $5,000 per day.~~

(6)~~(9)~~ Any facility whose owner fails to apply for a change-of-ownership license in accordance with part II of chapter 408 ~~s. 429.12~~ and operates the facility under the new ownership is subject to a fine of $5,000.

(7)~~(10)~~ In addition to any administrative fines imposed, the agency may assess a survey fee, equal to the lesser of one half of the facility's biennial license and bed fee or $500, to cover the cost of conducting initial complaint investigations that result in the finding of a violation that was the subject of the complaint or monitoring visits conducted under s. 429.28(3)(c) to verify the correction of the violations.

(8)~~(11)~~ The agency, as an alternative to or in conjunction with an administrative action against a facility for violations of this part and adopted rules, shall make a reasonable attempt to discuss each violation and recommended corrective action with the owner or administrator of the facility, prior to written notification. The agency, instead of fixing a period within which the facility shall enter into compliance with standards, may request a plan of corrective action from the facility which demonstrates a good faith effort to

remedy each violation by a specific date, subject to the approval of the agency.

~~(12) Administrative fines paid by any facility under this section shall be deposited into the Health Care Trust Fund and expended as provided in s. 429.18.~~

(9)~~(13)~~ The agency shall develop and disseminate an annual list of all facilities sanctioned or fined $5,000 or more for violations of state standards, the number and class of violations involved, the penalties imposed, and the current status of cases. The list shall be disseminated, at no charge, to the Department of Elderly Affairs, the Department of Health, the Department of Children and Family Services, the Agency for Persons with Disabilities, the area agencies on aging, the Florida Statewide Advocacy Council, and the state and local ombudsman councils. The Department of Children and Family Services shall disseminate the list to service providers under contract to the department who are responsible for referring persons to a facility for residency. The agency may charge a fee commensurate with the cost of printing and postage to other interested parties requesting a copy of this list.

Section 151. Section 429.21, Florida Statutes, is repealed.

Section 152. Subsection (9) of section 429.22, Florida Statutes, is amended to read:

429.22 Receivership proceedings.—

(9) The court may direct the agency to allocate funds from the Health Care Trust Fund to the receiver, subject to the provisions of s. 429.18~~(1)~~.

Section 153. Subsection (9) of section 429.26, Florida Statutes, is amended to read:

429.26 Appropriateness of placements; examinations of residents.—

(9) If, at any time after admission to a facility, a resident appears to need care beyond that which the facility is licensed to provide, the agency shall require the resident to be physically examined by a licensed physician, physician assistant, or licensed nurse practitioner. This examination shall, to the extent possible, be performed by the resident's preferred physician or nurse practitioner and shall be paid for by the resident with personal funds, except as provided in s. 429.18(2)~~(1)(b)~~. Following this examination, the examining physician, physician assistant, or licensed nurse practitioner shall complete and sign a medical form provided by the agency. The completed medical form shall be submitted to the agency within 30 days after the date the facility owner or administrator is notified by the agency that the physical examination is required. After consultation with the physician, physician assistant, or licensed nurse practitioner who performed the examination, a medical review team designated by the agency shall then determine whether the resident is appropriately residing in the facility. The medical review team shall base its decision on a comprehensive review of the resident's physical and functional status, including the resident's preferences, and not on an isolated health-related problem. In the case of a mental

health resident, if the resident appears to have needs in addition to those identified in the community living support plan, the agency may require an evaluation by a mental health professional, as determined by the Department of Children and Family Services. A facility may not be required to retain a resident who requires more services or care than the facility is able to provide in accordance with its policies and criteria for admission and continued residency. Members of the medical review team making the final determination may not include the agency personnel who initially questioned the appropriateness of a resident's placement. Such determination is final and binding upon the facility and the resident. Any resident who is determined by the medical review team to be inappropriately residing in a facility shall be given 30 days' written notice to relocate by the owner or administrator, unless the resident's continued residence in the facility presents an imminent danger to the health, safety, or welfare of the resident or a substantial probability exists that death or serious physical harm would result to the resident if allowed to remain in the facility.

Section 154. Subsections (1), (4), and (5) of section 429.31, Florida Statutes, are amended to read:

429.31 Closing of facility; notice; penalty.—

(1) In addition to the requirements of part II of chapter 408, ~~Whenever a facility voluntarily discontinues operation, it shall inform the agency in writing at least 90 days prior to the discontinuance of operation.~~ the facility shall ~~also~~ inform each resident or the next of kin, legal representative, or agency acting on each resident's behalf, of the fact and the proposed time of ~~such~~ discontinuance of operation, following the notification requirements provided in s. 429.28(1)(k). In the event a resident has no person to represent him or her, the facility shall be responsible for referral to an appropriate social service agency for placement.

~~(4) Immediately upon discontinuance of the operation of a facility, the owner shall surrender the license therefor to the agency, and the license shall be canceled.~~

(4)~~(5)~~ The agency may levy a fine in an amount no greater than $5,000 upon each person or business entity that owns any interest in a facility that terminates operation without providing notice to the agency and the residents of the facility at least 30 days before operation ceases. This fine shall not be levied against any facility involuntarily closed at the initiation of the agency. The agency shall use the proceeds of the fines to operate the facility until all residents of the facility are relocated ~~and shall deposit any balance of the proceeds into the Health Care Trust Fund established pursuant to s. 429.18~~.

Section 155. Section 429.34, Florida Statutes, is amended to read:

429.34 Right of entry and inspection.—In addition to the requirements of s. 408.811, any duly designated officer or employee of the department, the Department of Children and Family Services, ~~the agency,~~ the Medicaid Fraud Control Unit of the Office of the Attorney General ~~Department of Legal Affairs~~, the state or local fire marshal, or a member of the state or local

long-term care ombudsman council shall have the right to enter unannounced upon and into the premises of any facility licensed pursuant to this part in order to determine the state of compliance with the provisions of this part, part II of chapter 408, and applicable ~~of~~ rules ~~or standards in force pursuant thereto~~. ~~The right of entry and inspection shall also extend to any premises which the agency has reason to believe is being operated or maintained as a facility without a license; but no such entry or inspection of any premises may be made without the permission of the owner or person in charge thereof, unless a warrant is first obtained from the circuit court authorizing such entry. The warrant requirement shall extend only to a facility which the agency has reason to believe is being operated or maintained as a facility without a license. Any application for a license or renewal thereof made pursuant to this part shall constitute permission for, and complete acquiescence in, any entry or inspection of the premises for which the license is sought, in order to facilitate verification of the information submitted on or in connection with the application; to discover, investigate, and determine the existence of abuse or neglect; or to elicit, receive, respond to, and resolve complaints. Any current valid license shall constitute unconditional permission for, and complete acquiescence in, any entry or inspection of the premises by authorized personnel. The agency shall retain the right of entry and inspection of facilities that have had a license revoked or suspended within the previous 24 months, to ensure that the facility is not operating unlawfully. However, before entering the facility, a statement of probable cause must be filed with the director of the agency, who must approve or disapprove the action within 48 hours. Probable cause shall include, but is not limited to, evidence that the facility holds itself out to the public as a provider of personal care services or the receipt of a complaint by the long-term care ombudsman council about the facility.~~ Data collected by the state or local long-term care ombudsman councils or the state or local advocacy councils may be used by the agency in investigations involving violations of regulatory standards.

Section 156. Section 429.35, Florida Statutes, is amended to read:

429.35 Maintenance of records; reports.—

(1) Every facility shall maintain, as public information available for public inspection under such conditions as the agency shall prescribe, records containing copies of all inspection reports pertaining to the facility that have been issued by the agency to the facility. Copies of inspection reports shall be retained in the records for 5 years from the date the reports are filed or issued.

(2) Within 60 days after the date of the biennial inspection visit required under s. 408.811 or within 30 days after the date of any interim visit, the agency shall forward the results of the inspection to the local ombudsman council in whose planning and service area, as defined in part I ~~II~~ of chapter 400, the facility is located; to at least one public library or, in the absence of a public library, the county seat in the county in which the inspected assisted living facility is located; and, when appropriate, to the district Adult Services and Mental Health Program Offices.

(3) Every facility shall post a copy of the last inspection report of the agency for that facility in a prominent location within the facility so as to be accessible to all residents and to the public. Upon request, the facility shall also provide a copy of the report to any resident of the facility or to an applicant for admission to the facility.

Section 157. Section 429.41, Florida Statutes, is amended to read:

429.41 Rules establishing standards.—

(1) It is the intent of the Legislature that rules published and enforced pursuant to this section shall include criteria by which a reasonable and consistent quality of resident care and quality of life may be ensured and the results of such resident care may be demonstrated. Such rules shall also ensure a safe and sanitary environment that is residential and noninstitutional in design or nature. It is further intended that reasonable efforts be made to accommodate the needs and preferences of residents to enhance the quality of life in a facility. The agency, in consultation with the department, may adopt rules to administer the requirements of part II of chapter 408. In order to provide safe and sanitary facilities and the highest quality of resident care accommodating the needs and preferences of residents, the department, in consultation with the agency, the Department of Children and Family Services, and the Department of Health, shall adopt rules, policies, and procedures to administer this part, which must include reasonable and fair minimum standards in relation to:

(a) The requirements for and maintenance of facilities, not in conflict with the provisions of chapter 553, relating to plumbing, heating, cooling, lighting, ventilation, living space, and other housing conditions, which will ensure the health, safety, and comfort of residents and protection from fire hazard, including adequate provisions for fire alarm and other fire protection suitable to the size of the structure. Uniform firesafety standards shall be established and enforced by the State Fire Marshal in cooperation with the agency, the department, and the Department of Health.

1. Evacuation capability determination.—

a. The provisions of the National Fire Protection Association, NFPA 101A, Chapter 5, 1995 edition, shall be used for determining the ability of the residents, with or without staff assistance, to relocate from or within a licensed facility to a point of safety as provided in the fire codes adopted herein. An evacuation capability evaluation for initial licensure shall be conducted within 6 months after the date of licensure. For existing licensed facilities that are not equipped with an automatic fire sprinkler system, the administrator shall evaluate the evacuation capability of residents at least annually. The evacuation capability evaluation for each facility not equipped with an automatic fire sprinkler system shall be validated, without liability, by the State Fire Marshal, by the local fire marshal, or by the local authority having jurisdiction over firesafety, before the license renewal date. If the State Fire Marshal, local fire marshal, or local authority having jurisdiction over firesafety has reason to believe that the evacuation capability of a facility as reported by the administrator may have changed, it may, with assistance from the facility administrator, reevaluate the evacuation

capability through timed exiting drills. Translation of timed fire exiting drills to evacuation capability may be determined:

(I) Three minutes or less: prompt.

(II) More than 3 minutes, but not more than 13 minutes: slow.

(III) More than 13 minutes: impractical.

b. The Office of the State Fire Marshal shall provide or cause the provision of training and education on the proper application of Chapter 5, NFPA 101A, 1995 edition, to its employees, to staff of the Agency for Health Care Administration who are responsible for regulating facilities under this part, and to local governmental inspectors. The Office of the State Fire Marshal shall provide or cause the provision of this training within its existing budget, but may charge a fee for this training to offset its costs. The initial training must be delivered within 6 months after July 1, 1995, and as needed thereafter.

c. The Office of the State Fire Marshal, in cooperation with provider associations, shall provide or cause the provision of a training program designed to inform facility operators on how to properly review bid documents relating to the installation of automatic fire sprinklers. The Office of the State Fire Marshal shall provide or cause the provision of this training within its existing budget, but may charge a fee for this training to offset its costs. The initial training must be delivered within 6 months after July 1, 1995, and as needed thereafter.

d. The administrator of a licensed facility shall sign an affidavit verifying the number of residents occupying the facility at the time of the evacuation capability evaluation.

2. Firesafety requirements.—

a. Except for the special applications provided herein, effective January 1, 1996, the provisions of the National Fire Protection Association, Life Safety Code, NFPA 101, 1994 edition, Chapter 22 for new facilities and Chapter 23 for existing facilities shall be the uniform fire code applied by the State Fire Marshal for assisted living facilities, pursuant to s. 633.022.

b. Any new facility, regardless of size, that applies for a license on or after January 1, 1996, must be equipped with an automatic fire sprinkler system. The exceptions as provided in s. 22-2.3.5.1, NFPA 101, 1994 edition, as adopted herein, apply to any new facility housing eight or fewer residents. On July 1, 1995, local governmental entities responsible for the issuance of permits for construction shall inform, without liability, any facility whose permit for construction is obtained prior to January 1, 1996, of this automatic fire sprinkler requirement. As used in this part, the term “a new facility” does not mean an existing facility that has undergone change of ownership.

c. Notwithstanding any provision of s. 633.022 or of the National Fire Protection Association, NFPA 101A, Chapter 5, 1995 edition, to the contrary, any existing facility housing eight or fewer residents is not required

to install an automatic fire sprinkler system, nor to comply with any other requirement in Chapter 23, NFPA 101, 1994 edition, that exceeds the firesafety requirements of NFPA 101, 1988 edition, that applies to this size facility, unless the facility has been classified as impractical to evacuate. Any existing facility housing eight or fewer residents that is classified as impractical to evacuate must install an automatic fire sprinkler system within the timeframes granted in this section.

d. Any existing facility that is required to install an automatic fire sprinkler system under this paragraph need not meet other firesafety requirements of Chapter 23, NFPA 101, 1994 edition, which exceed the provisions of NFPA 101, 1988 edition. The mandate contained in this paragraph which requires certain facilities to install an automatic fire sprinkler system supersedes any other requirement.

e. This paragraph does not supersede the exceptions granted in NFPA 101, 1988 edition or 1994 edition.

f. This paragraph does not exempt facilities from other firesafety provisions adopted under s. 633.022 and local building code requirements in effect before July 1, 1995.

g. A local government may charge fees only in an amount not to exceed the actual expenses incurred by local government relating to the installation and maintenance of an automatic fire sprinkler system in an existing and properly licensed assisted living facility structure as of January 1, 1996.

h. If a licensed facility undergoes major reconstruction or addition to an existing building on or after January 1, 1996, the entire building must be equipped with an automatic fire sprinkler system. Major reconstruction of a building means repair or restoration that costs in excess of 50 percent of the value of the building as reported on the tax rolls, excluding land, before reconstruction. Multiple reconstruction projects within a 5-year period the total costs of which exceed 50 percent of the initial value of the building at the time the first reconstruction project was permitted are to be considered as major reconstruction. Application for a permit for an automatic fire sprinkler system is required upon application for a permit for a reconstruction project that creates costs that go over the 50-percent threshold.

i. Any facility licensed before January 1, 1996, that is required to install an automatic fire sprinkler system shall ensure that the installation is completed within the following timeframes based upon evacuation capability of the facility as determined under subparagraph 1.:

(I) Impractical evacuation capability, 24 months.

(II) Slow evacuation capability, 48 months.

(III) Prompt evacuation capability, 60 months.

The beginning date from which the deadline for the automatic fire sprinkler installation requirement must be calculated is upon receipt of written notice from the local fire official that an automatic fire sprinkler system must be

installed. The local fire official shall send a copy of the document indicating the requirement of a fire sprinkler system to the Agency for Health Care Administration.

j. It is recognized that the installation of an automatic fire sprinkler system may create financial hardship for some facilities. The appropriate local fire official shall, without liability, grant two 1-year extensions to the timeframes for installation established herein, if an automatic fire sprinkler installation cost estimate and proof of denial from two financial institutions for a construction loan to install the automatic fire sprinkler system are submitted. However, for any facility with a class I or class II, or a history of uncorrected class III, firesafety deficiencies, an extension must not be granted. The local fire official shall send a copy of the document granting the time extension to the Agency for Health Care Administration.

k. A facility owner whose facility is required to be equipped with an automatic fire sprinkler system under Chapter 23, NFPA 101, 1994 edition, as adopted herein, must disclose to any potential buyer of the facility that an installation of an automatic fire sprinkler requirement exists. The sale of the facility does not alter the timeframe for the installation of the automatic fire sprinkler system.

l. Existing facilities required to install an automatic fire sprinkler system as a result of construction-type restrictions in Chapter 23, NFPA 101, 1994 edition, as adopted herein, or evacuation capability requirements shall be notified by the local fire official in writing of the automatic fire sprinkler requirement, as well as the appropriate date for final compliance as provided in this subparagraph. The local fire official shall send a copy of the document to the Agency for Health Care Administration.

m. Except in cases of life-threatening fire hazards, if an existing facility experiences a change in the evacuation capability, or if the local authority having jurisdiction identifies a construction-type restriction, such that an automatic fire sprinkler system is required, it shall be afforded time for installation as provided in this subparagraph.

Facilities that are fully sprinkled and in compliance with other firesafety standards are not required to conduct more than one of the required fire drills between the hours of 11 p.m. and 7 a.m., per year. In lieu of the remaining drills, staff responsible for residents during such hours may be required to participate in a mock drill that includes a review of evacuation procedures. Such standards must be included or referenced in the rules adopted by the State Fire Marshal. Pursuant to s. 633.022(1)(b), the State Fire Marshal is the final administrative authority for firesafety standards established and enforced pursuant to this section. All licensed facilities must have an annual fire inspection conducted by the local fire marshal or authority having jurisdiction.

3. Resident elopement requirements.—Facilities are required to conduct a minimum of two resident elopement prevention and response drills per year. All administrators and direct care staff must participate in the drills which shall include a review of procedures to address resident elopement.

Facilities must document the implementation of the drills and ensure that the drills are conducted in a manner consistent with the facility's resident elopement policies and procedures.

(b) The preparation and annual update of a comprehensive emergency management plan. Such standards must be included in the rules adopted by the department after consultation with the Department of Community Affairs. At a minimum, the rules must provide for plan components that address emergency evacuation transportation; adequate sheltering arrangements; postdisaster activities, including provision of emergency power, food, and water; postdisaster transportation; supplies; staffing; emergency equipment; individual identification of residents and transfer of records; communication with families; and responses to family inquiries. The comprehensive emergency management plan 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 Department of Elderly Affairs, the Department of Health, the Agency for Health Care Administration, 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.

(c) The number, training, and qualifications of all personnel having responsibility for the care of residents. The rules must require adequate staff to provide for the safety of all residents. Facilities licensed for 17 or more residents are required to maintain an alert staff for 24 hours per day.

(d) All sanitary conditions within the facility and its surroundings which will ensure the health and comfort of residents. The rules must clearly delineate the responsibilities of the agency's licensure and survey staff, the county health departments, and the local authority having jurisdiction over firesafety and ensure that inspections are not duplicative. The agency may collect fees for food service inspections conducted by the county health departments and transfer such fees to the Department of Health.

(e) License application and license renewal, transfer of ownership, proper management of resident funds and personal property, surety bonds, resident contracts, refund policies, financial ability to operate, and facility and staff records.

(f) Inspections, complaint investigations, moratoriums, classification of deficiencies, levying and enforcement of penalties, and use of income from fees and fines.

(g) The enforcement of the resident bill of rights specified in s. 429.28.

(h) The care and maintenance of residents, which must include, but is not limited to:

1. The supervision of residents;

2. The provision of personal services;

3. The provision of, or arrangement for, social and leisure activities;

4. The arrangement for appointments and transportation to appropriate medical, dental, nursing, or mental health services, as needed by residents;

5. The management of medication;

6. The nutritional needs of residents;

7. Resident records; and

8. Internal risk management and quality assurance.

(i) Facilities holding a limited nursing, extended congregate care, or limited mental health license.

(j) The establishment of specific criteria to define appropriateness of resident admission and continued residency in a facility holding a standard, limited nursing, extended congregate care, and limited mental health license.

(k) The use of physical or chemical restraints. The use of physical restraints is limited to half-bed rails as prescribed and documented by the resident's physician with the consent of the resident or, if applicable, the resident's representative or designee or the resident's surrogate, guardian, or attorney in fact. The use of chemical restraints is limited to prescribed dosages of medications authorized by the resident's physician and must be consistent with the resident's diagnosis. Residents who are receiving medications that can serve as chemical restraints must be evaluated by their physician at least annually to assess:

1. The continued need for the medication.

2. The level of the medication in the resident's blood.

3. The need for adjustments in the prescription.

(l) The establishment of specific policies and procedures on resident elopement. Facilities shall conduct a minimum of two resident elopement drills each year. All administrators and direct care staff shall participate in the drills. Facilities shall document the drills.

(2) In adopting any rules pursuant to this part, the department, in conjunction with the agency, shall make distinct standards for facilities based upon facility size; the types of care provided; the physical and mental capabilities and needs of residents; the type, frequency, and amount of services and care offered; and the staffing characteristics of the facility. Rules developed pursuant to this section shall not restrict the use of shared staffing and shared programming in facilities that are part of retirement communities that provide multiple levels of care and otherwise meet the requirements of law and rule. Except for uniform firesafety standards, the department shall adopt by rule separate and distinct standards for facilities with 16 or fewer

beds and for facilities with 17 or more beds. The standards for facilities with 16 or fewer beds shall be appropriate for a noninstitutional residential environment, provided that the structure is no more than two stories in height and all persons who cannot exit the facility unassisted in an emergency reside on the first floor. The department, in conjunction with the agency, may make other distinctions among types of facilities as necessary to enforce the provisions of this part. Where appropriate, the agency shall offer alternate solutions for complying with established standards, based on distinctions made by the department and the agency relative to the physical characteristics of facilities and the types of care offered therein.

(3) The department shall submit a copy of proposed rules to the Speaker of the House of Representatives, the President of the Senate, and appropriate committees of substance for review and comment prior to the promulgation thereof.

~~(a)~~ Rules promulgated by the department shall encourage the development of homelike facilities which promote the dignity, individuality, personal strengths, and decisionmaking ability of residents.

(4)~~(b)~~ The agency, in consultation with the department, may waive rules promulgated pursuant to this part in order to demonstrate and evaluate innovative or cost-effective congregate care alternatives which enable individuals to age in place. Such waivers may be granted only in instances where there is reasonable assurance that the health, safety, or welfare of residents will not be endangered. To apply for a waiver, the licensee shall submit to the agency a written description of the concept to be demonstrated, including goals, objectives, and anticipated benefits; the number and types of residents who will be affected, if applicable; a brief description of how the demonstration will be evaluated; and any other information deemed appropriate by the agency. Any facility granted a waiver shall submit a report of findings to the agency and the department within 12 months. At such time, the agency may renew or revoke the waiver or pursue any regulatory or statutory changes necessary to allow other facilities to adopt the same practices. The department may by rule clarify terms and establish waiver application procedures, criteria for reviewing waiver proposals, and procedures for reporting findings, as necessary to implement this subsection.

(5)~~(4)~~ The agency may use an abbreviated biennial standard licensure inspection that consists of a review of key quality-of-care standards in lieu of a full inspection in facilities which have a good record of past performance. However, a full inspection shall be conducted in facilities which have had a history of class I or class II violations, uncorrected class III violations, confirmed ombudsman council complaints, or confirmed licensure complaints, within the previous licensure period immediately preceding the inspection or when a potentially serious problem is identified during the abbreviated inspection. The agency, in consultation with the department, shall develop the key quality-of-care standards with input from the State Long-Term Care Ombudsman Council and representatives of provider groups for incorporation into its rules. The department, in consultation with the agency, shall report annually to the Legislature concerning its implementation of this subsection. The report shall include, at a minimum, the

key quality-of-care standards which have been developed; the number of facilities identified as being eligible for the abbreviated inspection; the number of facilities which have received the abbreviated inspection and, of those, the number that were converted to full inspection; the number and type of subsequent complaints received by the agency or department on facilities which have had abbreviated inspections; any recommendations for modification to this subsection; any plans by the agency to modify its implementation of this subsection; and any other information which the department believes should be reported.

~~(5) A fee shall be charged by the department to any person requesting a copy of this part or rules promulgated under this part. Such fees shall not exceed the actual cost of duplication and postage.~~

Section 158. Subsections (4) through (7) of section 429.47, Florida Statutes, are renumbered as subsections (1) through (4), respectively, and present subsections (1), (2), and (3) of that section are amended to read:

429.47 Prohibited acts; penalties for violation.—

~~(1) It is unlawful for any person or public body to offer or advertise to the public, in any way by any medium whatever, personal services as defined in this act, without obtaining a valid current license. It is unlawful for any holder of a license issued pursuant to the provisions of this act to advertise or hold out to the public that it holds a license for a facility other than that for which it actually holds a license.~~

~~(2) It is unlawful for any holder of a license issued pursuant to the provisions of this act to withhold from the agency any evidence of financial instability, including, but not limited to, bad checks, delinquent accounts, nonpayment of withholding taxes, unpaid utility expenses, nonpayment for essential services, or adverse court action concerning the financial viability of the facility or any other facility licensed under part II of chapter 400 or under this part which is owned by the licensee.~~

~~(3) Any person found guilty of violating subsection (1) or subsection (2) commits a misdemeanor of the second degree, punishable as provided in s. 775.083. Each day of continuing violation shall be considered a separate offense.~~

Section 159. Section 429.51, Florida Statutes, is repealed.

Section 160. Section 429.67, Florida Statutes, is amended to read:

429.67 Licensure ~~application and renewal~~.—

(1) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this part and part II of chapter 408 and to entities licensed by or applying for such licensure from the Agency for Health Care Administration pursuant to this part. A license issued by the agency is required in order to operate an adult family-care home in this state. ~~Each person who intends to be an adult family-care home provider must apply for a license from the agency at least 90 days before the applicant intends to operate the adult family-care home.~~

(2) A person who intends to be an adult family-care home provider must own or rent the adult family-care home that is to be licensed and reside therein.

(3) In accordance with s. 408.805, an applicant or licensee shall pay a fee for each license application submitted under this part, part II of chapter 408, and applicable rules. The amount of the fee shall be $200 per biennium. ~~The agency shall notify a licensee at least 120 days before the expiration date that license renewal is required to continue operation. The notification must be provided electronically or by mail delivery. Application for a license or annual license renewal must be made on a form provided by the agency, signed under oath, and must be accompanied by a licensing fee of $100 per year.~~

(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.

~~(5) The application must be accompanied by a description and explanation of any exclusions, permanent suspensions, or terminations of the applicant from participation in the Medicaid or Medicare programs or any other governmental health care or health insurance program.~~

(5)~~(6)~~ Unless the adult family-care home is a community residential home subject to chapter 419, the applicant must provide documentation, signed by the appropriate governmental official, that the home has met local zoning requirements for the location for which the license is sought.

(6)~~(7)~~ In addition to the requirements of s. 408.811, access to a licensed adult family-care home must be provided at reasonable times for the appropriate officials of the department, the Department of Health, the Department of Children and Family Services, the agency, and the State Fire Marshal, who are responsible for the development and maintenance of fire,

health, sanitary, and safety standards, to inspect the facility to assure compliance with these standards. In addition, access to a licensed adult family-care home must be provided at reasonable times for the local long-term care ombudsman council.

~~(8) A license is effective for 1 year after the date of issuance unless revoked sooner. Each license must state the name of the provider, the address of the home to which the license applies, and the maximum number of residents of the home. Failure to timely file a license renewal application shall result in a late fee equal to 50 percent of the license fee.~~

~~(9) A license is not transferable or applicable to any location or person other than the location and person indicated on the license.~~

(7)~~(10)~~ The licensed maximum capacity of each adult family-care home is based on the service needs of the residents and the capability of the provider to meet the needs of the residents. Any relative who lives in the adult family-care home and who is a disabled adult or frail elder must be included in that limitation.

(8)~~(11)~~ Each adult family-care home must designate at least one licensed space for a resident receiving optional state supplementation. The Department of Children and Family Services shall specify by rule the procedures to be followed for referring residents who receive optional state supplementation to adult family-care homes. Those homes licensed as adult foster homes or assisted living facilities prior to January 1, 1994, that convert to adult family-care homes, are exempt from this requirement.

(9)~~(12)~~ In addition to the license categories available in s. 408.808, the agency may issue a conditional license to a provider for the purpose of bringing the adult family-care home into compliance with licensure requirements. A conditional license must be limited to a specific period, not exceeding 6 months. The department shall, by rule, establish criteria for issuing conditional licenses.

~~(13) All moneys collected under this section must be deposited into the Department of Elderly Affairs Administrative Trust Fund.~~

(10)~~(14)~~ The department may adopt rules to establish procedures, identify forms, specify documentation, and clarify terms, as necessary, to administer this section.

(11) The agency may adopt rules to administer the requirements of part II of chapter 408.

Section 161. Section 429.69, Florida Statutes, is amended to read:

429.69 Denial, revocation, and ~~or~~ suspension of a license.—In addition to the requirements of part II of chapter 408, the agency may deny, suspend, and ~~or~~ revoke a license for any of the following reasons:

(1) Failure of any of the persons required to undergo background screening under s. 429.67 to meet the level 1 screening standards of s. 435.03, unless an exemption from disqualification has been provided by the agency.

~~(2) An intentional or negligent act materially affecting the health, safety, or welfare of the adult family-care home residents.~~

~~(3) Submission of fraudulent information or omission of any material fact on a license application or any other document required by the agency.~~

~~(4) Failure to pay an administrative fine assessed under this part.~~

~~(5) A violation of this part or adopted rules which results in conditions or practices that directly threaten the physical or emotional health, safety, or welfare of residents.~~

(2)~~(6)~~ Failure to correct cited fire code violations that threaten the health, safety, or welfare of residents.

~~(7) Failure to submit a completed initial license application or to complete an application for license renewal within the specified timeframes.~~

~~(8) Exclusion, permanent suspension, or termination of the provider from the Medicare or Medicaid program.~~

Section 162. Section 429.71, Florida Statutes, is amended to read:

429.71 Classification of deficiencies; administrative fines ~~Violations; penalties~~.—

(1) In addition to the requirements of part II of chapter 408 and in addition to any other liability or penalty provided by law, the agency may impose an administrative fine ~~a civil penalty~~ on a provider according to the following classification:

(a) Class I violations are those conditions or practices related to the operation and maintenance of an adult family-care home or to the care of residents which the agency determines present an imminent danger to the residents or guests of the facility or a substantial probability that death or serious physical or emotional harm would result therefrom. The condition or practice that constitutes a class I violation must be abated or eliminated within 24 hours, unless a fixed period, as determined by the agency, is required for correction. A class I deficiency is subject to an administrative fine in an amount not less than $500 and not exceeding $1,000 for each violation. A fine may be levied notwithstanding the correction of the deficiency.

(b) Class II violations are those conditions or practices related to the operation and maintenance of an adult family-care home or to the care of residents which the agency determines directly threaten the physical or emotional health, safety, or security of the residents, other than class I violations. A class II violation is subject to an administrative fine in an amount not less than $250 and not exceeding $500 for each violation. A citation for a class II violation must specify the time within which the violation is required to be corrected. If a class II violation is corrected within the time specified, no civil penalty shall be imposed, unless it is a repeated offense.

(c) Class III violations are those conditions or practices related to the operation and maintenance of an adult family-care home or to the care of residents which the agency determines indirectly or potentially threaten the physical or emotional health, safety, or security of residents, other than class I or class II violations. A class III violation is subject to an administrative fine in an amount not less than $100 and not exceeding $250 for each violation. A citation for a class III violation shall specify the time within which the violation is required to be corrected. If a class III violation is corrected within the time specified, no civil penalty shall be imposed, unless it is a repeated offense.

(d) Class IV violations are those conditions or occurrences related to the operation and maintenance of an adult family-care home, or related to the required reports, forms, or documents, which do not have the potential of negatively affecting the residents. A provider that does not correct a class IV violation within the time limit specified by the agency is subject to an administrative fine in an amount not less than $50 and not exceeding $100 for each violation. Any class IV violation that is corrected during the time the agency survey is conducted will be identified as an agency finding and not as a violation.

(2) The agency may impose an administrative fine for violations which do not qualify as class I, class II, class III, or class IV violations. The amount of the fine shall not exceed $250 for each violation or $2,000 in the aggregate. Unclassified violations may include:

(a) Violating any term or condition of a license.

(b) Violating any provision of ~~rule adopted under~~ this part, part II of chapter 408, or applicable rules.

(c) Failure to follow the criteria and procedures provided under part I of chapter 394 relating to the transportation, voluntary admission, and involuntary examination of adult family-care home residents.

(d) Exceeding licensed capacity.

(e) Providing services beyond the scope of the license.

(f) Violating a moratorium.

(3) Each day during which a violation occurs constitutes a separate offense.

(4) In determining whether a penalty is to be imposed, and in fixing the amount of any penalty to be imposed, the agency must consider:

(a) The gravity of the violation.

(b) Actions taken by the provider to correct a violation.

(c) Any previous violation by the provider.

(d) The financial benefit to the provider of committing or continuing the violation.

(5) As an alternative to or in conjunction with an administrative action against a provider, the agency may request a plan of corrective action that demonstrates a good faith effort to remedy each violation by a specific date, subject to the approval of the agency.

(6) The department shall set forth, by rule, notice requirements and procedures for correction of deficiencies.

~~(7) Civil penalties paid by a provider must be deposited into the Department of Elderly Affairs Administrative Trust Fund and used to offset the expenses of departmental training and education for adult family-care home providers.~~

~~(8) The agency may impose an immediate moratorium on admissions to any adult family-care home if the agency finds that a condition in the home presents a threat to the health, safety, or welfare of its residents. The department may by rule establish facility conditions that constitute grounds for imposing a moratorium and establish procedures for imposing and lifting a moratorium.~~

Section 163. Section 429.73, Florida Statutes, is amended to read:

429.73 Rules and standards relating to adult family-care homes.—

(1) The agency, in consultation with the department, may adopt rules to administer the requirements of part II of chapter 408. The department, in consultation with the Department of Health, the Department of Children and Family Services, and the agency shall, by rule, establish minimum standards to ensure the health, safety, and well-being of each resident in the adult family-care home pursuant to this part. The rules must address:

(a) Requirements for the physical site of the facility and facility maintenance.

(b) Services that must be provided to all residents of an adult family-care home and standards for such services, which must include, but need not be limited to:

1. Room and board.

2. Assistance necessary to perform the activities of daily living.

3. Assistance necessary to administer medication.

4. Supervision of residents.

5. Health monitoring.

6. Social and leisure activities.

(c) Standards and procedures for license application and annual license renewal, advertising, proper management of each resident's funds and personal property and personal affairs, financial ability to operate, medication management, inspections, complaint investigations, and facility, staff, and resident records.

(d) Qualifications, training, standards, and responsibilities for providers and staff.

(e) Compliance with chapter 419, relating to community residential homes.

(f) Criteria and procedures for determining the appropriateness of a resident's placement and continued residency in an adult family-care home. A resident who requires 24-hour nursing supervision may not be retained in an adult family-care home unless such resident is an enrolled hospice patient and the resident's continued residency is mutually agreeable to the resident and the provider.

(g) Procedures for providing notice and assuring the least possible disruption of residents' lives when residents are relocated, an adult family-care home is closed, or the ownership of an adult family-care home is transferred.

(h) Procedures to protect the residents' rights as provided in s. 429.85.

(i) Procedures to promote the growth of adult family-care homes as a component of a long-term care system.

(j) Procedures to promote the goal of aging in place for residents of adult family-care homes.

(2) The department shall by rule provide minimum standards and procedures for emergencies. Pursuant to s. 633.022, the State Fire Marshal, in consultation with the department and the agency, shall adopt uniform fire-safety standards for adult family-care homes.

(3) The department shall adopt rules providing for the implementation of orders not to resuscitate. The provider may withhold or withdraw cardiopulmonary resuscitation if presented with an order not to resuscitate executed pursuant to s. 401.45. The provider shall not be subject to criminal prosecution or civil liability, nor be considered to have engaged in negligent or unprofessional conduct, for withholding or withdrawing cardiopulmonary resuscitation pursuant to such an order and <u>applicable</u> rules ~~adopted by the department~~.

~~(4) The provider of any adult family-care home that is in operation at the time any rules are adopted or amended under this part may be given a reasonable time, not exceeding 6 months, within which to comply with the new or revised rules and standards.~~

Section 164. <u>Section 429.77, Florida Statutes, is repealed.</u>

Section 165. Subsections (6) and (7) of section 429.901, Florida Statutes, are amended to read:

429.901 Definitions.—As used in this part, the term:

(6) "Operator" means the <u>licensee or</u> person having general administrative charge of an adult day care center.

(7) "Owner" means the licensee ~~owner~~ of an adult day care center.

Section 166. Section 429.907, Florida Statutes, is amended to read:

429.907 License requirement; fee; exemption; display.—

(1) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this part and part II of chapter 408 and to entities licensed by or applying for such licensure from the Agency for Health Care Administration pursuant to this part. A license issued by the agency is required in order to operate an adult day care in this state. ~~It is unlawful to operate an adult day care center without first obtaining from the agency a license authorizing such operation. The agency is responsible for licensing adult day care centers in accordance with this part.~~

(2) Separate licenses are required for centers operated on separate premises, even though operated under the same management. Separate licenses are not required for separate buildings on the same premises.

(3) In accordance with s. 408.805, an applicant or licensee shall pay a fee for each license application submitted under this part and part II of chapter 408. The amount of the fee shall be established by rule and ~~The biennial license fee required of a center shall be determined by the department, but~~ may not exceed $150.

(4) County-operated or municipally operated centers applying for licensure under this part are exempt from the payment of license fees.

~~(5) The license for a center shall be displayed in a conspicuous place inside the center.~~

~~(6) A license is valid only in the possession of the individual, firm, partnership, association, or corporation to which it is issued and is not subject to sale, assignment, or other transfer, voluntary or involuntary; nor is a license valid for any premises other than the premises for which originally issued.~~

Section 167. Section 429.909, Florida Statutes, is amended to read:

429.909 Application for license.—

~~(1) An application for a license to operate an adult day care center must be made to the agency on forms furnished by the agency and must be accompanied by the appropriate license fee unless the applicant is exempt from payment of the fee as provided in s. 429.907(4).~~

~~(2)~~ In addition to all provisions of part II of chapter 408, the applicant for licensure must furnish~~:~~

~~(a)~~ a description of the physical and mental capabilities and needs of the participants to be served and the availability, frequency, and intensity of basic services and of supportive and optional services to be provided and~~;~~

~~(b) Satisfactory proof of financial ability to operate and conduct the center in accordance with the requirements of this part, which must include,~~

~~in the case of an initial application, a 1-year operating plan and proof of a 3-month operating reserve fund; and~~

~~(c)~~ proof of adequate liability insurance coverage.

~~(d) Proof of compliance with level 2 background screening as required under s. 429.919.~~

~~(e) A description and explanation of any exclusions, permanent suspensions, or terminations of the application from the Medicare or Medicaid programs. Proof of compliance with disclosure of ownership and control interest requirements of the Medicare or Medicaid programs shall be accepted in lieu of this submission.~~

Section 168. Section 429.911, Florida Statutes, is amended to read:

429.911 Denial, suspension, revocation of license; emergency action; administrative fines; investigations and inspections.—

(1) The agency may deny, revoke, and ~~or~~ suspend a license under this part, impose an action under s. 408.814, and ~~or may~~ impose an administrative fine against the owner of an adult day care center or its operator or employee in the manner provided in chapter 120 for the violation of any provision of this part, part II of chapter 408, or applicable rules.

(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:

(a) An intentional or negligent act materially affecting the health or safety of center participants.

(b) A violation of this part or of any standard or rule under this part or part II of chapter 408.

(c) A failure of persons subject to level 2 background screening under s. 408.809 ~~429.174(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. 429.174~~(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.

(d) Failure to follow the criteria and procedures provided under part I of chapter 394 relating to the transportation, voluntary admission, and involuntary examination of center participants.

(e) Multiple or repeated violations of this part or of any standard or rule adopted under this part or part II of chapter 408.

~~(f) Exclusion, permanent suspension, or termination of the owner, if an individual, officer, or board member of the adult day care center, if the owner is a firm, corporation, partnership, or association, or any person owning 5 percent or more of the center, from the Medicare or Medicaid program.~~

(3) The agency is responsible for all investigations and inspections conducted pursuant to this part and s. 408.811.

Section 169. Section 429.913, Florida Statutes, is amended to read:

429.913 Administrative fines~~; interest~~.—

(1)(a) In addition to the requirements of part II of chapter 408, if the agency determines that an adult day care center is not operated in compliance with this part or with rules adopted under this part, the agency, notwithstanding any other administrative action it takes, shall make a reasonable attempt to discuss with the owner each violation and recommended corrective action prior to providing the owner with written notification. The agency may request the submission of a corrective action plan for the center which demonstrates a good faith effort to remedy each violation by a specific date, subject to the approval of the agency.

(b) The owner of a center or its operator or employee found in violation of this part, part II of chapter 408, or applicable rules ~~or of rules adopted under this part~~ may be fined by the agency. A fine may not exceed $500 for each violation. In no event, however, may such fines in the aggregate exceed $5,000.

(c) The failure to correct a violation by the date set by the agency, or the failure to comply with an approved corrective action plan, is a separate violation for each day such failure continues, unless the agency approves an extension to a specific date.

~~(d) If the owner of a center or its operator or employee appeals an agency action under this section and the fine is upheld, the violator shall pay the fine, plus interest at the legal rate specified in s. 687.01 for each day that the fine remains unpaid after the date set by the agency for payment of the fine.~~

(2) In determining whether to impose a fine and in fixing the amount of any fine, the agency shall consider the following factors:

(a) The gravity of the violation, including the probability that death or serious physical or emotional harm to a participant will result or has resulted, the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or rules were violated.

(b) Actions taken by the owner or operator to correct violations.

(c) Any previous violations.

(d) The financial benefit to the center of committing or continuing the violation.

Section 170. Section 429.915, Florida Statutes, is amended to read:

429.915 ~~Expiration of license; renewal;~~ Conditional license ~~or permit~~.—

~~(1) A license issued for the operation of an adult day care center, unless sooner suspended or revoked, expires 2 years after the date of issuance. The~~

~~agency shall notify a licensee at least 120 days before the expiration date that license renewal is required to continue operation. The notification must be provided electronically or by mail delivery. At least 90 days prior to the expiration date, an application for renewal must be submitted to the agency. A license shall be renewed, upon the filing of an application on forms furnished by the agency, if the applicant has first met the requirements of this part and of the rules adopted under this part. The applicant must file with the application satisfactory proof of financial ability to operate the center in accordance with the requirements of this part and in accordance with the needs of the participants to be served and an affidavit of compliance with the background screening requirements of s. 429.919.~~

~~(2) A licensee against whom a revocation or suspension proceeding is pending at the time for license renewal may be issued a conditional license effective until final disposition by the agency of the proceeding. If judicial relief is sought from the final disposition, the court having jurisdiction may issue a conditional permit effective for the duration of the judicial proceeding.~~

~~(3)~~ In addition to the license categories available in part II of chapter 408, the agency may issue a conditional license to an applicant for license renewal or change of ownership if the applicant fails to meet all standards and requirements for licensure. A conditional license issued under this subsection must be limited to a specific period not exceeding 6 months, as determined by the agency, and must be accompanied by an approved plan of correction.

Section 171. Section 429.919, Florida Statutes, is amended to read:

429.919 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:

(1)~~(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.

(2)~~(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.

(3)~~(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 chapter 400 or 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 172. Section 429.921, Florida Statutes, is repealed.

Section 173. Section 429.923, Florida Statutes, is repealed.

Section 174. Section 429.925, Florida Statutes, is amended to read:

429.925 Discontinuance of operation of adult day care centers ~~Closing or change of owner or operator of center.—~~

~~(1)~~ In addition to the requirements of part II of chapter 408, before operation of an adult day care center may be voluntarily discontinued, the operator must, ~~inform the agency in writing~~ at least 60 days before ~~prior to~~ the discontinuance of operation. ~~The operator must also, at such time~~, in-

form each participant of the fact and the proposed date of ~~such~~ discontinuance of operation.

~~(2) Immediately upon discontinuance of the operation of a center, the owner or operator shall surrender the license for the center to the agency, and the license shall be canceled by the agency.~~

~~(3) If a center has a change of ownership, the new owner shall apply to the agency for a new license at least 60 days before the date of the change of ownership.~~

~~(4) If a center has a change of operator, the new operator shall notify the agency in writing within 30 days after the change of operator.~~

Section 175. Section 429.927, Florida Statutes, is amended to read:

429.927 Right of entry and inspection.—In accordance with s. 408.811, ~~any duly designated officer or employee of~~ the agency or department has the right to enter the premises of any adult day care center licensed pursuant to this part, at any reasonable time, in order to determine the state of compliance with this part, part II of chapter 408, and applicable ~~the~~ rules ~~or standards in force pursuant to this part~~. ~~The right of entry and inspection also extends to any premises that the agency has reason to believe are being operated as a center without a license, but no entry or inspection of any unlicensed premises may be made without the permission of the owner or operator unless a warrant is first obtained from the circuit court authorizing entry or inspection. Any application for a center license or license renewal made pursuant to this part constitutes permission for, and complete acquiescence in, any entry or inspection of the premises for which the license is sought in order to facilitate verification of the information submitted on or in connection with the application.~~

Section 176. Section 429.929, Florida Statutes, is amended to read:

429.929 Rules establishing standards.—

(1) The agency, in consultation with the department, may adopt rules to administer the requirements of part II of chapter 408. The Department of Elderly Affairs, in conjunction with the agency, shall adopt rules to implement the provisions of this part. The rules must include reasonable and fair standards. Any conflict between these standards and those that may be set forth in local, county, or municipal ordinances shall be resolved in favor of those having statewide effect. Such standards must relate to:

(a) The maintenance of adult day care centers with respect to plumbing, heating, lighting, ventilation, and other building conditions, including adequate meeting space, to ensure the health, safety, and comfort of participants and protection from fire hazard. Such standards may not conflict with chapter 553 and must be based upon the size of the structure and the number of participants.

(b) The number and qualifications of all personnel employed by adult day care centers who have responsibilities for the care of participants.

(c) All sanitary conditions within adult day care centers and their surroundings, including water supply, sewage disposal, food handling, and general hygiene, and maintenance of sanitary conditions, to ensure the health and comfort of participants.

(d) Basic services provided by adult day care centers.

(e) Supportive and optional services provided by adult day care centers.

(f) Data and information relative to participants and programs of adult day care centers, including, but not limited to, the physical and mental capabilities and needs of the participants, the availability, frequency, and intensity of basic services and of supportive and optional services provided, the frequency of participation, the distances traveled by participants, the hours of operation, the number of referrals to other centers or elsewhere, and the incidence of illness.

(g) Components of a comprehensive emergency management plan, developed in consultation with the Department of Health, the Agency for Health Care Administration, and the Department of Community Affairs.

~~(2) Pursuant to s. 119.07, the agency may charge a fee for furnishing a copy of this part, or of the rules adopted under this part, to any person upon request for the copy.~~

(2)~~(3)~~ Pursuant to this part, s. 408.811, and applicable rules ~~adopted by the department~~, the agency may conduct an abbreviated biennial inspection of key quality-of-care standards, in lieu of a full inspection, of a center that has a record of good performance. However, the agency must conduct a full inspection of a center that has had one or more confirmed complaints within the licensure period immediately preceding the inspection or which has a serious problem identified during the abbreviated inspection. The agency shall develop the key quality-of-care standards, taking into consideration the comments and recommendations of the Department of Elderly Affairs and of provider groups. These standards shall be included in rules adopted by the Department of Elderly Affairs.

Section 177. Section 429.933, Florida Statutes, is repealed.

Section 178. Subsections (9) and (10) of section 440.102, Florida Statutes, are amended to read:

440.102 Drug-free workplace program requirements.—The following provisions apply to a drug-free workplace program implemented pursuant to law or to rules adopted by the Agency for Health Care Administration:

(9) DRUG-TESTING STANDARDS FOR LABORATORIES.—

(a) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this section and part II of chapter 408 and to entities licensed by or applying for such licensure from the agency pursuant to this section. A license issued by the agency is required in order to operate a drug-free workplace laboratory.

(b)~~(a)~~ A laboratory may analyze initial or confirmation test specimens only if:

1. The laboratory obtains a license under part II of chapter 408 and s. 112.0455(17). Each applicant for licensure and each licensee must comply with all requirements of this section, part II of chapter 408, and applicable rules. ~~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 pursuant to this section or the laboratory is certified by the United States Department of Health and Human Services.~~

2. The laboratory has written procedures to ensure the 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.

(c)~~(b)~~ A laboratory shall disclose to the medical review officer a written positive confirmed test result report within 7 working days after receipt of the sample. All laboratory reports of a drug test result must, at a minimum, state:

1. The name and address of the laboratory that performed the test and the positive identification of the person tested.

2. Positive results on confirmation tests only, or negative results, as applicable.

3. A list of the drugs for which the drug analyses were conducted.

4. The type of tests conducted for both initial tests and confirmation tests and the minimum cutoff levels of the tests.

5. Any correlation between medication reported by the employee or job applicant pursuant to subparagraph (5)(b)2. and a positive confirmed drug test result.

A report must not disclose the presence or absence of any drug other than a specific drug and its metabolites listed pursuant to this section.

(d)~~(c)~~ The laboratory shall submit to the Agency for Health Care Administration a monthly report with statistical information regarding the testing of employees and job applicants. The report must include information on the methods of analysis conducted, the drugs tested for, the number of positive and negative results for both initial tests and confirmation tests, and any other information deemed appropriate by the Agency for Health Care Administration. A monthly report must not identify specific employees or job applicants.

(10) RULES.—The Agency for Health Care Administration shall adopt rules pursuant to s. 112.0455, part II of chapter 408, and criteria established by the United States Department of Health and Human Services as general guidelines for modeling drug-free workplace laboratories ~~the state drug-testing program~~, concerning, but not limited to:

(a) Standards for licensing drug-testing laboratories and suspension and revocation of such licenses.

(b) Urine, hair, blood, and other body specimens and minimum specimen amounts that are appropriate for drug testing.

(c) Methods of analysis and procedures to ensure reliable drug-testing results, including standards for initial tests and confirmation tests.

(d) Minimum cutoff detection levels for each drug or metabolites of such drug for the purposes of determining a positive test result.

(e) Chain-of-custody procedures to ensure proper identification, labeling, and handling of specimens tested.

(f) Retention, storage, and transportation procedures to ensure reliable results on confirmation tests and retests.

Section 179. Paragraph (l) of subsection (1) of section 468.505, Florida Statutes, is amended to read:

468.505 Exemptions; exceptions.—

(1) Nothing in this part may be construed as prohibiting or restricting the practice, services, or activities of:

(l) A person employed by a nursing facility exempt from licensing under s. 395.002(12)~~(13)~~, or a person exempt from licensing under s. 464.022.

Section 180. Subsection (3) is added to section 483.035, Florida Statutes, to read:

483.035 Clinical laboratories operated by practitioners for exclusive use; licensure and regulation.—

(3) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this part and part II of chapter 408 and to entities licensed by or applying for such licensure from the agency pursuant to this part. A license issued by the agency is required in order to operate a clinical laboratory.

Section 181. Subsection (1) of section 483.051, Florida Statutes, is amended to read:

483.051 Powers and duties of the agency.—The agency shall adopt rules to implement this part, which rules must include, but are not limited to, the following:

(1) LICENSING; QUALIFICATIONS.—The agency shall provide for biennial licensure of all clinical laboratories meeting the requirements of this part and shall prescribe the qualifications necessary for such licensure. ~~A license issued for operating a clinical laboratory, unless sooner suspended or revoked, expires on the date set forth by the agency on the face of the license.~~

Section 182. Section 483.061, Florida Statutes, is amended to read:

483.061 Inspection of clinical laboratories.—

(1) In addition to the requirements of s. 408.811, the agency shall ensure that each clinical laboratory subject to this part is inspected either onsite or offsite when deemed necessary by the agency, but at least every 2 years, for the purpose of evaluating the operation, supervision, and procedures of the facility to ensure compliance with this part. Collection stations and branch offices may be inspected either onsite or offsite, when deemed necessary by the agency. The agency may conduct or cause to be conducted the following ~~announced or unannounced~~ inspections ~~at any reasonable time~~:

(a) An inspection conducted at the direction of the federal Centers for Medicare and Medicaid Services ~~Health Care Financing Administration~~.

~~(b) A licensure inspection.~~

(b)~~(c)~~ A validation inspection.

(c)~~(d)~~ A complaint investigation, including a full licensure investigation with a review of all licensure standards as outlined in rule. Complaints received by the agency from individuals, organizations, or other sources are subject to review and investigation by the agency. If a complaint has been filed against a laboratory or if a laboratory has a substantial licensure deficiency, the agency may inspect the laboratory annually or as the agency considers necessary.

(2) ~~However,~~ For laboratories operated under s. 483.035, biennial licensure inspections shall be scheduled so as to cause the least disruption to the practitioner's scheduled patients.

~~(2) The right of entry and inspection is extended to any premises that is maintained as a laboratory without a license, but such entry or inspection may not be made without the permission of the owner or person in charge of the laboratory, unless an inspection warrant as defined in s. 933.20 is first obtained.~~

(3) The agency may ~~shall~~ inspect an out-of-state clinical laboratory under this section at the expense of the out-of-state clinical laboratory to determine

whether the laboratory meets the requirements of this part and part II of chapter 408.

(4) The agency shall accept, in lieu of its own periodic inspections for licensure, the survey of or inspection by private accrediting organizations that perform inspections of clinical laboratories accredited by such organizations, including postinspection activities required by the agency.

(a) The agency shall accept inspections performed by such organizations if the accreditation is not provisional, if such organizations perform postinspection activities required by the agency and provide the agency with all necessary inspection and postinspection reports and information necessary for enforcement, if such organizations apply standards equal to or exceeding standards established and approved by the agency, and if such accrediting organizations are approved by the federal Health Care Financing Administration to perform such inspections.

(b) The agency may conduct complaint investigations made against laboratories inspected by accrediting organizations.

(c) The agency may conduct sample validation inspections of laboratories inspected by accrediting organizations to evaluate the accreditation process used by an accrediting organization.

(d) The agency may conduct a full inspection if an accrediting survey has not been conducted within the previous 24 months, and the laboratory must pay the appropriate license ~~inspection~~ fee under s. 483.172(2) ~~s. 483.172~~.

(e) The agency shall develop, and adopt, by rule, criteria for accepting inspection and postinspection reports of accrediting organizations in lieu of conducting a state licensure inspection.

Section 183. Section 483.091, Florida Statutes, is amended to read:

483.091 Clinical laboratory license.—~~A person may not conduct, maintain, or operate a clinical laboratory in this state, except a laboratory that is exempt under s. 483.031, unless the clinical laboratory has obtained a license from the agency.~~ A clinical laboratory may not send a specimen drawn within this state to any clinical laboratory outside the state for examination unless the out-of-state laboratory has obtained a license from the agency. ~~A license is valid only for the person or persons to whom it is issued and may not be sold, assigned, or transferred, voluntarily or involuntarily, and is not valid for any premises other than those for which the license is issued. However,~~ A new license may be secured for the new location before the actual change, if the contemplated change complies with this part, part II of chapter 408, and the applicable rules ~~adopted under this part~~. ~~Application for a new clinical laboratory license must be made 60 days before a change in the ownership of the clinical laboratory.~~

Section 184. Section 483.101, Florida Statutes, is amended to read:

483.101 ~~Application for~~ Clinical laboratory license.—

~~(1) An application for a clinical laboratory license must be made under oath by the owner or director of the clinical laboratory or by the public official responsible for operating a state, municipal, or county clinical laboratory or institution that contains a clinical laboratory, upon forms provided by the agency.~~

~~(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.~~

~~(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 may 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 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.~~

~~(h) The agency may deny or revoke licensure if the applicant:~~

~~1. Has falsely represented a material fact in the application required by paragraph (e) or paragraph (f), or has omitted any material fact from the application required by paragraph (e) or paragraph (f); or~~

~~2. Has had prior action taken against the applicant under the Medicaid or Medicare program as set forth in paragraph (e).~~

~~(i) An application for license renewal must contain the information required under paragraphs (e) and (f).~~

~~(3)~~ A license must be issued authorizing the performance of one or more clinical laboratory procedures or one or more tests on each specialty or subspecialty. A separate license is required of all laboratories maintained on separate premises even if the laboratories are operated under the same management. ~~Upon receipt of a request for an application for a clinical laboratory license, the agency shall provide to the applicant a copy of the rules relating to licensure and operations applicable to the laboratory for which licensure is sought.~~

Section 185. Section 483.106, Florida Statutes, is amended to read:

483.106 Application for a certificate of exemption.—An application for a certificate of exemption must be made under oath by the owner or director of a clinical laboratory that performs only waived tests as defined in s. 483.041. A certificate of exemption authorizes a clinical laboratory to perform waived tests. Laboratories maintained on separate premises and operated under the same management may apply for a single certificate of

exemption or multiple certificates of exemption. The agency shall, by rule, specify the process for biennially issuing certificates of exemption. Sections 483.011, 483.021, 483.031, 483.041, 483.172, and 483.23~~, and 483.25~~ apply to a clinical laboratory that obtains a certificate of exemption under this section.

Section 186. Section 483.111, Florida Statutes, is amended to read:

483.111 Limitations on licensure.—A license may be issued to a clinical laboratory to perform only those clinical laboratory procedures and tests that are within the specialties or subspecialties in which the clinical laboratory personnel are qualified. A license may not be issued unless the agency determines that the clinical laboratory is adequately staffed and equipped to operate in conformity with the requirements of this part, part II of chapter 408, and applicable ~~the~~ rules ~~adopted under this part~~.

Section 187. Section 483.131, Florida Statutes, is repealed.

Section 188. Subsections (1) and (2) of section 483.172, Florida Statutes, are amended to read:

483.172 License fees.—

(1) In accordance with s. 408.805, an applicant or a licensee shall pay a fee for each license application submitted under this part, part II of chapter 408, and applicable rules. ~~The agency shall collect fees for all licenses issued under this part. Each fee is due at the time of application and must be payable to the agency to be deposited in the Health Care Trust Fund administered by the agency.~~

(2) The biennial license fee schedule is as follows:

(a) If a laboratory performs not more than 2,000 tests annually, the fee is $400.

(b) If a laboratory performs not more than 3 categories of procedures with a total annual volume of more than 2,000 but no more than 10,000 tests, the license fee is $965.

(c) If a laboratory performs at least 4 categories of procedures with a total annual volume of not more than 10,000 tests, the license fee is $1,294.

(d) If a laboratory performs not more than 3 categories of procedures with a total annual volume of more than 10,000 but not more than 25,000 tests, the license fee is $1,592.

(e) If a laboratory performs at least 4 categories of procedures with a total annual volume of more than 10,000 but not more than 25,000 tests, the license fee is $2,103.

(f) If a laboratory performs a total of more than 25,000 but not more than 50,000 tests annually, the license fee is $2,364.

(g) If a laboratory performs a total of more than 50,000 but not more than 75,000 tests annually, the license fee is $2,625.

(h) If a laboratory performs a total of more than 75,000 but not more than 100,000 tests annually, the license fee is $2,886.

(i) If a laboratory performs a total of more than 100,000 but not more than 500,000 tests annually, the license fee is $3,397.

(j) If a laboratory performs a total of more than 500,000 but not more than 1 million tests annually, the license fee is $3,658.

(k) If a laboratory performs a total of more than 1 million tests annually, the license fee is $3,919.

Section 189. Section 483.201, Florida Statutes, is amended to read:

483.201 Grounds for disciplinary action against clinical laboratories.—In addition to the requirements of part II of chapter 408, the following acts constitute grounds for which a disciplinary action specified in s. 483.221 may be taken against a clinical laboratory:

~~(1) Making a fraudulent statement on an application for a clinical laboratory license or any other document required by the agency.~~

(1)~~(2)~~ Permitting unauthorized persons to perform technical procedures or to issue reports.

(2)~~(3)~~ Demonstrating incompetence or making consistent errors in the performance of clinical laboratory examinations and procedures or erroneous reporting.

(3)~~(4)~~ Performing a test and rendering a report thereon to a person not authorized by law to receive such services.

(4)~~(5)~~ Knowingly having professional connection with or knowingly lending the use of the name of the licensed clinical laboratory or its director to an unlicensed clinical laboratory.

(5)~~(6)~~ Violating or aiding and abetting in the violation of any provision of this part or the rules adopted under this part.

(6)~~(7)~~ Failing to file any report required by the provisions of this part or the rules adopted under this part.

(7)~~(8)~~ Reporting a test result for a clinical specimen if the test was not performed on the clinical specimen.

(8)~~(9)~~ Performing and reporting tests in a specialty or subspecialty in which the laboratory is not licensed.

(9)~~(10)~~ Knowingly advertising false services or credentials.

(10)~~(11)~~ Failing to correct deficiencies within the time required by the agency.

Section 190. Section 483.221, Florida Statutes, is amended to read:

483.221 Administrative fines ~~penalties~~.—

(1)~~(a)~~ In accordance with part II of chapter 408, the agency may ~~deny, suspend, revoke, annul, limit, or deny renewal of a license or~~ impose an administrative fine, not to exceed $1,000 per violation, for the violation of any provision of this part or rules adopted under this part. ~~Each day of violation constitutes a separate violation and is subject to a separate fine.~~

(2)~~(b)~~ In determining the penalty to be imposed for a violation, as provided in subsection (1) ~~paragraph (a)~~, the following factors must be considered:

(a)~~1.~~ The severity of the violation, including the probability that death or serious harm to the health or safety of any person will result or has resulted; the severity of the actual or potential harm; and the extent to which the provisions of this part were violated.

(b)~~2.~~ Actions taken by the licensee to correct the violation or to remedy complaints.

(c)~~3.~~ Any previous violation by the licensee.

(d)~~4.~~ The financial benefit to the licensee of committing or continuing the violation.

~~(c) All amounts collected under this section must be deposited into the Health Care Trust Fund administered by the agency.~~

~~(2) The agency may issue an emergency order immediately suspending, revoking, annulling, or limiting a license if it determines that any condition in the licensed facility presents a clear and present danger to public health or safety.~~

Section 191. Section 483.25, Florida Statutes, is repealed.

Section 192. Section 483.291, Florida Statutes, is amended to read:

483.291 Powers and duties of the agency; rules.—The agency shall adopt rules to implement this part and part II of chapter 408, which rules must include the following:

(1) LICENSING STANDARDS.—The agency ~~shall license all multiphasic health testing centers meeting the requirements of this part and~~ shall prescribe standards necessary for licensure.

(2) FEES.—In accordance with s. 408.805, an applicant or a licensee shall pay a fee for each license application submitted under this part, part II of chapter 408, and applicable rules. ~~The agency shall establish annual fees, which shall be reasonable in amount, for licensing of centers. The fees must be sufficient in amount to cover the cost of licensing and inspecting centers.~~

~~(a)~~ The ~~annual~~ licensure fee ~~is due at the time of application and is payable to the agency to be deposited in the Health Care Trust Fund admin-~~

~~istered by the agency. The license fee~~ must be not less than $600 ~~$300~~ or more than $2,000 ~~$1,000~~.

~~(b) The fee for late filing of an application for license renewal is $200 and is in addition to the licensure fee due for renewing the license.~~

~~(3) ANNUAL LICENSING.—The agency shall provide for annual licensing of centers. Any center that fails to pay the proper fee or otherwise fails to qualify by the date of expiration of its license is delinquent, and its license is automatically canceled without notice or further proceeding. Upon cancellation of its license under this subsection, a center may have its license reinstated only upon application and qualification as provided for initial applicants and upon payment of all delinquent fees.~~

(3)~~(4)~~ STANDARDS OF PERFORMANCE.—The agency shall prescribe standards for the performance of health testing procedures.

(4)~~(5)~~ CONSTRUCTION OF CENTERS.—The agency may adopt rules to ensure that centers comply with all local, county, state, and federal standards for the construction, renovation, maintenance, or repair of centers, which standards must ensure the conduct and operation of the centers in a manner that will protect the public health.

(5)~~(6)~~ SAFETY AND SANITARY CONDITIONS WITHIN THE CENTER AND ITS SURROUNDINGS.—The agency shall establish standards relating to safety and sanitary conditions within the center and its surroundings, including water supply; sewage; the handling of specimens; identification, segregation, and separation of biohazardous waste as required by s. 381.0098; storage of chemicals; workspace; firesafety; and general measures, which standards must ensure the protection of the public health. The agency shall determine compliance by a multiphasic health testing center with the requirements of s. 381.0098 by verifying that the center has obtained all required permits.

(6)~~(7)~~ EQUIPMENT.—The agency shall establish minimum standards for center equipment essential to the proper conduct and operation of the center.

(7)~~(8)~~ PERSONNEL.—The agency shall prescribe minimum qualifications for center personnel. A center may employ as a medical assistant a person who has at least one of the following qualifications:

(a) Prior experience of not less than 6 months as a medical assistant in the office of a licensed medical doctor or osteopathic physician or in a hospital, an ambulatory surgical center, a home health agency, or a health maintenance organization.

(b) Certification and registration by the American Medical Technologists Association or other similar professional association approved by the agency.

(c) Prior employment as a medical assistant in a licensed center for at least 6 consecutive months at some time during the preceding 2 years.

Section 193. Section 483.294, Florida Statutes, is amended to read:

483.294 Inspection of centers.—In accordance with s. 408.811, the agency shall, at least once annually, inspect the premises and operations of all centers subject to licensure under this part~~, without prior notice to the centers, for the purpose of studying and evaluating the operation, supervision, and procedures of such facilities, to determine their compliance with agency standards and to determine their effect upon the health and safety of the people of this state~~.

Section 194. Section 483.30, Florida Statutes, is amended to read:

483.30 Licensing of centers.—The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this part and part II of chapter 408 and to entities licensed by or applying for such licensure from the agency pursuant to this part. A license issued by the agency is required in order to operate a center.

~~(1) A person may not conduct, maintain, or operate a multiphasic health testing center in this state without obtaining a multiphasic health testing center license from the agency. The license is valid only for the person or persons to whom it is issued and may not be sold, assigned, or transferred, voluntarily or involuntarily.~~ A license is not valid for any premises other than the center for which it is issued. However, a new license may be secured for the new location for a fixed center before the actual change, if the contemplated change is in compliance with this part and the rules adopted under this part. ~~A center must be relicensed if a change of ownership occurs. Application for relicensure must be made 60 days before the change of ownership.~~

~~(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.~~

~~(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 may 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 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.~~

~~(h) The agency may deny or revoke licensure if the applicant:~~

~~1. Has falsely represented a material fact in the application required by paragraph (e) or paragraph (f), or has omitted any material fact from the application required by paragraph (e) or paragraph (f); or~~

~~2. Has had prior action taken against the applicant under the Medicaid or Medicare program as set forth in paragraph (e).~~

~~(i) An application for license renewal must contain the information required under paragraphs (e) and (f).~~

Section 195. Section 483.302, Florida Statutes, is amended to read:

483.302 Application for license.—

~~(1) Application for a license as required by s. 483.30 must be made to the agency on forms furnished by it and must be accompanied by the appropriate license fee.~~

~~(2)~~ The application for a license must ~~shall~~ contain:

(1)~~(a)~~ A determination as to whether the facility will be fixed or mobile and the location for a fixed facility.

~~(b) The name and address of the owner if an individual; if the owner is a firm, partnership, or association, the name and address of every member thereof; if the owner is a corporation, its name and address and the name and address of its medical director and officers and of each person having at least a 10 percent interest in the corporation.~~

(2)~~(c)~~ The name of any person ~~whose name is required on the application under the provisions of paragraph (b) and~~ who owns at least a 10 percent interest in any professional service, firm, association, partnership, or corporation providing goods, leases, or services to the center for which the application is made, and the name and address of the professional service, firm, association, partnership, or corporation in which such interest is held.

~~(d) The name by which the facility is to be known.~~

(3)~~(e)~~ The name, address, and Florida physician's license number of the medical director.

Section 196. Section 483.311, Florida Statutes, is repealed.

Section 197. Subsections (2) through (8) of section 483.317, Florida Statutes, are renumbered as subsections (1) through (7), respectively, and present subsection (1) of that section is amended to read:

483.317 Grounds for disciplinary action against centers.—The following acts constitute grounds for which a disciplinary action specified in s. 483.32 may be taken against a center:

~~(1) Making a fraudulent statement on an application for a license or on any other document required by the agency pursuant to this part.~~

Section 198. Section 483.32, Florida Statutes, is amended to read:

483.32 Administrative fines ~~penalties~~.—

(1)~~(a)~~ The agency may ~~deny, suspend, revoke, annul, limit, or deny renewal of a license or~~ impose an administrative fine, not to exceed $500 per violation, for the violation of any provision of this part, part II of chapter 408, or applicable rules ~~adopted under this part~~. ~~Each day of violation constitutes a separate violation and is subject to a separate fine.~~

(2)~~(b)~~ In determining the amount of the fine to be levied for a violation, as provided in subsection (1) ~~paragraph (a)~~, the following factors shall be considered:

(a)~~1.~~ The severity of the violation, including the probability that death or serious harm to the health or safety of any person will result or has resulted; the severity of the actual or potential harm; and the extent to which the provisions of this part were violated.

(b)~~2.~~ Actions taken by the licensee to correct the violation or to remedy complaints.

(c)~~3.~~ Any previous violation by the licensee.

(d)~~4.~~ The financial benefit to the licensee of committing or continuing the violation.

~~(c) All amounts collected under this section must be deposited into the Health Care Trust Fund administered by the agency.~~

~~(2) The agency may issue an emergency order immediately suspending, revoking, annulling, or limiting a license when it determines that any condition in the licensed facility presents a clear and present danger to public health and safety.~~

Section 199. Subsections (2) and (3) of section 483.322, Florida Statutes, are renumbered as subsections (1) and (2), respectively, and present subsection (1) of that section is amended to read:

483.322 Offenses.—It is unlawful for any person to:

~~(1) Operate, maintain, direct, or engage in the business of operating a multiphasic health testing center unless the person has obtained a license for the center.~~

Section 200. Section 483.328, Florida Statutes, is repealed.

Section 201. Subsection (2) of section 765.541, Florida Statutes, is amended to read:

765.541 Certification of organizations engaged in the practice of cadaveric organ and tissue procurement.—The Agency for Health Care Administration shall:

(2) Adopt rules that set forth appropriate standards and guidelines for the program in accordance with ss. 765.541-765.546 and part II of chapter 408. These standards and guidelines must be substantially based on the existing laws of the Federal Government and this state and the existing

standards and guidelines of the United Network for Organ Sharing (UNOS), the American Association of Tissue Banks (AATB), the South-Eastern Organ Procurement Foundation (SEOPF), the North American Transplant Coordinators Organization (NATCO), and the Eye Bank Association of America (EBAA). In addition, the Agency for Health Care Administration shall, before adopting these standards and guidelines, seek input from all organ procurement organizations, tissue banks, and eye banks based in this state;

Section 202. Subsection (1) of section 765.542, Florida Statutes, is amended to read:

765.542 Certification of organ procurement organizations, tissue banks, and eye banks.—

(1) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to ss. 765.541-765.546 and part II of chapter 408 and to entities licensed or certified by or applying for such licensure or certification from the Agency for Health Care Administration pursuant to ss. 765.541-765.546. An organization, agency, or other entity may not engage in the practice of organ procurement in this state without being designated as an organ procurement organization by the secretary of the United States Department of Health and Human Services and being appropriately certified by the Agency for Health Care Administration. As used in this subsection, the term "procurement" includes the retrieval, processing, or distribution of human organs. A physician or organ procurement organization based outside this state is exempt from these certification requirements if:

(a) The organs are procured for an out-of-state patient who is listed on, or referred through, the United Network for Organ Sharing System; and

(b) The organs are procured through an agreement of an organ procurement organization certified by the state.

Section 203. Section 765.544, Florida Statutes, is amended to read:

765.544 Fees; Florida Organ and Tissue Donor Education and Procurement Trust Fund.—

(1) In accordance with s. 408.805, an applicant or a certificateholder shall pay a fee for each application submitted under this part, part II of chapter 408, and applicable rules. The amount of the fee shall be as follows: ~~The Agency for Health Care Administration shall collect~~

(a) An initial application fee of $1,000 from organ procurement organizations and tissue banks and $500 from eye banks. ~~The fee must be submitted with each application for initial certification and is nonrefundable.~~

(b)~~(2) The Agency for Health Care Administration shall assess~~ Annual fees to be used, in the following order of priority, for the certification program, the advisory board, maintenance of the organ and tissue donor registry, and the organ and tissue donor education program in the following amounts, which may not exceed $35,000 per organization:

1.~~(a)~~ Each general organ procurement organization shall pay the greater of $1,000 or 0.25 percent of its total revenues produced from procurement activity in this state by the certificateholder during its most recently completed fiscal year or operational year.

2.~~(b)~~ Each bone and tissue procurement agency or bone and tissue bank shall pay the greater of $1,000 or 0.25 percent of its total revenues from procurement and processing activity in this state by the certificateholder during its most recently completed fiscal year or operational year.

3.~~(c)~~ Each eye bank shall pay the greater of $500 or 0.25 percent of its total revenues produced from procurement activity in this state by the certificateholder during its most recently completed fiscal year or operational year.

(2)~~(3)~~ The Agency for Health Care Administration shall specify ~~provide~~ by rule the ~~for~~ administrative penalties for the purpose of ensuring adherence to the standards of quality and practice required by this chapter, part II of chapter 408, and applicable rules of the agency for continued certification.

(3)~~(4)~~(a) Proceeds from fees, administrative penalties, and surcharges collected pursuant to this section ~~subsections (2) and (3)~~ must be deposited into the Florida Organ and Tissue Donor Education and Procurement Trust Fund created by s. 765.52155.

(b) Moneys deposited in the trust fund pursuant to this section must be used exclusively for the implementation, administration, and operation of the certification program and the advisory board, for maintaining the organ and tissue donor registry, and for organ and tissue donor education.

(4)~~(5)~~ As used in this section, the term "procurement activity in this state" includes the bringing into this state for processing, storage, distribution, or transplantation of organs or tissues that are initially procured in another state or country.

Section 204. Subsection (4) of section 766.118, Florida Statutes, is amended to read:

766.118 Determination of noneconomic damages.—

(4) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF PRACTITIONERS PROVIDING EMERGENCY SERVICES AND CARE.—Notwithstanding subsections (2) and (3), with respect to a cause of action for personal injury or wrongful death arising from medical negligence of practitioners providing emergency services and care, as defined in s. 395.002(9)~~(10)~~, or providing services as provided in s. 401.265, or providing services pursuant to obligations imposed by 42 U.S.C. s. 1395dd to persons with whom the practitioner does not have a then-existing health care patient-practitioner relationship for that medical condition:

(a) Regardless of the number of such practitioner defendants, noneconomic damages shall not exceed $150,000 per claimant.

(b) Notwithstanding paragraph (a), the total noneconomic damages recoverable by all claimants from all such practitioners shall not exceed $300,000.

The limitation provided by this subsection applies only to noneconomic damages awarded as a result of any act or omission of providing medical care or treatment, including diagnosis that occurs prior to the time the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient, unless surgery is required as a result of the emergency within a reasonable time after the patient is stabilized, in which case the limitation provided by this subsection applies to any act or omission of providing medical care or treatment which occurs prior to the stabilization of the patient following the surgery.

Section 205. Section 766.316, Florida Statutes, is amended to read:

766.316 Notice to obstetrical patients of participation in the plan.—Each hospital with a participating physician on its staff and each participating physician, other than residents, assistant residents, and interns deemed to be participating physicians under s. 766.314(4)(c), under the Florida Birth-Related Neurological Injury Compensation Plan shall provide notice to the obstetrical patients as to the limited no-fault alternative for birth-related neurological injuries. Such notice shall be provided on forms furnished by the association and shall include a clear and concise explanation of a patient's rights and limitations under the plan. The hospital or the participating physician may elect to have the patient sign a form acknowledging receipt of the notice form. Signature of the patient acknowledging receipt of the notice form raises a rebuttable presumption that the notice requirements of this section have been met. Notice need not be given to a patient when the patient has an emergency medical condition as defined in s. 395.002(8)~~(9)~~(b) or when notice is not practicable.

Section 206. Paragraph (b) of subsection (2) of section 812.014, Florida Statutes, is amended to read:

812.014 Theft.—

(2)

(b)1. If the property stolen is valued at $20,000 or more, but less than $100,000;

2. The property stolen is cargo valued at less than $50,000 that has entered the stream of interstate or intrastate commerce from the shipper's loading platform to the consignee's receiving dock; or

3. The property stolen is emergency medical equipment, valued at $300 or more, that is taken from a facility licensed under chapter 395 or from an aircraft or vehicle permitted under chapter 401,

the offender commits grand theft in the second degree, punishable as a felony of the second degree, as provided in s. 775.082, s. 775.083, or s.

775.084. Emergency medical equipment means mechanical or electronic apparatus used to provide emergency services and care as defined in s. 395.002(9)~~(10)~~ or to treat medical emergencies.

Section 207. This act shall take effect July 1, 2007.

Approved by the Governor June 27, 2007.

Filed in Office Secretary of State June 27, 2007.