

CHAPTER 98-171

Committee Substitute for Committee Substitute for Senate Bill No. 714

An act relating to health care; amending s. 381.0035, F.S.; requiring certain information related to HIV testing and counseling to be included in HIV educational courses; amending s. 381.004, F.S.; requiring informed consent before an HIV test may be ordered; requiring certain information to be provided when informed consent is sought; providing requirements with respect to notification and release of test results; authorizing certain disclosures of test results; providing for court orders for testing in specified circumstances; providing for emergency action against a registration; providing requirements for model protocols; providing penalties; amending s. 384.25, F.S.; deleting provisions relating to protocols and to notification to school superintendents; amending s. 455.604, F.S.; requiring certain information related to HIV testing to be included in HIV educational courses for certain licensed professions; amending s. 112.0455, F.S., relating to the Drug-Free Workplace Act; requiring background screening for an applicant for licensure of certain laboratories; authorizing the use of certain body hair for drug testing; creating s. 381.60225, F.S.; requiring background screening for an applicant for certification to operate an organ procurement organization, a tissue bank, or an eye bank; amending s. 383.302, F.S., relating to the regulation of birth centers; revising definitions to reflect the transfer of regulatory authority from the Department of Health and Rehabilitative Services to the Agency for Health Care Administration; amending s. 383.305, F.S.; requiring background screening for an applicant for licensure of a birth center; amending ss. 383.308, 383.309, 383.31, 383.312, 383.313, 383.318, 383.32, 383.324, 383.325, 383.327, 383.33, 383.331, F.S., relating to the regulation of birth centers; conforming provisions to reflect the transfer of regulatory authority to the Agency for Health Care Administration; amending s. 390.015, F.S.; requiring background screening for an applicant for licensure of an abortion clinic; amending s. 391.206, F.S.; requiring background screening for an applicant for licensure to operate a pediatric extended care center; amending s. 393.063, F.S., relating to developmental disabilities; providing a definition; amending s. 393.067, F.S.; requiring background screening for an applicant for licensure to operate an intermediate care facility for the developmentally disabled; amending s. 394.4787, F.S., relating to the regulation of mental health facilities; conforming a cross-reference to changes made by the act; amending s. 394.67, F.S., relating to community alcohol, drug abuse, and mental health services; revising definitions; amending s. 394.875, F.S.; requiring background screening for an applicant for licensure of a crisis stabilization unit or residential treatment facility; amending ss. 394.876, 394.877, 394.878, 394.879, 394.90, 394.902, 394.903, 394.904, 394.907, F.S., relating to the regulation of mental health facilities; conforming provisions to reflect the transfer of regulatory authority

to the Agency for Health Care Administration; amending s. 395.002, F.S., relating to hospital licensing and regulation; providing definitions; creating s. 395.0055, F.S.; requiring background screening for an applicant for licensure of a facility operated under ch. 395, F.S.; amending s. 395.0199, F.S.; requiring background screening for an applicant for registration as a utilization review agent; amending s. 400.051, F.S.; conforming a cross-reference; amending s. 400.071, F.S.; requiring background screening for an applicant for licensure of a nursing home; amending s. 400.411, F.S.; requiring background screening for an applicant for licensure of an assisted living facility; amending ss. 400.414, 400.417, 400.4174, 400.4176, F.S., relating to the regulation of assisted living facilities; providing additional grounds for denial, revocation, or suspension of a license; requiring background screening for employees hired on or after a specified date; amending ss. 400.461, F.S., relating to the regulation of home health agencies; conforming a cross-reference; amending s. 400.471, F.S.; requiring background screening for an applicant for licensure of a home health agency; amending s. 400.506, F.S.; requiring background screening for an applicant for licensure of a nurse registry; amending s. 400.555, F.S.; requiring background screening for an applicant for licensure of an adult day care center; amending s. 400.556, F.S., relating to disciplinary actions against adult day care center licensees; making noncompliance with background screening requirements a basis for disciplinary action; amending s. 400.557, F.S., relating to renewal of an adult day care center license; requiring an affidavit of compliance with background screening requirements when a license is renewed; creating s. 400.5572, F.S.; requiring background screening for employees of an adult day care center hired on or after a specified date; amending s. 400.606, F.S.; requiring background screening for an applicant for licensure of a hospice; creating s. 400.6065, F.S.; providing requirements for background screening of hospice employees; amending s. 400.607, F.S., relating to disciplinary actions against a hospice license; making noncompliance with background screening requirements a basis for disciplinary action; amending s. 400.619, F.S.; revising background screening requirements for an applicant for licensure of an adult family care home; providing screening requirements for designated relief persons; deleting agency authority to take disciplinary action against an adult family-care-home license; revising rulemaking authority; creating s. 400.6194, F.S.; providing for disciplinary action against an adult family-care-home license; making noncompliance with screening requirements a basis for disciplinary action; amending s. 400.801, F.S.; requiring background screening for an applicant for licensure of a home for special services; amending s. 400.805, F.S.; requiring background screening for an applicant for licensure of a transitional living facility; amending s. 430.04, F.S.; providing duties and responsibilities of the Department of Elderly Affairs; requiring the department to take disciplinary action against an area agency on aging for failure to implement and maintain a department-approved grievance resolution procedure; amending s. 455.654, F.S., relating to referring health care providers; conforming

cross-references to changes made by the act; amending s. 468.505, F.S., relating to disciplinary action against certain medical professionals and activities exempt from regulation; updating provisions and conforming cross-references; amending s. 483.101, F.S.; requiring background screening for an applicant for licensure of a clinical laboratory; amending s. 483.106, F.S., relating to a certificate of exemption; correcting terminology; amending s. 483.30, F.S.; requiring background screening for an applicant for licensure of a multiphasic health testing center; repealing s. 455.661, F.S., which provides for licensure of designated health care services; providing appropriations and authorizing positions; authorizing certain positions in excess of those otherwise authorized; providing funding; providing for applicability of background screening requirements; providing for future repeal; providing for a review of certain background screening requirements; providing an effective date.

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

Section 1. Subsection (1) of section 381.0035, Florida Statutes, is amended to read:

381.0035 Educational course on human immunodeficiency virus and acquired immune deficiency syndrome; employees and clients of certain health care facilities.—

(1) The Department of Health shall require all employees and clients of facilities licensed under chapters 393, 394, and 397 and employees of facilities licensed under chapter 395 and parts II, III, IV, and VI of chapter 400 to complete, biennially, a continuing educational course on the modes of transmission, infection control procedures, clinical management, and prevention of human immunodeficiency virus and acquired immune deficiency syndrome with an emphasis on appropriate behavior and attitude change. Such instruction shall include information on current Florida law and its impact on testing, confidentiality of test results, and treatment of patients and any protocols and procedures applicable to human immunodeficiency counseling and testing, reporting, the offering of HIV testing to pregnant women, and partner notification issues pursuant to ss. 381.004 and 384.25.

Section 2. Subsections (2), (3), (4), (5), and (8) of section 381.004, Florida Statutes, are amended, and subsection (6) of that section is reenacted, to read:

381.004 Testing for human immunodeficiency virus.—

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

(a) “HIV test” means a test ordered after July 6, 1988, to determine the presence of the antibody or antigen to human immunodeficiency virus or the presence of human immunodeficiency virus infection.

(b) “HIV test result” means a laboratory report of a human immunodeficiency virus test result entered into a medical record on or after July 6, 1988, or any report or notation in a medical record of a laboratory report of a

human immunodeficiency virus test. As used in this section, the term “HIV test result” does not include test results reported to a health care provider by a patient.

(c) “Significant exposure” means:

1. Exposure to blood or body fluids through needlestick, instruments, or sharps;

2. Exposure of mucous membranes to visible blood or body fluids, to which universal precautions apply according to the National Centers for Disease Control and Prevention, including, without limitations, the following body fluids:

a. Blood.

b. Semen.

c. Vaginal secretions.

d. Cerebro-spinal fluid (CSF).

e. Synovial fluid.

f. Pleural fluid.

g. Peritoneal fluid.

h. Pericardial fluid.

i. Amniotic fluid.

j. Laboratory specimens that contain HIV (e.g., suspensions of concentrated virus); or

3. Exposure of skin to visible blood or body fluids, especially when the exposed skin is chapped, abraded, or afflicted with dermatitis or the contact is prolonged or involving an extensive area.

(d) “Preliminary HIV test” means an antibody screening test, such as the enzyme-linked immunosorbent assays (ELISAs) or the Single-Use Diagnostic System (SUDS).

(e)(d) “Test subject” or “subject of the test” means the person upon whom an HIV test is performed, or the person who has legal authority to make health care decisions for the test subject.

(3) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.—

(a) No person in this state shall ~~order perform~~ a test designed to identify the human immunodeficiency virus, or its antigen or antibody, without first obtaining the informed consent of the person upon whom the test is being performed, except as specified in paragraph (i). Informed consent shall be

preceded by an explanation of the right to confidential treatment of information identifying the subject of the test and the results of the test to the extent provided by law. Information shall also be provided on the fact that a positive HIV test result will be reported to the county health department with sufficient information to identify the test subject and on the availability and location of sites at which anonymous testing is performed. As required in paragraph (4)(c), each county health department shall maintain a list of sites at which anonymous testing is performed, including the locations, phone numbers, and hours of operation of the sites. Consent need not be in writing provided there is documentation in the medical record that the test has been explained and the consent has been obtained.

(b) Except as provided in paragraph (i), informed consent must be obtained from a legal guardian or other person authorized by law when the person:

1. Is not competent, is incapacitated, or is otherwise unable to make an informed judgment; or
2. Has not reached the age of majority, except as provided in s. 384.30.

(c) The person ordering the test or that person's designee shall ensure that all reasonable efforts are made to notify the test subject of his or her test result. Notification of a person with a positive test result shall include information on the availability of appropriate medical and support services, on the importance of notifying partners who may have been exposed, and on preventing transmission of HIV. Notification of a person with a negative test result shall include, as appropriate, information on preventing the transmission of HIV. When testing occurs in a hospital emergency department, detention facility, or other facility and the test subject has been released before being notified of positive test results, informing the county health department for that department to notify the test subject fulfills this responsibility. No person shall order a test without making available to the person tested, prior to the test, information regarding measures for the prevention of, exposure to, and transmission of human immunodeficiency virus. At the time an HIV test is ordered, the person ordering the test shall schedule a return visit with the test subject for the purpose of disclosing the test results and conducting posttest counseling as described in paragraph (e).

(d) No test result shall be determined as positive, and no positive test result shall be revealed to any person, without corroborating or confirmatory tests being conducted except in the following situations:-

1. ~~However,~~ Preliminary test results may be released to licensed physicians or the medical or nonmedical personnel subject to the significant exposure for purposes of subparagraphs (h)10., (i)10. and 11., and 12.

2. Preliminary test results may be released to health care providers and to the person tested when decisions about medical care or treatment of the person tested cannot await the results of confirmatory testing. Positive preliminary HIV test results shall not be characterized to the patient as a diagnosis of HIV infection. Justification for the use of preliminary test results must be documented in the medical record by the health care provider

who ordered the test. This subparagraph does not authorize the release of preliminary test results for the purpose of routine identification of HIV-infected individuals or when HIV testing is incidental to the preliminary diagnosis or care of a patient. Corroborating or confirmatory testing must be conducted as followup to a positive preliminary test. Results shall be communicated to the patient according to statute regardless of the outcome. Except as provided in this section, test results are confidential and exempt from the provisions of s. 119.07(1).

~~(e) Except as otherwise provided, no test result shall be revealed to the person upon whom the test was performed without affording that person the immediate opportunity for individual, face-to-face counseling about:~~

- ~~1. The meaning of the test results;~~
- ~~2. The possible need for additional testing;~~
- ~~3. Measures for the prevention of the transmission of the human immunodeficiency virus infection;~~
- ~~4. The availability in the geographic area of any appropriate health care services, including mental health care, and appropriate social and support services;~~
- ~~5. The benefits of locating and counseling any individual by whom the infected individual may have been exposed to the human immunodeficiency virus infection and any individual whom the infected individual may have exposed to such human immunodeficiency virus infection; and~~
- ~~6. The availability, if any, of the services of public health authorities with respect to locating and counseling any individual described in subparagraph 5.~~

~~Telephonic posttest counseling shall be permitted when reporting the HIV test results of a home access HIV test that is approved by the United States Food and Drug Administration and analyzed by a laboratory certified under the federal Clinical Laboratory Improvement Amendments of 1988 or licensed under part I of chapter 483.~~

~~(e)(f) Except as provided in this section, the identity of any person upon whom a test has been performed and test results are confidential and exempt from the provisions of s. 119.07(1). No person who has obtained or has knowledge of a test result pursuant to this section may disclose or be compelled to disclose the identity of any person upon whom a test is performed, or the results of such a test in a manner which permits identification of the subject of the test, except to the following persons:~~

- ~~1. The subject of the test or the subject's legally authorized representative.~~
- ~~2. Any person, including third-party payors, designated in a legally effective release of the test results executed prior to or after the test by the subject of the test or the subject's legally authorized representative. The test~~

subject may in writing authorize the disclosure of the test subject's HIV test results to third party payors, who need not be specifically identified, and to other persons to whom the test subject subsequently issues a general release of medical information. A general release without such prior written authorization is not sufficient to release HIV test results.

3. An authorized agent or employee of a health facility or health care provider if the health facility or health care provider itself is authorized to obtain the test results, the agent or employee participates in the administration or provision of patient care or handles or processes specimens of body fluids or tissues, and the agent or employee has a need to know such information. The department shall adopt a rule defining which persons have a need to know pursuant to this subparagraph.

4. Health care providers consulting between themselves or with health care facilities to determine diagnosis and treatment. For purposes of this subparagraph, health care providers shall include licensed health care professionals employed by or associated with state, county, or municipal detention facilities when such health care professionals are acting exclusively for the purpose of providing diagnoses or treatment of persons in the custody of such facilities.

5. The department, in accordance with rules for reporting and controlling the spread of disease, as otherwise provided by state law.

6. A health facility or health care provider which procures, processes, distributes, or uses:

a. A human body part from a deceased person, with respect to medical information regarding that person; or

b. Semen provided prior to July 6, 1988, for the purpose of artificial insemination.

7. Health facility staff committees, for the purposes of conducting program monitoring, program evaluation, or service reviews pursuant to chapters 395 and 766.

8. Authorized medical or epidemiological researchers who may not further disclose any identifying characteristics or information.

9. A person allowed access by a court order which is issued in compliance with the following provisions:

a. No court of this state shall issue such order unless the court finds that the person seeking the test results has demonstrated a compelling need for the test results which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for disclosure against the privacy interest of the test subject and the public interest which may be disserved by disclosure which deters blood, organ, and semen donation and future human immunodeficiency virus-related testing or which may lead to discrimination. This paragraph shall not apply to blood bank donor records.

b. Pleadings pertaining to disclosure of test results shall substitute a pseudonym for the true name of the subject of the test. The disclosure to the parties of the subject's true name shall be communicated confidentially in documents not filed with the court.

c. Before granting any such order, the court shall provide the individual whose test result is in question with notice and a reasonable opportunity to participate in the proceedings if he or she is not already a party.

d. Court proceedings as to disclosure of test results shall be conducted in camera, unless the subject of the test agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice.

e. Upon the issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure which shall specify the persons who may have access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosure.

10. A person allowed access by order of a judge of compensation claims of the Division of Workers' Compensation of the Department of Labor and Employment Security. A judge of compensation claims shall not issue such order unless he or she finds that the person seeking the test results has demonstrated a compelling need for the test results which cannot be accommodated by other means.

11. Those employees of the department or of child-placing or child-caring agencies or of family foster homes, licensed pursuant to s. 409.175, who are directly involved in the placement, care, control, or custody of such test subject and who have a need to know such information; adoptive parents of such test subject; or any adult custodian, any adult relative, or any person responsible for the child's welfare, if the test subject was not tested under subparagraph (b)2. and if a reasonable attempt has been made to locate and inform the legal guardian of a test result. The department shall adopt a rule to implement this subparagraph.

12. Those employees of residential facilities or of community-based care programs that care for developmentally disabled persons, pursuant to chapter 393, who are directly involved in the care, control, or custody of such test subject and who have a need to know such information.

13. A health care provider involved in the delivery of a child can note the mother's HIV test results in the child's medical record.

14.12. Medical personnel or nonmedical personnel who have been subject to a significant exposure during the course of medical practice or in the performance of professional duties, or individuals who are the subject of the significant exposure as provided in subparagraphs (h)10., (i)10. and 11., and 13.

15. The medical examiner shall disclose positive HIV test results to the department in accordance with rules for reporting and controlling the spread of disease.

(f)(g) Except as provided in this section, the identity of a person upon whom a test has been performed is confidential and exempt from the provisions of s. 119.07(1). No person to whom the results of a test have been disclosed may disclose the test results to another person except as authorized by this subsection and by ss. 951.27 and 960.003. Whenever disclosure is made pursuant to this subsection, it shall be accompanied by a statement in writing which includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of such information without the specific written consent of the person to whom such information pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is NOT sufficient for this purpose." An oral disclosure shall be accompanied by oral notice and followed by a written notice within 10 days, except that this notice shall not be required for disclosures made pursuant to subparagraphs ~~(e)3.~~ ~~(f)3.~~ and 4.

(g)(h) Human immunodeficiency virus test results contained in the medical records of a hospital licensed under chapter 395 may be released in accordance with s. 395.3025 without being subject to the requirements of subparagraph ~~(e)2.~~ ~~(f)2.~~, subparagraph ~~(e)9.~~ ~~(f)9.~~, or paragraph ~~(f)~~ ~~(g)~~; provided the hospital has obtained written informed consent for the HIV test in accordance with provisions of this section.

(h)(i) Notwithstanding the provisions of paragraph (a), informed consent is not required:

1. When testing for sexually transmissible diseases is required by state or federal law, or by rule including the following situations:

a. HIV testing pursuant to s. 796.08 of persons convicted of prostitution or of procuring another to commit prostitution.

b. Testing for HIV by a medical examiner in accordance with s. 406.11.

2. Those exceptions provided for blood, plasma, organs, skin, semen, or other human tissue pursuant to s. 381.0041.

3. For the performance of an HIV-related test by licensed medical personnel in bona fide medical emergencies when the test results are necessary for medical diagnostic purposes to provide appropriate emergency care or treatment to the person being tested and the patient is unable to consent, as supported by documentation in the medical record. Notification of test results in accordance with paragraph (c) Posttest counseling is required.

4. For the performance of an HIV-related test by licensed medical personnel for medical diagnosis of acute illness where, in the opinion of the attending physician, obtaining informed consent would be detrimental to the patient, as supported by documentation in the medical record, and the test results are necessary for medical diagnostic purposes to provide appropriate care or treatment to the person being tested. Notification of test results in accordance with paragraph (c) Posttest counseling is required if it would not

be detrimental to the patient. This subparagraph does not authorize the routine testing of patients for HIV infection without informed consent.

5. When HIV testing is performed as part of an autopsy for which consent was obtained pursuant to s. 872.04.

6. For the performance of an HIV test upon a defendant pursuant to the victim's request in a prosecution for any type of sexual battery where a blood sample is taken from the defendant voluntarily, pursuant to court order for any purpose, or pursuant to the provisions of s. 775.0877, s. 951.27, or s. 960.003; however, the results of any HIV test performed shall be disclosed solely to the victim and the defendant, except as provided in ss. 775.0877, 951.27, and 960.003.

7. When an HIV test is mandated by court order.

8. For epidemiological research pursuant to s. 381.0032, for research consistent with institutional review boards created by 45 C.F.R. part 46, or for the performance of an HIV-related test for the purpose of research, if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher.

9. When human tissue is collected lawfully without the consent of the donor for corneal removal as authorized by s. 732.9185 or enucleation of the eyes as authorized by s. 732.919.

10. For the performance of an HIV test upon an individual who comes into contact with medical personnel in such a way that a significant exposure has occurred during the course of employment or within the scope of practice and where a blood sample is available that was taken from that individual voluntarily by medical personnel for other purposes. "Medical personnel" includes a licensed or certified health care professional; an employee of a health care professional, health care facility, or blood bank; and a paramedic or emergency medical technician as defined in s. 401.23.

a. Prior to performance of an HIV test on a voluntarily obtained blood sample, the individual from whom the blood was obtained shall be requested to consent to the performance of the test and to the release of the results. The individual's refusal to consent and all information concerning the performance of an HIV test and any HIV test result shall be documented only in the medical personnel's record unless the individual gives written consent to entering this information on the individual's medical record.

b. Reasonable attempts to locate the individual and to obtain consent shall be made and all attempts must be documented. If the individual cannot be found, an HIV test may be conducted on the available blood sample. If the individual does not voluntarily consent to the performance of an HIV test, the individual shall be informed that an HIV test will be performed, and counseling shall be furnished as provided in this section. However, HIV testing shall be conducted only after a licensed physician documents, in the medical record of the medical personnel, that there has been a significant exposure and that, in the physician's medical judgment, the information is

medically necessary to determine the course of treatment for the medical personnel.

c. Costs of any HIV test of a blood sample performed with or without the consent of the individual, as provided in this subparagraph, shall be borne by the medical personnel or the employer of the medical personnel. However, costs of testing or treatment not directly related to the initial HIV tests or costs of subsequent testing or treatment shall not be borne by the medical personnel or the employer of the medical personnel.

d. In order to utilize the provisions of this subparagraph, the medical personnel must either be tested for HIV pursuant to this section or provide the results of an HIV test taken within 6 months prior to the significant exposure if such test results are negative.

e. A person who receives the results of an HIV test pursuant to this subparagraph shall maintain the confidentiality of the information received and of the persons tested. Such confidential information is exempt from s. 119.07(1).

f. If the source of the exposure will not voluntarily submit to HIV testing and a blood sample is not available, the medical personnel or the employer of such person acting on behalf of the employee may seek a court order directing the source of the exposure to submit to HIV testing. A sworn statement by a physician licensed under chapter 458 or chapter 459 that a significant exposure has occurred and that, in the physician's medical judgment, testing is medically necessary to determine the course of treatment constitutes probable cause for the issuance of an order by the court. The results of the test shall be released to the source of the exposure and to the person who experienced the exposure.

11. For the performance of an HIV test upon an individual who comes into contact with medical personnel in such a way that a significant exposure has occurred during the course of employment or within the scope of practice of the medical personnel while the medical personnel provides emergency medical treatment to the individual; or who comes into contact with nonmedical personnel in such a way that a significant exposure has occurred while the nonmedical personnel provides emergency medical assistance during a medical emergency. For the purposes of this subparagraph, a medical emergency means an emergency medical condition outside of a hospital or health care facility that provides physician care. The test may be performed only during the course of treatment for the medical emergency.

a. An individual who is capable of providing consent shall be requested to consent to an HIV test prior to the testing. The individual's refusal to consent, and all information concerning the performance of an HIV test and its result, shall be documented only in the medical personnel's record unless the individual gives written consent to entering this information on the individual's medical record.

b. HIV testing shall be conducted only after a licensed physician documents, in the medical record of the medical personnel or nonmedical person-

nel, that there has been a significant exposure and that, in the physician's medical judgment, the information is medically necessary to determine the course of treatment for the medical personnel or nonmedical personnel.

c. Costs of any HIV test performed with or without the consent of the individual, as provided in this subparagraph, shall be borne by the medical personnel or the employer of the medical personnel or nonmedical personnel. However, costs of testing or treatment not directly related to the initial HIV tests or costs of subsequent testing or treatment shall not be borne by the medical personnel or the employer of the medical personnel or nonmedical personnel.

d. In order to utilize the provisions of this subparagraph, the medical personnel or nonmedical personnel shall be tested for HIV pursuant to this section or shall provide the results of an HIV test taken within 6 months prior to the significant exposure if such test results are negative.

e. A person who receives the results of an HIV test pursuant to this subparagraph shall maintain the confidentiality of the information received and of the persons tested. Such confidential information is exempt from s. 119.07(1).

f. If the source of the exposure will not voluntarily submit to HIV testing and a blood sample was not obtained during treatment for the medical emergency, the medical personnel, the employer of the medical personnel acting on behalf of the employee, or the nonmedical personnel may seek a court order directing the source of the exposure to submit to HIV testing. A sworn statement by a physician licensed under chapter 458 or chapter 459 that a significant exposure has occurred and that, in the physician's medical judgment, testing is medically necessary to determine the course of treatment constitutes probable cause for the issuance of an order by the court. The results of the test shall be released to the source of the exposure and to the person who experienced the exposure.

12. For the performance of an HIV test by the medical examiner upon a deceased individual who is the source of a significant exposure to medical personnel or nonmedical personnel who provided emergency medical assistance and who expired or could not be resuscitated during treatment for the medical emergency.

13.12. For the performance of an HIV-related test medically indicated by licensed medical personnel for medical diagnosis of a hospitalized infant as necessary to provide appropriate care and treatment of the infant when, after a reasonable attempt, a parent cannot be contacted to provide consent. The medical records of the infant shall reflect the reason consent of the parent was not initially obtained. Test results and posttest counseling shall be provided to the parent when the parent is located.

14. For the performance of HIV testing conducted to monitor the clinical progress of a patient previously diagnosed to be HIV positive.

15. For the performance of repeated HIV testing conducted to monitor possible conversion from a significant exposure.

(4) COUNTY HEALTH DEPARTMENT NETWORK OF VOLUNTARY HUMAN IMMUNODEFICIENCY VIRUS TESTING PROGRAMS.—

(a) The Department of Health shall establish a network of voluntary human immunodeficiency virus testing programs in every county in the state. These programs shall be conducted in each county health department established under the provisions of part I of chapter 154. Additional programs may be contracted to other private providers to the extent that finances permit and local circumstances dictate.

(b) Each county health department shall have the ability to provide counseling and testing for human immunodeficiency virus to each patient who receives services and shall offer such testing on a voluntary basis to each patient who presents himself or herself for services in a public health program designated by the State Health Officer by rule.

(c) Each county health department shall provide a program of counseling and testing for human immunodeficiency virus infection, on both an anonymous and confidential basis. Counseling provided to a patient tested on both an anonymous and confidential basis shall include informing the patient of the availability of partner-notification services, the benefits of such services, and the confidentiality protections available as part of such services. The Department of Health or its designated agent shall continue to provide for anonymous testing through an alternative testing site program with sites throughout all areas of the state. Each county health department shall maintain a list of anonymous testing sites. The list shall include the locations, phone numbers, and hours of operation of the sites and shall be disseminated to all persons and programs offering human immunodeficiency virus testing within the service area of the county health department, including physicians licensed under chapter 458 or chapter 459. Except as provided in this section, the identity of a person upon whom a test has been performed and test results are confidential and exempt from the provisions of s. 119.07(1).

(d) The result of a serologic test conducted under the auspices of the Department of Health shall not be used to determine if a person may be insured for disability, health, or life insurance or to screen or determine suitability for, or to discharge a person from, employment. Any person who violates the provisions of this subsection is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5) HUMAN IMMUNODEFICIENCY VIRUS TESTING REQUIREMENTS; REGISTRATION WITH THE DEPARTMENT OF HEALTH; EXEMPTIONS FROM REGISTRATION.—No county health department and no other person in this state shall conduct or hold themselves out to the public as conducting a testing program for acquired immune deficiency syndrome, ~~acquired immune deficiency syndrome related complex~~, or human immunodeficiency virus status without first registering with the Department of Health, reregistering each year, complying with all other applicable provisions of state law, and meeting the following requirements:

(a) The program must be directed by a person with a minimum number of contact hours of experience in the counseling of persons with acquired

immune deficiency syndrome, ~~acquired immune deficiency syndrome related complex,~~ or human immunodeficiency virus infection, as established by the Department of Health by rule.

(b) The program must have all medical care supervised by a physician licensed under the provisions of chapter 458 or chapter 459.

(c) The program shall have all laboratory procedures performed in a laboratory licensed under the provisions of chapter 483.

(d) The program must meet all the informed consent criteria contained in subsection (3).

(e) The program must provide the opportunity for pretest counseling on the meaning of a test for human immunodeficiency virus, including medical indications for the test; the possibility of false positive or false negative results; the potential need for confirmatory testing; the potential social, medical, and economic consequences of a positive test result; and the need to eliminate high-risk behavior.

(f) The program must provide supplemental corroborative testing on all positive test results before the results of any positive test are provided to the patient. Except as provided in this section, the identity of any person upon whom a test has been performed and test results are confidential and exempt from the provisions of s. 119.07(1).

(g) The program must provide the opportunity for face-to-face posttest counseling on the meaning of the test results; the possible need for additional testing; the social, medical, and economic consequences of a positive test result; and the need to eliminate behavior which might spread the disease to others.

(h) Each person providing posttest counseling to a patient with a positive test result shall receive specialized training, to be specified by rule of the department, about the special needs of persons with positive results, including recognition of possible suicidal behavior, and shall refer the patient for further health and social services as appropriate.

(i) When services are provided for a charge during pretest counseling, testing, supplemental testing, and posttest counseling, the program must provide a complete list of all such charges to the patient and the Department of Health.

(j) Nothing in this subsection shall be construed to require a facility licensed under chapter 483 or a person licensed under the provisions of chapter 457, chapter 458, chapter 459, chapter 460, chapter 461, chapter 466, or chapter 467 to register with the Department of Health if he or she does not advertise or hold himself or herself out to the public as conducting testing programs for human immunodeficiency virus infection or specializing in such testing.

(k) The department shall deny, suspend, or revoke the registration of any person or agency that violates this section, or any rule adopted under this

section, constituting an emergency affecting the immediate health, safety, and welfare of a person receiving service.

(6) PENALTIES.—

(a) Any violation of this section by a facility or licensed health care provider shall be a ground for disciplinary action contained in the facility's or professional's respective licensing chapter.

(b) Any person who violates the confidentiality provisions of this section and s. 951.27 commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(8) MODEL PROTOCOL FOR COUNSELING AND TESTING FOR HUMAN IMMUNODEFICIENCY VIRUS.—The Department of Health shall develop, by rule, a model protocol consistent with the provisions of this section for counseling and testing persons for the human immunodeficiency virus. The protocol shall include criteria for evaluating a patient's risk for human immunodeficiency virus infection and for offering human immunodeficiency virus testing, on a voluntary basis, as a routine part of primary health care or admission to a health care facility. The Department of Health shall ensure that the protocols developed under this section are made available to health care providers.

Section 3. Section 384.25, Florida Statutes, is amended to read:

384.25 Reporting required.—

(1) Each person who makes a diagnosis of or treats a person with a sexually transmissible disease and each laboratory that performs a test for a sexually transmissible disease which concludes with a positive result shall report such facts as may be required by the department by rule, within a time period as specified by rule of the department, but in no case to exceed 2 weeks.

(2) The department shall adopt rules specifying the information required in and a minimum time period for reporting a sexually transmissible disease. In adopting such rules, the department shall consider the need for information, protections for the privacy and confidentiality of the patient, and the practical ability of persons and laboratories to report in a reasonable fashion. To ensure the confidentiality of persons infected with the human immunodeficiency virus (HIV), reporting of HIV infection and acquired immune deficiency syndrome (AIDS) must be conducted using the HIV/AIDS Reporting System (HARS) developed by the Centers for Disease Control and Prevention of the United States Public Health Service.

(3) The department shall require reporting of physician diagnosed cases of AIDS based upon diagnostic criteria from the Centers for Disease Control and Prevention.

(4) The department may require physician and laboratory reporting of HIV infection. However, only reports of HIV infection identified on or after the effective date of the rule developed by the department pursuant to this

subsection shall be accepted. The reporting may not affect or relate to anonymous HIV testing programs conducted pursuant to s. 381.004(4) or to university-based medical research protocols as determined by the department.

(5) After notification of the test subject under subsection (4), the department may, with the consent of the test subject, notify school superintendents of students and school personnel whose HIV tests are positive.

(6) The department shall by February 1 of each year submit to the Legislature an annual report relating to all information obtained pursuant to this section.

~~(7) The rules adopted by the department pursuant to this section shall specify the protocols for the reporting required or permitted by subsection (3) or subsection (4). The protocol developed for implementation of subsection (4) shall include, but need not be limited to, information to be given to a test subject during pretest counseling, including:~~

~~(a) The fact that a positive HIV test result may be reported to the county health department with sufficient information to identify the test subject and the availability and location of anonymous testing sites; and~~

~~(b) The partner notification services available through the county health departments, the benefits of such services, and the confidentiality protections available as part of such services.~~

~~(7)~~(8) Each person who violates the provisions of this section or the rules adopted hereunder may be fined by the department up to \$500 for each offense. The department shall report each violation of this section to the regulatory agency responsible for licensing each health care professional and each laboratory to which these provisions apply.

Section 4. Subsection (1) of section 455.604, Florida Statutes, is amended to read:

455.604 Requirement for instruction for certain licensees on human immunodeficiency virus and acquired immune deficiency syndrome.—

(1) The appropriate board shall require each person licensed or certified under chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 463; chapter 464; chapter 465; chapter 466; part II, part III, or part V of chapter 468; or chapter 486 to complete a continuing educational course, approved by the board, on human immunodeficiency virus and acquired immune deficiency syndrome as part of biennial relicensure or recertification. The course shall consist of education on the modes of transmission, infection control procedures, clinical management, and prevention of human immunodeficiency virus and acquired immune deficiency syndrome. Such course shall include information on current Florida law on acquired immune deficiency syndrome and its impact on testing, confidentiality of test results, and treatment of patients, and any protocols and procedures applicable to human immunodeficiency virus counseling and testing, reporting, the offering of HIV testing to pregnant women, and partner notification issues pursuant to ss. 381.004 and 384.25.

Section 5. Subsection (12) and paragraph (b) 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) A laboratory may analyze initial or confirmation drug specimens only if:

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

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

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

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

d. A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the abuse registry background check and 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.

(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.

(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.

(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 non-prescription medication taken by the employee or job applicant.

(13) RULES.—

(b) The following standards and procedures are established related to hair testing:

1. Hair cutoff levels for initial drug-screening tests.—The following initial cutoff levels must be used when screening hair specimens to determine whether they are negative for these drugs or their metabolites:

- a. Marijuana: 10 pg/10 mg of hair;
- b. Cocaine: 5 ng/10 mg of hair; and
- c. Opiate/synthetic narcotics and metabolites: 5 ng/10 mg of hair. For the purpose of this section, opiate and metabolites include the following:
 - (I) Codeine;
 - (II) Heroin, monoacetylmorphine ~~monoacetylmorphine~~ (heroin metabolites);
 - (III) Morphine;
- d. Phencyclidine: 3 ng/10 mg of hair; and
- e. Amphetamines: 5 ng/10 mg of hair. For the purpose of this section, amphetamines include the following:
 - (I) Amphetamines;
 - (II) Methamphetamine;
2. Hair cutoff levels for drug confirmation testing.—
 - a. All specimens identified as positive on the initial test must be confirmed using gas chromatography/mass spectrometry (GC/MS), mass spectrometry/mass spectrometry (MS/MS) at the following cutoff levels for these drugs on their metabolites. All confirmations must be by quantitative analysis.
 - (I) Marijuana metabolites: 1 pg/10 mg of hair (Delta-9-tetrahydrocannabinol-0-carboxylic acid).
 - (II) Cocaine: must be at or above 5 ng/10 mg of hair. Cocaine metabolites if present will be recorded at the following minimum levels:
 - (A) Benzoylcegonine at 1 ng/10 mg of hair; and
 - (B) Cocaethylene at 1 ng/10 mg of hair.
 - (III) Opiate/synthetic narcotics and metabolites: 5 ng/10 mg of hair; opiate and metabolites include the following:
 - (A) Codeine;
 - (B) 6-Monoacetylmorphine (heroin metabolite); and
 - (C) Morphine.
 - (IV) Phencyclidine: 3 ng/10 mg of hair.
 - (V) Amphetamines: 5 ng/10 mg of hair. For the purpose of this section, amphetamines include the following:
 - (A) Amphetamines; and

(B) Methamphetamines.

b. All hair specimens undergoing confirmation must be decontaminated using a wash procedure which has been published in the peer-reviewed literature which, as a minimum, has an initial 15-minute organic solvent wash followed by multiple (minimum of three) 30-minute aqueous washes.

c. After hair is washed, the drug entrapped in the hair is released either by digestion (chemical or enzymatic) or by multiple solvent extractions. The resulting digest or pooled solvent extracts are then screened and confirmed by approved methods.

d. All confirmation analysis methods must eliminate the melanin fraction of the hair before analysis. If a nondigestion method is used, the laboratory must present published data in the peer-reviewed literature from a large population study which indicates that the method of extraction does not possess a statistically significant hair-color bias.

e. Additional hair samples may be collected to reconfirm the initial report. The recollected sample shall be retested as specified; however, the confirmation analysis must be performed even if the screening test is negative. A second positive report must be made if the drug concentration in the digest by confirmation methods exceeds the limit of quantitation of the testing laboratory's method. A second test must be offered to anyone disputing a positive hair test result.

3. Hair specimen collection procedures.—

a. Designation of collection site.—Each drug-testing program shall have one or more designated collection sites which have all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and shipping or transportation of hair specimens to a licensed drug-testing facility.

b. Security.—While security is important with any collection, in the case of hair, only the temporary storage area in the designated collection site needs to be secure.

c. Chain of custody.—Chain-of-custody standardized forms shall be properly executed by authorized collection site personnel upon receipt of specimens. Handling and transportation of hair specimens from one authorized individual or place to another shall always be accomplished through chain-of-custody procedures. Every effort shall be made to minimize the number of persons handling specimens.

d. Access to authorized personnel only.—The hair collection site need be off limits to unauthorized personnel only during the actual collection of specimens.

e. Privacy.—Procedures for collecting hair should be performed on one individual at a time to prevent substitutions or interference with the collection of reliable samples. Procedures must ensure that the hair collection does not infringe on the individual's privacy.

f. Integrity and identity of specimen.—Precautions must be taken to ensure that the root end of a hair specimen is indicated for the laboratory which performs the testing. The maximum length of hair that shall be tested is 3.9 cm distal from the head, which on average represents a 3-month time window. The following minimum precautions must be taken when collecting a hair specimen to ensure that specimens are obtained and correctly identified:

(I) When an individual arrives at the collection site, the collection site personnel shall request the individual to present photo identification. If the individual does not have proper photo identification, the collection site personnel shall contact the supervisor of the individual, the coordinator of the drug testing program, or any other employer official who can positively identify the individual. If the individual's identity cannot be established, the collection site personnel shall not proceed with the collection.

(II) If the individual fails to arrive at the assigned time, the collection site personnel shall contact the appropriate authority to obtain guidance on the action to be taken.

(III) The collection site personnel shall note any unusual behavior or appearance on the chain-of-custody form.

(IV) Hair shall be cut as close to the scalp or body, excluding the pubic area, as possible. Upon taking the specimen from the individual, the collection site personnel shall determine that it contains approximately $\frac{1}{2}$ -inch of hair when fanned out on a ruler (about 40 mg of hair).

(V) Both the individual being tested and the collection site personnel shall keep the specimen in view at all times prior to the specimen container being sealed with a tamper-resistant seal and labeled with the individual's specimen number and other required information.

(VI) The collection site personnel shall label the container which contains the hair with the date, the individual's specimen number, and any other identifying information provided or required by the drug-testing program.

(VII) The individual shall initial the container for the purpose of certifying that it is the specimen collected from the individual.

(VIII) The collection site personnel shall indicate on the chain-of-custody form all information identifying the specimen. The collection site personnel shall sign the chain-of-custody form next to the identifying information or the chain of custody on the specimen container.

(IX) The individual must be asked to read and sign a statement certifying that the specimen identified as having been collected from the individual is in fact that specimen the individual provided.

(X) The collection site personnel shall complete the chain-of-custody form.

g. Collection control.—To the maximum extent possible, collection site personnel shall keep the individual's specimen container within sight both

before and after collection. After the specimen is collected, it must be properly sealed and labeled. An approved chain-of-custody form must be used for maintaining control and accountability of each specimen from the point of collection to final disposition of the specimen. The date and purpose must be documented on an approved chain-of-custody form each time a specimen is handled or transferred and every individual in the chain must be identified. Every effort must be made to minimize the number of persons handling specimens.

h. Transportation to the testing facility.—Collection site personnel shall arrange to transport the collected specimens to the drug-testing facility. The specimens shall be placed in containers which shall be securely sealed to eliminate the possibility of undetected tampering. The collection site personnel shall ensure that the chain-of-custody documentation is sealed separately from the specimen and placed inside the container sealed for transfer to the drug-testing facility.

4. Quality assurance and quality control.—

a. Quality assurance.—Testing facilities shall have a quality assurance program which encompasses all aspects of the testing process, including, but not limited to, specimen acquisition, chain of custody, security and reporting of results, initial and confirmatory testing, and validation of analytical procedures. Quality assurance procedures shall be designed, implemented, and reviewed to monitor the conduct of each step of the process of testing for drugs.

b. Quality control.—

(I) Each analytical run of specimens to be screened shall include:

(A) Hair specimens certified to contain no drug;

(B) Hair specimens fortified with known standards; and

(C) Positive controls with the drug or metabolite at or near the threshold (cutoff).

(II) In addition, with each batch of samples, a sufficient number of standards shall be included to ensure and document the linearity of the assay method over time in the concentration area of the cutoff. After acceptable values are obtained for the known standards, those values must be used to calculate sample data. Implementation of procedures to ensure that carryover does not contaminate the testing of an individual's specimen must be documented. A minimum of 5 percent of all test samples must be quality control specimens. The testing facility's quality control samples, prepared from fortified hair samples of determined concentration, must be included in the run and must appear as normal samples to drug-screen testing facility analysis. One percent of each run, with a minimum of at least one sample, must be the testing facility's own quality control samples.

5.a. Proficiency testing.—

(I) Each hair drug-testing facility shall enroll and demonstrate satisfactory performance in a proficiency-testing program established by an independent group.

(II) The drug-testing facility shall maintain records which document the handling, processing, and examination of all proficiency-testing samples for a minimum of 2 years from the date of testing.

(III) The drug-testing facility shall ensure that proficiency-testing samples are analyzed at least three times each year using the same techniques as those employed for unknown specimens.

(IV) The proficiency-testing samples must be included with the routine sample run and tested with the same frequency as unknown samples by the individuals responsible for testing unknown specimens.

(V) The drug-testing facility may not engage in discussions or communications concerning proficiency-testing results with other drug-testing facilities, nor may they send proficiency-testing samples or portions of the samples to another drug-testing facility for analysis.

b. Satisfactory performance.—

(I) The drug-testing facility shall maintain an overall testing-event score equivalent to passing proficiency scores for other drug-testing matrices.

(II) Failure to participate in a proficiency-testing event shall result in a score of 0 percent for that testing event.

c. Unsuccessful performance.—Failure to achieve satisfactory performance in two consecutive testing events, or two out of three consecutive testing events, is determined to be unsuccessful performance.

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

Section 6. Section 381.60225, Florida Statutes, is created to read:

381.60225 Background screening.—

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

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

(b) The Agency for Health Care Administration may require background screening of any other individual who is an applicant if the Agency for Health Care Administration has probable cause to believe that he or she has

been convicted of a crime or has committed any other offense prohibited under the level 2 standards for screening set forth in chapter 435.

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

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

(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) The agency may not certify any organization, agency, or entity if any applicant or managing employee has been found guilty of, regardless of

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

(h) The agency may deny or revoke certification of any organization, agency, or entity 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 renewal of certification must contain the information required under paragraphs (e) and (f).

(2) An organ procurement organization, tissue bank, or eye bank certified by the Agency for Health Care Administration in accordance with ss. 381.6021 and 381.6022 is not subject to the requirements of this section if the entity has no direct patient-care responsibilities and does not bill patients or insurers directly for services under the Medicare or Medicaid programs, or for privately insured services.

Section 7. Section 383.302, Florida Statutes, is amended to read:

383.302 Definitions of terms used in ss. 383.30-383.335.—As used in ss. 383.30-383.335, ~~unless the context otherwise requires,~~ the term:

(1) “Agency” means the Agency for Health Care Administration.

~~(2)~~(4) “Birth center” means any facility, institution, or place, which is not an ambulatory surgical center or a hospital or in a hospital, in which births are planned to occur away from the mother’s usual residence following a normal, uncomplicated, low-risk pregnancy.

~~(3)~~(2) “Clinical staff” means individuals employed full time or part time by a birth center who are licensed or certified to provide care at childbirth.

~~(4)~~(3) “Consultant” means a physician licensed pursuant to chapter 458 or chapter 459 who agrees to provide advice and services to a birth center and who either:

(a) Is certified or eligible for certification by the American Board of Obstetrics and Gynecology, or

(b) Has hospital obstetrical privileges.

~~(4) “Department” means the Department of Health.~~

(5) “Governing body” means any individual, group, corporation, or institution which is responsible for the overall operation and maintenance of a birth center.

(6) "Governmental unit" means the state or any county, municipality, or other political subdivision or any department, division, board, or other agency of any of the foregoing.

(7) "Licensed facility" means a facility licensed in accordance with s. 383.305.

(8) "Low-risk pregnancy" means a pregnancy which is expected to result in an uncomplicated birth, as determined through risk criteria developed by rule of the department, and which is accompanied by adequate prenatal care.

(9) "Person" means any individual, firm, partnership, corporation, company, association, institution, or joint stock association and means any legal successor of any of the foregoing.

(10) "Premises" means those buildings, beds, and facilities located at the main address of the licensee and all other buildings, beds, and facilities for the provision of maternity care located in such reasonable proximity to the main address of the licensee as to appear to the public to be under the dominion and control of the licensee.

Section 8. Section 383.305, Florida Statutes, is amended to read:

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

(1)(a) Upon receipt of an application for a license and the license fee, the agency department 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 department. 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 department, 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 department.

(2) An application for a license, or renewal thereof, shall be made to the agency department upon forms provided by it and shall contain such information as the agency department 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 department. Such fees are payable to the agency department and shall be deposited in a trust fund administered by the agency department, 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 department 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 department 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 promulgated hereunder, it is authorized to deny, suspend, or revoke a license.

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

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

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

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

(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the abuse registry background check and 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 9. Paragraph (a) of subsection (2) of section 383.308, Florida Statutes, is amended to read:

383.308 Birth center facility and equipment; requirements.—

(2)(a) A birth center shall be equipped with those items needed to provide low-risk maternity care and readily available equipment to initiate emergency procedures in life-threatening events to mother and baby, as defined by rule of the agency department.

Section 10. Section 383.309, Florida Statutes, is amended to read:

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

(1) The agency department shall ~~adopt, amend, promulgate, and enforce rules to administer ss. 383.30-383.335~~ implement the provisions of this act, 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) Construction, maintenance, repair, and renovation of licensed facilities are governed by rules of the agency department which ~~use~~ utilize the most recently adopted, nationally recognized codes wherever feasible. Facilities licensed under s. 383.305 are exempt from local construction standards to the extent that those standards are in conflict with the standards adopted by rule of the agency department.

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

(2) Any licensed facility ~~that~~ which is in operation at the time of adoption ~~promulgation~~ 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 ~~from~~ the date of such adoption ~~promulgation~~, within which to comply with such rule.

Section 11. Paragraph (b) of subsection (1) and paragraph (b) of subsection (2) of section 383.31, Florida Statutes, are amended to read:

383.31 Selection of clients; informed consent.—

(1)

(b) The criteria for the selection of clients and the establishment of risk status shall be defined by rule of the agency department.

(2)

(b) The agency department shall develop a client informed-consent form to be used by the center to inform the client of the benefits and risks related to childbirth outside a hospital.

Section 12. Subsection (1) of section 383.312, Florida Statutes, is amended to read:

383.312 Prenatal care of birth center clients.—

(1) A birth center shall ensure that its clients have adequate prenatal care, as defined by the agency department, and shall ensure that serological tests are administered as required by this chapter.

Section 13. Subsection (1) of section 383.313, Florida Statutes, is amended to read:

383.313 Performance of laboratory and surgical services; use of anesthetic and chemical agents.—

(1) LABORATORY SERVICES.—A birth center may collect specimens for those tests that are requested under protocol. A birth center may perform simple laboratory tests, as defined by rule of the agency department, and is exempt from the requirements of chapter 483, provided no more than five physicians are employed by the birth center and testing is conducted exclusively in connection with the diagnosis and treatment of clients of the birth center.

Section 14. Subsection (1) of section 383.318, Florida Statutes, is amended to read:

383.318 Postpartum care for birth center clients and infants.—

(1) A mother and her infant shall be dismissed from the birth center within 24 hours after the birth of the infant, except in unusual circumstances as defined by rule of the agency department. If a mother or infant is retained at the birth center for more than 24 hours after the birth, a report shall be filed with the agency department within 48 hours of the birth describing the circumstances and the reasons for the decision.

Section 15. Subsection (3) of section 383.32, Florida Statutes, is amended to read:

383.32 Clinical records.—

(3) Clinical records shall be kept confidential in accordance with s. 455.241 and exempt from the provisions of s. 119.07(1). A client's clinical records shall be open to inspection only under the following conditions:

(a) A consent to release information has been signed by the client; or

(b) The review is made by the agency department for a licensure survey or complaint investigation.

Section 16. Section 383.324, Florida Statutes, is amended to read:

383.324 Inspections and investigations; inspection fees.—

(1) The agency department 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 department, at the time of inspection, an inspection fee established by rule of the agency department.

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

Section 17. Subsection (3) of section 383.325, Florida Statutes, is amended to read:

383.325 Inspection reports.—

(3) A licensed facility shall, upon the request of any person who has completed a written application with intent to be admitted to such facility or any person who is a patient of such facility, or any relative, spouse, or guardian of any such person, furnish to the requester a copy of the last inspection report issued by the agency department or an accrediting organization, whichever is most recent, pertaining to the licensed facility, as provided in subsection (1), provided the person requesting such report agrees to pay a reasonable charge to cover copying costs.

Section 18. Subsection (4) of section 383.327, Florida Statutes, is amended to read:

383.327 Birth and death records; reports.—

(4) A report shall be submitted annually to the agency department. The contents of the report shall be prescribed by rule of the agency department.

Section 19. Section 383.33, Florida Statutes, is amended to read:

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

(1)(a) The agency department 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 or any rule adopted under ss. 383.30-383.335 promulgated hereunder. Each day of violation constitutes a separate violation and is subject to a separate fine.

(b) In determining the amount of the 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 ss. 383.30-383.335 ~~this act~~ were violated.

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

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 department~~ to be used for the sole purpose of carrying out the provisions of ss. 383.30-383.335.

(2) The ~~agency department~~ 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.

(3) The ~~agency department~~ may impose an immediate moratorium on elective admissions to any licensed facility, building or portion thereof, or service when the ~~agency department~~ determines that any condition in the facility presents a threat to the public health or safety.

Section 20. Section 383.331, Florida Statutes, is amended to read:

383.331 Injunctive relief.—Notwithstanding the existence or pursuit of any other remedy, the ~~agency department~~ may maintain an action in the name of the state for injunction or other process to enforce the provisions of ss. 383.30-383.335 and the rules adopted promulgated under such sections.

Section 21. Subsection (3) is added to section 390.015, Florida Statutes, to read:

390.015 Application for license.—

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

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

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

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

(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the abuse registry background check and 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 22. Subsection (5) is added to section 391.206, Florida Statutes, to read:

391.206 Initial application for license.—

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

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

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

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

(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the abuse registry background check and 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 23. Present subsections (2) through (53) of section 393.063, Florida Statutes, are renumbered as subsections (3) through (54), respectively, and a new subsection (2) is added to that section, to read:

393.063 Definitions.—For the purposes of this chapter:

(2) “Agency” means the Agency for Health Care Administration.

Section 24. Present subsections (6) through (18) of section 393.067, Florida Statutes, are renumbered as subsections (7) through (19), respectively, and a new subsection (6) is added to that section, to read:

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

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

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

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

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

(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the abuse registry background check and 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 25. Subsection (7) of section 394.4787, Florida Statutes, is amended to read:

394.4787 Definitions.—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(30) ~~s. 395.002(27)~~ as a specialty psychiatric hospital.

Section 26. Section 394.67, Florida Statutes, is amended to read:

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

(1) “Advisory council” means a district advisory council.

(2) “Agency” means the Agency for Health Care Administration.

~~(2) “Alcohol, drug abuse, and mental health planning council” or “council” means the council within a Department of Health and Rehabilitative Services district or subdistrict established in accordance with the provisions of this part for the purpose of assessing the alcohol, drug abuse, and mental~~

health needs of the community and developing a plan to address those needs.

(3) “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.

(4) “Client” means any individual receiving services in any alcohol, drug abuse, or mental health facility, program, or service, which facility, program, or service is operated, funded, or regulated by the agency and the department or regulated by the agency.

(5) “Crisis stabilization unit” means a program that provides an alternative to inpatient hospitalization and that provides brief, intensive services 24 hours a day, 7 days a week, for mentally ill individuals who are in an acutely disturbed state.

(6)(3) “Department” means the Department of Children and Family Health and Rehabilitative Services.

(7) “Director” means any member of the official board of directors reported in the organization’s annual corporate report to the Florida Department of State, or, if no such report is made, any member of the operating board of directors. The term excludes members of separate, restricted boards that serve only in an advisory capacity to the operating board.

(8)(4) “District administrator” means the person appointed by the Secretary of Children and Family Health and Rehabilitative Services for the purpose of administering a department service district as set forth in s. 20.19.

(9)(5) “District plan” or “plan” means the combined district alcohol, drug abuse, and mental health plan prepared by the alcohol, drug abuse, and mental health planning council and approved by the district administrator and governing bodies in accordance with this part.

(10)(6) “Federal funds” means funds from federal sources for alcohol, drug abuse, or mental health facilities and programs, exclusive of federal funds that are deemed eligible by the Federal Government, and are eligible through state regulation, for matching purposes.

(11)(7) “Governing body” means the chief legislative body of a county, a board of county commissioners, or boards of county commissioners in counties acting jointly, or their counterparts in a charter government.

(12) “Licensed facility” means a facility licensed in accordance with this chapter.

(13)(8) “Local matching funds” means funds received from governing bodies of local government, including city commissions, county commissions, district school boards, special tax districts, private hospital funds, private gifts, both individual and corporate, and bequests and funds received from community drives or any other sources.

(14) “Managing employee” means the administrator or other similarly titled individual who is responsible for the daily operation of the facility.

~~(15)~~(9) “Patient fees” means compensation received by a community alcohol, drug abuse, or mental health facility for services rendered to clients from any source of funds, including city, county, state, federal, and private sources.

(16) “Premises” means those buildings, beds, and facilities located at the main address of the licensee and all other buildings, beds, and facilities for the provision of acute or residential care which are located in such reasonable proximity to the main address of the licensee as to appear to the public to be under the dominion and control of the licensee.

~~(17)~~(40) “Program office” means the Alcohol, Drug Abuse, and Mental Health Program Office of the Department of Children and Family Health and Rehabilitative Services.

(18) “Residential treatment facility” means a facility providing residential care and treatment to individuals exhibiting symptoms of mental illness who are in need of a 24-hour-per-day, 7-day-a-week structured living environment, respite care, or long-term community placement.

~~(19)~~(44) “Service district” means a community service district as established by the department under s. 20.19 for the purpose of providing community alcohol, drug abuse, and mental health services.

~~(20)~~(42) “Service provider” means any agency in which all or any portion of the programs or services set forth in s. 394.675 are carried out.

~~(13) “Crisis stabilization unit” means a program providing an alternative to inpatient hospitalization and which provides brief, intensive services 24 hours a day, 7 days a week, for mentally ill individuals who are in an acutely disturbed state.~~

~~(14) “Residential treatment facility” means a facility providing residential care and treatment to individuals exhibiting symptoms of mental illness who are in need of a 24-hour, 7-day-a-week structured living environment, respite care, or long-term community placement. Residential treatment facility shall also include short-term residential treatment facilities for treatment of mental illness.~~

~~(15) “Licensed facility” means a facility licensed in accordance with this chapter.~~

~~(16) “Premises” means those buildings, beds, and facilities located at the main address of the licensee and all other buildings, beds, and facilities for the provision of acute or residential care located in such reasonable proximity to the main address of the licensee as to appear to the public to be under the dominion and control of the licensee.~~

~~(17) “Client” means any individual receiving services in any alcohol, drug abuse, or mental health facility, program, or service, which facility, pro-~~

~~gram, or service is operated, funded, or regulated by the Department of Health and Rehabilitative Services.~~

Section 27. Section 394.875, Florida Statutes, is amended to read:

394.875 Crisis stabilization units and residential treatment facilities; 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.

(2) ~~After July 1, 1986,~~ It is unlawful for any entity to hold itself out as a crisis stabilization unit or a residential treatment facility, or to act as a crisis stabilization unit or a residential treatment facility, unless it is licensed by the agency department 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 department may maintain an action in circuit court to enjoin the unlawful operation of a crisis stabilization unit or a residential treatment facility if the agency department 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.

(5) Subsection (2) does not apply to:

- (a) Homes for special services licensed under chapter 400;
- (b) Nursing homes licensed under chapter 400; or
- (c) Residential child caring facilities licensed under s. 409.175.

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

(7) ~~The agency may department shall~~ 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.

(8) The agency department 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 department 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 department shall, upon demand of the agency department, 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.

(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 promulgate rules governing facility construction, staffing and licensure requirements, and the operation of such units for minors.

(10) Notwithstanding the provisions of subsection (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.

(11) Notwithstanding the other provisions of this section, any facility licensed under chapters 396 and 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 chapters 396 and 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 chapter 394 is equal to or less than the number of beds licensed under chapters 396 and 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.

(12) 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 healthcare 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 abuse registry background check and 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 28. Section 394.876, Florida Statutes, is amended to read:

394.876 Applications.—

(1) Any person desiring to be licensed under this chapter shall apply to the agency department on forms provided by the agency department. The application 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 10 percent ownership interest in the corporation.

~~(c) Such information as the department determines to be necessary to establish the character and competency of the applicant and of the person who is or will be administrator of the unit or facility.~~

~~(c)(d)~~ Such information as the department and the agency find determines 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 ~~department~~ 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.

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

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

Section 29. Section 394.877, Florida Statutes, is amended to read:

394.877 Fees.—

(1) Each application for licensure or renewal ~~must shall~~ 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 Mental Health Care Facility Licensing ~~Mental Health Care Facility Licensing~~ Trust Fund.

Section 30. Subsections (1), (2), (5), and (6) of section 394.878, Florida Statutes, are amended to read:

394.878 Issuance and renewal of licenses.—

(1) Upon review of the application for licensure and receipt of appropriate fees, the agency ~~department~~ shall issue an original or renewal license to any applicant that meets the requirements of this chapter.

(2) A license is valid for a period of 1 year. An applicant for renewal of a license shall apply to the agency ~~department~~ no later than 90 days before expiration of the current license.

(5) The agency department may issue a probationary license to an applicant that has completed the application requirements of this chapter but has not, at the time of the application, developed an operational crisis stabilization unit or residential treatment facility. The probationary license shall expire 90 days after issuance and may once be renewed for an additional 90-day period. The agency department may cancel a probationary license at any time.

(6) The agency department may issue an interim license to an applicant that has substantially completed all application requirements and has initiated action to fully meet such requirements. The interim license shall expire 90 days after issuance and, in cases of extreme hardship, may once be renewed for an additional 90-day period.

Section 31. Section 394.879, Florida Statutes, is amended to read:

394.879 Rules; enforcement.—

(1) The department, in consultation with the agency, shall adopt reasonable rules to implement 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.

(2) Minimum firesafety standards shall be established and enforced by the State Fire Marshal in cooperation with the department. Such standards shall be included in the rule adopted by the department after consultation with the State Fire Marshal.

(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 such rule.

(4) The agency department 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 or revoke the license or deny the renewal application of such licensee. In imposing such penalty, the agency department 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.

Section 32. Section 394.90, Florida Statutes, is amended to read:

394.90 Inspection; right of entry; records.—

(1)(a) The department and the agency may enter and inspect at any time a licensed facility to determine whether the facility is in compliance with this chapter and the rules of the department.

(b) The department and the agency may enter and inspect any premises that it has probable cause to suspect may be operating as an unlicensed crisis stabilization unit or residential treatment facility; however, such entry and inspection shall be made only with the permission of the person in charge of such premises or pursuant to warrant.

(c) Any application for licensure under this chapter constitutes full permission for the department and the agency to enter and inspect the premises of the applicant or licensee at any time.

(2) For purposes of monitoring and investigation, the department and the Agency for Health Care Administration shall have access to the clinical records of any client of a licensee or designated facility, the provisions of s. 394.4615 to the contrary notwithstanding.

(3) The agency ~~department~~ shall schedule periodic inspections of licensees so as to minimize the cost to the licensees and the disruption of the licensees' programs. This subsection shall not be construed to limit the authority of the department and the agency to inspect the facilities of a licensee at any time.

(4) Each licensee shall maintain as public information, available to any person upon request, copies of all reports of inspections of the licensee filed with or issued by any governmental agency during the preceding 5-year period. The licensee shall furnish a copy of the most recent inspection report of the agency ~~department~~ to any person upon payment of a reasonable charge for copying.

(5)(a) The agency ~~department~~ may accept, in lieu of its own inspections for licensure, the survey or inspection of an accrediting organization, if the provider is accredited and the agency ~~department~~ receives the report of the accrediting organization. The department, in consultation with the agency, shall develop, and adopt by rule, specific criteria for assuring that the accrediting organization has specific standards and experience related to the program area being licensed, specific criteria for accepting the standards and survey methodologies of an accrediting organization, delineations of the obligations of accrediting organizations to assure adherence to those standards, criteria for receiving, accepting and maintaining the confidentiality of the survey and corrective action reports, and allowance for the agency's ~~department's~~ participation in surveys.

(b) The agency ~~department~~ shall conduct compliance investigations and sample validation inspections to evaluate the inspection process of accrediting organizations to ensure minimum standards are maintained as provided in Florida statute and rule. The agency ~~department~~ may conduct a lifesafety

inspection in calendar years in which an accrediting organization survey is not conducted and shall conduct a full state inspection, including a lifesafety inspection, if an accrediting organization survey has not been conducted within the previous 36 months. The agency department, by accepting the survey or inspection of an accrediting organization, does not forfeit its right to perform inspections.

Section 33. Section 394.902, Florida Statutes, is amended to read:

394.902 Denial, suspension, and revocation; other remedies.—

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

(2) The agency department may impose a moratorium on elective admissions to a licensee or any program or portion of a licensed facility if the agency department determines that any condition in the facility presents a threat to the public health or safety.

(3) If the agency department determines that an applicant or licensee is not in compliance with this chapter or the rules adopted under this chapter, the agency department 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 department for a period of 6 months following revocation.

(4) The agency department 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 34. Subsections (1), (2), and (11) of section 394.903, Florida Statutes, are amended to read:

394.903 Receivership proceedings.—

(1) The agency, independently or in conjunction with the department may petition a court of competent jurisdiction for the appointment of a receiver for a crisis stabilization unit or a residential treatment facility when any of the following conditions exist:

(a) Any person is operating a unit or facility without a license and refuses to make application for a license as required by this part.

(b) The licensee is closing the unit or facility or has informed the agency department that it intends to close and adequate arrangements have not been made for relocation of the residents within 7 days, exclusive of weekends and holidays, of the closing of the unit or facility.

(c) The agency department determines that conditions exist in the unit or facility which present an imminent danger to the health, safety, or welfare of the residents of the unit or facility or a substantial probability that death or serious physical harm would result therefrom. The agency department shall, whenever possible, facilitate the continued operation of the program.

(d) The licensee cannot meet its financial obligations for providing food, shelter, care, and utilities. Issuance of bad checks or accumulation of delinquent bills for such items as personnel salaries, food, drugs, or utilities constitutes ~~shall constitute~~ prima facie evidence that the ownership of the unit or facility lacks the financial ability to operate the unit or facility in accordance with the requirements of this chapter and all rules adopted under this chapter hereunder.

(2) Petitions for receivership shall take precedence over other court business unless the court determines that some other pending proceeding, having similar statutory precedence, shall have priority. A hearing shall be conducted within 5 days after ~~of~~ the filing of the petition, at which time all interested parties shall have the opportunity to present evidence pertaining to the petition. The agency department shall notify the owner or operator of the unit or facility named in the petition of its filing and the dates for the hearing. The court shall grant the petition only upon finding that the health, safety, and welfare of residents of the unit or facility would be threatened if a condition existing at the time the petition was filed is permitted to continue. A receiver shall not be appointed ex parte unless the court determines that one or more of the conditions of subsection (1) exist and that the owner or operator cannot be found, that all reasonable means of locating the owner or operator and notifying him or her of the petition and hearing have been exhausted, or that the owner or operator after notification of the hearing chooses not to attend. After such findings, the court may appoint any person qualified by education, training, or experience to carry out the responsibilities of receiver pursuant to this section, except that it shall not appoint any owner or affiliate of the unit or facility which is in receivership. Prior to the appointment as receiver of a person who is the operator, manager, or supervisor of another unit or facility, the court shall determine that the person can reasonably operate, manage, or supervise more than one unit or facility. The receiver may be appointed for up to 90 days, with the option of petitioning the court for 30-day extensions. The receiver may be selected from a list of persons qualified to act as receivers developed by the agency department and presented to the court with each petition for receivership. Under no circumstances shall ~~The agency or department or a designated departmental employee of either, may not~~ be appointed as a receiver for more than 60 days; however, such the departmental receiver may petition the court for 30-day extensions. The agency department may petition the court to appoint a substitute receiver. The court shall grant the extension upon a showing of good cause. During the first 60 days of the receivership, the agency may department shall not take action to decertify or revoke the license of a unit or facility unless conditions causing imminent danger to the health and welfare of the residents exist and a receiver has been unable to remove those conditions. After the first 60 days of receivership, and every

60 days thereafter until the receivership is terminated, the agency department shall submit to the court the results of an assessment of the unit's or facility's ability to assure the safety and care of the residents. If the conditions at the unit or facility or the intentions of the owner indicate that the purpose of the receivership is to close the unit or facility rather than to facilitate its continued operations, the department, in consultation with the agency, shall place the residents in appropriate alternative residential settings as quickly as possible. If, in the opinion of the court, the agency department has not been diligent in its efforts to make adequate placement arrangements, the court may find the agency department to be in contempt and shall order the agency department to submit its plans for moving the residents.

(11) Nothing in this section shall be construed to relieve any owner, operator, or employee of a unit or facility placed in receivership of any civil or criminal liability incurred, or any duty imposed by law, by reason of acts or omissions of the owner, operator, or employee prior to the appointment of a receiver; nor shall anything contained in this section be construed to suspend during the receivership any obligation of the owner, operator, or employee for payment of taxes or other operating and maintenance expenses of the unit or facility or of the owner, operator, or employee or any other person for the payment of mortgages or liens. The owner shall retain the right to sell or mortgage any unit or facility under receivership, subject to approval of the court which ordered the receivership. Receivership imposed under the provisions of this chapter shall be subject to the Mental Health Care Facility Licensing Trust Fund pursuant to s. 394.904. The owner of a facility placed in receivership by the court shall be liable for all expenses and costs incurred by the Mental Health Care Facility Licensing Trust Fund which occur as a result of the receivership.

Section 35. Section 394.904, Florida Statutes, is amended to read:

394.904 Mental Health Care Facility Licensing Trust Fund.—There is created in the State Treasury the Mental Health Care Facility Licensing Trust Fund. All moneys collected by the agency department pursuant to this chapter shall be deposited in the trust fund. Moneys in the trust fund shall be appropriated to the agency department for the purpose of covering the cost of regulation of facilities licensed under this chapter and any other purpose related to enforcement of this chapter.

Section 36. Subsections (1), (2), (3), (7), (8), and (9) of section 394.907, Florida Statutes, are amended to read:

394.907 Community mental health centers; quality assurance programs.—

(1) As used in this section, the term "community mental health center" means a publicly funded, not-for-profit center that which contracts with the department for the provision of inpatient, outpatient, day treatment, or emergency services.

(2) Effective April 1, 1989, Any community mental health center and any facility licensed pursuant to s. 394.875 shall have an ongoing quality assur-

ance program. The purpose of the quality assurance program shall be to objectively and systematically monitor and evaluate the appropriateness and quality of client care, to ensure that services are rendered consistent with reasonable, prevailing professional standards and to resolve identified problems.

(3) Each facility shall develop a written plan that which addresses the minimum guidelines for the quality assurance program. Such guidelines shall include, but are not limited to:

- (a) Standards for the provision of client care and treatment practices;
- (b) Procedures for the maintenance of client records;
- (c) Policies and procedures for staff development;
- (d) Standards for facility safety and maintenance;
- (e) Procedures for peer review and resource utilization;

(f) Policies and procedures for adverse incident reporting to include verification of corrective action to remediate or minimize incidents and for reporting such incidents to the department by a timeframe as prescribed by rule.

Such plan shall be submitted to the governing board for approval and a copy provided to the department.

(7) The department shall have access to all records necessary to determine 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 agency compliance with ~~the provisions of~~ this section, are confidential and exempt from ~~the provisions of~~ 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 ~~the provisions of~~ s. 286.011.

(8) The department, in consultation with the agency, shall adopt promulgate rules to carry out ~~the provisions of~~ this section.

(9) ~~The provisions of~~ This section does shall not apply to hospitals licensed pursuant to chapter 395 or programs operated within such hospitals.

Section 37. Section 395.002, Florida Statutes, is amended to read:

395.002 Definitions.—As used in this chapter:

(1) “Accrediting organizations” means the Joint Commission on Accreditation of Healthcare Organizations, the American Osteopathic Association, the Commission on Accreditation of Rehabilitation Facilities, and the Accreditation Association for Ambulatory Health Care, Inc.

(2) “Adverse or untoward incident,” for purposes of reporting to the agency, means an event over which health care personnel could exercise control, which is probably associated in whole or in part with medical intervention rather than the condition for which such intervention occurred, and which causes injury to a patient, and which:

(a) Is not consistent with or expected to be a consequence of such medical intervention;

(b) Occurs as a result of medical intervention to which the patient has not given his or her informed consent;

(c) Occurs as the result of any other action or lack of any other action on the part of the hospital or personnel of the hospital;

(d) Results in a surgical procedure being performed on the wrong patient; or

(e) Results in a surgical procedure being performed that is unrelated to the patient’s diagnosis or medical needs.

(3) “Agency” means the Agency for Health Care Administration.

(4) “Ambulatory surgical center” means a facility the primary purpose of which is to provide elective surgical care, in which the patient is admitted to and discharged from such facility within the same working day and is not permitted to stay overnight, and which is not part of a hospital. However, a facility existing for the primary purpose of performing terminations of pregnancy, an office maintained by a physician for the practice of medicine, or an office maintained for the practice of dentistry shall not be construed to be an ambulatory surgical center, provided that any facility or office which is certified or seeks certification as a Medicare ambulatory surgical center shall be licensed as an ambulatory surgical center pursuant to s. 395.003.

(5) “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.

~~(6)~~⁽⁵⁾ “Biomedical waste” means any solid or liquid waste as defined in s. 381.0098~~(2)~~^(a).

~~(7)~~⁽⁶⁾ “Clinical privileges” means the privileges granted to a physician or other licensed health care practitioner to render patient care services in a hospital, but does not include the privilege of admitting patients.

~~(8)~~⁽⁷⁾ “Department” means the Department of Health and ~~Rehabilitative Services~~.

(9) “Director” means any member of the official board of directors as reported in the organization’s annual corporate report to the Florida Department of State, or, if no such report is made, any member of the operating board of directors. The term excludes members of separate, restricted boards that serve only in an advisory capacity to the operating board.

~~(10)~~(8) “Emergency medical condition” means:

(a) A medical condition manifesting itself by acute symptoms of sufficient severity, which may include severe pain, such that the absence of immediate medical attention could reasonably be expected to result in any of the following:

1. Serious jeopardy to patient health, including a pregnant woman or fetus.
2. Serious impairment to bodily functions.
3. Serious dysfunction of any bodily organ or part.

(b) With respect to a pregnant woman:

1. That there is inadequate time to effect safe transfer to another hospital prior to delivery;
2. That a transfer may pose a threat to the health and safety of the patient or fetus; or
3. That there is evidence of the onset and persistence of uterine contractions or rupture of the membranes.

(11)(9) “Emergency services and care” means medical screening, examination, and evaluation by a physician, or, to the extent permitted by applicable law, by other appropriate personnel under the supervision of a physician, to determine if an emergency medical condition exists and, if it does, the care, treatment, or surgery by a physician necessary to relieve or eliminate the emergency medical condition, within the service capability of the facility.

(12)(10) “General hospital” means any facility which meets the provisions of subsection (14)(12) and which regularly makes its facilities and services available to the general population.

(13)(11) “Governmental unit” means the state or any county, municipality, or other political subdivision, or any department, division, board, or other agency of any of the foregoing.

(14)(12) “Hospital” means any establishment that:

(a) Offers services more intensive than those required for room, board, personal services, and general nursing care, and offers facilities and beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care for illness, injury, deformity, infirmity, abnormality, disease, or pregnancy; and

(b) Regularly makes available at least clinical laboratory services, diagnostic X-ray services, and treatment facilities for surgery or obstetrical care, or other definitive medical treatment of similar extent.

However, the provisions of this chapter do not apply to any institution conducted by or for the adherents of any well-recognized church or religious denomination that depends exclusively upon prayer or spiritual means to heal, care for, or treat any person. For purposes of local zoning matters, the term "hospital" includes a medical office building located on the same premises as a hospital facility, provided the land on which the medical office building is constructed is zoned for use as a hospital; provided the premises were zoned for hospital purposes on January 1, 1992.

~~(15)~~(13) "Hospital bed" means a hospital accommodation which is ready for immediate occupancy, or is capable of being made ready for occupancy within 48 hours, excluding provision of staffing, and which conforms to minimum space, equipment, and furnishings standards as specified by rule of the department for the provision of services specified in this section to a single patient.

~~(16)~~(14) "Initial denial determination" means a determination by a private review agent that the health care services furnished or proposed to be furnished to a patient are inappropriate, not medically necessary, or not reasonable.

~~(17)~~(15) "Injury," for purposes of reporting to the agency, means any of the following outcomes if caused by an adverse or untoward incident:

- (a) Death;
- (b) Brain damage;
- (c) Spinal damage;
- (d) Permanent disfigurement;
- (e) Fracture or dislocation of bones or joints;
- (f) Any condition requiring definitive or specialized medical attention which is not consistent with the routine management of the patient's case or patient's preexisting physical condition;
- (g) Any condition requiring surgical intervention to correct or control;
- (h) Any condition resulting in transfer of the patient, within or outside the facility, to a unit providing a more acute level of care;
- (i) Any condition that extends the patient's length of stay; or
- (j) Any condition that results in a limitation of neurological, physical, or sensory function which continues after discharge from the facility.

~~(18)~~(16) "Intensive residential treatment programs for children and adolescents" means a specialty hospital accredited by the Joint Commission on

Accreditation of Healthcare Organizations which provides 24-hour care and which has the primary functions of diagnosis and treatment of patients under the age of 18 having psychiatric disorders in order to restore such patients to an optimal level of functioning.

~~(19)~~~~(17)~~ “Licensed facility” means a hospital or ambulatory surgical center licensed in accordance with this chapter.

~~(20)~~~~(18)~~ “Lifesafety” means the control and prevention of fire and other life-threatening conditions on a premises for the purpose of preserving human life.

~~(21)~~ “Managing employee” means the administrator or other similarly titled individual who is responsible for the daily operation of the facility.

~~(22)~~~~(19)~~ “Medical staff” means physicians licensed under chapter 458 or chapter 459 with privileges in a licensed facility, as well as other licensed health care practitioners with clinical privileges as approved by a licensed facility’s governing board.

~~(23)~~~~(20)~~ “Medically necessary transfer” means a transfer made necessary because the patient is in immediate need of treatment for an emergency medical condition for which the facility lacks service capability or is at service capacity.

~~(24)~~~~(21)~~ “Person” means any individual, partnership, corporation, association, or governmental unit.

~~(25)~~~~(22)~~ “Premises” means those buildings, beds, and equipment located at the address of the licensed facility and all other buildings, beds, and equipment for the provision of hospital or ambulatory surgical care located in such reasonable proximity to the address of the licensed facility as to appear to the public to be under the dominion and control of the licensee.

~~(26)~~~~(23)~~ “Private review agent” means any person or entity which performs utilization review services for third-party payors on a contractual basis for outpatient or inpatient services. However, the term shall not include full-time employees, personnel, or staff of health insurers, health maintenance organizations, or hospitals, or wholly owned subsidiaries thereof or affiliates under common ownership, when performing utilization review for their respective hospitals, health maintenance organizations, or insureds of the same insurance group. For this purpose, health insurers, health maintenance organizations, and hospitals, or wholly owned subsidiaries thereof or affiliates under common ownership, include such entities engaged as administrators of self-insurance as defined in s. 624.031.

~~(27)~~~~(24)~~ “Service capability” means all services offered by the facility where identification of services offered is evidenced by the appearance of the service in a patient’s medical record or itemized bill.

~~(28)~~~~(25)~~ “At service capacity” means the temporary inability of a hospital to provide a service which is within the service capability of the hospital, due to maximum use of the service at the time of the request for the service.

~~(29)~~(26) “Specialty bed” means a bed, other than a general bed, designated on the face of the hospital license for a dedicated use.

~~(30)~~(27) “Specialty hospital” means any facility which meets the provisions of subsection ~~(14)~~(12), 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 (16).

~~(31)~~(28) “Stabilized” means, with respect to an emergency medical condition, that no material deterioration of the condition is likely, within reasonable medical probability, to result from the transfer of the patient from a hospital.

~~(32)~~(29) “Utilization review” means a system for reviewing the medical necessity or appropriateness in the allocation of health care resources of hospital services given or proposed to be given to a patient or group of patients.

~~(33)~~(30) “Utilization review plan” means a description of the policies and procedures governing utilization review activities performed by a private review agent.

~~(34)~~(31) “Validation inspection” means an inspection of the premises of a licensed facility by the agency to assess whether a review by an accrediting organization has adequately evaluated the licensed facility according to minimum state standards.

Section 38. Section 395.0055, Florida Statutes, is created to read:

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

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

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

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

in compliance with any other health care licensure requirements of this state is acceptable in fulfillment of subsection (1).

(4) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the abuse registry background check and 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.

(5) 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.

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

(7) This section 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 subsection.

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

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

(a) Has falsely represented a material fact in the application required by subsection (5) or subsection (6), or has omitted any material fact from the application required by subsection (5) or subsection (6); or

(b) Has had prior Medicaid or Medicare action taken against the applicant as set forth in subsection (5).

(10) An application for license renewal must contain the information required under subsections (5) and (6).

Section 39. Present subsections (4), (5), (6), (7), (8), and (9) of section 395.0199, Florida Statutes, are renumbered as subsections (5), (6), (7), (8), (9), and (10), respectively, and a new subsection (4) is added to that section, to read:

395.0199 Private utilization review.—

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

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

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

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

(d) A provisional registration may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the abuse registry background check and 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).

Section 40. 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(12) ~~s. 395.002(10)~~, that is licensed under chapter 395.

Section 41. Paragraph (a) of subsection (2) of section 400.071, Florida Statutes, is amended, present subsections (4), (5), (6), (7), and (8) of that section are redesignated as subsections (5), (6), (7), (8), and (9), respectively, and a new subsection (4) is added to that section, to read:

400.071 Application for license.—

(2) The application shall be under oath and 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 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 ~~10-percent~~ interest in the corporation; and the name by which the facility is to be known.

(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 Department of Insurance 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 abuse registry background check and 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).

Section 42. Section 400.411, Florida Statutes, is amended to read:

400.411 Initial application for license; provisional license.—

(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. The application shall contain sufficient information, as required by rules of the department, to establish that the applicant can provide adequate care.

(2) The applicant may be an individual owner, a corporation, a partnership, a firm, an association, or a governmental entity.

(3)(2) The application must shall be signed by the applicant under oath and must shall 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. Pursuant thereto:

1. 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.

2. If the applicant is a corporation, the application shall contain the corporation's 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 ownership ~~10-percent~~ 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 ~~for which the application is made~~, if a 5-percent ~~10-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) Information that provides a source to establish the suitable character, financial stability, and competency of the applicant and of each person specified in the application under subparagraph (a)1. or subparagraph (a)2. who has at least a 10-percent interest in the firm, partnership, association, or corporation and, if applicable, of the administrator, including The name and address of any long-term care facility with which the applicant, or administrator, or financial officer has been affiliated through ownership or employment within 5 years of the date of this license the application for a license; and a signed affidavit disclosing any financial or ownership interest that the applicant, or any person listed in paragraph (a) principal, partner, or shareholder thereof, holds or has held within the last 5 years in any other facility licensed under this part, or in any other entity licensed by this the 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)(d) The names and addresses of ~~other~~ persons of whom the agency may inquire as to the character, and reputation, and financial responsibility of the owner applicant and, if different from the applicant, ~~applicable~~, of the administrator and financial officer.

~~(e) The names and addresses of other persons of whom the agency may inquire as to the financial responsibility of the applicant.~~

(f) 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 adults.

~~(g) 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.~~

~~(g)(h)~~ 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.

~~(h)(i)~~ The name, address, date of birth, social security number, education, and experience of the administrator, if different from the applicant.

~~(4)(3)~~ 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. ~~An applicant applying for an initial license shall submit a balance sheet setting forth the assets and liabilities of the owner and a statement projecting revenues, expenses, taxes, extraordinary items, and other credits or charges for the first 12 months of operation of the facility.~~

~~(5)(4)~~ If the applicant is a continuing care facility certified under offers continuing care agreements, as defined in chapter 651, a copy of the facility's proof shall be furnished that the applicant has obtained a certificate of authority must be provided as required for operation under that chapter.

~~(6)(5)~~ The applicant shall provide proof of liability insurance as defined in s. 624.605.

~~(7)(6)~~ If the applicant is a community residential home, the applicant must provide proof that it has met the requirements specified in chapter 419 shall apply to community residential homes zoned single family or multi-family.

~~(8)(7)~~ The applicant must provide the agency with proof of legal right to occupy the property. This proof may include, but is not limited to, copies of recorded warranty deeds, or copies of lease or rental agreements, contracts for deeds, quitclaim deeds, or other such documentation.

~~(9)(8)~~ The applicant must furnish proof that the facility has received a satisfactory firesafety inspection. The local ~~fire marshal or other authority~~ having jurisdiction or the State Fire Marshal must conduct the inspection within 30 days after the written request by the applicant. ~~If an authority having jurisdiction does not have a certified firesafety inspector, the State Fire Marshal shall conduct the inspection.~~

(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. 400.4174.

~~(12)(9)~~ 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.

~~(13)(10)~~ A ~~No~~ county or municipality ~~may not shall~~ issue an occupational license ~~that which~~ 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 ~~the above-~~required determinations.

Section 43. Section 400.414, Florida Statutes, is amended to read:

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

(1) The agency may deny, revoke, or suspend any a license issued under this part, or impose an administrative fine in the manner provided in chapter 120, ~~for.~~ ~~At the chapter 120 hearing, the agency shall prove by a preponderance of the evidence that its actions are warranted.~~

(2) any of the following actions by an assisted living a facility, any person subject to level 2 background screening under s. 400.4174, or facility or its employee shall be grounds for action by the agency against a licensee:

(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 facility owner or administrator is not of suitable character or competency, or that the owner lacks the financial ability, to provide continuing adequate care to residents, pursuant to the information obtained through s. 400.411, s. 400.417, or s. 400.434.~~

(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) One or more class I, three or more class II, or five or more repeated or recurring identical or similar class III violations that are similar or identical to violations of this part which were identified by the agency within the last 2 years during the last biennial inspection, monitoring visit, or complaint investigation and which, in the aggregate, affect the health, safety, or welfare of the facility residents.

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

~~(g)~~(f) A confirmed report of adult abuse, neglect, or exploitation, as defined in s. 415.102, which has been upheld following a chapter 120 hearing or a waiver of such proceedings where the perpetrator is an employee, volunteer, administrator, or owner, or otherwise has access to the residents of a facility, and the owner or administrator has not taken action to remove the perpetrator. Exemptions from disqualification may be granted as set forth in s. 435.07. No administrative action may be taken against the facility if the perpetrator is granted an exemption.

~~(h)~~(g) Violation of a moratorium.

~~(i)~~(h) Failure of the license applicant, the licensee during relicensure, or ~~failure of a licensee that holds a provisional an initial or change of ownership license,~~ to meet minimum license standards or the requirements of rules ~~adopted under this part or related rules,~~ at the time of license application or renewal.

~~(j)~~(i) 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. 400.4174, or that the applicant has been excluded, permanently suspended, or terminated from the Medicaid or Medicare programs that is signed and notarized.

~~(k)~~(j) An intentional or negligent life-threatening act in violation of the uniform firesafety standards for assisted living facilities or other firesafety standards ~~established by the State Fire Marshal,~~ that threatens the health, safety, or welfare of a resident of a facility, as communicated to the agency by the ~~State Fire Marshal, a local fire marshal, or other authority having jurisdiction or the State Fire Marshal.~~

(l) Exclusion, permanent suspension, or termination from the Medicare or Medicaid programs.

(m) Knowingly operating any unlicensed facility or providing without a license any service that must be licensed under this chapter.

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.

~~(3) Proceedings brought under paragraphs (2)(a), (c), (e), and (j) shall not be subject to de novo review.~~

~~(2)(4)~~ Upon notification by the ~~State Fire Marshal, local fire marshal, or other authority having jurisdiction~~ or by the State Fire Marshal, the agency may deny or revoke the license of an assisted living a facility that fails to correct cited fire code violations ~~issued by the State Fire Marshal, a local fire marshal, or other authority having jurisdiction,~~ 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 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; had an injunctive proceeding initiated against it; or has an outstanding fine assessed under this chapter.

(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) The agency may deny a license to an applicant who owns 25 percent or more of, or operates, a facility which, during the 5 years prior to the application for a license, has had a license denied, suspended, or revoked pursuant to subsection (2), or, during the 2 years prior to the application for a license, has had a moratorium imposed on admissions, has had an injunctive proceeding initiated against it, has had a receiver appointed, was closed due to financial inability to operate, or has an outstanding fine assessed under this part.~~

(5)(6) An action taken by the agency to suspend, deny, or revoke a facility's license under this part, 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, shall, upon receipt of the facility's request for a hearing, be heard by the Division of Administrative Hearings of the Department of Management Services within 120 days after receipt of the facility's the request for a hearing, unless that time limitation period is waived by both parties. The administrative law judge must render a decision within 30 days after receipt of a proposed recommended order the hearing.

(6)(7) 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 which have had their licenses denied, suspended, or revoked or that which 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.

Section 44. Section 400.417, Florida Statutes, is amended to read:

400.417 Expiration of license; renewal; conditional license.—

(1) ~~Biennial licenses issued for the operation of a facility, unless sooner suspended or revoked, shall expire automatically 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 by certified mail at least 120 days prior to the expiration of the license that a renewal license relicensure is necessary to continue operation. 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 promulgated under this part. 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, in effect on the last preceding regular renewal date. Late fees shall be deposited into the Health Care Trust Fund as provided in s. 400.418. The facility shall file with the application satisfactory proof of ability to operate and conduct the facility in accordance with the requirements of this part.~~

(2) ~~A license shall be renewed 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 An applicant for renewal of a license must furnish proof that the facility has received a satisfactory firesafety inspection, conducted by the local fire marshal or other authority having jurisdiction or the State Fire Marshal, within the preceding 12 months and an affidavit or compliance with the background screening requirements of s. 400.4174.~~

(3) ~~An applicant for renewal of a license who has complied on the initial license application with the provisions of s. 400.411 with respect to proof of financial ability to operate shall not be required to provide further proof of financial ability on renewal applications unless the facility or any other facility owned or operated in whole or in part by the same person or business entity has demonstrated financial instability as provided under s. 400.447(2) evidenced by bad checks, delinquent accounts, or nonpayment of withholding taxes, utility expenses, or other essential services 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 shall 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 carry out the purpose of this section. 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)(2) 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 of such proceeding. 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.

(5)(3) A conditional license may be issued to an applicant for license renewal ~~if when~~ 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 approved plan of correction.

(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.

Section 45. Section 400.4174, Florida Statutes, is amended to read:

400.4174 Background screening; exemptions; reports of abuse in facilities.—

(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 Department of Insurance 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 abuse registry and Department of Law Enforcement background checks, but has not yet received results from the Federal Bureau of Investigation, or when a request for an exemption from disqualification has been submitted to the agency pursuant to s. 435.07, but a response has not been issued.

(2) The owner or administrator of an assisted living facility must conduct level 1 background screening, as set forth in chapter 435, on all employees hired on or after October 1, 1998, who perform personal services as defined in s. 400.402(16). The agency may exempt an individual from employment disqualification as set forth in chapter 435. Such persons shall be considered as having met this requirement if:

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

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

(c) The person required to be screened is employed by a corporation or business entity or related corporation or business entity that owns, operates, or manages more than one facility or agency licensed under chapter 400, and for whom a level 1 screening was conducted by the corporation or business entity as a condition of initial or continued employment.

(3) When an employee, volunteer, administrator, or owner of a facility is the subject of ~~has a confirmed report of adult abuse, neglect, or exploitation, as defined in s. 415.102, or child abuse or neglect, as defined in s. 415.503,~~ and the protective investigator knows that the individual is an employee, volunteer, administrator, or owner of a facility, the agency shall be notified of the confirmed report.

Section 46. Section 400.4176, Florida Statutes, is amended to read:

400.4176 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 45 days thereof and ~~must provide~~

documentation within 90 days that the new administrator has completed the applicable core educational requirements under s. 400.452. Background screening shall be completed on any new administrator ~~to establish that the individual is of suitable character as specified in s. 400.4174 ss. 400.411(2)(c) and 400.456.~~

Section 47. Section 400.461, Florida Statutes, is amended to read:

400.461 Short title; purpose.—

(1) This part, consisting of ~~ss. 400.461-400.518~~ ss. 400.461-400.515, may be cited as the “Home Health Services Act.”

(2) The purpose of this part is to provide for the licensure of every home health agency and to provide for the development, establishment, and enforcement of basic standards that will ensure the safe and adequate care of persons receiving health services in their own homes.

Section 48. A new subsection (4) is added to section 400.471, Florida Statutes, and present subsections (4), (5), (6), (7), (8), (9), and (10) of section 400.506, Florida Statutes, are redesignated as subsections (5), (6), (7), (8), (9), (10), and (11), respectively, to read:

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

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

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

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

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

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 been or is currently excluded, suspended, terminated from, or has involuntarily withdrawn from participation in this state's Medicaid program, or the Medicaid program of any other state, or from participation in the Medicare program or any other 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).

Section 49. Present subsections (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), and (16) of section 400.506, Florida Statutes, are redesignated as subsections (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), and (17), respectively, and a new subsection (2) is added to that section, to read:

400.506 Licensure of nurse registries; requirements; penalties.—

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

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

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

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

(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the abuse registry background check 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 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).

Section 50. Subsection (2) of section 400.555, Florida Statutes, is amended to read:

400.555 Application for license.—

(2) 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;

(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. 400.5572.

(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 51. Subsection (2) of section 400.556, Florida Statutes, is amended to read:

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

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

(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.

(c) A failure of persons subject to level 2 background screening under s. 400.4174(1) to meet the screening standards of s. 435.04, or the retention by the center of an employee subject to level 1 background screening standards under s. 400.4174(2) who does not meet the screening standards of s. 435.03 and for whom exemptions from disqualification have not been provided by the agency. A confirmed report of adult abuse, neglect, or exploitation, as defined in s. 415.102, or of child abuse or neglect, as defined in s. 415.503, which report has been upheld following a hearing held pursuant to chapter 120 or a waiver of such hearing.

(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.

(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.

Section 52. Subsection (1) of section 400.557, Florida Statutes, is amended to read:

400.557 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 by certified mail, return receipt requested, at least 120 days before the expiration date that license renewal is required to continue operation. 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. 400.5572.

Section 53. Section 400.5572, Florida Statutes, is created to read:

400.5572 Background screening.—

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

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

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

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

(c) The agency may grant a provisional license to an adult day care center applying for an initial license when each individual required by this subsection to undergo screening has completed the abuse registry and 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 adult day care center must conduct level 1 background screening as set forth in chapter 435 on all employees hired on or after October 1, 1998, who provide basic services or supportive and optional services to the participants. Such persons satisfy this requirement if:

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

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

(c) The person required to be screened is employed by a corporation or business entity or related corporation or business entity that owns, operates, or manages more than one facility or agency licensed under chapter 400, and for whom a level 1 screening was conducted by the corporation or business entity as a condition of initial or continued employment.

(3) When an employee, volunteer, operator, or owner of an adult day care center is the subject of a confirmed report of adult abuse, neglect, or exploitation, as defined in s. 415.102, and the protective investigator knows that the individual is an employee, volunteer, operator, or owner of a center, the agency shall be notified of the confirmed report.

Section 54. Section 400.606, Florida Statutes, is amended to read:

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

(1) 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 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 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.

~~(3)~~(2) 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 subsection (1)~~ 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)(3) 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.

(5)(4) The agency shall not issue a license to a hospice that fails to receive a certificate of need under the provisions of 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.

(6)(5) 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.

Section 55. Section 400.6065, Florida Statutes, is created 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 abuse registry and Department of Law Enforcement background checks but has not yet received results from the Federal Bureau of Investigation.

Section 56. Present subsections (3), (4), (5), and (6) of section 400.607, Florida Statutes, are redesignated as subsections (4), (5), (6), and (7), respectively, and a new subsection (3) is added to that section, to read:

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

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

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

(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.

Section 57. Section 400.619, Florida Statutes, is amended to read:

400.619 Licensure application and renewal requirements.—

~~(1) Each person who intends to be a provider of an adult family-care home provider must apply for obtain a license from the agency before caring for a disabled adult or an aged person in the adult family-care home. Such application must be made at least 90 days before the applicant intends to operate the adult family-care home.~~

~~(2) A person who intends to be a provider of an adult family-care home provider must own or rent and live in the adult family-care home that is to be licensed.~~

~~(3) Application for a license or annual license renewal to operate an adult family-care home 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 to offset the cost of training and education programs by the Department of Elderly Affairs for providers.~~

~~(4) Upon receipt of a license application or license renewal, and the fee, the agency shall initiate level 1 background screening as provided under chapter 435 on must check with the abuse registry and the Department of Law Enforcement concerning the adult family-care home provider, the designated relief person applicant, all adult household members, and all staff members. The agency shall also 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.

(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.

(7)(5) 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 and Rehabilitative 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 long-term care ombudsman council.

(8)(6) 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. A license may be issued with or without restrictions governing the residents or care offered in the adult family-care home.

(9)(7) A license is not transferable or applicable to any location or person other than the location and ~~or~~ person indicated on the license application for licensure.

(10)(8) 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 ~~an aged person or a disabled adult or frail elder~~ must be included in that limitation.

(11)(9) Each adult family-care home must designate at least one licensed space for a resident receiving optional state supplementation as defined in ~~s. 409.212~~. The Department of Children and Family Health and Rehabilitative 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~~ the requirement of designating one space for a resident receiving optional state supplementation.

(12)(10) 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, ~~as determined by the department, in consultation with the agency.~~ The department shall, by rule, establish criteria for issuing conditional licenses.

~~(11) The agency may deny, suspend, or revoke a license for any of the following reasons:~~

~~(a) A confirmed report, obtained under s. 415.1075, of abuse, neglect, or exploitation, or conviction of a crime related to abuse, neglect, or exploitation.~~

~~(b) A proposed confirmed report that remains unserved and is maintained in the central abuse registry and tracking system pursuant to s. 415.1065(2)(c).~~

~~(c) An intentional or negligent act materially affecting the health, safety, or welfare of the adult family-care home residents.~~

~~(d) A violation of ss. 400.616-400.629 or rules adopted under ss. 400.616-400.629, including the failure to comply with any restrictions specified in the license.~~

~~(e) Submission of fraudulent or inaccurate information to the agency.~~

~~(f) Conviction of a felony involving violence to a person.~~

~~(g) Failure to pay a civil penalty assessed under this part.~~

(13)(12) All moneys collected under this section must be deposited into the Department of Elderly Affairs Administrative Trust Fund and ~~must be~~ used to offset the expenses of departmental training and education for adult family-care home providers.

(14)(13) The department shall adopt rules to implement this section.

Section 58. Section 400.6194, Florida Statutes, is created to read:

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

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

(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.

(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 59. 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 where specialized health care services are provided, including personal and custodial care, but not continuous nursing services.

(2) A person must obtain a license from the agency to operate a home for special services. A license is valid for 1 year.

(3) 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 abuse registry background check and 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)~~(4) Application for license renewal must be submitted 90 days before the expiration of the license.

~~(6)~~(5) 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.

~~(7)~~(6) The agency shall adopt rules for implementing and enforcing this section.

~~(8)~~(7)(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.

~~(9)~~(8)(a) A violation of any provision of this section or 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 subsection ~~(8)~~(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 continuing violation is a separate offense.

Section 60. Present subsections (4), (5), and (6) of section 400.805, Florida Statutes, are redesignated as subsections (5), (6), and (7), respectively, present subsections (3) and (7) of that section are redesignated as subsections (4) and (8), respectively, and amended, and a new subsection (3) is added to that section, to read:

400.805 Transitional living facilities.—

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

(a) Upon receipt of a completed, signed, and dated application, the agency shall require background screening, in accordance with the level 2

standards for screening set forth in chapter 435, of the managing employee, or other similarly titled individual who is responsible for the daily operation of the facility, and of the financial officer, or other similarly titled individual who is responsible for the financial operation of the facility, including billings for client care and services. The applicant must comply with the procedures for level 2 background screening as set forth in chapter 435.

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

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

(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the abuse registry background check and 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)(3) An application for renewal of license must be submitted 90 days before the expiration of the license. Upon renewal of licensure, each applicant must submit to the agency, under penalty of perjury, an affidavit as set forth in s. 400.805(3)(d).

(8)(7)(a) A violation of any provision of this section or rules adopted by the agency or division under this section is punishable by payment of an administrative or a civil penalty fine not to exceed \$5,000.

(b) A violation of subsection (7)(6) 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.

Section 61. Subsection (2) of section 430.04, Florida Statutes, is amended to read:

430.04 Duties and responsibilities of the Department of Elderly Affairs.—The Department of Elderly Affairs shall:

(2) Be responsible for ensuring that each area agency on aging operates in a manner to ensure that the elderly of this state receive the best services possible. The department shall rescind designation of an area agency on aging or take intermediate measures against the agency, including corrective action, unannounced special monitoring, temporary assumption of operation of one or more programs by the department, placement on probationary status, imposing a moratorium on agency action, imposing financial penalties for nonperformance, or other administrative action pursuant to chapter 120, if the department finds that:

(a) An intentional or negligent act of the agency has materially affected the health, welfare, or safety of clients, or substantially and negatively affected the operation of an aging services program.

(b) The agency lacks financial stability sufficient to meet contractual obligations or that contractual funds have been misappropriated.

(c) The agency has committed multiple or repeated violations of legal and regulatory requirements or department standards.

(d) The agency has failed to continue the provision or expansion of services after the declaration of a state of emergency.

(e) The agency has failed to adhere to the terms of its contract with the department.

(f) The agency has failed to implement and maintain a department-approved client grievance resolution procedure.

Section 62. Paragraphs (i) and (k) of subsection (3) of section 455.654, Florida Statutes, are amended to read:

455.654 Financial arrangements between referring health care providers and providers of health care services.—

(3) DEFINITIONS.—For the purpose of this section, the word, phrase, or term:

(i) “Investment interest” means an equity or debt security issued by an entity, including, without limitation, shares of stock in a corporation, units or other interests in a partnership, bonds, debentures, notes, or other equity interests or debt instruments. ~~Except for purposes of s. 455.661, The following~~ investment interests shall be excepted from this definition:

1. An investment interest in an entity that is the sole provider of designated health services in a rural area;

2. An investment interest in notes, bonds, debentures, or other debt instruments issued by an entity which provides designated health services, as an integral part of a plan by such entity to acquire such investor’s equity investment interest in the entity, provided that the interest rate is consistent with fair market value, and that the maturity date of the notes, bonds, debentures, or other debt instruments issued by the entity to the investor is not later than October 1, 1996.

3. An investment interest in real property resulting in a landlord-tenant relationship between the health care provider and the entity in which the equity interest is held, unless the rent is determined, in whole or in part, by the business volume or profitability of the tenant or exceeds fair market value; or

4. An investment interest in an entity which owns or leases and operates a hospital licensed under chapter 395 or a nursing home facility licensed under chapter 400.

(k) "Referral" means any referral of a patient by a health care provider for health care services, including, without limitation:

1. The forwarding of a patient by a health care provider to another health care provider or to an entity which provides or supplies designated health services or any other health care item or service; or

2. The request or establishment of a plan of care by a health care provider, which includes the provision of designated health services or other health care item or service.

3. ~~Except for the purposes of s. 455.661,~~ The following orders, recommendations, or plans of care shall not constitute a referral by a health care provider:

a. By a radiologist for diagnostic-imaging services.

b. By a physician specializing in the provision of radiation therapy services for such services.

c. By a medical oncologist for drugs and solutions to be prepared and administered intravenously to such oncologist's patient, as well as for the supplies and equipment used in connection therewith to treat such patient for cancer and the complications thereof.

d. By a cardiologist for cardiac catheterization services.

e. By a pathologist for diagnostic clinical laboratory tests and pathological examination services, if furnished by or under the supervision of such pathologist pursuant to a consultation requested by another physician.

f. By a health care provider who is the sole provider or member of a group practice for designated health services or other health care items or services that are prescribed or provided solely for such referring health care provider's or group practice's own patients, and that are provided or performed by or under the direct supervision of such referring health care provider or group practice.

g. By a health care provider for services provided by an ambulatory surgical center licensed under chapter 395.

h. By a health care provider for diagnostic clinical laboratory services where such services are directly related to renal dialysis.

i. By a urologist for lithotripsy services.

j. By a dentist for dental services performed by an employee of or health care provider who is an independent contractor with the dentist or group practice of which the dentist is a member.

k. By a physician for infusion therapy services to a patient of that physician or a member of that physician's group practice.

l. By a nephrologist for renal dialysis services and supplies.

Section 63. 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:

(a) A person licensed in this state under chapter 457, chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 464, chapter 465, chapter 466, chapter 480, chapter 490, or chapter 491, when engaging in the profession or occupation for which he or she is licensed, or of any person employed by and under the supervision of the licensee when rendering services within the scope of the profession or occupation of the licensee.;

(b) A person employed as a dietitian by the government of the United States, if the person engages in dietetics solely under direction or control of the organization by which the person is employed.;

(c) A person employed as a cooperative extension home economist.;

(d) A person pursuing a course of study leading to a degree in dietetics and nutrition from a program or school accredited pursuant to s. 468.509(2), if the activities and services constitute a part of a supervised course of study and if the person is designated by a title that clearly indicates the person's status as a student or trainee.;

(e) A person fulfilling the supervised experience component of s. 468.509, if the activities and services constitute a part of the experience necessary to meet the requirements of s. 468.509.;

(f) Any dietitian or nutritionist from another state practicing dietetics or nutrition incidental to a course of study when taking or giving a postgraduate course or other course of study in this state, provided such dietitian or nutritionist is licensed in another jurisdiction or is a registered dietitian or holds an appointment on the faculty of a school accredited pursuant to s. 468.509(2).;

(g) A person who markets or distributes food, food materials, or dietary supplements, or any person who engages in the explanation of the use and benefits of those products or the preparation of those products, if that person does not engage for a fee in dietetics and nutrition practice or nutrition counseling.;

(h) A person who markets or distributes food, food materials, or dietary supplements, or any person who engages in the explanation of the use of those products or the preparation of those products, as an employee of an establishment permitted pursuant to chapter 465.;

(i) An educator who is in the employ of a nonprofit organization approved by the council; a federal, state, county, or municipal agency, or other political subdivision; an elementary or secondary school; or an accredited institution

of higher education the definition of which, as provided in s. 468.509(2), applies to other sections of this part, insofar as the activities and services of the educator are part of such employment.;

(j) Any person who provides weight control services or related weight control products, provided the program has been reviewed by, consultation is available from, and no program change can be initiated without prior approval by a licensed dietitian/nutritionist, a dietitian or nutritionist licensed in another state that has licensure requirements considered by the council to be at least as stringent as the requirements for licensure under this part, or a registered dietitian.;

(k) A person employed by a hospital licensed under chapter 395, or by a nursing home or assisted living facility licensed under part II or part III of chapter 400, or by a continuing care facility certified under chapter 651, if the person is employed in compliance with the laws and rules adopted thereunder regarding the operation of its dietetic department.;

(l) A person employed by a nursing facility exempt from licensing under ~~s. 395.002(14)~~ ~~s. 395.002(12)~~, or a person exempt from licensing under s. 464.022.;

(m) A person employed as a dietetic technician.

Section 64. 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~~ ~~operator~~ 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 abuse registry background check and 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 65. 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 ~~operator~~ 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, 483.23, and 483.25 apply to a clinical laboratory that obtains a certificate of exemption under this section.

Section 66. Section 483.30, Florida Statutes, is amended to read:

483.30 Licensing of centers.—

(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 abuse registry background check and 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 67. Section 455.661, Florida Statutes, is repealed.

Section 68. Three full-time positions are allocated to the Agency for Health Care Administration to implement and administer a background screening exemption program pursuant to section 400.4174, Florida Statutes, section 400.5572, Florida Statutes, and chapter 435, Florida Statutes, and \$166,430 is appropriated from the Health Care Trust Fund for that purpose.

Section 69. Pursuant to section 216.262, Florida Statutes, the Florida Department of Law Enforcement is granted authority to establish positions in excess of the total authorized positions upon submission of a proper request to the Administration Commission. These positions shall be established with funding from the department's Law Enforcement Operating Trust Fund and shall be used to process the increased workload of conducting the criminal history records checks authorized under this section. These positions will be earmarked by the department, and, at such time as they are no longer needed, may be placed in a reserve status for future use.

Section 70. The provisions of this act which require an applicant for licensure, certification, or registration to undergo background screening shall apply to any individual or entity that applies, on or after July 1, 1998, for renewal of a license, certificate, or registration that is subject to the background screening required by this act.

Section 71. (1) The provisions of this act which require an applicant for licensure, certification, or registration to undergo background screening shall stand repealed on June 30, 2001, unless reviewed and saved from repeal through reenactment by this legislature.

(2) The Agency for Health Care Administration shall conduct a review of the effectiveness of licensure, certification, and registration applicant background screening requirements in preventing persons with specified criminal backgrounds from operating health care programs, and in preventing or deterring health care fraud and abuse. The Agency for Health Care Administration shall convene a workgroup to direct this review, and the workgroup shall, at a minimum, include a representative from the following parties:

- (a) The Statewide Prosecutor's Office;
- (b) The Attorney General's Office;
- (c) The Department of Children and Families; and
- (d) The Department of Elder Affairs.

(3) Such review by the Agency for Health Care Administration shall be completed and a report submitted to the legislature by January 1, 2001.

Section 72. This act shall take effect July 1, 1998.

Approved by the Governor May 22, 1998.

Filed in Office Secretary of State May 22, 1998.