Health & Families Council

Tuesday, April 18, 2006
10:15 AM – 12:15 PM
Reed Hall

Meeting Packet

Allan G. Bense
Speaker

Anna Holliday "Holly" Benson
Chair

Council Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Health & Families Council

Start Date and Time:	Tuesday, April 18, 2006 10:15 am
End Date and Time:	Tuesday, April 18, 2006 12:15 pm
Location:	Reed Hall (102 HOB)
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 371 CS Cancer Drug Donation Program by Harrell
HB 377 CS Continuing Care Provider Minimum Liquid Reserve Requirements by Gibson, H.
HB 501 CS Assisted Care Communities by Clarke
HB 1417 CS Hospices by Sansom
HB 1449 CS Brain Tumor Research by Gannon
HB 1503 CS Persons with Disabilities by Galvano
HB 7053 Nursing Home Consumer Information by Elder & Long-Term Care Committee
HB 7065 CS Clandestine Laboratory Contamination by Health Care Regulation Committee
HB 7073 Health Care Information by Health Care Regulation Committee
HB 7083 Programs of the Department of Children and Family Services by Future of Florida's Families Committee
HB 7123 Child Protective Services by Future of Florida's Families Committee
HB 7141 Licensure of Health Care Providers by Health Care Regulation Committee
HB 7199 CS Forensic Treatment and Training by Future of Florida's Families Committee

Pursuant to Rule 7.22(c), amendments by non-appointed members must be filed by 5:00 p.m., Monday, April 17, 2006.

The Chair requests that members of the Council file amendments by 5:00 p.m., Monday, April 17, 2006.

NOTICE FINALIZED on 04/14/2006 14:19 by ISEMINGER.BOBBYE

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 371 CS Cancer Drug Donation Program
SPONSOR(S): Harrell
TIED BILLS: **IDEN./SIM. BILLS:** SB 1310

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care General Committee	10 Y, 0 N, w/CS	Brown-Barrios	Brown-Barrios
2) Judiciary Committee	13 Y, 0 N, w/CS	Hogge	Hogge
3) Health Care Appropriations Committee	12 Y, 0 N, w/CS	Money	Massengale
4) Health & Families Council		Brown-Barrios	Moore
5)			

SUMMARY ANALYSIS

House Bill 371 CS creates the Cancer Drug Donation Program Act under section 499.029, Florida Statutes. The bill requires the Department of Health (DOH) to establish and maintain a cancer drug and supplies donation program under which a donor may donate cancer drugs or supplies needed to administer cancer drugs for use by an individual who meets eligibility criteria specified by DOH in rule. The department is authorized to adopt rules for the implementation of the program.

Donations may be made only at a hospital pharmacy that elects or volunteers to participate in the program. A dispensing pharmacy may charge a handling fee sufficient to cover the cost of preparation and dispensing of cancer drugs or supplies under the program. Under the bill, a cancer drug may only be accepted or dispensed under the program if such drug is in its original, unopened, sealed container or packaging. A cancer drug cannot be accepted or dispensed under the program if the drug bears an expiration date that is less than six months after the date the drug was donated or if the drug appears to have been tampered with or mislabeled.

A person who is eligible to receive cancer drugs or supplies under the state Medicaid program or under any other prescription drug program funded in whole or in part by the state, federal government, or by a third-party insurer, is ineligible to participate in the program, unless benefits have been exhausted, or a certain cancer drug or cancer supply is not covered by the person's prescription drug program.

The bill requires DOH to establish and maintain a participant facility (i.e., hospital pharmacy) registry for the program. The registry must include the name, address, and telephone number of the facility.

The bill provides immunity from civil and criminal liability for donors and program participants and renders pharmaceutical manufacturers not liable in certain circumstances.

The bill provides an appropriation of one full-time equivalent position, salary rate of 42,715, and $65,308 from the Drugs, Devices, and Cosmetics Trust Fund for FY 2006-07.

The effective date of this bill is July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—The bill creates an additional responsibility for the Department of Health and authorizes the development of additional rules.

Ensure lower taxes—The bill permits a participant facility dispensing cancer drugs or supplies under the proposed donation program, to charge a handling fee sufficient to cover the cost of preparation and dispensing of cancer drugs or supplies.

Promote personal responsibility—The bill allows individuals to contribute cancer drugs on a voluntary basis.

Empower families—The bill provides opportunities for certain families with limited resources to pursue less costly cancer treatments.

B. EFFECT OF PROPOSED CHANGES:

House Bill 371 CS creates the Cancer Drug Donation Program Act under section 499.029, Florida Statutes. The bill requires DOH to establish and maintain a cancer drug and supplies donation program under which a donor defined as a patient or patient representative, physician, health care facility, nursing home, hospice, or hospital pharmacy may donate cancer drugs provided that it has been maintained within a closed-drug delivery system[1] or supplies needed to administer cancer drugs for use by an individual who meets eligibility criteria specified by DOH in rule. Drug manufacturers, medical device manufacturers or suppliers, wholesalers of drugs or supplies may also donate cancer drugs or supplies to the program. The department is authorized to adopt rules for the implementation of the program.

Donations may be made only at a hospital pharmacy that elects or volunteers to participate in the program. A dispensing pharmacy may charge a handling fee sufficient to cover the cost of preparation and dispensing of cancer drugs or supplies under the program. Under the bill, a cancer drug may only be accepted or dispensed under the program if the drug is in its original, unopened, sealed container or packaging. A cancer drug cannot be accepted or dispensed under the program if it bears an expiration date that is less than six months after the date the drug was donated or if the drug appears to have been tampered with or mislabeled.

A person who is eligible to receive cancer drugs or supplies under the state Medicaid program or under any other prescription drug program funded in whole or in part by the state, federal government, or by a third-party insurer, is ineligible to participate in the program, unless benefits have been exhausted, or a certain cancer drug or cancer supply is not covered by the person's prescription drug program.

The bill requires DOH to establish and maintain a participant facility (i.e., hospital pharmacy) registry for the program. The registry must include the name, address, and telephone number of the facility. The department must make the participant facility registry available on the department's website to any donor wishing to donate cancer drugs or supplies to the program. The department web site shall also contain links to cancer drug manufacturers that offer drug assistance programs or offer free medication.

Under the act, a donor of cancer drugs or supplies or a program participant who exercises reasonable care in donating, accepting, distributing, or dispensing cancer drugs or supplies under the program is immune from civil or criminal liability and from professional disciplinary action of any kind for any injury, death, or loss to person or property relating to activities of the program.

In addition, a pharmaceutical manufacturer is not liable for any claim or injury arising from the transfer of any cancer drug under the program, including, but not limited to, liability for failure to transfer or

[1] Defined in the bill as a system in which the actual control of the unit-dose medication package is maintained by a facility rather than by the individual patient.

communicate product or consumer information regarding the transferred drug, as well as the expiration date of the transferred drug.

Because the bill creates new law and allows the donation of cancer drugs or supplies currently prohibited by statute and regulations, the bill provides that if any conflict exists between the provisions contained in the newly created section 499.029, Florida Statutes, and provisions in chapter 465, Florida Statutes,[2] or chapter 499, Florida Statutes,[3] the provisions contained in section 499.029, Florida Statutes, shall control as to the operation of the Cancer Drug Donation Program Act.

The bill provides an appropriation of one full-time equivalent position, salary rate of 42,715, and $65,308 from the Florida Drugs, Devices, and Cosmetics Trust Fund for FY 2006-07.

BACKGROUND AND CURRENT SITUATION

Cancer Cases

Cancer is a general term for a group of diseases in which abnormal cells grow out of control. Cancer cells can invade nearby tissues and can spread through the bloodstream and lymphatic system to other parts of the body.[4] Cancer is the second leading cause of death in Florida and in the United States. In 2005, an estimated 570,000 Americans—or more than 1,500 people a day—were expected to die of cancer. Of these annual cancer deaths, 40,090 are expected in Florida. In addition, approximately 1.4 million new cases of cancer were expected to be diagnosed nationally. This figure includes an estimated 96,200 new cases that were likely to be diagnosed in Florida.[5]

Estimated New Cases of Cancer – 2005		
Types of Cancers	**US**	**FL**
All Cancers	1,372,910	96,200
Breast (female)	211,240	13,430
Uterine Cervix	10,370	730
Colon & Rectum	145,250	9,860
Uterine Corpus	40,880	2,520
Leukemia	34,810	2,620
Lung & Bronchus	172,570	13,130
Melanoma of the skin	59,580	4,600
Non-Hodgkin Lymphoma	56,390	3,470
Prostate	232,090	19,650
Urinary Bladder	63,210	4,890

[2] Regulation of pharmacies.
[3] Regulation of drug, cosmetic, and household products.
[4] National Cancer Institute – Dictionary of Cancer Terms.
[5] Source: Cancer Facts & Figure, American Cancer Society, 2005.

Financial Cost of Cancer Treatment

The financial costs of cancer treatment are a burden to people diagnosed with cancer, their families, and society as a whole. Nationally, cancer treatment accounted for an estimated $72.1 billion in 2004 spending.[6] The cost of treating cancer varies greatly by the type of cancer an individual has been diagnosed to have.

Estimates of National Expenditures for Medical Treatment for the 15 Most Common Cancers[7]				
	Percent of all new cancers (1998)	**Expenditures (billions; in 2004 dollars)**	**Percent of all cancer treatment expenditures**	**Average Medicare first year cost (in thousands in 2004 dollars)**
Lung	12.70%	$9.6	13.30%	$24,700
Breast	15.90%	$8.1	11.20%	$11,000
Colorectal	10.70%	$8.4	11.70%	$24,200
Prostate	16.80%	$8.0	11.10%	$11,000
Lymphoma	4.60%	$4.6	6.30%	$21,500
Head/Neck	2.80%	$3.2	4.40%	$18,000
Bladder	4.40%	$2.9	4.00%	$12,300
Leukemia	2.40%	$2.6	3.70%	$18,000
Ovary	1.90%	$2.2	3.10%	$36,800
Kidney	2.60%	$1.9	2.70%	$25,300
Endometrial	2.90%	$1.8	2.50%	$16,200
Cervix	0.80%	$1.7	2.40%	$20,100
Pancreas	2.30%	$1.5	2.10%	$26,600
Melanoma	4.00%	$1.5	2.00%	$4,800
Esophagus	1.00%	$0.8	1.10%	$30,500
All Other	14.00%	$13.4	18.50%	$20,400

Insurance Status of Floridians

Lack of health insurance and other barriers to health care prevent many Americans from receiving optimal medical care. According to the 2003 national health survey data, there are approximately 2.9 million Floridians who lack health insurance.

Source of Insurance for Floridians				
Source of Insurance	**FL Population**	**%**	**US Population**	**%**
Employer	7,956,640	48	156,270,570	54
Individual	990,350	6	13,593,990	5
Medicaid	2,007,000	12	38,352,430	13
Medicare	2,726,250	16	34,190,710	12
Uninsured	2,957,290	18	44,960,710	16
Total	16,637,520	100	287,368,410	100

(Source: Kaiser Foundation - Population Distribution by Insurance Status, state data 2002-03, U.S. 2003)

Cancer Drugs

According to National Institute of Health (NIH) - Cancer Institute, there are 500 agents (i.e., drugs) that are being used in the treatment of patients with cancer or cancer-related conditions.[8] There are

[6] 1963-1995: Brown ML, Lipscomb J, Snyder C. The burden of illness of cancer: economic cost and quality of life. Annual Review of Public Health 2001;22:91-113. : NIH Report to the U.S. Congress, 2005; National Health Care Expenditures Projections: 2003-2013
[7] Cancer Trend Progress Report – 2005 Update, U.S. National Institute of Health – National Cancer Institute.
[8] NCI Drug Dictionary, NIH-National Institute of Health, 2005.

estimates that consumers leave unused approximately $1 billion worth of unused prescription drugs[9] per year.

Cancer drug donation or repository program

To address the issue of affordability of treatment and unused prescription medication to treat cancer, some states have established a cancer drug donation or repository program to accept unused, unopened, prescription drugs and medical supplies. Wisconsin,[10] Colorado[11] and Nebraska[12] are among the states that have passed cancer drug donation laws. Several other states are considering similar legislation.[13]

In general, the cancer donation programs being established in other states have similar characteristics. These characteristics include, but are not limited to:

- A mechanism to accept unused, unopened, individually packaged prescription drugs and medical supplies from individuals and health care facilities and these would be redistributed to uninsured and under-insured cancer patients.
- Preference being given to the uninsured for access to donated drugs and supplies.
- Donated drugs being distributed only when prescribed by a doctor and dispensed by a pharmacist.
- Donated drugs and supplies being in their original, unopened, sealed and tamper-evident packaging.
- Health facilities being able to charge a handling fee for dispensing donated cancer drugs, but not reselling donated drugs.
- Having a central registry operated by a state agency to track participating facilities.

Relevant Statutory Provisions

Section 465.016, Florida Statutes
Section 465.016(1) (l), Florida Statutes, prohibits a pharmacy from placing into stock any part of any prescription compounded or dispensed which is returned by a patient; however, in a hospital, nursing home, correctional facility, or extended care facility in which dispensed unit dose medication is transferred to the facility for administration, these may be returned.

Chapter 499, Florida Statutes
The Florida Drug and Cosmetic Act is codified in chapter 499, Florida Statutes. The act defines "wholesale distribution" to mean distribution of prescription drugs to persons other than a consumer or patient, but does not include specified activities. Chapter 499, Florida Statutes, provides safeguards for the public health and protection from injury by product use and by merchandising deceit involving drugs, devices, and cosmetics. The chapter provides uniform legislation to be administered so far as practicable in conformity with the provisions of, and regulations issued under the authority of, the Federal Food, Drug, and Cosmetic Act and that portion of the Federal Trade Commission Act which expressly prohibits the false advertisement of drugs, devices and cosmetics.

Section 499.014, Florida Statutes
Authorizes the distribution of prescription drugs by a charitable organization under a limited permit issued by the Department of Health.

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[9] "Old Pills Finding New Medicine Cabinets," NY Times, May 18, 2005. This reference is to all prescription drugs not just drugs to treat cancer.
[10] Section 255.056, Wisconsin Statutes.
[11] Section 25-35-101, Colorado Statute.
[12] Title 181 Chapter 6, Nebraska Statute.
[13] National Conference of State Legislatures, 2005 Summary of Prescription Drug State Legislation.

Section 893.13, Florida Statutes
Provides that, except as authorized by chapter 893, Florida Statutes, (i.e., Drug Abuse Prevention and Control) and chapter 499, Florida Statutes, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance.

Florida Administrative Code
The Department of Health has adopted rules governing the issuance of a restricted prescription drug distribution permit for charitable organizations, and for the operation of their organizations under this permit.[14]

Relevant Government Agencies

U.S. Food and Drug Administration (FDA)
The FDA is the federal agency responsible for ensuring that foods, drugs, biological products, and medical devices are safe and effective. Under section 505 of the Federal Food, Drug, and Cosmetic Act, (FDA) no drug can be introduced or delivered for introduction into interstate commerce unless approved by the FDA. The FDA has no specific regulations regarding cancer drug donation programs and leaves the cancer donation program to the discretion of the state as long as the state enforces applicable regulations relating to prescription medication.[15]

Department of Health
The Bureau of Statewide Pharmaceutical Services is responsible for enforcing Florida's Drug and Cosmetic Act, chapter 499, Florida Statutes. The purpose of this act is to safeguard the health of the public and protect the public from injury by product use and merchandising deceit involving drugs, devices and cosmetics, as well as false and misleading advertising. The bureau also provides pharmaceuticals to county health departments annually and administers the State of Florida's pharmaceutical contracts.

Agency for Health Care Administration
Hospitals are subject to oversight by the Agency for Health Care Administration and most are accredited by the Joint Council on Accreditation of Healthcare Organizations. These entities have policies for reviewing pharmacy operations in hospitals.

C. SECTION DIRECTORY:

Section 1. Creates section 499.029, Florida Statutes, to establish the Cancer Drug Donation Program under the Department of Health.

Section 2. Provides an appropriation.

Section 3. Establishes an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   According to DOH, 1 full-time equivalent position is needed to create and maintain the registry, to provide consultation and technical assistance, and to perform other administrative functions.

[14] Rules 64F-12.015(8)(c) and 64F-12.023(1)., F.A.C.
[15] Telephone discussion with FDA concerning HB 371, Stewart Watson, REHS LCDR, USPHS, Public Affairs Specialist Florida District – FDA.

	FY 06-07	FY 07-08
Salary and Expenses	($65,308)	($71, 079)

The bill provides an appropriation of one full-time equivalent position, salary rate of 42,715, and $65,308 from the Florida Drugs, Devices, and Cosmetics Trust Fund for FY 2006-07.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

For a hospital pharmacy that elects or volunteers to participate in the program, there will be costs associated with the processing, storage, dispensing and disposal of donated cancer drugs and supplies. These costs could be recovered fully or in part by the handling fee authorized in the bill to cover the cost of preparing and dispensing the cancer drugs or supplies under the program. The fee will be established in rules adopted by DOH.

D. FISCAL COMMENTS:

According to DOH, to dispense donated drugs to eligible recipients, participating hospital pharmacies will be required to obtain a Community Pharmacy Permit, thus incurring an additional cost of $255.00 for licensure.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take any action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The act authorizes DOH to adopt implementing rules to include the following:

- Eligibility criteria, including a method to determine priority of eligible patients under the program.
- Standards and procedures for participants that accept, store, distribute, or dispense donated cancer drugs or supplies.
- Necessary forms for administration of the program, including, but not limited to, forms for use by persons or entities that donate, accept, distribute, or dispense cancer drugs or supplies under the program.
- The maximum handling fee that may be charged by a participant facility that accepts and distributes or dispenses donated cancer drugs or supplies.
- Categories of cancer drugs and supplies that the program will accept for dispensing.

- Categories of cancer drugs and supplies that the program will not accept for dispensing and the reason that such drugs and supplies will not be accepted.
- Maintenance and distribution of the participant registry.

However, the bill does not provide DOH with any guidance as part of this delegated authority. The bill gives the agency broad discretion on formulating rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 11, 2006, the Health Care General Committee adopted one amendment to the bill. The amendment:

- Restricts cancer drugs to those approved by the FDA.
- Defines closed drug delivery system.
- Changes the definition of "donor" to include only cancer drugs that have been maintained within a closed drug delivery system.
- Defines "nursing home."
- Changes the definition of "participant facility" to mean a class II institutional hospital pharmacy.
- Strengthens provisions to ensure the integrity of a donated drug.
- Provides that a donation of cancer drugs can be made only at a participant facility.
- Allows DOH to exclude any drug based on its therapeutic effectiveness or high potential for abuse or diversion.
- Excludes a person receiving Medicaid or any other prescription drug program funded in whole or in part by the federal government (e.g., Medicare), or by any other prescription drug program offered by a third-party insurer, unless benefits have been exhausted, or a certain cancer drug or cancer supply is not covered by the prescription drug program.
- Requires DOH to maintain a cancer drug donation program web site and links to cancer supply manufacturers that offer drug assistance programs or offer free medication.
- Adds cancer supply manufacturers to those immune from liability for any claim or injury arising from the donation and use of any donated cancer drug.
- Provides that if any conflict exists between the provisions contained in s. 381.94, F. S., and provisions in chapter 465, F. S., or chapter 499, F. S., the provisions contained in s. 381.94, F. S., shall control the operation of the Cancer Drug Donation Program.

As amended, the bill was reported favorably as a committee substitute.

On March 15, 2006, the Judiciary Committee adopted two amendments and reported the bill favorably as a Committee Substitute. The CS differs from the CS as reported by the Health Care Committee in the following ways:

1) Reverts back to the liability provisions found in the original bill as filed. The amendment immunizes donors of cancer drugs or supplies and program participants from civil and criminal liability and professional disciplinary action when they exercise reasonable care in donating, accepting, distributing, or dispensing cancer drugs or supplies.

2) Limits non-liability to pharmaceutical manufacturers and only for injuries resulting from the transfer of any cancer drug under this program. The CS removes manufacturers of cancer supplies from this provision.

3) Provides an appropriation of $65,308 from the General Revenue Fund to the Department of Health to administer the program.

As amended, the bill was reported favorably as a committee substitute.

On April 11, 2006 the Health Care Appropriations Committee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Create the Cancer Drug Donation Program under the Department of Health in section 499.029 Florida Statutes, rather than section 381.94, Florida Statutes.
- Provides the appropriation of $65,308 from the Drugs, Devices, and Cosmetics Trust Fund in lieu of General Revenue, provides one full-time equivalent position and 42,715 in salary rate.

As amended, the bill was reported favorably as a committee substitute.

CHAMBER ACTION

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1 The Health Care Appropriations Committee recommends the
2 following:
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4 **Council/Committee Substitute**
5 Remove the entire bill and insert:
6 A bill to be entitled
7 An act relating to the Cancer Drug Donation Program;
8 creating s. 499.029, F.S.; providing a short title;
9 creating the Cancer Drug Donation Program; providing a
10 purpose; providing definitions; providing conditions for
11 the donation of cancer drugs and supplies to the program;
12 providing conditions for the acceptance of cancer drugs
13 and supplies into the program, inspection of cancer drugs
14 and supplies, and dispensing of cancer drugs and supplies
15 to eligible patients; requiring a participant facility
16 that accepts donated drugs and supplies through the
17 program to comply with certain state and federal laws;
18 authorizing a participant facility to charge fees under
19 certain conditions; requiring the Department of Health,
20 upon recommendation of the Board of Pharmacy, to adopt
21 certain rules; providing for the ineligibility of certain
22 persons to receive donated drugs; requiring the department
23 to establish and maintain a participant facility registry;

24 providing for the contents and availability of the
25 participant facility registry; providing immunity from
26 civil and criminal liability for donors or pharmaceutical
27 manufacturers in certain circumstances; providing that in
28 the event of conflict between the provisions in s.
29 499.029, F.S., and provisions in ch. 465 or ch. 499, F.S.,
30 the provisions in s. 499.029, F.S., shall control;
31 providing an appropriation; providing an effective date.
32
33 Be It Enacted by the Legislature of the State of Florida:
34
35 Section 1. Section 499.029, Florida Statutes, is created
36 to read:
37 499.029 Cancer Drug Donation Program.--
38 (1) This section may be cited as the "Cancer Drug Donation
39 Program Act."
40 (2) There is created a Cancer Drug Donation Program within
41 the Department of Health for the purpose of authorizing and
42 facilitating the donation of cancer drugs and supplies to
43 eligible patients.
44 (3) As used in this section:
45 (a) "Cancer drug" means a prescription drug that has been
46 approved under s. 505 of the federal Food, Drug, and Cosmetic
47 Act and is used to treat cancer or its side effects or is used
48 to treat the side effects of a prescription drug used to treat
49 cancer or its side effects. "Cancer drug" does not include a
50 substance listed in Schedule II, Schedule III, Schedule IV, or
51 Schedule V of s. 893.03.

52 (b) "Closed drug delivery system" means a system in which
53 the actual control of the unit-dose medication package is
54 maintained by the facility rather than by the individual
55 patient.
56 (c) "Department" means the Department of Health.
57 (d) "Donor" means a patient or patient representative who
58 donates cancer drugs or supplies needed to administer cancer
59 drugs that have been maintained within a closed drug delivery
60 system; health care facilities, nursing homes, hospices, or
61 hospitals with closed drug delivery systems; or pharmacies, drug
62 manufacturers, medical device manufacturers or suppliers, or
63 wholesalers of drugs or supplies, in accordance with this
64 section. "Donor" includes a physician licensed under chapter 458
65 or chapter 459 who receives cancer drugs or supplies directly
66 from a drug manufacturer, drug wholesaler, or pharmacy.
67 (e) "Eligible patient" means a person who the department
68 determines is eligible to receive cancer drugs from the program.
69 (f) "Health care facility" means a health care facility
70 licensed under chapter 395.
71 (g) "Health care clinic" means a health care clinic
72 licensed under part XIII of chapter 400.
73 (h) "Hospice" means a corporation licensed under part VI
74 of chapter 400.
75 (i) "Hospital" means a facility as defined in s. 395.002
76 and licensed under chapter 395.
77 (j) "Nursing home" means a facility licensed under part II
78 of chapter 400.

79 (k) "Participant facility" means a class II hospital
80 pharmacy that has elected to participate in the program and that
81 accepts donated cancer drugs and supplies under the rules
82 adopted by the department for the program.
83 (l) "Pharmacist" means a person licensed under chapter
84 465.
85 (m) "Pharmacy" means an entity licensed under chapter 465.
86 (n) "Prescribing practitioner" means a physician licensed
87 under chapter 458 or any other medical professional with
88 authority under state law to prescribe cancer medication.
89 (o) "Prescription drug" means a drug as defined in s.
90 465.003(8).
91 (p) "Program" means the Cancer Drug Donation Program
92 created by this section.
93 (q) "Supplies" means any supplies used in the
94 administration of a cancer drug.
95 (4) Any donor may donate cancer drugs or supplies to a
96 participant facility that elects to participate in the program
97 and meets criteria established by the department for such
98 participation. Cancer drugs or supplies may not be donated to a
99 specific cancer patient, and donated drugs or supplies may not
100 be resold by the program. A participant facility may provide
101 dispensing and consulting services to individuals who are not
102 patients of the hospital.
103 (5) The cancer drugs or supplies donated to the program
104 may be prescribed only by a prescribing practitioner for use by
105 an eligible patient and may be dispensed only by a pharmacist.

106 (6)(a) A cancer drug may only be accepted or dispensed
107 under the program if the drug is in its original, unopened,
108 sealed container, or in a tamper-evident unit-dose packaging,
109 except that a cancer drug packaged in single-unit doses may be
110 accepted and dispensed if the outside packaging is opened but
111 the single-unit-dose packaging is unopened with tamper-resistant
112 packaging intact.
113 (b) A cancer drug may not be accepted or dispensed under
114 the program if the drug bears an expiration date that is less
115 than 6 months after the date the drug was donated or if the drug
116 appears to have been tampered with or mislabeled as determined
117 in paragraph (c).
118 (c) Prior to being dispensed to an eligible patient, the
119 cancer drug or supplies donated under the program shall be
120 inspected by a pharmacist to determine that the drug and
121 supplies do not appear to have been tampered with or mislabeled.
122 (d) A dispenser of donated cancer drugs or supplies may
123 not submit a claim or otherwise seek reimbursement from any
124 public or private third-party payor for donated cancer drugs or
125 supplies dispensed to any patient under the program, and a
126 public or private third-party payor is not required to provide
127 reimbursement to a dispenser for donated cancer drugs or
128 supplies dispensed to any patient under the program.
129 (7)(a) A donation of cancer drugs or supplies shall be
130 made only at a participant facility. A participant facility may
131 decline to accept a donation. A participant facility that
132 accepts donated cancer drugs or supplies under the program shall
133 comply with all applicable provisions of state and federal law

134 relating to the storage and dispensing of the donated cancer
135 drugs or supplies.
136 (b) A participant facility that voluntarily takes part in
137 the program may charge a handling fee sufficient to cover the
138 cost of preparation and dispensing of cancer drugs or supplies
139 under the program. The fee shall be established in rules adopted
140 by the department.
141 (8) The department, upon the recommendation of the Board
142 of Pharmacy, shall adopt rules to carry out the provisions of
143 this section. Initial rules under this section shall be adopted
144 no later than 90 days after the effective date of this act. The
145 rules shall include, but not be limited to:
146 (a) Eligibility criteria, including a method to determine
147 priority of eligible patients under the program.
148 (b) Standards and procedures for participant facilities
149 that accept, store, distribute, or dispense donated cancer drugs
150 or supplies.
151 (c) Necessary forms for administration of the program,
152 including, but not limited to, forms for use by entities that
153 donate, accept, distribute, or dispense cancer drugs or supplies
154 under the program.
155 (d) The maximum handling fee that may be charged by a
156 participant facility that accepts and distributes or dispenses
157 donated cancer drugs or supplies.
158 (e) Categories of cancer drugs and supplies that the
159 program will accept for dispensing; however, the department may
160 exclude any drug based on its therapeutic effectiveness or high
161 potential for abuse or diversion.

162 (f) Maintenance and distribution of the participant
163 facility registry established in subsection (10).
164 (9) A person who is eligible to receive cancer drugs or
165 supplies under the state Medicaid program or under any other
166 prescription drug program funded in whole or in part by the
167 state, by any other prescription drug program funded in whole or
168 in part by the Federal Government, or by any other prescription
169 drug program offered by a third-party insurer, unless benefits
170 have been exhausted, or a certain cancer drug or supply is not
171 covered by the prescription drug program, is ineligible to
172 participate in the program created under this section.
173 (10) The department shall establish and maintain a
174 participant facility registry for the program. The participant
175 facility registry shall include the participant facility's name,
176 address, and telephone number. The department shall make the
177 participant facility registry available on the department's
178 website to any donor wishing to donate cancer drugs or supplies
179 to the program. The department's website shall also contain
180 links to cancer drug manufacturers that offer drug assistance
181 programs or free medication.
182 (11) Any donor of cancer drugs or supplies, or any
183 participant in the program, who exercises reasonable care in
184 donating, accepting, distributing, or dispensing cancer drugs or
185 supplies under the program and the rules adopted under this
186 section shall be immune from civil or criminal liability and
187 from professional disciplinary action of any kind for any
188 injury, death, or loss to person or property relating to such
189 activities.

190 (12) A pharmaceutical manufacturer is not liable for any
191 claim or injury arising from the transfer of any cancer drug
192 under this section, including, but not limited to, liability for
193 failure to transfer or communicate product or consumer
194 information regarding the transferred drug, as well as the
195 expiration date of the transferred drug.
196 (13) If any conflict exists between the provisions in this
197 section and the provisions in this chapter or chapter 465, the
198 provisions in this section shall control the operation of the
199 Cancer Drug Donation Program.
200 Section 2. There is hereby appropriated one full-time
201 equivalent position at salary rate 42,715 and recurring funding
202 from the Florida Drug, Device, and Cosmetic Trust Fund pursuant
203 to s. 499.057, Florida Statutes, in the sum of $65,308 for
204 fiscal year 2006-2007, for the purpose of implementing the
205 Cancer Drug Donation Program under s. 499.029, Florida Statutes,
206 as created by this act.
207 Section 3. This act shall take effect July 1, 2006.

Amendment to HB 371 CS by Rep. Harrell

The Federal Deficit Reduction Act requires that unused drugs paid for by Medicaid on behalf of recipients in long term care facilities be returned to stock and credited to Medicaid and therefore not eligible for donation under the Cancer Drug Donation program.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 371 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Health & Families Council
2 Representative(s) Harrell offered the following:
3
4 **Amendment**
5 Remove line(s) 95-102 and insert:
6 (4) Any donor may donate cancer drugs or supplies to a
7 participant facility that elects to participate in the program
8 and meets criteria established by the department for such
9 participation. Cancer drugs or supplies may not be donated to a
10 specific cancer patient, and donated drugs or supplies may not
11 be resold by the program. Cancer drugs billed to and paid for
12 by Medicaid in long term care facilities that are eligible for
13 return to stock must be credited to Medicaid and are not
14 eligible for donation under the program. A participant facility
15 may provide dispensing and consulting services to individuals
16 who are not patients of the hospital.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 377 CS Continuing Care Provider Minimum Liquid Reserve Requirements
SPONSOR(S): Gibson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1256

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Elder & Long-Term Care Committee	8 Y, 0 N, w/CS	DePalma	Walsh
2) Insurance Committee	18 Y, 0 N	Cooper	Cooper
3) Health Care Appropriations Committee	14 Y, 0 N	Speir	Massengale
4) Health & Families Council		DePalma	Moore
5)			

SUMMARY ANALYSIS

HB 377 CS restructures the escrow requirements of subsections 651.035(2)(a) and (c), Florida Statutes, by removing property insurance premiums from the calculation of a provider's debt service reserve requirement, and by effectively incorporating such property insurance premiums into the calculation of a provider's operating reserve requirement.

Because of fluctuations in insurance premium levels, there is an indeterminate economic impact on the private sector.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty—The bill restructures the escrow requirements for continuing care providers, potentially enabling these providers more financial and programmatic flexibility in conducting their affairs and directing available resources.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Continuing Care Retirement Communities

A Continuing Care Retirement Community (CCRC), also frequently referred to as a "Life Care Community," is a senior housing arrangement specifically designed to provide its residents with both short-term independence of living and some measure of long-term security, as providers contract with residents for provision of a continuum of care as the senior's needs and abilities change.

All CCRCs offer three basic care environments that residents may elect to move among to accommodate evolving physical and social needs: independent living, assisted living, and skilled-nursing care.[1] While seniors residing in independent living facilities at a CCRC typically are more active residents requiring less direct attention and assistance, residents desiring either short- or long-term skilled nursing care may use a CCRC's Health Care Center, an on-site facility offering 24-hour nursing care.

Prior to enrollment at a CCRC, prospective residents are required to sign a lifetime contract with the Community specifying the senior's service and residency elections. Although the entrance and monthly maintenance fees required for CCRC residency are substantial and a prohibitive barrier to such a living arrangement for many seniors,[2] CCRCs generally offer three separate fee schedules to choose among when contracting with a resident. These schedules range from more extensive contracts (including unlimited long-term nursing care at little or no increase in monthly fees) to fee-for-service contracts (where residents pay separately for all health and medical services, and for long-term care).[3]

Continuing Care Retirement Communities are growing in popularity. Nationally, more than 2,100 CCRCs house approximately 625,000 individuals, and there are currently 70 CCRCs in the state.[4] Nonprofit agencies sponsor most CCRCs, and often are established in a manner that caters to affinity groups such as religious organizations, fraternal orders, and ethnic groups.[5]

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[1] For information on program features and alternatives offered within a CCRC, and a review of the various contract options available to Community residents, refer to program evaluations provided by the American Association of Retired Persons (AARP), available at: http://www.aarp.org/families/housing_choices/other_options/a2004-02-26-retirementcommunity.html, and the Florida Department of Elder Affairs (DOEA), available at: http://elderaffairs.state.fl.us/2004CRG/sec04.html#ccr.

[2] AARP reports that one-time entrance fees can range from a low of $20,000 to a high of $400,000, and monthly maintenance fees can range from $200 to $2,500, ibid.

[3] s. 651.055(1)(b), F.S.

[4] Statistical data from *Long Term Care: Florida's Challenge*, prepared by University of Florida professor Doctor Josephine Turner and available at: http://fycs.ifas.ufl.edu/financial/unit5/u5ppts/u5ltc.ppt.

[5] A collection of "non-commercial information" on Continuing Care Retirement Communities can be found at: http://www.helpguide.org/elder/continuing_care_retirement_communities.htm.

Minimum Liquid Reserve Requirement

Presently, CCRCs must maintain a statutorily-prescribed minimum liquid reserve for the benefit of facility residents, the requirements of which are found in s. 651.035, F.S. In the event of insolvency, the debt service reserve would be used by the receiver to pay mortgage principal and interest, taxes and insurance for a period of one year for any insolvent continuing care provider that was placed in Rehabilitation and Liquidation.

This reserve is maintained in escrow, and consists of two principal components[6] based on two distinct calculations. The first is the "debt service reserve,"[7] a figure primarily representative of a provider's property insurance[8] premiums. Providers must maintain in escrow, as a reserve, an amount equal to the next 12 months of interest payments on any mortgage loan or other long-term financing of the facility, including taxes and insurance.

The other is the "operating reserve", represented as a function of a provider's total operating expenses, *less* depreciation and amortization; property insurance, interest and taxes; extraordinary expenses if adequately explained and documented in accordance with generally-accepted accounting principles; liability insurance[9] premiums in excess of those paid in 1999; and changes in the obligation to provide future services to current residents. Each provider must maintain in reserve an amount equal to 30 percent of the total projected operating expenses[10] for the first 12 fiscal months of operation, and 15 percent thereafter.[11] Where a provider has been in operation for more than 12 months, the total operating expenses shall be determined by averaging the total annual operating expenses reported to the office by the number of annual reports filed with the office within the immediate preceding three-year period subject to adjustment in the event there is a change in the number of facilities owned by a provider.

In recognition of an escalation in liability and property insurance rates, the 2002 Legislature passed Senate Bill 1246, amending s. 651.035, F.S.[12] Under this legislation, the amount of property insurance premiums used in calculating a CCRC's debt service reserve—and the amount of liability insurance premiums used in calculating the operating reserve—could not exceed premiums paid in calendar year 1999.[13] For CCRCs licensed during or after 1999, the amount of property and liability insurance premiums used in calculating a provider's debt and operating service reserves, respectively, are capped at the amount paid during the first 12 months of a facility's operation.

Under s. 651.035(2)(a), F.S., beginning on January 1, 2006—and each year thereafter, until the amount held in escrow attributable to property insurance equals 100 percent of the premium—a provider is required to increase the amount maintained in escrow for property insurance by 10 percent of the premium paid that year. The section does not include a similar provision for making the operating reserve whole at some future time.

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[6] s. 651.035, F.S. also supplies the statutory requirements of providers' "debt service reserve offset" and, as an element of the "operating reserve", a "renewal and replacement reserve."

[7] s. 651.035(2)(a), F.S.; although the reserve under paragraph (b) of subsection (2) of s. 651.035, F.S. is identified as a separate "debt service reserve", in practice it is referred to as the "debt service reserve *offset*". Consequently, in practice the reserve in paragraph (a) is referred to as the "debt service reserve."

[8] Per s. 624.604, F.S., property insurance is "insurance on real or personal property of every kind and of every interest therein, whether on land, water, or in the air, against loss or damage from any and all hazard or cause, and against loss consequential upon loss or damage, other than noncontractual legal liability for any such loss or damage."

[9] Per s. 624.605(1)(b), F.S., liability insurance is "insurance against legal liability for the death, injury, or disability of any human being, or for damage to property, with provision for medical, hospital, and surgical benefits to the injured persons, irrespective of the legal liability of the insured, when issued as part of a liability insurance contract."

[10] This forecasting of operating expenses occurs in a feasibility study, required by s. 651.023, F.S.

[11] As reported in an annual report filed by providers pursuant to s. 651.026, F.S.

[12] Section 3, chapter 2002-222, L.O.F.

[13] Based on the most recently-filed annual reports, the Office of Insurance Regulation reports that CCRC reserve funds have been reduced by $12,408,697 ($3,946,585 in liability insurance and $8,462,112 in property insurance) as a result of capping the insurance premium rates at their 1999 levels for calculation of provider reserves.

EFFECT OF PROPOSED CHANGES

This bill restructures the treatment of property insurance premiums in the calculation of minimum liquid reserve requirements. The bill amends subsections 651.035(2)(a) and (c), F.S., by removing property insurance premiums from calculation of a provider's debt service reserve requirement, and by deleting property insurance premiums from the list of items excluded from calculation of operating reserves—effectively including property insurance premiums into the list of "total annual operating expenses" used in calculating a provider's operating reserve requirement. Specifically, the bill does the following:

- Transfers consideration and calculation of a provider's property insurance premiums from the "debt service reserve" requirements of subsection 651.035(2)(a), F.S., to the "operating reserve" requirements of subsection 651.035(2)(c), F.S.
    - The amount to be maintained by providers in escrow as a "debt service reserve" is equal to the aggregate amount of all principal and interest due during the fiscal year on any mortgage loan or other long-term financing of the facility, including taxes.
    - For purposes of calculating a provider's operating reserve, "total operating expenses" shall include all expenses of the facility except: depreciation and amortization; interest and taxes included in section 651.035(1), F.S.; extraordinary expenses that are adequately explained and documented in accordance with generally-accepted accounting principles; liability insurance premiums in excess of those paid in calendar year 1999; and changes in the obligation to provide future services to current residents.
    - The amount to be maintained by providers in escrow as an "operating reserve" is equal to 30 percent of the total operating expenses projected in a required feasibility study for the first 12 months of operation. Thereafter, each provider must maintain in escrow an operating reserve in an amount equal to 15 percent of the total operating expenses in a required annual report. Where a provider has been in operation for more than 12 months, the total operating expenses shall be determined by averaging the total annual operating expenses reported to the office by the number of annual reports filed with the office within the immediate preceding three-year period subject to adjustment in the event there is a change in the number of facilities owned by a provider.

The bill deletes the provision added during the 2002 Legislative Session requiring providers, beginning on January 1, 2006 and continuing each year thereafter until the amount maintained in its debt service reserve attributable to property insurance is replenished to 100 percent of the premium, to increase the amount maintained in escrow for property insurance by 10 percent of the premium paid that year.

The bill also deletes the provision capping inclusion of property insurance premiums used in calculation of a provider's debt service reserve requirement at the amount paid by a provider for property insurance premiums in 1999 (or, for providers initially licensed during or after 1999, the amount of property insurance premiums paid during the first 12 months of facility operation).

The effective date of the bill is July 1, 2006.

C. SECTION DIRECTORY:

Section 1. Amends s. 651.035(2)(a) and (c), F.S.; deleting property insurance premiums from debt service reserve requirements; deleting additional minimum debt service reserve requirements for certain continuing care providers for certain years; and adding property insurance premiums into operating reserve calculations.

Section 2. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Because of fluctuations in insurance premium levels, there is an indeterminate economic impact on the private sector.

D. FISCAL COMMENTS:

Citing a 199 percent increase in providers' annual property insurance premiums between 1999 and 2005, and noting that current hurricane predictions are likely to result in increases to property insurance premiums in coming years, the Florida Association of Homes for the Aging (FAHA) and the Florida Life Care Residents Association have commented that the associations "do not believe that the investment of residents would be jeopardized if property insurance premiums were moved from the debt service reserve, where 100% of the annual premium must be escrowed, to the [operating reserve], where 30% of annual operating expenses must be escrowed. This change would provide some financial relief to residents now and in the future without jeopardizing the financial cushion that would be needed if a CCRC went into administrative supervision or receivership."[14]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Counties and municipalities are not affected by this legislation.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

[14] Communication on file with the Elder and Long-Term Care Committee.

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its January 25, 2006 meeting, the Committee on Elder & Long-Term Care adopted a strike-all amendment to House Bill 377. The strike-all changed the bill in the following ways:

- Transfers consideration and calculation of a provider's property insurance premiums from the "debt service reserve" requirements of section 651.035(2)(a), Florida Statutes, to the "operating reserve" requirements of section 651.035(2)(c), Florida Statutes.
- Removes a provision in section 651.035(2)(a), Florida Statutes, capping inclusion of property insurance premiums used in calculation of a provider's debt service reserve requirement at the amount paid by a provider for property insurance premiums in 1999 (or, for providers initially licensed during or after 1999, the amount of property insurance premiums paid during the first 12 months of facility operation).
- Removes a provision in section 651.035(2)(a) , Florida Statutes, requiring providers, beginning January 1, 2006 and continuing each year thereafter until the amount maintained in escrow attributable to property insurance equals 100 percent of the premium, to increase the amount maintained in escrow for property insurance by 10 percent of the premium paid that year.

The Committee favorably reported a committee substitute. This analysis is drafted to the committee substitute.

CHAMBER ACTION

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1 The Elder & Long-Term Care Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to continuing care provider minimum liquid
7 reserve requirements; amending s. 651.035, F.S.; deleting
8 property insurance premiums from certain debt service
9 reserve requirements; deleting certain property insurance
10 debt service reserve limitations; deleting certain
11 additional minimum debt service reserve requirements for
12 certain years; including property insurance premiums in
13 calculating expenses; providing an effective date.
14
15 Be It Enacted by the Legislature of the State of Florida:
16
17 Section 1. Paragraphs (a) and (c) of subsection (2) of
18 section 651.035, Florida Statutes, are amended to read:
19 651.035 Minimum liquid reserve requirements.--
20 (2)(a) A provider shall maintain in escrow as a debt
21 service reserve an amount equal to the aggregate amount of all
22 principal and interest payments due during the fiscal year on
23 any mortgage loan or other long-term financing of the facility,

24 including taxes ~~and insurance~~ as recorded in the audited
25 financial statements required under s. 651.026. The amount shall
26 include any leasehold payments and all costs related to such
27 payments ~~same~~. If principal payments are not due during the
28 fiscal year, the provider shall maintain in escrow as a minimum
29 liquid reserve an amount equal to interest payments due during
30 the next 12 months on any mortgage loan or other long-term
31 financing of the facility, including taxes ~~and insurance~~. ~~For~~
32 ~~the purpose of this paragraph, the amount of property insurance~~
33 ~~premiums used in calculating the debt service reserve shall not~~
34 ~~exceed the amount paid in calendar year 1999. For providers~~
35 ~~initially licensed during or after calendar year 1999, the~~
36 ~~amount of property insurance premiums used in calculating the~~
37 ~~debt service reserve shall not exceed the amount paid during the~~
38 ~~first 12 months of facility operation. However, beginning~~
39 ~~January 1, 2006, and each year thereafter, until the amount~~
40 ~~maintained in escrow attributable to property insurance equals~~
41 ~~100 percent of the premium, the provider shall increase the~~
42 ~~amount maintained in escrow for property insurance by 10 percent~~
43 ~~of the premium paid that year.~~
44 (c) Each provider shall maintain in escrow an operating
45 reserve in an amount equal to 30 percent of the total operating
46 expenses projected in the feasibility study required by s.
47 651.023 for the first 12 months of operation. Thereafter, each
48 provider shall maintain in escrow an operating reserve in an
49 amount equal to 15 percent of the total operating expenses in
50 the annual report filed pursuant to s. 651.026. Where a provider
51 has been in operation for more than 12 months, the total annual

52 operating expenses shall be determined by averaging the total
53 annual operating expenses reported to the office by the number
54 of annual reports filed with the office within the immediate
55 preceding 3-year period subject to adjustment in the event there
56 is a change in the number of facilities owned. For purposes of
57 this subsection, total annual operating expenses shall include
58 all expenses of the facility except: depreciation and
59 amortization; interest~~, insurance~~ and taxes included in
60 subsection (1); extraordinary expenses which are adequately
61 explained and documented in accordance with generally accepted
62 accounting principles; liability insurance premiums in excess of
63 those paid in calendar year 1999; and changes in the obligation
64 to provide future services to current residents. For providers
65 initially licensed during or after calendar year 1999, liability
66 insurance shall be included in the total operating expenses in
67 an amount not to exceed the premium paid during the first 12
68 months of facility operation. Beginning January 1, 1993, the
69 operating reserves required under this subsection shall be in an
70 unencumbered account held in escrow for the benefit of the
71 residents. Such funds may not be encumbered or subject to any
72 liens or charges by the escrow agent or judgments, garnishments,
73 or creditors' claims against the provider or facility. However,
74 if a facility had a lien, mortgage, trust indenture, or similar
75 debt instrument in place prior to January 1, 1993, which
76 encumbered all or any part of the reserves required by this
77 subsection and such funds were used to meet the requirements of
78 this subsection, then such arrangement may be continued, unless

79 a refinancing or acquisition has occurred, and the provider
80 shall be in compliance with this subsection.
81 Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 501 CS Assisted Care Communities
SPONSOR(S): Clarke
TIED BILLS: **IDEN./SIM. BILLS:** SB 388

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Elder & Long-Term Care Committee	8 Y, 0 N, w/CS	DePalma	Walsh
2) Future of Florida's Families Committee	7 Y, 0 N	Davis	Collins
3) Governmental Operations Committee	5 Y, 0 N	Ziegler	Williamson
4) Health & Families Council		DePalma	Moore
5)			

SUMMARY ANALYSIS

HB 501 CS transfers provisions relating to assisted living facilities, adult family-care homes and adult day care centers from Parts III, V and VII of Chapter 400, F.S., to newly-created Parts I, II and III of Chapter 429, F.S., to be entitled "Assisted Care Communities."

The bill makes multiple statutory revisions which specify each conforming change required to accurately move these sections to their new chapter.

The bill does not appear to have a fiscal impact on state or local government.

The effective date of the bill is July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House principles.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Regulation of Health Care Facilities and Services

Chapter 408, F.S., "Health Care Administration" contains the general statutory provisions assigned to the Agency for Health Care Administration (AHCA). The Agency, as created in s. 20.42, F.S., is responsible for:

- Health facility licensure, inspection, and regulatory enforcement;
- Investigation of consumer complaints related to health care facilities and managed care plans;
- Implementation of the certificate of need program;
- Operation of the State Center for Health Statistics;
- Administration of the Medicaid program;
- Administration of the contracts with the Florida Healthy Kids Corporation;
- Certification of health maintenance organizations and prepaid health clinics as set forth in part III of chapter 641, F.S.; and
- Any other duties prescribed by statute or agreement.

The statutory provisions for the health care facilities and services requiring licensure by, or registration with, AHCA, are found in chapters 112, 383, 390, 394, 395, 400, 440, 483, and 765, F.S. The facilities and services include drug free workplace laboratories, birth centers, abortion clinics, crisis stabilization units, short term residential treatment units, residential treatment facilities, residential treatment centers for children and adolescents, hospitals, ambulatory surgical centers, mobile surgical facilities, private review agents, health care risk managers, nursing homes, assisted living facilities, home health agencies, nurse registries, companion services or homemaker services providers, adult day care centers, hospices, adult family care homes, homes for special services, transitional living facilities, prescribed pediatric extended care centers, home medical equipment providers, intermediate care facilities for the developmentally disabled, health care services pools, health care clinics, clinical laboratories, multiphasic health testing centers, and organ and tissue procurement agencies.

These regulated health care facilities and services provide care in settings ranging from individual homes to institutions such as hospitals and nursing homes. The complexity of care provided ranges from companion and homemaker services in the home to trauma care and intensive care in hospitals. The duration of service ranges from short-term to long-term.

The Department of Elderly Affairs currently has rulemaking authority for the assisted living facility, adult family care home, adult day care center, and hospice programs. The Agency for Health Care Administration has rulemaking authority for the majority of other programs it licenses including hospitals, nursing homes, home health agencies, and others.

Nursing Homes and Related Health Care Facilities

Chapter 400, F.S., is entitled "Nursing Homes and Related Health Care Facilities" and consists of 13 parts.

Part	Title
I	Long-Term Care Facilities: Ombudsman Program
II	Nursing Homes
III	Assisted Living Facilities
IV	Home Health Agencies
V	Adult Day Care Centers
VI	Hospices
VII	Adult Family-Care Home Act
VIII	Intermediate, Special Services, and Transitional Living Facilities
IX	Prescribed Pediatric Extended Care Centers
X	Home Medical Equipment Providers
XI	Intermediate Care Facilities for Developmentally Disabled Persons
XII	Health Care Services Pools
XIII	Health Care Clinic Act

Assisted Living Facilities

Assisted Living Facilities (ALFs) are residential care facilities that provide housing, meals, personal care, and supportive services to older persons and disabled adults who are unable to live independently. The facilities are licensed under Chapter 400, part III, F.S., and are intended to be a less costly alternative to more restrictive institutional settings for individuals who do not require 24-hour nursing supervision. Generally speaking, ALFs provide supervision, assistance with personal and supportive services, and assistance with administration of medications to elders and disabled adults.

Nationally, it is estimated that in excess of 600,000 seniors currently reside in an ALF. In 2000, Florida's 2,305 assisted living facilities alone housed approximately 75,000 residents. Facilities operating on a for-profit basis account for the majority of the state's ALFs, as more than 83% of Florida's ALFs function as for-profit enterprises.[1]

In addition to a standard ALF operating license, there are three "specialty" ALF licenses: extended congregate care (ECC), limited nursing services (LNS), and limited mental health (LMH). An ALF holding an ECC license may provide additional nursing services and total assistance with personal care services. Residents living in ECC-licensed facilities may have greater impairment levels than those living in a standard ALF. Residents living in an ALF holding a LNS or LMH license must meet the same residency criteria as a standard-licensed ALF.

Regardless of the facility's license status, residents living in ALFs cannot have conditions that require 24-hour nursing supervision.[2]

Part III of Chapter 400, F.S., was created in 1975, and details the licensing and regulatory requirements for ALFs.

Adult Family Care Homes

Adult Family-Care Homes (AFCHs) are a familial-oriented living arrangement in a private home. AFCHs are licensed in accordance with Chapter 400, part VII, F.S., to provide room, board, and personal care on a 24-hour basis for up to five residents as an alternative to more restrictive institutional settings for individuals who need housing and supportive services, but not 24-hour nursing

[1] *Florida's Aging Population: Critical Issues for Florida's Future*, 2nd Edition (2004), Pepper Institute on Aging and Public Policy, FSU College of Social Sciences.
[2] An exception is made for an existing resident who is receiving licensed hospice services while residing in an ALF.

supervision. The provider must own or rent and live in the home operating as an AFCH, and staff in AFCHs are either employed by, or under contract with, the provider.

Part VII of Chapter 400, F.S., was created in 1985, and details the licensing and regulatory requirements for AFCHs.

Adult Day Care Centers

Adult Day Care Centers (ADCCs) provide a variety of therapeutic, social, and health activities and services to adults who have functional impairments, in an effort to help restore, remediate, or maintain optimal functioning and increase interaction with others in a non-institutional setting. Participants may utilize a variety of services offered during any part of a day but less than a 24-hour period.

Part V of Chapter 400, F.S., was created in 1978, and details the licensing and regulatory requirements for ADCCs.

Division of Statutory Revision

The Division of Statutory Revision (the "Division") is a unit within the Office of Legislative Services (OLS), which is responsible for editing, compiling, indexing, and publishing the Florida Statutes under the continuous permanent statutory revision plan established under ss. 11.241-11.243, F.S. The powers, duties, and functions of OLS as they pertain to the statutory revision program are specified by these sections of statute.

The provisions of s.11.242(1), F.S., charge the Division with conducting a systematic and continuing study of the statutes and laws of this state for the purpose of reducing their number and bulk, removing inconsistencies, redundancies, and unnecessary repetitions and otherwise improving their clarity and facilitating their correct and proper interpretation; and for the same purpose, to prepare and submit to the Legislature reviser's bills and bills for the amendment, consolidation, revision, repeal, or other alterations or changes in any general statute or laws or parts thereof of a general nature required as a result of legislation approved during the preceding session or sessions.

EFFECT OF PROPOSED CHANGES

HB 501 CS transfers all sections of parts III, V and VII of chapter 400, F.S., to chapter 429, F.S., entitling the chapter "Assisted Care Communities" and making multiple statutory revisions necessary to accurately reflect the move of part III of chapter 400, F.S., to chapter 429, F.S. Chapter 429, F.S. is organized into parts I, II and III as follows:

Chapter 400, F.S., part	Title	Transfer to Chapter 429, F.S., part
III	Assisted Living Facilities	I
VII	Adult Family-Care Homes	II
V	Adult Day Care Centers	III

C. SECTION DIRECTORY:

Section 1: Creates Chapter 429, Assisted Care Communities.

Section 2: Renumbers ss. 400.401 through 400.454 as ss. 429.01 through 429.54 and designates those sections as Part I, Assisted Living Facilities.

Section 3: Renumbers ss. 400.616 through 400.629 as ss. 429.60 through 429.87 and designates those sections as Part II, Adult Family-Care Homes.

Section 4: Renumbers ss. 400.55 through 400.564 as ss. 429.90 through 429.933 and designates those sections as Part III, Adult Day Care Centers.

Sections 5 through 120: Specifies each conforming change required to reflect the relocation of Parts III, VII and V of Chapter 400, F.S., to newly-created Parts I, II, and III of Chapter 429, F.S.

Section 121: Directs the Division of Statutory Revision to prepare a reviser's bill for introduction at a subsequent legislative session making conforming changes to Florida Statutes.

Section 122: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Agency for Health Care Administration reports that there should be no fiscal impact through implementation of the provisions of the bill.

2. Expenditures:

   The Agency for Health Care Administration reports that there should be no fiscal impact through implementation of the provisions of the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The municipal/county mandates provision in Section 18 of Article VII of the Florida Constitution does not appear to be applicable since the bill does not appear to require counties or municipalities to take action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its January 25, 2006 meeting, the Committee on Elder & Long-Term Care adopted a strike-all amendment to HB 501. The strike-all corrects several technical and conforming references throughout the bill.

The Committee favorably reported a Committee Substitute, and this analysis is drafted to the Committee Substitute.

CHAMBER ACTION

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1 The Elder & Long-Term Care Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to assisted care communities; creating ch.
7 429, F.S.; transferring pt. III of ch. 400, F.S., relating
8 to assisted living facilities, to pt. I of ch. 429, F.S.;
9 transferring pt. VII of ch. 400, F.S., relating to adult
10 family-care homes, to pt. II of ch. 429, F.S.;
11 transferring pt. V of ch. 400, F.S., relating to adult day
12 care centers, to pt. III of ch. 429, F.S.; amending ss.
13 101.655, 189.428, 196.1975, 202.125, 205.1965, 212.031,
14 212.08, 296.02, 381.0035, 381.745, 393.063, 393.506,
15 394.455, 394.4574, 394.463, 400.0063, 400.0069, 400.0073,
16 400.0077, 400.0239, 400.119, 400.141, 400.142, 400.191,
17 400.215, 400.402, 400.404, 400.407, 400.4071, 400.408,
18 400.411, 400.412, 400.414, 400.415, 400.417, 400.4174,
19 400.4176, 400.4178, 400.418, 400.419, 400.42, 400.422,
20 400.424, 400.4255, 400.4256, 400.426, 400.427, 400.428,
21 400.429, 400.4293, 400.431, 400.441, 400.442, 400.444,
22 400.447, 400.452, 400.462, 400.464, 400.497, 400.552,
23 400.555, 400.556, 400.557, 400.5572, 400.601, 400.618,

24 400.6194, 400.621, 400.628, 400.93, 400.962, 400.980,
25 400.9905, 401.23, 402.164, 408.032, 408.033, 408.034,
26 408.07, 408.831, 409.212, 409.221, 409.905, 409.906,
27 409.907, 409.912, 410.031, 410.034, 415.1111, 419.001,
28 430.601, 430.703, 435.03, 435.04, 440.13, 465.0235,
29 468.1685, 468.505, 477.025, 483.285, 509.032, 509.241,
30 627.6617, 627.732, 651.011, 651.022, 651.023, 651.055,
31 651.095, 651.118, 765.1103, 765.205, 768.735, 893.13,
32 943.0585, and 943.059, F.S., to conform references to
33 changes made by the act; requesting the Division of
34 Statutory Revision to make necessary conforming changes to
35 the Florida Statutes; providing an effective date.
36
37 Be It Enacted by the Legislature of the State of Florida:
38
39 Section 1. Chapter 429, Florida Statutes, is created, to
40 be entitled "Assisted Care Communities."
41 Section 2. Sections 400.401, 400.402, 400.404, 400.407,
42 400.4071, 400.4075, 400.408, 400.411, 400.412, 400.414, 400.415,
43 400.417, 400.4174, 400.4176, 400.4177, 400.4178, 400.418,
44 400.419, 400.4195, 400.42, 400.421, 400.422, 400.423, 400.424,
45 400.4255, 400.4256, 400.426, 400.427, 400.4275, 400.428,
46 400.429, 400.4293, 400.4294, 400.4295, 400.4296, 400.4297,
47 400.4298, 400.431, 400.434, 400.435, 400.441, 400.442, 400.444,
48 400.4445, 400.447, 400.449, 400.451, 400.452, 400.453, and
49 400.454, Florida Statutes, are renumbered as sections 429.01,
50 429.02, 429.04, 429.07, 429.071, 429.075, 429.08, 429.11,
51 429.12, 429.14, 429.15, 429.17, 429.174, 429.176, 429.177,

52 429.178, 429.18, 429.19, 429.195, 429.20, 429.21, 429.22,
53 429.23, 429.24, 429.255, 429.256, 429.26, 429.27, 429.275,
54 429.28, 429.29, 429.293, 429.294, 429.295, 429.296, 429.297,
55 429.298, 429.31, 429.34, 429.35, 429.41, 429.42, 429.44,
56 429.445, 429.47, 429.49, 429.51, 429.52, 429.53, and 429.54,
57 Florida Statutes, respectively, designated as part I of chapter
58 429, Florida Statutes, and entitled "ASSISTED LIVING
59 FACILITIES."
60 Section 3. Sections 400.616, 400.617, 400.618, 400.619,
61 400.6194, 400.6196, 400.621, 400.6211, 400.622, 400.625,
62 400.6255, 400.628, and 400.629, Florida Statutes, are renumbered
63 as sections 429.60, 429.63, 429.65, 429.67, 429.69, 429.71,
64 429.73, 429.75, 429.77, 429.81, 429.83, 429.85, and 429.87,
65 Florida Statutes, respectively, designated as part II of chapter
66 429, Florida Statutes, and entitled "ADULT FAMILY-CARE HOMES."
67 Section 4. Sections 400.55, 400.551, 400.552, 400.553,
68 400.554, 400.555, 400.556, 400.5565, 400.557, 400.5571,
69 400.5572, 400.5575, 400.558, 400.559, 400.56, 400.562, 400.563,
70 and 400.564, Florida Statutes, are renumbered as sections
71 429.90, 429.901, 429.903, 429.905, 429.907, 429.909, 429.911,
72 429.913, 429.915, 429.917, 429.919, 429.921, 429.923, 429.925,
73 429.927, 429.929, 429.931, and 429.933, Florida Statutes,
74 designated as part III of chapter 429, Florida Statutes, and
75 entitled "ADULT DAY CARE CENTERS."
76 Section 5. Subsection (1) of section 101.655, Florida
77 Statutes, is amended to read:
78 101.655 Supervised voting by absent electors in certain
79 facilities.--

80 (1) The supervisor of elections of a county shall provide
81 supervised voting for absent electors residing in any assisted
82 living facility, as defined in s. 429.02 ~~s. 400.402~~, or nursing
83 home facility, as defined in s. 400.021, within that county at
84 the request of any administrator of such a facility. Such
85 request for supervised voting in the facility shall be made by
86 submitting a written request to the supervisor of elections no
87 later than 21 days prior to the election for which that request
88 is submitted. The request shall specify the name and address of
89 the facility and the name of the electors who wish to vote
90 absentee in that election. If the request contains the names of
91 fewer than five voters, the supervisor of elections is not
92 required to provide supervised voting.
93 Section 6. Subsection (9) of section 189.428, Florida
94 Statutes, is amended to read:
95 189.428 Special districts; oversight review process.--
96 (9) This section does not apply to a deepwater port listed
97 in s. 311.09(1) which is in compliance with a port master plan
98 adopted pursuant to s. 163.3178(2)(k), or to an airport
99 authority operating in compliance with an airport master plan
100 approved by the Federal Aviation Administration, or to any
101 special district organized to operate health systems and
102 facilities licensed under chapter 395, ~~or~~ chapter 400, or
103 chapter 429.
104 Section 7. Paragraph (b) of subsection (2) of section
105 196.1975, Florida Statutes, is amended to read:

106 196.1975 Exemption for property used by nonprofit homes
107 for the aged.--Nonprofit homes for the aged are exempt to the
108 extent that they meet the following criteria:
109 (2) A facility will not qualify as a "home for the aged"
110 unless at least 75 percent of the occupants are over the age of
111 62 years or totally and permanently disabled. For homes for the
112 aged which are exempt from paying income taxes to the United
113 States as specified in subsection (1), licensing by the Agency
114 for Health Care Administration is required for ad valorem tax
115 exemption hereunder only if the home:
116 (b) Qualifies as an assisted living facility under ~~part~~
117 ~~III of~~ chapter 429 ~~400~~.
118 Section 8. Paragraph (c) of subsection (4) of section
119 202.125, Florida Statutes, is amended to read:
120 202.125 Sales of communications services; specified
121 exemptions.--
122 (4) The sale of communications services to a home for the
123 aged, religious institution or educational institution that is
124 exempt from federal income tax under s. 501(c)(3) of the
125 Internal Revenue Code, or by a religious institution that is
126 exempt from federal income tax under s. 501(c)(3) of the
127 Internal Revenue Code having an established physical place for
128 worship at which nonprofit religious services and activities are
129 regularly conducted and carried on, is exempt from the taxes
130 imposed or administered pursuant to ss. 202.12 and 202.19. As
131 used in this subsection, the term:
132 (c) "Home for the aged" includes any nonprofit
133 corporation:

134 1. In which at least 75 percent of the occupants are 62
135 years of age or older or totally and permanently disabled; which
136 qualifies for an ad valorem property tax exemption under s.
137 196.196, s. 196.197, or s. 196.1975; and which is exempt from
138 the sales tax imposed under chapter 212.
139 2. Licensed as a nursing home under chapter 400 or an
140 assisted living facility under chapter 429 ~~400~~ and which is
141 exempt from the sales tax imposed under chapter 212.
142 Section 9. Section 205.1965, Florida Statutes, is amended
143 to read:
144 205.1965 Assisted living facilities.--A county or
145 municipality may not issue an occupational license for the
146 operation of an assisted living facility pursuant to ~~part III of~~
147 chapter 429 ~~400~~ without first ascertaining that the applicant
148 has been licensed by the Agency for Health Care Administration
149 to operate such facility at the specified location or locations.
150 The Agency for Health Care Administration shall furnish to local
151 agencies responsible for issuing occupational licenses
152 sufficient instructions for making the above required
153 determinations.
154 Section 10. Paragraph (b) of subsection (1) of section
155 212.031, Florida Statutes, is amended to read:
156 212.031 Tax on rental or license fee for use of real
157 property.--
158 (1)
159 (b) When a lease involves multiple use of real property
160 wherein a part of the real property is subject to the tax
161 herein, and a part of the property would be excluded from the

162 tax under subparagraph (a)1., subparagraph (a)2., subparagraph
163 (a)3., or subparagraph (a)5., the department shall determine,
164 from the lease or license and such other information as may be
165 available, that portion of the total rental charge which is
166 exempt from the tax imposed by this section. The portion of the
167 premises leased or rented by a for-profit entity providing a
168 residential facility for the aged will be exempt on the basis of
169 a pro rata portion calculated by combining the square footage of
170 the areas used for residential units by the aged and for the
171 care of such residents and dividing the resultant sum by the
172 total square footage of the rented premises. For purposes of
173 this section, the term "residential facility for the aged" means
174 a facility that is licensed or certified in whole or in part
175 under chapter 400, chapter 429, or chapter 651; or that provides
176 residences to the elderly and is financed by a mortgage or loan
177 made or insured by the United States Department of Housing and
178 Urban Development under s. 202, s. 202 with a s. 8 subsidy, s.
179 221(d)(3) or (4), s. 232, or s. 236 of the National Housing Act;
180 or other such similar facility that provides residences
181 primarily for the elderly.
182 Section 11. Paragraph (i) of subsection (7) of section
183 212.08, Florida Statutes, is amended to read:
184 212.08 Sales, rental, use, consumption, distribution, and
185 storage tax; specified exemptions.--The sale at retail, the
186 rental, the use, the consumption, the distribution, and the
187 storage to be used or consumed in this state of the following
188 are hereby specifically exempt from the tax imposed by this
189 chapter.

190 (7) MISCELLANEOUS EXEMPTIONS.--Exemptions provided to any
191 entity by this chapter do not inure to any transaction that is
192 otherwise taxable under this chapter when payment is made by a
193 representative or employee of the entity by any means,
194 including, but not limited to, cash, check, or credit card, even
195 when that representative or employee is subsequently reimbursed
196 by the entity. In addition, exemptions provided to any entity by
197 this subsection do not inure to any transaction that is
198 otherwise taxable under this chapter unless the entity has
199 obtained a sales tax exemption certificate from the department
200 or the entity obtains or provides other documentation as
201 required by the department. Eligible purchases or leases made
202 with such a certificate must be in strict compliance with this
203 subsection and departmental rules, and any person who makes an
204 exempt purchase with a certificate that is not in strict
205 compliance with this subsection and the rules is liable for and
206 shall pay the tax. The department may adopt rules to administer
207 this subsection.
208 (i) Hospital meals and rooms.--Also exempt from payment of
209 the tax imposed by this chapter on rentals and meals are
210 patients and inmates of any hospital or other physical plant or
211 facility designed and operated primarily for the care of persons
212 who are ill, aged, infirm, mentally or physically incapacitated,
213 or otherwise dependent on special care or attention. Residents
214 of a home for the aged are exempt from payment of taxes on meals
215 provided through the facility. A home for the aged is defined
216 as a facility that is licensed or certified in part or in whole
217 under chapter 400, chapter 429, or chapter 651, or that is

218 financed by a mortgage loan made or insured by the United States
219 Department of Housing and Urban Development under s. 202, s. 202
220 with a s. 8 subsidy, s. 221(d)(3) or (4), s. 232, or s. 236 of
221 the National Housing Act, or other such similar facility
222 designed and operated primarily for the care of the aged.
223 Section 12. Subsection (5) of section 296.02, Florida
224 Statutes, is amended to read:
225 296.02 Definitions.--For the purposes of this part, except
226 where the context clearly indicates otherwise:
227 (5) "Extended congregate care" has the meaning given to
228 that term under s. 429.02 ~~s. 400.402~~.
229 Section 13. Subsections (1) and (3) of section 381.0035,
230 Florida Statutes, are amended to read:
231 381.0035 Educational course on HIV and AIDS; employees and
232 clients of certain health care facilities.--
233 (1) The Department of Health shall require all employees
234 and clients of facilities licensed under chapters 393, 394, and
235 397 and employees of facilities licensed under chapter 395, ~~and~~
236 parts II and~~,~~ III~~,~~ ~~IV, and VI~~ of chapter 400, and parts I and IV
237 of chapter 429 to complete, biennially, a continuing educational
238 course on the modes of transmission, infection control
239 procedures, clinical management, and prevention of human
240 immunodeficiency virus and acquired immune deficiency syndrome
241 with an emphasis on appropriate behavior and attitude change.
242 Such instruction shall include information on current Florida
243 law and its impact on testing, confidentiality of test results,
244 and treatment of patients and any protocols and procedures
245 applicable to human immunodeficiency counseling and testing,

246 reporting, the offering of HIV testing to pregnant women, and
247 partner notification issues pursuant to ss. 381.004 and 384.25.
248 (3) Facilities licensed under chapters 393, 394, 395, and
249 397, ~~and~~ parts II, III, and IV~~, and VI~~ of chapter 400, and part
250 I of chapter 429 shall maintain a record of employees and dates
251 of attendance at human immunodeficiency virus and acquired
252 immune deficiency syndrome educational courses.
253 Section 14. Subsection (9) of section 381.745, Florida
254 Statutes, is amended to read:
255 381.745 Definitions; ss. 381.739-381.79.--As used in ss.
256 381.739-381.79, the term:
257 (9) "Transitional living facility" means a state-approved
258 facility, as defined and licensed under chapter 400 or chapter
259 429, or a facility approved by the brain and spinal cord injury
260 program in accordance with this chapter.
261 Section 15. Subsection (24) of section 393.063, Florida
262 Statutes, is amended to read:
263 393.063 Definitions.--For the purposes of this chapter:
264 (24) "Intermediate care facility for the developmentally
265 disabled" or "ICF/DD" means a residential facility licensed and
266 certified pursuant to part VIII ~~XI~~ of chapter 400.
267 Section 16. Paragraph (b) of subsection (1) of section
268 393.506, Florida Statutes, is amended to read:
269 393.506 Administration of medication.--
270 (1) Notwithstanding the provisions of part I of chapter
271 464, the Nurse Practice Act, unlicensed direct care services
272 staff providing services to persons with developmental

273 disabilities may administer oral, transdermal, inhaled, or
274 topical prescription medications as provided in this section.
275 (b) For intermediate care facilities for the
276 developmentally disabled licensed pursuant to part VIII ~~XI~~ of
277 chapter 400, unlicensed staff designated by the director may
278 provide medication assistance under the general supervision of a
279 registered nurse licensed pursuant to chapter 464.
280 Section 17. Subsection (10) of section 394.455, Florida
281 Statutes, is amended to read:
282 394.455 Definitions.--As used in this part, unless the
283 context clearly requires otherwise, the term:
284 (10) "Facility" means any hospital, community facility,
285 public or private facility, or receiving or treatment facility
286 providing for the evaluation, diagnosis, care, treatment,
287 training, or hospitalization of persons who appear to have a
288 mental illness or have been diagnosed as having a mental
289 illness. "Facility" does not include any program or entity
290 licensed pursuant to chapter 400 or chapter 429.
291 Section 18. Paragraphs (b), (c), and (e) of subsection (2)
292 of section 394.4574, Florida Statutes, are amended to read:
293 394.4574 Department responsibilities for a mental health
294 resident who resides in an assisted living facility that holds a
295 limited mental health license.--
296 (2) The department must ensure that:
297 (b) A cooperative agreement, as required in s. 429.075 ~~s.~~
298 ~~400.4075~~, is developed between the mental health care services
299 provider that serves a mental health resident and the
300 administrator of the assisted living facility with a limited

301 mental health license in which the mental health resident is
302 living. Any entity that provides Medicaid prepaid health plan
303 services shall ensure the appropriate coordination of health
304 care services with an assisted living facility in cases where a
305 Medicaid recipient is both a member of the entity's prepaid
306 health plan and a resident of the assisted living facility. If
307 the entity is at risk for Medicaid targeted case management and
308 behavioral health services, the entity shall inform the assisted
309 living facility of the procedures to follow should an emergent
310 condition arise.
311 (c) The community living support plan, as defined in s.
312 429.02 ~~s. 400.402~~, has been prepared by a mental health resident
313 and a mental health case manager of that resident in
314 consultation with the administrator of the facility or the
315 administrator's designee. The plan must be provided to the
316 administrator of the assisted living facility with a limited
317 mental health license in which the mental health resident lives.
318 The support plan and the agreement may be in one document.
319 (e) The mental health services provider assigns a case
320 manager to each mental health resident who lives in an assisted
321 living facility with a limited mental health license. The case
322 manager is responsible for coordinating the development of and
323 implementation of the community living support plan defined in
324 s. 429.02 ~~s. 400.402~~. The plan must be updated at least
325 annually.
326 Section 19. Paragraph (b) of subsection (2) of section
327 394.463, Florida Statutes, is amended to read:
328 394.463 Involuntary examination.--

329 (2) INVOLUNTARY EXAMINATION.--
330 (b) A person shall not be removed from any program or
331 residential placement licensed under chapter 400 or chapter 429
332 and transported to a receiving facility for involuntary
333 examination unless an ex parte order, a professional
334 certificate, or a law enforcement officer's report is first
335 prepared. If the condition of the person is such that
336 preparation of a law enforcement officer's report is not
337 practicable before removal, the report shall be completed as
338 soon as possible after removal, but in any case before the
339 person is transported to a receiving facility. A receiving
340 facility admitting a person for involuntary examination who is
341 not accompanied by the required ex parte order, professional
342 certificate, or law enforcement officer's report shall notify
343 the Agency for Health Care Administration of such admission by
344 certified mail no later than the next working day. The
345 provisions of this paragraph do not apply when transportation is
346 provided by the patient's family or guardian.
347 Section 20. Paragraph (b) of subsection (3) of section
348 400.0063, Florida Statutes, is amended to read:
349 400.0063 Establishment of Office of State Long-Term Care
350 Ombudsman; designation of ombudsman and legal advocate.--
351 (3)
352 (b) The duties of the legal advocate shall include, but
353 not be limited to:
354 1. Assisting the ombudsman in carrying out the duties of
355 the office with respect to the abuse, neglect, or violation of
356 rights of residents of long-term care facilities.

357 2. Assisting the state and local ombudsman councils in
358 carrying out their responsibilities under this part.
359 3. Initiating and prosecuting legal and equitable actions
360 to enforce the rights of long-term care facility residents as
361 defined in this chapter or chapter 429.
362 4. Serving as legal counsel to the state and local
363 ombudsman councils, or individual members thereof, against whom
364 any suit or other legal action is initiated in connection with
365 the performance of the official duties of the councils or an
366 individual member.
367 Section 21. Subsection (3) of section 400.0069, Florida
368 Statutes, is amended to read:
369 400.0069 Local long-term care ombudsman councils; duties;
370 membership.--
371 (3) In order to carry out the duties specified in
372 subsection (2), the local ombudsman council is authorized,
373 pursuant to ss. 400.19(1) and 429.34 ~~400.434~~, to enter any long-
374 term care facility without notice or first obtaining a warrant,
375 subject to the provisions of s. 400.0073(5).
376 Section 22. Paragraphs (c) and (f) of subsection (5) and
377 subsection (6) of section 400.0073, Florida Statutes, are
378 amended to read:
379 400.0073 State and local ombudsman council
380 investigations.--
381 (5) Any onsite administrative inspection conducted by an
382 ombudsman council shall be subject to the following:
383 (c) Inspections shall be conducted in a manner which will
384 impose no unreasonable burden on nursing homes or long-term care

385 facilities, consistent with the underlying purposes of this part
386 and chapter 429. Unnecessary duplication of efforts among
387 council members or the councils shall be reduced to the extent
388 possible.
389 (f) All inspections shall be limited to compliance with
390 part ~~parts~~ II~~, III, and VII~~ of this chapter, chapter 429, and 42
391 U.S.C. ss. 1396(a) et seq., and any rules or regulations
392 promulgated pursuant to such laws.
393 (6) An inspection may not be accomplished by forcible
394 entry. Refusal of a long-term care facility to allow entry of
395 any ombudsman council member constitutes a violation of part II~~,~~
396 ~~part III, or part VII~~ of this chapter or chapter 429.
397 Section 23. Subsection (4) of section 400.0077, Florida
398 Statutes, is amended to read:
399 400.0077 Confidentiality.--
400 (4) Members of any state or local ombudsman council shall
401 not be required to testify in any court with respect to matters
402 held to be confidential under s. 429.14 ~~s. 400.414~~ except as may
403 be necessary to enforce the provisions of this act.
404 Section 24. Subsection (1) of section 400.0239, Florida
405 Statutes, is amended to read:
406 400.0239 Quality of Long-Term Care Facility Improvement
407 Trust Fund.--
408 (1) There is created within the Agency for Health Care
409 Administration a Quality of Long-Term Care Facility Improvement
410 Trust Fund to support activities and programs directly related
411 to improvement of the care of nursing home and assisted living
412 facility residents. The trust fund shall be funded through

413 proceeds generated pursuant to ss. 400.0238 and 429.298
414 ~~400.4298~~, through funds specifically appropriated by the
415 Legislature, through gifts, endowments, and other charitable
416 contributions allowed under federal and state law, and through
417 federal nursing home civil monetary penalties collected by the
418 Centers for Medicare and Medicaid Services and returned to the
419 state. These funds must be utilized in accordance with federal
420 requirements.
421 Section 25. Subsections (1) and (4) of section 400.119,
422 Florida Statutes, are amended to read:
423 400.119 Confidentiality of records and meetings of risk
424 management and quality assurance committees.--
425 (1) Records of meetings of the risk management and quality
426 assurance committee of a long-term care facility licensed under
427 this part or part I ~~III~~ of ~~this~~ chapter 429, as well as incident
428 reports filed with the facility's risk manager and
429 administrator, notifications of the occurrence of an adverse
430 incident, and adverse incident reports from the facility are
431 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
432 of the State Constitution. However, if the Agency for Health
433 Care Administration has a reasonable belief that conduct by a
434 staff member or employee of a facility is criminal activity or
435 grounds for disciplinary action by a regulatory board, the
436 agency may disclose such records to the appropriate law
437 enforcement agency or regulatory board.
438 (4) The meetings of an internal risk management and
439 quality assurance committee of a long-term care facility
440 licensed under this part or part I ~~III~~ of ~~this~~ chapter 429 are

441 exempt from s. 286.011 and s. 24(b), Art. I of the State
442 Constitution and are not open to the public.
443 Section 26. Subsections (4) and (7) of section 400.141,
444 Florida Statutes, are amended to read:
445 400.141 Administration and management of nursing home
446 facilities.--Every licensed facility shall comply with all
447 applicable standards and rules of the agency and shall:
448 (4) Provide for resident use of a community pharmacy as
449 specified in s. 400.022(1)(q). Any other law to the contrary
450 notwithstanding, a registered pharmacist licensed in Florida,
451 that is under contract with a facility licensed under this
452 chapter <u>or chapter 429</u>, shall repackage a nursing facility
453 resident's bulk prescription medication which has been packaged
454 by another pharmacist licensed in any state in the United States
455 into a unit dose system compatible with the system used by the
456 nursing facility, if the pharmacist is requested to offer such
457 service. In order to be eligible for the repackaging, a resident
458 or the resident's spouse must receive prescription medication
459 benefits provided through a former employer as part of his or
460 her retirement benefits, a qualified pension plan as specified
461 in s. 4972 of the Internal Revenue Code, a federal retirement
462 program as specified under 5 C.F.R. s. 831, or a long-term care
463 policy as defined in s. 627.9404(1). A pharmacist who correctly
464 repackages and relabels the medication and the nursing facility
465 which correctly administers such repackaged medication under the
466 provisions of this subsection shall not be held liable in any
467 civil or administrative action arising from the repackaging. In
468 order to be eligible for the repackaging, a nursing facility

469 resident for whom the medication is to be repackaged shall sign
470 an informed consent form provided by the facility which includes
471 an explanation of the repackaging process and which notifies the
472 resident of the immunities from liability provided herein. A
473 pharmacist who repackages and relabels prescription medications,
474 as authorized under this subsection, may charge a reasonable fee
475 for costs resulting from the implementation of this provision.
476 (7) If the facility has a standard license or is a Gold
477 Seal facility, exceeds the minimum required hours of licensed
478 nursing and certified nursing assistant direct care per resident
479 per day, and is part of a continuing care facility licensed
480 under chapter 651 or a retirement community that offers other
481 services pursuant to part III of this chapter or part I or part
482 III of chapter 429~~, part IV, or part V~~ on a single campus, be
483 allowed to share programming and staff. At the time of
484 inspection and in the semiannual report required pursuant to
485 subsection (15), a continuing care facility or retirement
486 community that uses this option must demonstrate through
487 staffing records that minimum staffing requirements for the
488 facility were met. Licensed nurses and certified nursing
489 assistants who work in the nursing home facility may be used to
490 provide services elsewhere on campus if the facility exceeds the
491 minimum number of direct care hours required per resident per
492 day and the total number of residents receiving direct care
493 services from a licensed nurse or a certified nursing assistant
494 does not cause the facility to violate the staffing ratios
495 required under s. 400.23(3)(a). Compliance with the minimum
496 staffing ratios shall be based on total number of residents

497 receiving direct care services, regardless of where they reside
498 on campus. If the facility receives a conditional license, it
499 may not share staff until the conditional license status ends.
500 This subsection does not restrict the agency's authority under
501 federal or state law to require additional staff if a facility
502 is cited for deficiencies in care which are caused by an
503 insufficient number of certified nursing assistants or licensed
504 nurses. The agency may adopt rules for the documentation
505 necessary to determine compliance with this provision.
506
507 Facilities that have been awarded a Gold Seal under the program
508 established in s. 400.235 may develop a plan to provide
509 certified nursing assistant training as prescribed by federal
510 regulations and state rules and may apply to the agency for
511 approval of their program.
512 Section 27. Subsection (1) of section 400.142, Florida
513 Statutes, is amended to read:
514 400.142 Emergency medication kits; orders not to
515 resuscitate.--
516 (1) Other provisions of this chapter or of chapter 429,
517 chapter 465, chapter 499, or chapter 893 to the contrary
518 notwithstanding, each nursing home operating pursuant to a
519 license issued by the agency may maintain an emergency
520 medication kit for the purpose of storing medicinal drugs to be
521 administered under emergency conditions to residents residing in
522 such facility.
523 Section 28. Paragraph (a) of subsection (2) of section
524 400.191, Florida Statutes, is amended to read:

525 400.191 Availability, distribution, and posting of reports
526 and records.--
527 (2) The agency shall provide additional information in
528 consumer-friendly printed and electronic formats to assist
529 consumers and their families in comparing and evaluating nursing
530 home facilities.
531 (a) The agency shall provide an Internet site which shall
532 include at least the following information either directly or
533 indirectly through a link to another established site or sites
534 of the agency's choosing:
535 1. A list by name and address of all nursing home
536 facilities in this state.
537 2. Whether such nursing home facilities are proprietary or
538 nonproprietary.
539 3. The current owner of the facility's license and the
540 year that that entity became the owner of the license.
541 4. The name of the owner or owners of each facility and
542 whether the facility is affiliated with a company or other
543 organization owning or managing more than one nursing facility
544 in this state.
545 5. The total number of beds in each facility.
546 6. The number of private and semiprivate rooms in each
547 facility.
548 7. The religious affiliation, if any, of each facility.
549 8. The languages spoken by the administrator and staff of
550 each facility.
551 9. Whether or not each facility accepts Medicare or
552 Medicaid recipients or insurance, health maintenance

553 organization, Veterans Administration, CHAMPUS program, or
554 workers' compensation coverage.
555 10. Recreational and other programs available at each
556 facility.
557 11. Special care units or programs offered at each
558 facility.
559 12. Whether the facility is a part of a retirement
560 community that offers other services pursuant to part III of
561 this chapter or part I or part III of chapter 429~~, part IV, or~~
562 ~~part V~~.
563 13. Survey and deficiency information contained on the
564 Online Survey Certification and Reporting (OSCAR) system of the
565 federal Health Care Financing Administration, including annual
566 survey, revisit, and complaint survey information, for each
567 facility for the past 45 months. For noncertified nursing
568 homes, state survey and deficiency information, including annual
569 survey, revisit, and complaint survey information for the past
570 45 months shall be provided.
571 14. A summary of the Online Survey Certification and
572 Reporting (OSCAR) data for each facility over the past 45
573 months. Such summary may include a score, rating, or comparison
574 ranking with respect to other facilities based on the number of
575 citations received by the facility of annual, revisit, and
576 complaint surveys; the severity and scope of the citations; and
577 the number of annual recertification surveys the facility has
578 had during the past 45 months. The score, rating, or comparison
579 ranking may be presented in either numeric or symbolic form for
580 the intended consumer audience.

581 Section 29. Paragraph (b) of subsection (2) of section
582 400.215, Florida Statutes, is amended to read:
583 400.215 Personnel screening requirement.--
584 (2) Employers and employees shall comply with the
585 requirements of s. 435.05.
586 (b) Employees qualified under the provisions of paragraph
587 (a) who have not maintained continuous residency within the
588 state for the 5 years immediately preceding the date of request
589 for background screening must complete level 2 screening, as
590 provided in chapter 435. Such employees may work in a
591 conditional status up to 180 days pending the receipt of written
592 findings evidencing the completion of level 2 screening. Level 2
593 screening shall not be required of employees or prospective
594 employees who attest in writing under penalty of perjury that
595 they meet the residency requirement. Completion of level 2
596 screening shall require the employee or prospective employee to
597 furnish to the nursing facility a full set of fingerprints to
598 enable a criminal background investigation to be conducted. The
599 nursing facility shall submit the completed fingerprint card to
600 the agency. The agency shall establish a record of the request
601 in the database provided for in paragraph (c) and forward the
602 request to the Department of Law Enforcement, which is
603 authorized to submit the fingerprints to the Federal Bureau of
604 Investigation for a national criminal history records check. The
605 results of the national criminal history records check shall be
606 returned to the agency, which shall maintain the results in the
607 database provided for in paragraph (c). The agency shall notify
608 the administrator of the requesting nursing facility or the

609 administrator of any other facility licensed under chapter 393,
610 chapter 394, chapter 395, chapter 397, chapter 429, or this
611 chapter, as requested by such facility, as to whether or not the
612 employee has qualified under level 1 or level 2 screening. An
613 employee or prospective employee who has qualified under level 2
614 screening and has maintained such continuous residency within
615 the state shall not be required to complete a subsequent level 2
616 screening as a condition of employment at another facility.
617 Section 30. Section 400.402, Florida Statutes, is
618 renumbered as section 429.02, Florida Statutes, and amended to
619 read:
620 429.02 ~~400.402~~ Definitions.--When used in this part, the
621 term:
622 (1) "Activities of daily living" means functions and tasks
623 for self-care, including ambulation, bathing, dressing, eating,
624 grooming, and toileting, and other similar tasks.
625 (2) "Administrator" means an individual at least 21 years
626 of age who is responsible for the operation and maintenance of
627 an assisted living facility.
628 (3) "Agency" means the Agency for Health Care
629 Administration.
630 (4) "Aging in place" or "age in place" means the process
631 of providing increased or adjusted services to a person to
632 compensate for the physical or mental decline that may occur
633 with the aging process, in order to maximize the person's
634 dignity and independence and permit them to remain in a
635 familiar, noninstitutional, residential environment for as long
636 as possible. Such services may be provided by facility staff,

637 volunteers, family, or friends, or through contractual
638 arrangements with a third party.
639 (5) "Applicant" means an individual owner, corporation,
640 partnership, firm, association, or governmental entity that
641 applies for a license.
642 (6) "Assisted living facility" means any building or
643 buildings, section or distinct part of a building, private home,
644 boarding home, home for the aged, or other residential facility,
645 whether operated for profit or not, which undertakes through its
646 ownership or management to provide housing, meals, and one or
647 more personal services for a period exceeding 24 hours to one or
648 more adults who are not relatives of the owner or administrator.
649 (7) "Chemical restraint" means a pharmacologic drug that
650 physically limits, restricts, or deprives an individual of
651 movement or mobility, and is used for discipline or convenience
652 and not required for the treatment of medical symptoms.
653 (8) "Community living support plan" means a written
654 document prepared by a mental health resident and the resident's
655 mental health case manager in consultation with the
656 administrator of an assisted living facility with a limited
657 mental health license or the administrator's designee. A copy
658 must be provided to the administrator. The plan must include
659 information about the supports, services, and special needs of
660 the resident which enable the resident to live in the assisted
661 living facility and a method by which facility staff can
662 recognize and respond to the signs and symptoms particular to
663 that resident which indicate the need for professional services.

664 (9) "Cooperative agreement" means a written statement of
665 understanding between a mental health care provider and the
666 administrator of the assisted living facility with a limited
667 mental health license in which a mental health resident is
668 living. The agreement must specify directions for accessing
669 emergency and after-hours care for the mental health resident. A
670 single cooperative agreement may service all mental health
671 residents who are clients of the same mental health care
672 provider.
673 (10) "Department" means the Department of Elderly Affairs.
674 (11) "Emergency" means a situation, physical condition, or
675 method of operation which presents imminent danger of death or
676 serious physical or mental harm to facility residents.
677 (12) "Extended congregate care" means acts beyond those
678 authorized in subsection (17) that may be performed pursuant to
679 part I of chapter 464 by persons licensed thereunder while
680 carrying out their professional duties, and other supportive
681 services which may be specified by rule. The purpose of such
682 services is to enable residents to age in place in a residential
683 environment despite mental or physical limitations that might
684 otherwise disqualify them from residency in a facility licensed
685 under this part.
686 (13) "Guardian" means a person to whom the law has
687 entrusted the custody and control of the person or property, or
688 both, of a person who has been legally adjudged incapacitated.
689 (14) "Limited nursing services" means acts that may be
690 performed pursuant to part I of chapter 464 by persons licensed
691 thereunder while carrying out their professional duties but

692 limited to those acts which the department specifies by rule.
693 Acts which may be specified by rule as allowable limited nursing
694 services shall be for persons who meet the admission criteria
695 established by the department for assisted living facilities and
696 shall not be complex enough to require 24-hour nursing
697 supervision and may include such services as the application and
698 care of routine dressings, and care of casts, braces, and
699 splints.
700 (15) "Managed risk" means the process by which the
701 facility staff discuss the service plan and the needs of the
702 resident with the resident and, if applicable, the resident's
703 representative or designee or the resident's surrogate,
704 guardian, or attorney in fact, in such a way that the
705 consequences of a decision, including any inherent risk, are
706 explained to all parties and reviewed periodically in
707 conjunction with the service plan, taking into account changes
708 in the resident's status and the ability of the facility to
709 respond accordingly.
710 (16) "Mental health resident" means an individual who
711 receives social security disability income due to a mental
712 disorder as determined by the Social Security Administration or
713 receives supplemental security income due to a mental disorder
714 as determined by the Social Security Administration and receives
715 optional state supplementation.
716 (17) "Personal services" means direct physical assistance
717 with or supervision of the activities of daily living and the
718 self-administration of medication and other similar services
719 which the department may define by rule. "Personal services"

720 shall not be construed to mean the provision of medical,
721 nursing, dental, or mental health services.
722 (18) "Physical restraint" means a device which physically
723 limits, restricts, or deprives an individual of movement or
724 mobility, including, but not limited to, a half-bed rail, a
725 full-bed rail, a geriatric chair, and a posey restraint. The
726 term "physical restraint" shall also include any device which
727 was not specifically manufactured as a restraint but which has
728 been altered, arranged, or otherwise used for this purpose. The
729 term shall not include bandage material used for the purpose of
730 binding a wound or injury.
731 (19) "Relative" means an individual who is the father,
732 mother, stepfather, stepmother, son, daughter, brother, sister,
733 grandmother, grandfather, great-grandmother, great-grandfather,
734 grandson, granddaughter, uncle, aunt, first cousin, nephew,
735 niece, husband, wife, father-in-law, mother-in-law, son-in-law,
736 daughter-in-law, brother-in-law, sister-in-law, stepson,
737 stepdaughter, stepbrother, stepsister, half brother, or half
738 sister of an owner or administrator.
739 (20) "Resident" means a person 18 years of age or older,
740 residing in and receiving care from a facility.
741 (21) "Resident's representative or designee" means a
742 person other than the owner, or an agent or employee of the
743 facility, designated in writing by the resident, if legally
744 competent, to receive notice of changes in the contract executed
745 pursuant to s. 429.24 ~~s. 400.424~~; to receive notice of and to
746 participate in meetings between the resident and the facility
747 owner, administrator, or staff concerning the rights of the

748 resident; to assist the resident in contacting the ombudsman
749 council if the resident has a complaint against the facility; or
750 to bring legal action on behalf of the resident pursuant to s.
751 429.29 ~~s. 400.429~~.
752 (22) "Service plan" means a written plan, developed and
753 agreed upon by the resident and, if applicable, the resident's
754 representative or designee or the resident's surrogate,
755 guardian, or attorney in fact, if any, and the administrator or
756 designee representing the facility, which addresses the unique
757 physical and psychosocial needs, abilities, and personal
758 preferences of each resident receiving extended congregate care
759 services. The plan shall include a brief written description, in
760 easily understood language, of what services shall be provided,
761 who shall provide the services, when the services shall be
762 rendered, and the purposes and benefits of the services.
763 (23) "Shared responsibility" means exploring the options
764 available to a resident within a facility and the risks involved
765 with each option when making decisions pertaining to the
766 resident's abilities, preferences, and service needs, thereby
767 enabling the resident and, if applicable, the resident's
768 representative or designee, or the resident's surrogate,
769 guardian, or attorney in fact, and the facility to develop a
770 service plan which best meets the resident's needs and seeks to
771 improve the resident's quality of life.
772 (24) "Supervision" means reminding residents to engage in
773 activities of daily living and the self-administration of
774 medication, and, when necessary, observing or providing verbal
775 cuing to residents while they perform these activities.

776 (25) "Supplemental security income," Title XVI of the
777 Social Security Act, means a program through which the Federal
778 Government guarantees a minimum monthly income to every person
779 who is age 65 or older, or disabled, or blind and meets the
780 income and asset requirements.
781 (26) "Supportive services" means services designed to
782 encourage and assist aged persons or adults with disabilities to
783 remain in the least restrictive living environment and to
784 maintain their independence as long as possible.
785 (27) "Twenty-four-hour nursing supervision" means services
786 that are ordered by a physician for a resident whose condition
787 requires the supervision of a physician and continued monitoring
788 of vital signs and physical status. Such services shall be:
789 medically complex enough to require constant supervision,
790 assessment, planning, or intervention by a nurse; required to be
791 performed by or under the direct supervision of licensed nursing
792 personnel or other professional personnel for safe and effective
793 performance; required on a daily basis; and consistent with the
794 nature and severity of the resident's condition or the disease
795 state or stage.
796 Section 31. Section 400.404, Florida Statutes, is
797 renumbered as section 429.04, Florida Statutes, and amended to
798 read:
799 429.04 ~~400.404~~ Facilities to be licensed; exemptions.--
800 (1) For the administration of this part, facilities to be
801 licensed by the agency shall include all assisted living
802 facilities as defined in this part.

803 (2) The following are exempt from licensure under this
804 part:
805 (a) Any facility, institution, or other place operated by
806 the Federal Government or any agency of the Federal Government.
807 (b) Any facility or part of a facility licensed under
808 chapter 393 or chapter 394.
809 (c) Any facility licensed as an adult family-care home
810 under part II ~~VII~~.
811 (d) Any person who provides housing, meals, and one or
812 more personal services on a 24-hour basis in the person's own
813 home to not more than two adults who do not receive optional
814 state supplementation. The person who provides the housing,
815 meals, and personal services must own or rent the home and
816 reside therein.
817 (e) Any home or facility approved by the United States
818 Department of Veterans Affairs as a residential care home
819 wherein care is provided exclusively to three or fewer veterans.
820 (f) Any facility that has been incorporated in this state
821 for 50 years or more on or before July 1, 1983, and the board of
822 directors of which is nominated or elected by the residents,
823 until the facility is sold or its ownership is transferred; or
824 any facility, with improvements or additions thereto, which has
825 existed and operated continuously in this state for 60 years or
826 more on or before July 1, 1989, is directly or indirectly owned
827 and operated by a nationally recognized fraternal organization,
828 is not open to the public, and accepts only its own members and
829 their spouses as residents.

830 (g) Any facility certified under chapter 651, or a
831 retirement community, may provide services authorized under this
832 part or part III ~~IV~~ of ~~this~~ chapter 400 to its residents who
833 live in single-family homes, duplexes, quadruplexes, or
834 apartments located on the campus without obtaining a license to
835 operate an assisted living facility if residential units within
836 such buildings are used by residents who do not require staff
837 supervision for that portion of the day when personal services
838 are not being delivered and the owner obtains a home health
839 license to provide such services. However, any building or
840 distinct part of a building on the campus that is designated for
841 persons who receive personal services and require supervision
842 beyond that which is available while such services are being
843 rendered must be licensed in accordance with this part. If a
844 facility provides personal services to residents who do not
845 otherwise require supervision and the owner is not licensed as a
846 home health agency, the buildings or distinct parts of buildings
847 where such services are rendered must be licensed under this
848 part. A resident of a facility that obtains a home health
849 license may contract with a home health agency of his or her
850 choice, provided that the home health agency provides liability
851 insurance and workers' compensation coverage for its employees.
852 Facilities covered by this exemption may establish policies that
853 give residents the option of contracting for services and care
854 beyond that which is provided by the facility to enable them to
855 age in place. For purposes of this section, a retirement
856 community consists of a facility licensed under this part or

857 under part II of chapter 400, and apartments designed for
858 independent living located on the same campus.
859 (h) Any residential unit for independent living which is
860 located within a facility certified under chapter 651, or any
861 residential unit which is colocated with a nursing home licensed
862 under part II of chapter 400 or colocated with a facility
863 licensed under this part in which services are provided through
864 an outpatient clinic or a nursing home on an outpatient basis.
865 Section 32. Section 400.407, Florida Statutes, is
866 renumbered as section 429.07, Florida Statutes, and amended to
867 read:
868 429.07 ~~400.407~~ License required; fee, display.--
869 (1) A license issued by the agency is required for an
870 assisted living facility operating in this state.
871 (2) Separate licenses shall be required for facilities
872 maintained in separate premises, even though operated under the
873 same management. A separate license shall not be required for
874 separate buildings on the same grounds.
875 (3) Any license granted by the agency must state the
876 maximum resident capacity of the facility, the type of care for
877 which the license is granted, the date the license is issued,
878 the expiration date of the license, and any other information
879 deemed necessary by the agency. Licenses shall be issued for one
880 or more of the following categories of care: standard, extended
881 congregate care, limited nursing services, or limited mental
882 health.
883 (a) A standard license shall be issued to facilities
884 providing one or more of the personal services identified in s.

885 429.02 ~~s. 400.402~~. Such facilities may also employ or contract
886 with a person licensed under part I of chapter 464 to administer
887 medications and perform other tasks as specified in s. 429.255
888 ~~s. 400.4255~~.
889 (b) An extended congregate care license shall be issued to
890 facilities providing, directly or through contract, services
891 beyond those authorized in paragraph (a), including acts
892 performed pursuant to part I of chapter 464 by persons licensed
893 thereunder, and supportive services defined by rule to persons
894 who otherwise would be disqualified from continued residence in
895 a facility licensed under this part.
896 1. In order for extended congregate care services to be
897 provided in a facility licensed under this part, the agency must
898 first determine that all requirements established in law and
899 rule are met and must specifically designate, on the facility's
900 license, that such services may be provided and whether the
901 designation applies to all or part of a facility. Such
902 designation may be made at the time of initial licensure or
903 relicensure, or upon request in writing by a licensee under this
904 part. Notification of approval or denial of such request shall
905 be made within 90 days after receipt of such request and all
906 necessary documentation. Existing facilities qualifying to
907 provide extended congregate care services must have maintained a
908 standard license and may not have been subject to administrative
909 sanctions during the previous 2 years, or since initial
910 licensure if the facility has been licensed for less than 2
911 years, for any of the following reasons:
912 a. A class I or class II violation;

913 b. Three or more repeat or recurring class III violations
914 of identical or similar resident care standards as specified in
915 rule from which a pattern of noncompliance is found by the
916 agency;
917 c. Three or more class III violations that were not
918 corrected in accordance with the corrective action plan approved
919 by the agency;
920 d. Violation of resident care standards resulting in a
921 requirement to employ the services of a consultant pharmacist or
922 consultant dietitian;
923 e. Denial, suspension, or revocation of a license for
924 another facility under this part in which the applicant for an
925 extended congregate care license has at least 25 percent
926 ownership interest; or
927 f. Imposition of a moratorium on admissions or initiation
928 of injunctive proceedings.
929 2. Facilities that are licensed to provide extended
930 congregate care services shall maintain a written progress
931 report on each person who receives such services, which report
932 describes the type, amount, duration, scope, and outcome of
933 services that are rendered and the general status of the
934 resident's health. A registered nurse, or appropriate designee,
935 representing the agency shall visit such facilities at least
936 quarterly to monitor residents who are receiving extended
937 congregate care services and to determine if the facility is in
938 compliance with this part and with rules that relate to extended
939 congregate care. One of these visits may be in conjunction with
940 the regular survey. The monitoring visits may be provided

941 through contractual arrangements with appropriate community
942 agencies. A registered nurse shall serve as part of the team
943 that inspects such facility. The agency may waive one of the
944 required yearly monitoring visits for a facility that has been
945 licensed for at least 24 months to provide extended congregate
946 care services, if, during the inspection, the registered nurse
947 determines that extended congregate care services are being
948 provided appropriately, and if the facility has no class I or
949 class II violations and no uncorrected class III violations.
950 Before such decision is made, the agency shall consult with the
951 long-term care ombudsman council for the area in which the
952 facility is located to determine if any complaints have been
953 made and substantiated about the quality of services or care.
954 The agency may not waive one of the required yearly monitoring
955 visits if complaints have been made and substantiated.
956 3. Facilities that are licensed to provide extended
957 congregate care services shall:
958 a. Demonstrate the capability to meet unanticipated
959 resident service needs.
960 b. Offer a physical environment that promotes a homelike
961 setting, provides for resident privacy, promotes resident
962 independence, and allows sufficient congregate space as defined
963 by rule.
964 c. Have sufficient staff available, taking into account
965 the physical plant and firesafety features of the building, to
966 assist with the evacuation of residents in an emergency, as
967 necessary.

968 d. Adopt and follow policies and procedures that maximize
969 resident independence, dignity, choice, and decisionmaking to
970 permit residents to age in place to the extent possible, so that
971 moves due to changes in functional status are minimized or
972 avoided.
973 e. Allow residents or, if applicable, a resident's
974 representative, designee, surrogate, guardian, or attorney in
975 fact to make a variety of personal choices, participate in
976 developing service plans, and share responsibility in
977 decisionmaking.
978 f. Implement the concept of managed risk.
979 g. Provide, either directly or through contract, the
980 services of a person licensed pursuant to part I of chapter 464.
981 h. In addition to the training mandated in s. 429.52 ~~s.~~
982 ~~400.452~~, provide specialized training as defined by rule for
983 facility staff.
984 4. Facilities licensed to provide extended congregate care
985 services are exempt from the criteria for continued residency as
986 set forth in rules adopted under s. 429.41 ~~s. 400.441~~.
987 Facilities so licensed shall adopt their own requirements within
988 guidelines for continued residency set forth by the department
989 in rule. However, such facilities may not serve residents who
990 require 24-hour nursing supervision. Facilities licensed to
991 provide extended congregate care services shall provide each
992 resident with a written copy of facility policies governing
993 admission and retention.
994 5. The primary purpose of extended congregate care
995 services is to allow residents, as they become more impaired,

996 the option of remaining in a familiar setting from which they
997 would otherwise be disqualified for continued residency. A
998 facility licensed to provide extended congregate care services
999 may also admit an individual who exceeds the admission criteria
1000 for a facility with a standard license, if the individual is
1001 determined appropriate for admission to the extended congregate
1002 care facility.
1003 6. Before admission of an individual to a facility
1004 licensed to provide extended congregate care services, the
1005 individual must undergo a medical examination as provided in s.
1006 429.26(4) ~~s. 400.426(4)~~ and the facility must develop a
1007 preliminary service plan for the individual.
1008 7. When a facility can no longer provide or arrange for
1009 services in accordance with the resident's service plan and
1010 needs and the facility's policy, the facility shall make
1011 arrangements for relocating the person in accordance with s.
1012 429.28(1)(k) ~~s. 400.428(1)(k)~~.
1013 8. Failure to provide extended congregate care services
1014 may result in denial of extended congregate care license
1015 renewal.
1016 9. No later than January 1 of each year, the department,
1017 in consultation with the agency, shall prepare and submit to the
1018 Governor, the President of the Senate, the Speaker of the House
1019 of Representatives, and the chairs of appropriate legislative
1020 committees, a report on the status of, and recommendations
1021 related to, extended congregate care services. The status report
1022 must include, but need not be limited to, the following
1023 information:

1024 a. A description of the facilities licensed to provide
1025 such services, including total number of beds licensed under
1026 this part.
1027 b. The number and characteristics of residents receiving
1028 such services.
1029 c. The types of services rendered that could not be
1030 provided through a standard license.
1031 d. An analysis of deficiencies cited during licensure
1032 inspections.
1033 e. The number of residents who required extended
1034 congregate care services at admission and the source of
1035 admission.
1036 f. Recommendations for statutory or regulatory changes.
1037 g. The availability of extended congregate care to state
1038 clients residing in facilities licensed under this part and in
1039 need of additional services, and recommendations for
1040 appropriations to subsidize extended congregate care services
1041 for such persons.
1042 h. Such other information as the department considers
1043 appropriate.
1044 (c) A limited nursing services license shall be issued to
1045 a facility that provides services beyond those authorized in
1046 paragraph (a) and as specified in this paragraph.
1047 1. In order for limited nursing services to be provided in
1048 a facility licensed under this part, the agency must first
1049 determine that all requirements established in law and rule are
1050 met and must specifically designate, on the facility's license,
1051 that such services may be provided. Such designation may be made

1052 at the time of initial licensure or relicensure, or upon request
1053 in writing by a licensee under this part. Notification of
1054 approval or denial of such request shall be made within 90 days
1055 after receipt of such request and all necessary documentation.
1056 Existing facilities qualifying to provide limited nursing
1057 services shall have maintained a standard license and may not
1058 have been subject to administrative sanctions that affect the
1059 health, safety, and welfare of residents for the previous 2
1060 years or since initial licensure if the facility has been
1061 licensed for less than 2 years.
1062 2. Facilities that are licensed to provide limited nursing
1063 services shall maintain a written progress report on each person
1064 who receives such nursing services, which report describes the
1065 type, amount, duration, scope, and outcome of services that are
1066 rendered and the general status of the resident's health. A
1067 registered nurse representing the agency shall visit such
1068 facilities at least twice a year to monitor residents who are
1069 receiving limited nursing services and to determine if the
1070 facility is in compliance with applicable provisions of this
1071 part and with related rules. The monitoring visits may be
1072 provided through contractual arrangements with appropriate
1073 community agencies. A registered nurse shall also serve as part
1074 of the team that inspects such facility.
1075 3. A person who receives limited nursing services under
1076 this part must meet the admission criteria established by the
1077 agency for assisted living facilities. When a resident no
1078 longer meets the admission criteria for a facility licensed
1079 under this part, arrangements for relocating the person shall be

1080 made in accordance with s. 429.28(1)(k) ~~s. 400.428(1)(k)~~, unless
1081 the facility is licensed to provide extended congregate care
1082 services.
1083 (4)(a) The biennial license fee required of a facility is
1084 $300 per license, with an additional fee of $50 per resident
1085 based on the total licensed resident capacity of the facility,
1086 except that no additional fee will be assessed for beds
1087 designated for recipients of optional state supplementation
1088 payments provided for in s. 409.212. The total fee may not
1089 exceed $10,000, no part of which shall be returned to the
1090 facility. The agency shall adjust the per bed license fee and
1091 the total licensure fee annually by not more than the change in
1092 the consumer price index based on the 12 months immediately
1093 preceding the increase.
1094 (b) In addition to the total fee assessed under paragraph
1095 (a), the agency shall require facilities that are licensed to
1096 provide extended congregate care services under this part to pay
1097 an additional fee per licensed facility. The amount of the
1098 biennial fee shall be $400 per license, with an additional fee
1099 of $10 per resident based on the total licensed resident
1100 capacity of the facility. No part of this fee shall be returned
1101 to the facility. The agency may adjust the per bed license fee
1102 and the annual license fee once each year by not more than the
1103 average rate of inflation for the 12 months immediately
1104 preceding the increase.
1105 (c) In addition to the total fee assessed under paragraph
1106 (a), the agency shall require facilities that are licensed to
1107 provide limited nursing services under this part to pay an

1108 additional fee per licensed facility. The amount of the
1109 biennial fee shall be $250 per license, with an additional fee
1110 of $10 per resident based on the total licensed resident
1111 capacity of the facility. No part of this fee shall be returned
1112 to the facility. The agency may adjust the per bed license fee
1113 and the biennial license fee once each year by not more than the
1114 average rate of inflation for the 12 months immediately
1115 preceding the increase.
1116 (5) Counties or municipalities applying for licenses under
1117 this part are exempt from the payment of license fees.
1118 (6) The license shall be displayed in a conspicuous place
1119 inside the facility.
1120 (7) A license shall be valid only in the possession of the
1121 individual, firm, partnership, association, or corporation to
1122 which it is issued and shall not be subject to sale, assignment,
1123 or other transfer, voluntary or involuntary; nor shall a license
1124 be valid for any premises other than that for which originally
1125 issued.
1126 (8) A fee may be charged to a facility requesting a
1127 duplicate license. The fee shall not exceed the actual cost of
1128 duplication and postage.
1129 Section 33. Section 400.4071, Florida Statutes, is
1130 renumbered as section 429.071, Florida Statutes, and amended to
1131 read:
1132 429.071 ~~400.4071~~ Intergenerational respite care assisted
1133 living facility pilot program.--
1134 (1) It is the intent of the Legislature to establish a
1135 pilot program to:

1136 (a) Facilitate the receipt of in-home, family-based care
1137 by minors and adults with disabilities and elderly persons with
1138 special needs through respite care for up to 14 days.
1139 (b) Prevent caregiver "burnout," in which the caregiver's
1140 health declines and he or she is unable to continue to provide
1141 care so that the only option for the person with disabilities or
1142 special needs is to receive institutional care.
1143 (c) Foster the development of intergenerational respite
1144 care assisted living facilities to temporarily care for minors
1145 and adults with disabilities and elderly persons with special
1146 needs in the same facility and to give caregivers the time they
1147 need for rejuvenation and healing.
1148 (2) The Agency for Health Care Administration shall
1149 establish a 5-year pilot program, which shall license an
1150 intergenerational respite care assisted living facility that
1151 will provide temporary personal, respite, and custodial care to
1152 minors and adults with disabilities and elderly persons with
1153 special needs who do not require 24-hour nursing services. The
1154 intergenerational respite care assisted living facility must:
1155 (a) Meet all applicable requirements and standards
1156 contained in this part ~~III of this chapter~~, except that, for
1157 purposes of this section, the term "resident" means a person of
1158 any age temporarily residing in and receiving care from the
1159 facility.
1160 (b) Provide respite care services for minors and adults
1161 with disabilities and elderly persons with special needs for a
1162 period of at least 24 hours but not for more than 14 consecutive
1163 days.

1164 (c) Provide a facility or facilities in which minors and
1165 adults reside in distinct and separate living units.
1166 (d) Provide a facility that has a maximum of 48 beds, is
1167 located in Miami-Dade County, and is operated by a not-for-
1168 profit entity.
1169 (3) The agency may establish policies necessary to achieve
1170 the objectives specific to the pilot program and may adopt rules
1171 necessary to implement the program.
1172 (4) After 4 years, the agency shall present its report on
1173 the effectiveness of the pilot program to the President of the
1174 Senate and the Speaker of the House of Representatives and its
1175 recommendation as to whether the Legislature should make the
1176 program permanent.
1177 Section 34. Section 400.408, Florida Statutes, is
1178 renumbered as section 429.08, Florida Statutes, and amended to
1179 read:
1180 429.08 ~~400.408~~ Unlicensed facilities; referral of person
1181 for residency to unlicensed facility; penalties; verification of
1182 licensure status.--
1183 (1)(a) It is unlawful to own, operate, or maintain an
1184 assisted living facility without obtaining a license under this
1185 part.
1186 (b) Except as provided under paragraph (d), any person who
1187 owns, operates, or maintains an unlicensed assisted living
1188 facility commits a felony of the third degree, punishable as
1189 provided in s. 775.082, s. 775.083, or s. 775.084. Each day of
1190 continued operation is a separate offense.

1191 (c) Any person found guilty of violating paragraph (a) a
1192 second or subsequent time commits a felony of the second degree,
1193 punishable as provided under s. 775.082, s. 775.083, or s.
1194 775.084. Each day of continued operation is a separate offense.
1195 (d) Any person who owns, operates, or maintains an
1196 unlicensed assisted living facility due to a change in this part
1197 or a modification in department rule within 6 months after the
1198 effective date of such change and who, within 10 working days
1199 after receiving notification from the agency, fails to cease
1200 operation or apply for a license under this part commits a
1201 felony of the third degree, punishable as provided in s.
1202 775.082, s. 775.083, or s. 775.084. Each day of continued
1203 operation is a separate offense.
1204 (e) Any facility that fails to cease operation after
1205 agency notification may be fined for each day of noncompliance
1206 pursuant to s. 429.19 ~~s. 400.419~~.
1207 (f) When a licensee has an interest in more than one
1208 assisted living facility, and fails to license any one of these
1209 facilities, the agency may revoke the license, impose a
1210 moratorium, or impose a fine pursuant to s. 429.19 ~~s. 400.419~~,
1211 on any or all of the licensed facilities until such time as the
1212 unlicensed facility is licensed or ceases operation.
1213 (g) If the agency determines that an owner is operating or
1214 maintaining an assisted living facility without obtaining a
1215 license and determines that a condition exists in the facility
1216 that poses a threat to the health, safety, or welfare of a
1217 resident of the facility, the owner is subject to the same

1218 actions and fines imposed against a licensed facility as
1219 specified in ss. 429.14 and 429.19 ~~ss. 400.414 and 400.419~~.
1220 (h) Any person aware of the operation of an unlicensed
1221 assisted living facility must report that facility to the
1222 agency. The agency shall provide to the department's elder
1223 information and referral providers a list, by county, of
1224 licensed assisted living facilities, to assist persons who are
1225 considering an assisted living facility placement in locating a
1226 licensed facility.
1227 (i) Each field office of the Agency for Health Care
1228 Administration shall establish a local coordinating workgroup
1229 which includes representatives of local law enforcement
1230 agencies, state attorneys, the Medicaid Fraud Control Unit of
1231 the Department of Legal Affairs, local fire authorities, the
1232 Department of Children and Family Services, the district long-
1233 term care ombudsman council, and the district human rights
1234 advocacy committee to assist in identifying the operation of
1235 unlicensed facilities and to develop and implement a plan to
1236 ensure effective enforcement of state laws relating to such
1237 facilities. The workgroup shall report its findings, actions,
1238 and recommendations semiannually to the Director of Health
1239 Facility Regulation of the agency.
1240 (2) It is unlawful to knowingly refer a person for
1241 residency to an unlicensed assisted living facility; to an
1242 assisted living facility the license of which is under denial or
1243 has been suspended or revoked; or to an assisted living facility
1244 that has a moratorium on admissions. Any person who violates

1245 this subsection commits a noncriminal violation, punishable by a
1246 fine not exceeding $500 as provided in s. 775.083.
1247 (a) Any health care practitioner, as defined in s.
1248 456.001, who is aware of the operation of an unlicensed facility
1249 shall report that facility to the agency. Failure to report a
1250 facility that the practitioner knows or has reasonable cause to
1251 suspect is unlicensed shall be reported to the practitioner's
1252 licensing board.
1253 (b) Any hospital or community mental health center
1254 licensed under chapter 395 or chapter 394 which knowingly
1255 discharges a patient or client to an unlicensed facility is
1256 subject to sanction by the agency.
1257 (c) Any employee of the agency or department, or the
1258 Department of Children and Family Services, who knowingly refers
1259 a person for residency to an unlicensed facility; to a facility
1260 the license of which is under denial or has been suspended or
1261 revoked; or to a facility that has a moratorium on admissions is
1262 subject to disciplinary action by the agency or department, or
1263 the Department of Children and Family Services.
1264 (d) The employer of any person who is under contract with
1265 the agency or department, or the Department of Children and
1266 Family Services, and who knowingly refers a person for residency
1267 to an unlicensed facility; to a facility the license of which is
1268 under denial or has been suspended or revoked; or to a facility
1269 that has a moratorium on admissions shall be fined and required
1270 to prepare a corrective action plan designed to prevent such
1271 referrals.

1272 (e) The agency shall provide the department and the
1273 Department of Children and Family Services with a list of
1274 licensed facilities within each county and shall update the list
1275 at least quarterly.
1276 (f) At least annually, the agency shall notify, in
1277 appropriate trade publications, physicians licensed under
1278 chapter 458 or chapter 459, hospitals licensed under chapter
1279 395, nursing home facilities licensed under part II of ~~this~~
1280 chapter 400, and employees of the agency or the department, or
1281 the Department of Children and Family Services, who are
1282 responsible for referring persons for residency, that it is
1283 unlawful to knowingly refer a person for residency to an
1284 unlicensed assisted living facility and shall notify them of the
1285 penalty for violating such prohibition. The department and the
1286 Department of Children and Family Services shall, in turn,
1287 notify service providers under contract to the respective
1288 departments who have responsibility for resident referrals to
1289 facilities. Further, the notice must direct each noticed
1290 facility and individual to contact the appropriate agency office
1291 in order to verify the licensure status of any facility prior to
1292 referring any person for residency. Each notice must include the
1293 name, telephone number, and mailing address of the appropriate
1294 office to contact.
1295 Section 35. Section 400.411, Florida Statutes, is
1296 renumbered as section 429.11, Florida Statutes, and amended to
1297 read:
1298 429.11 ~~400.411~~ Initial application for license;
1299 provisional license.--

1300 (1) Application for a license shall be made to the agency
1301 on forms furnished by it and shall be accompanied by the
1302 appropriate license fee.
1303 (2) The applicant may be an individual owner, a
1304 corporation, a partnership, a firm, an association, or a
1305 governmental entity.
1306 (3) The application must be signed by the applicant under
1307 oath and must contain the following:
1308 (a) The name, address, date of birth, and social security
1309 number of the applicant and the name by which the facility is to
1310 be known. If the applicant is a firm, partnership, or
1311 association, the application shall contain the name, address,
1312 date of birth, and social security number of every member
1313 thereof. If the applicant is a corporation, the application
1314 shall contain the corporation's name and address; the name,
1315 address, date of birth, and social security number of each of
1316 its directors and officers; and the name and address of each
1317 person having at least a 5-percent ownership interest in the
1318 corporation.
1319 (b) The name and address of any professional service,
1320 firm, association, partnership, or corporation that is to
1321 provide goods, leases, or services to the facility if a 5-
1322 percent or greater ownership interest in the service, firm,
1323 association, partnership, or corporation is owned by a person
1324 whose name must be listed on the application under paragraph
1325 (a).
1326 (c) The name and address of any long-term care facility
1327 with which the applicant, administrator, or financial officer

1328 has been affiliated through ownership or employment within 5
1329 years of the date of this license application; and a signed
1330 affidavit disclosing any financial or ownership interest that
1331 the applicant, or any person listed in paragraph (a), holds or
1332 has held within the last 5 years in any facility licensed under
1333 this part, or in any other entity licensed by this state or
1334 another state to provide health or residential care, which
1335 facility or entity closed or ceased to operate as a result of
1336 financial problems, or has had a receiver appointed or a license
1337 denied, suspended or revoked, or was subject to a moratorium on
1338 admissions, or has had an injunctive proceeding initiated
1339 against it.
1340 (d) A description and explanation of any exclusions,
1341 permanent suspensions, or terminations of the applicant from the
1342 Medicare or Medicaid programs. Proof of compliance with
1343 disclosure of ownership and control interest requirements of the
1344 Medicaid or Medicare programs shall be accepted in lieu of this
1345 submission.
1346 (e) The names and addresses of persons of whom the agency
1347 may inquire as to the character, reputation, and financial
1348 responsibility of the owner and, if different from the
1349 applicant, the administrator and financial officer.
1350 (f) Identification of all other homes or facilities,
1351 including the addresses and the license or licenses under which
1352 they operate, if applicable, which are currently operated by the
1353 applicant or administrator and which provide housing, meals, and
1354 personal services to residents.

1355 (g) The location of the facility for which a license is
1356 sought and documentation, signed by the appropriate local
1357 government official, which states that the applicant has met
1358 local zoning requirements.
1359 (h) The name, address, date of birth, social security
1360 number, education, and experience of the administrator, if
1361 different from the applicant.
1362 (4) The applicant shall furnish satisfactory proof of
1363 financial ability to operate and conduct the facility in
1364 accordance with the requirements of this part. A certificate of
1365 authority, pursuant to chapter 651, may be provided as proof of
1366 financial ability.
1367 (5) If the applicant is a continuing care facility
1368 certified under chapter 651, a copy of the facility's
1369 certificate of authority must be provided.
1370 (6) The applicant shall provide proof of liability
1371 insurance as defined in s. 624.605.
1372 (7) If the applicant is a community residential home, the
1373 applicant must provide proof that it has met the requirements
1374 specified in chapter 419.
1375 (8) The applicant must provide the agency with proof of
1376 legal right to occupy the property.
1377 (9) The applicant must furnish proof that the facility has
1378 received a satisfactory firesafety inspection. The local
1379 authority having jurisdiction or the State Fire Marshal must
1380 conduct the inspection within 30 days after written request by
1381 the applicant.

1382 (10) The applicant must furnish documentation of a
1383 satisfactory sanitation inspection of the facility by the county
1384 health department.
1385 (11) The applicant must furnish proof of compliance with
1386 level 2 background screening as required under s. 429.174 ~~s.~~
1387 ~~400.4174~~.
1388 (12) A provisional license may be issued to an applicant
1389 making initial application for licensure or making application
1390 for a change of ownership. A provisional license shall be
1391 limited in duration to a specific period of time not to exceed 6
1392 months, as determined by the agency.
1393 (13) A county or municipality may not issue an
1394 occupational license that is being obtained for the purpose of
1395 operating a facility regulated under this part without first
1396 ascertaining that the applicant has been licensed to operate
1397 such facility at the specified location or locations by the
1398 agency. The agency shall furnish to local agencies responsible
1399 for issuing occupational licenses sufficient instruction for
1400 making such determinations.
1401 Section 36. Section 400.412, Florida Statutes, is
1402 renumbered as section 429.12, Florida Statutes, and amended to
1403 read:
1404 429.12 ~~400.412~~ Sale or transfer of ownership of a
1405 facility.--It is the intent of the Legislature to protect the
1406 rights of the residents of an assisted living facility when the
1407 facility is sold or the ownership thereof is transferred.
1408 Therefore, whenever a facility is sold or the ownership thereof
1409 is transferred, including leasing:

1410 (1) The transferee shall make application to the agency
1411 for a new license at least 60 days before the date of transfer
1412 of ownership. The application must comply with the provisions
1413 of s. 429.11 ~~s. 400.411~~.
1414 (2)(a) The transferor shall notify the agency in writing
1415 at least 60 days before the date of transfer of ownership.
1416 (b) The new owner shall notify the residents, in writing,
1417 of the transfer of ownership within 7 days of his or her receipt
1418 of the license.
1419 (3) The transferor shall be responsible and liable for:
1420 (a) The lawful operation of the facility and the welfare
1421 of the residents domiciled in the facility until the date the
1422 transferee is licensed by the agency.
1423 (b) Any and all penalties imposed against the facility for
1424 violations occurring before the date of transfer of ownership
1425 unless the penalty imposed is a moratorium on admissions or
1426 denial of licensure. The moratorium on admissions or denial of
1427 licensure remains in effect after the transfer of ownership,
1428 unless the agency has approved the transferee's corrective
1429 action plan or the conditions which created the moratorium or
1430 denial have been corrected, and may be grounds for denial of
1431 license to the transferee in accordance with chapter 120.
1432 (c) Any outstanding liability to the state, unless the
1433 transferee has agreed, as a condition of sale or transfer, to
1434 accept the outstanding liabilities and to guarantee payment
1435 therefor; except that, if the transferee fails to meet these
1436 obligations, the transferor shall remain liable for the
1437 outstanding liability.

1438 (4) The transferor of a facility the license of which is
1439 denied pending an administrative hearing shall, as a part of the
1440 written transfer-of-ownership contract, advise the transferee
1441 that a plan of correction must be submitted by the transferee
1442 and approved by the agency at least 7 days before the transfer
1443 of ownership and that failure to correct the condition which
1444 resulted in the moratorium on admissions or denial of licensure
1445 is grounds for denial of the transferee's license.
1446 (5) The transferee must provide the agency with proof of
1447 legal right to occupy the property before a license may be
1448 issued. Proof may include, but is not limited to, copies of
1449 warranty deeds, or copies of lease or rental agreements,
1450 contracts for deeds, quitclaim deeds, or other such
1451 documentation.
1452 Section 37. Section 400.414, Florida Statutes, is
1453 renumbered as section 429.14, Florida Statutes, and amended to
1454 read:
1455 429.14 ~~400.414~~ Denial, revocation, or suspension of
1456 license; imposition of administrative fine; grounds.--
1457 (1) The agency may deny, revoke, or suspend any license
1458 issued under this part, or impose an administrative fine in the
1459 manner provided in chapter 120, for any of the following actions
1460 by an assisted living facility, for the actions of any person
1461 subject to level 2 background screening under s. 429.174 ~~s.~~
1462 ~~400.4174~~, or for the actions of any facility employee:
1463 (a) An intentional or negligent act seriously affecting
1464 the health, safety, or welfare of a resident of the facility.

1465 (b) The determination by the agency that the owner lacks
1466 the financial ability to provide continuing adequate care to
1467 residents.
1468 (c) Misappropriation or conversion of the property of a
1469 resident of the facility.
1470 (d) Failure to follow the criteria and procedures provided
1471 under part I of chapter 394 relating to the transportation,
1472 voluntary admission, and involuntary examination of a facility
1473 resident.
1474 (e) A citation of any of the following deficiencies as
1475 defined in s. 429.19 ~~s. 400.419~~:
1476 1. One or more cited class I deficiencies.
1477 2. Three or more cited class II deficiencies.
1478 3. Five or more cited class III deficiencies that have
1479 been cited on a single survey and have not been corrected within
1480 the times specified.
1481 (f) A determination that a person subject to level 2
1482 background screening under s. 429.174(1) ~~s. 400.4174(1)~~ does not
1483 meet the screening standards of s. 435.04 or that the facility
1484 is retaining an employee subject to level 1 background screening
1485 standards under s. 429.174(2) ~~s. 400.4174(2)~~ who does not meet
1486 the screening standards of s. 435.03 and for whom exemptions
1487 from disqualification have not been provided by the agency.
1488 (g) A determination that an employee, volunteer,
1489 administrator, or owner, or person who otherwise has access to
1490 the residents of a facility does not meet the criteria specified
1491 in s. 435.03(2), and the owner or administrator has not taken
1492 action to remove the person. Exemptions from disqualification

1493 may be granted as set forth in s. 435.07. No administrative
1494 action may be taken against the facility if the person is
1495 granted an exemption.
1496 (h) Violation of a moratorium.
1497 (i) Failure of the license applicant, the licensee during
1498 relicensure, or a licensee that holds a provisional license to
1499 meet the minimum license requirements of this part, or related
1500 rules, at the time of license application or renewal.
1501 (j) A fraudulent statement or omission of any material
1502 fact on an application for a license or any other document
1503 required by the agency, including the submission of a license
1504 application that conceals the fact that any board member,
1505 officer, or person owning 5 percent or more of the facility may
1506 not meet the background screening requirements of s. 429.174 ~~s.~~
1507 ~~400.4174~~, or that the applicant has been excluded, permanently
1508 suspended, or terminated from the Medicaid or Medicare programs.
1509 (k) An intentional or negligent life-threatening act in
1510 violation of the uniform firesafety standards for assisted
1511 living facilities or other firesafety standards that threatens
1512 the health, safety, or welfare of a resident of a facility, as
1513 communicated to the agency by the local authority having
1514 jurisdiction or the State Fire Marshal.
1515 (l) Exclusion, permanent suspension, or termination from
1516 the Medicare or Medicaid programs.
1517 (m) Knowingly operating any unlicensed facility or
1518 providing without a license any service that must be licensed
1519 under this chapter or chapter 400.

1520 (n) Any act constituting a ground upon which application
1521 for a license may be denied.
1522
1523 Administrative proceedings challenging agency action under this
1524 subsection shall be reviewed on the basis of the facts and
1525 conditions that resulted in the agency action.
1526 (2) Upon notification by the local authority having
1527 jurisdiction or by the State Fire Marshal, the agency may deny
1528 or revoke the license of an assisted living facility that fails
1529 to correct cited fire code violations that affect or threaten
1530 the health, safety, or welfare of a resident of a facility.
1531 (3) The agency may deny a license to any applicant or to
1532 any officer or board member of an applicant who is a firm,
1533 corporation, partnership, or association or who owns 5 percent
1534 or more of the facility, if the applicant, officer, or board
1535 member has or had a 25-percent or greater financial or ownership
1536 interest in any other facility licensed under this part, or in
1537 any entity licensed by this state or another state to provide
1538 health or residential care, which facility or entity during the
1539 5 years prior to the application for a license closed due to
1540 financial inability to operate; had a receiver appointed or a
1541 license denied, suspended, or revoked; was subject to a
1542 moratorium on admissions; had an injunctive proceeding initiated
1543 against it; or has an outstanding fine assessed under this
1544 chapter <u>or chapter 400</u>.
1545 (4) The agency shall deny or revoke the license of an
1546 assisted living facility that has two or more class I violations
1547 that are similar or identical to violations identified by the

1548 agency during a survey, inspection, monitoring visit, or
1549 complaint investigation occurring within the previous 2 years.
1550 (5) An action taken by the agency to suspend, deny, or
1551 revoke a facility's license under this part, in which the agency
1552 claims that the facility owner or an employee of the facility
1553 has threatened the health, safety, or welfare of a resident of
1554 the facility be heard by the Division of Administrative Hearings
1555 of the Department of Management Services within 120 days after
1556 receipt of the facility's request for a hearing, unless that
1557 time limitation is waived by both parties. The administrative
1558 law judge must render a decision within 30 days after receipt of
1559 a proposed recommended order.
1560 (6) The agency shall provide to the Division of Hotels and
1561 Restaurants of the Department of Business and Professional
1562 Regulation, on a monthly basis, a list of those assisted living
1563 facilities that have had their licenses denied, suspended, or
1564 revoked or that are involved in an appellate proceeding pursuant
1565 to s. 120.60 related to the denial, suspension, or revocation of
1566 a license.
1567 (7) Agency notification of a license suspension or
1568 revocation, or denial of a license renewal, shall be posted and
1569 visible to the public at the facility.
1570 (8) The agency may issue a temporary license pending final
1571 disposition of a proceeding involving the suspension or
1572 revocation of an assisted living facility license.
1573 Section 38. Section 400.415, Florida Statutes, is
1574 renumbered as section 429.15, Florida Statutes, and amended to
1575 read:

1576 429.15 ~~400.415~~ Moratorium on admissions; notice.--The
1577 agency may impose an immediate moratorium on admissions to any
1578 assisted living facility if the agency determines that any
1579 condition in the facility presents a threat to the health,
1580 safety, or welfare of the residents in the facility.
1581 (1) A facility the license of which is denied, revoked, or
1582 suspended pursuant to s. 429.14 ~~s. 400.414~~ may be subject to
1583 immediate imposition of a moratorium on admissions to run
1584 concurrently with licensure denial, revocation, or suspension.
1585 (2) When a moratorium is placed on a facility, notice of
1586 the moratorium shall be posted and visible to the public at the
1587 facility until the moratorium is lifted.
1588 (3) The department may by rule establish conditions that
1589 constitute grounds for imposing a moratorium on a facility and
1590 procedures for imposing and lifting a moratorium, as necessary
1591 to administer this section.
1592 Section 39. Section 400.417, Florida Statutes, is
1593 renumbered as section 429.17, Florida Statutes, and amended to
1594 read:
1595 429.17 ~~400.417~~ Expiration of license; renewal; conditional
1596 license.--
1597 (1) Biennial licenses, unless sooner suspended or revoked,
1598 shall expire 2 years from the date of issuance. Limited nursing,
1599 extended congregate care, and limited mental health licenses
1600 shall expire at the same time as the facility's standard
1601 license, regardless of when issued. The agency shall notify the
1602 facility at least 120 days prior to expiration that a renewal
1603 license is necessary to continue operation. The notification

1604 must be provided electronically or by mail delivery. Ninety days
1605 prior to the expiration date, an application for renewal shall
1606 be submitted to the agency. Fees must be prorated. The failure
1607 to file a timely renewal application shall result in a late fee
1608 charged to the facility in an amount equal to 50 percent of the
1609 current fee.
1610 (2) A license shall be renewed within 90 days upon the
1611 timely filing of an application on forms furnished by the agency
1612 and the provision of satisfactory proof of ability to operate
1613 and conduct the facility in accordance with the requirements of
1614 this part and adopted rules, including proof that the facility
1615 has received a satisfactory firesafety inspection, conducted by
1616 the local authority having jurisdiction or the State Fire
1617 Marshal, within the preceding 12 months and an affidavit of
1618 compliance with the background screening requirements of s.
1619 429.174 ~~s. 400.4174~~.
1620 (3) An applicant for renewal of a license who has complied
1621 with the provisions of s. 429.11 ~~s. 400.411~~ with respect to
1622 proof of financial ability to operate shall not be required to
1623 provide further proof unless the facility or any other facility
1624 owned or operated in whole or in part by the same person has
1625 demonstrated financial instability as provided under s.
1626 429.47(2) ~~s. 400.447(2)~~ or unless the agency suspects that the
1627 facility is not financially stable as a result of the annual
1628 survey or complaints from the public or a report from the State
1629 Long-Term Care Ombudsman Council. Each facility must report to
1630 the agency any adverse court action concerning the facility's
1631 financial viability, within 7 days after its occurrence. The

1632 agency shall have access to books, records, and any other
1633 financial documents maintained by the facility to the extent
1634 necessary to determine the facility's financial stability. A
1635 license for the operation of a facility shall not be renewed if
1636 the licensee has any outstanding fines assessed pursuant to this
1637 part which are in final order status.
1638 (4) A licensee against whom a revocation or suspension
1639 proceeding is pending at the time of license renewal may be
1640 issued a conditional license effective until final disposition
1641 by the agency. If judicial relief is sought from the final
1642 disposition, the court having jurisdiction may issue a
1643 conditional license for the duration of the judicial proceeding.
1644 (5) A conditional license may be issued to an applicant
1645 for license renewal if the applicant fails to meet all standards
1646 and requirements for licensure. A conditional license issued
1647 under this subsection shall be limited in duration to a specific
1648 period of time not to exceed 6 months, as determined by the
1649 agency, and shall be accompanied by an agency-approved plan of
1650 correction.
1651 (6) When an extended care or limited nursing license is
1652 requested during a facility's biennial license period, the fee
1653 shall be prorated in order to permit the additional license to
1654 expire at the end of the biennial license period. The fee shall
1655 be calculated as of the date the additional license application
1656 is received by the agency.
1657 (7) The department may by rule establish renewal
1658 procedures, identify forms, and specify documentation necessary
1659 to administer this section.

1660 Section 40. Section 400.4174, Florida Statutes, is
1661 renumbered as section 429.174, Florida Statutes, and amended to
1662 read:
1663 429.174 ~~400.4174~~ Background screening; exemptions.--
1664 (1)(a) Level 2 background screening must be conducted on
1665 each of the following persons, who shall be considered employees
1666 for the purposes of conducting screening under chapter 435:
1667 1. The facility owner if an individual, the administrator,
1668 and the financial officer.
1669 2. An officer or board member if the facility owner is a
1670 firm, corporation, partnership, or association, or any person
1671 owning 5 percent or more of the facility if the agency has
1672 probable cause to believe that such person has been convicted of
1673 any offense prohibited by s. 435.04. For each officer, board
1674 member, or person owning 5 percent or more who has been
1675 convicted of any such offense, the facility shall submit to the
1676 agency a description and explanation of the conviction at the
1677 time of license application. This subparagraph does not apply to
1678 a board member of a not-for-profit corporation or organization
1679 if the board member serves solely in a voluntary capacity, does
1680 not regularly take part in the day-to-day operational decisions
1681 of the corporation or organization, receives no remuneration for
1682 his or her services, and has no financial interest and has no
1683 family members with a financial interest in the corporation or
1684 organization, provided that the board member and facility submit
1685 a statement affirming that the board member's relationship to
1686 the facility satisfies the requirements of this subparagraph.

1687 (b) Proof of compliance with level 2 screening standards
1688 which has been submitted within the previous 5 years to meet any
1689 facility or professional licensure requirements of the agency or
1690 the Department of Health satisfies the requirements of this
1691 subsection, provided that such proof is accompanied, under
1692 penalty of perjury, by an affidavit of compliance with the
1693 provisions of chapter 435. Proof of compliance with the
1694 background screening requirements of the Financial Services
1695 Commission and the Office of Insurance Regulation for applicants
1696 for a certificate of authority to operate a continuing care
1697 retirement community under chapter 651, submitted within the
1698 last 5 years, satisfies the Department of Law Enforcement and
1699 Federal Bureau of Investigation portions of a level 2 background
1700 check.
1701 (c) The agency may grant a provisional license to a
1702 facility applying for an initial license when each individual
1703 required by this subsection to undergo screening has completed
1704 the Department of Law Enforcement background checks, but has not
1705 yet received results from the Federal Bureau of Investigation,
1706 or when a request for an exemption from disqualification has
1707 been submitted to the agency pursuant to s. 435.07, but a
1708 response has not been issued.
1709 (2) The owner or administrator of an assisted living
1710 facility must conduct level 1 background screening, as set forth
1711 in chapter 435, on all employees hired on or after October 1,
1712 1998, who perform personal services as defined in s. 429.02(17)
1713 ~~s. 400.402(17)~~. The agency may exempt an individual from

1714 employment disqualification as set forth in chapter 435. Such
1715 persons shall be considered as having met this requirement if:
1716 (a) Proof of compliance with level 1 screening
1717 requirements obtained to meet any professional license
1718 requirements in this state is provided and accompanied, under
1719 penalty of perjury, by a copy of the person's current
1720 professional license and an affidavit of current compliance with
1721 the background screening requirements.
1722 (b) The person required to be screened has been
1723 continuously employed in the same type of occupation for which
1724 the person is seeking employment without a breach in service
1725 which exceeds 180 days, and proof of compliance with the level 1
1726 screening requirement which is no more than 2 years old is
1727 provided. Proof of compliance shall be provided directly from
1728 one employer or contractor to another, and not from the person
1729 screened. Upon request, a copy of screening results shall be
1730 provided by the employer retaining documentation of the
1731 screening to the person screened.
1732 (c) The person required to be screened is employed by a
1733 corporation or business entity or related corporation or
1734 business entity that owns, operates, or manages more than one
1735 facility or agency licensed under this chapter, and for whom a
1736 level 1 screening was conducted by the corporation or business
1737 entity as a condition of initial or continued employment.
1738 Section 41. Section 400.4176, Florida Statutes, is
1739 renumbered as section 429.176, Florida Statutes, and amended to
1740 read:

1741 429.176 ~~400.4176~~ Notice of change of administrator.--If,
1742 during the period for which a license is issued, the owner
1743 changes administrators, the owner must notify the agency of the
1744 change within 10 days and provide documentation within 90 days
1745 that the new administrator has completed the applicable core
1746 educational requirements under s. 429.52 ~~s. 400.452~~. Background
1747 screening shall be completed on any new administrator as
1748 specified in s. 429.174 ~~s. 400.4174~~.
1749 Section 42. Section 400.4178, Florida Statutes, is
1750 renumbered as section 429.178, Florida Statutes, and amended to
1751 read:
1752 429.178 ~~400.4178~~ Special care for persons with Alzheimer's
1753 disease or other related disorders.--
1754 (1) A facility which advertises that it provides special
1755 care for persons with Alzheimer's disease or other related
1756 disorders must meet the following standards of operation:
1757 (a)1. If the facility has 17 or more residents, have an
1758 awake staff member on duty at all hours of the day and night; or
1759 2. If the facility has fewer than 17 residents, have an
1760 awake staff member on duty at all hours of the day and night or
1761 have mechanisms in place to monitor and ensure the safety of the
1762 facility's residents.
1763 (b) Offer activities specifically designed for persons who
1764 are cognitively impaired.
1765 (c) Have a physical environment that provides for the
1766 safety and welfare of the facility's residents.
1767 (d) Employ staff who have completed the training and
1768 continuing education required in subsection (2).

1769 (2)(a) An individual who is employed by a facility that
1770 provides special care for residents with Alzheimer's disease or
1771 other related disorders, and who has regular contact with such
1772 residents, must complete up to 4 hours of initial dementia-
1773 specific training developed or approved by the department. The
1774 training shall be completed within 3 months after beginning
1775 employment and shall satisfy the core training requirements of
1776 s. 429.52(2)(g) ~~s. 400.452(2)(g)~~.
1777 (b) A direct caregiver who is employed by a facility that
1778 provides special care for residents with Alzheimer's disease or
1779 other related disorders, and who provides direct care to such
1780 residents, must complete the required initial training and 4
1781 additional hours of training developed or approved by the
1782 department. The training shall be completed within 9 months
1783 after beginning employment and shall satisfy the core training
1784 requirements of s. 429.52(2)(g) ~~s. 400.452(2)(g)~~.
1785 (c) An individual who is employed by a facility that
1786 provides special care for residents with Alzheimer's disease or
1787 other related disorders, but who only has incidental contact
1788 with such residents, must be given, at a minimum, general
1789 information on interacting with individuals with Alzheimer's
1790 disease or other related disorders, within 3 months after
1791 beginning employment.
1792 (3) In addition to the training required under subsection
1793 (2), a direct caregiver must participate in a minimum of 4
1794 contact hours of continuing education each calendar year. The
1795 continuing education must include one or more topics included in
1796 the dementia-specific training developed or approved by the

1797 department, in which the caregiver has not received previous
1798 training.
1799 (4) Upon completing any training listed in subsection (2),
1800 the employee or direct caregiver shall be issued a certificate
1801 that includes the name of the training provider, the topic
1802 covered, and the date and signature of the training provider.
1803 The certificate is evidence of completion of training in the
1804 identified topic, and the employee or direct caregiver is not
1805 required to repeat training in that topic if the employee or
1806 direct caregiver changes employment to a different facility.
1807 The employee or direct caregiver must comply with other
1808 applicable continuing education requirements.
1809 (5) The department, or its designee, shall approve the
1810 initial and continuing education courses and providers.
1811 (6) The department shall keep a current list of providers
1812 who are approved to provide initial and continuing education for
1813 staff of facilities that provide special care for persons with
1814 Alzheimer's disease or other related disorders.
1815 (7) Any facility more than 90 percent of whose residents
1816 receive monthly optional supplementation payments is not
1817 required to pay for the training and education programs required
1818 under this section. A facility that has one or more such
1819 residents shall pay a reduced fee that is proportional to the
1820 percentage of such residents in the facility. A facility that
1821 does not have any residents who receive monthly optional
1822 supplementation payments must pay a reasonable fee, as
1823 established by the department, for such training and education
1824 programs.

1825 (8) The department shall adopt rules to establish
1826 standards for trainers and training and to implement this
1827 section.
1828 Section 43. Section 400.418, Florida Statutes, is
1829 renumbered as section 429.18, Florida Statutes, and amended to
1830 read:
1831 429.18 ~~400.418~~ Disposition of fees and administrative
1832 fines.--
1833 (1) Income from license fees, inspection fees, late fees,
1834 and administrative fines generated pursuant to ss. 429.07,
1835 429.08, 429.17, 429.19, and 429.31 ~~ss. 400.407, 400.408,~~
1836 ~~400.417, 400.419, and 400.431~~ shall be deposited in the Health
1837 Care Trust Fund administered by the agency. Such funds shall be
1838 directed to and used by the agency for the following purposes:
1839 (a) Up to 50 percent of the trust funds accrued each
1840 fiscal year under this part may be used to offset the expenses
1841 of receivership, pursuant to s. 429.22 ~~s. 400.422~~, if the court
1842 determines that the income and assets of the facility are
1843 insufficient to provide for adequate management and operation.
1844 (b) An amount of $5,000 of the trust funds accrued each
1845 year under this part shall be allocated to pay for inspection-
1846 related physical and mental health examinations requested by the
1847 agency pursuant to s. 429.26 ~~s. 400.426~~ for residents who are
1848 either recipients of supplemental security income or have
1849 monthly incomes not in excess of the maximum combined federal
1850 and state cash subsidies available to supplemental security
1851 income recipients, as provided for in s. 409.212. Such funds

1852 shall only be used where the resident is ineligible for
1853 Medicaid.
1854 (c) Any trust funds accrued each year under this part and
1855 not used for the purposes specified in paragraphs (a) and (b)
1856 shall be used to offset the costs of the licensure program,
1857 including the costs of conducting background investigations,
1858 verifying information submitted, defraying the costs of
1859 processing the names of applicants, and conducting inspections
1860 and monitoring visits pursuant to this part.
1861 (2) Income from fees generated pursuant to s. 429.41(5) ~~s.~~
1862 ~~400.441(5)~~ shall be deposited in the Health Care Trust Fund and
1863 used to offset the costs of printing and postage.
1864 Section 44. Section 400.419, Florida Statutes, is
1865 renumbered as section 429.19, Florida Statutes, and amended to
1866 read:
1867 429.19 ~~400.419~~ Violations; imposition of administrative
1868 fines; grounds.--
1869 (1) The agency shall impose an administrative fine in the
1870 manner provided in chapter 120 for any of the actions or
1871 violations as set forth within this section by an assisted
1872 living facility, for the actions of any person subject to level
1873 2 background screening under s. 429.174 ~~s. 400.4174~~, for the
1874 actions of any facility employee, or for an intentional or
1875 negligent act seriously affecting the health, safety, or welfare
1876 of a resident of the facility.
1877 (2) Each violation of this part and adopted rules shall be
1878 classified according to the nature of the violation and the
1879 gravity of its probable effect on facility residents. The agency

1880 shall indicate the classification on the written notice of the
1881 violation as follows:
1882 (a) Class "I" violations are those conditions or
1883 occurrences related to the operation and maintenance of a
1884 facility or to the personal care of residents which the agency
1885 determines present an imminent danger to the residents or guests
1886 of the facility or a substantial probability that death or
1887 serious physical or emotional harm would result therefrom. The
1888 condition or practice constituting a class I violation shall be
1889 abated or eliminated within 24 hours, unless a fixed period, as
1890 determined by the agency, is required for correction. The agency
1891 shall impose an administrative fine for a cited class I
1892 violation in an amount not less than $5,000 and not exceeding
1893 $10,000 for each violation. A fine may be levied notwithstanding
1894 the correction of the violation.
1895 (b) Class "II" violations are those conditions or
1896 occurrences related to the operation and maintenance of a
1897 facility or to the personal care of residents which the agency
1898 determines directly threaten the physical or emotional health,
1899 safety, or security of the facility residents, other than class
1900 I violations. The agency shall impose an administrative fine for
1901 a cited class II violation in an amount not less than $1,000 and
1902 not exceeding $5,000 for each violation. A fine shall be levied
1903 notwithstanding the correction of the violation.
1904 (c) Class "III" violations are those conditions or
1905 occurrences related to the operation and maintenance of a
1906 facility or to the personal care of residents which the agency
1907 determines indirectly or potentially threaten the physical or

1908 emotional health, safety, or security of facility residents,
1909 other than class I or class II violations. The agency shall
1910 impose an administrative fine for a cited class III violation in
1911 an amount not less than $500 and not exceeding $1,000 for each
1912 violation. A citation for a class III violation must specify the
1913 time within which the violation is required to be corrected. If
1914 a class III violation is corrected within the time specified, no
1915 fine may be imposed, unless it is a repeated offense.
1916 (d) Class "IV" violations are those conditions or
1917 occurrences related to the operation and maintenance of a
1918 building or to required reports, forms, or documents that do not
1919 have the potential of negatively affecting residents. These
1920 violations are of a type that the agency determines do not
1921 threaten the health, safety, or security of residents of the
1922 facility. The agency shall impose an administrative fine for a
1923 cited class IV violation in an amount not less than $100 and not
1924 exceeding $200 for each violation. A citation for a class IV
1925 violation must specify the time within which the violation is
1926 required to be corrected. If a class IV violation is corrected
1927 within the time specified, no fine shall be imposed. Any class
1928 IV violation that is corrected during the time an agency survey
1929 is being conducted will be identified as an agency finding and
1930 not as a violation.
1931 (3) In determining if a penalty is to be imposed and in
1932 fixing the amount of the fine, the agency shall consider the
1933 following factors:
1934 (a) The gravity of the violation, including the
1935 probability that death or serious physical or emotional harm to

1936 a resident will result or has resulted, the severity of the
1937 action or potential harm, and the extent to which the provisions
1938 of the applicable laws or rules were violated.
1939 (b) Actions taken by the owner or administrator to correct
1940 violations.
1941 (c) Any previous violations.
1942 (d) The financial benefit to the facility of committing or
1943 continuing the violation.
1944 (e) The licensed capacity of the facility.
1945 (4) Each day of continuing violation after the date fixed
1946 for termination of the violation, as ordered by the agency,
1947 constitutes an additional, separate, and distinct violation.
1948 (5) Any action taken to correct a violation shall be
1949 documented in writing by the owner or administrator of the
1950 facility and verified through followup visits by agency
1951 personnel. The agency may impose a fine and, in the case of an
1952 owner-operated facility, revoke or deny a facility's license
1953 when a facility administrator fraudulently misrepresents action
1954 taken to correct a violation.
1955 (6) For fines that are upheld following administrative or
1956 judicial review, the violator shall pay the fine, plus interest
1957 at the rate as specified in s. 55.03, for each day beyond the
1958 date set by the agency for payment of the fine.
1959 (7) Any unlicensed facility that continues to operate
1960 after agency notification is subject to a $1,000 fine per day.
1961 (8) Any licensed facility whose owner or administrator
1962 concurrently operates an unlicensed facility shall be subject to
1963 an administrative fine of $5,000 per day.

1964 (9) Any facility whose owner fails to apply for a change-
1965 of-ownership license in accordance with s. 429.12 ~~s. 400.412~~ and
1966 operates the facility under the new ownership is subject to a
1967 fine of $5,000.
1968 (10) In addition to any administrative fines imposed, the
1969 agency may assess a survey fee, equal to the lesser of one half
1970 of the facility's biennial license and bed fee or $500, to cover
1971 the cost of conducting initial complaint investigations that
1972 result in the finding of a violation that was the subject of the
1973 complaint or monitoring visits conducted under s. 429.28(3)(c)
1974 ~~s. 400.428(3)(c)~~ to verify the correction of the violations.
1975 (11) The agency, as an alternative to or in conjunction
1976 with an administrative action against a facility for violations
1977 of this part and adopted rules, shall make a reasonable attempt
1978 to discuss each violation and recommended corrective action with
1979 the owner or administrator of the facility, prior to written
1980 notification. The agency, instead of fixing a period within
1981 which the facility shall enter into compliance with standards,
1982 may request a plan of corrective action from the facility which
1983 demonstrates a good faith effort to remedy each violation by a
1984 specific date, subject to the approval of the agency.
1985 (12) Administrative fines paid by any facility under this
1986 section shall be deposited into the Health Care Trust Fund and
1987 expended as provided in s. 429.18 ~~s. 400.418~~.
1988 (13) The agency shall develop and disseminate an annual
1989 list of all facilities sanctioned or fined $5,000 or more for
1990 violations of state standards, the number and class of
1991 violations involved, the penalties imposed, and the current

1992 status of cases. The list shall be disseminated, at no charge,
1993 to the Department of Elderly Affairs, the Department of Health,
1994 the Department of Children and Family Services, the area
1995 agencies on aging, the Florida Statewide Advocacy Council, and
1996 the state and local ombudsman councils. The Department of
1997 Children and Family Services shall disseminate the list to
1998 service providers under contract to the department who are
1999 responsible for referring persons to a facility for residency.
2000 The agency may charge a fee commensurate with the cost of
2001 printing and postage to other interested parties requesting a
2002 copy of this list.
2003 Section 45. Section 400.42, Florida Statutes, is
2004 renumbered as section 429.20, Florida Statutes, and amended to
2005 read:
2006 429.20 ~~400.42~~ Certain solicitation prohibited; third-party
2007 supplementation.--
2008 (1) A person may not, in connection with the solicitation
2009 of contributions by or on behalf of an assisted living facility
2010 or facilities, misrepresent or mislead any person, by any
2011 manner, means, practice, or device whatsoever, to believe that
2012 the receipts of such solicitation will be used for charitable
2013 purposes, if that is not the fact.
2014 (2) Solicitation of contributions of any kind in a
2015 threatening, coercive, or unduly forceful manner by or on behalf
2016 of an assisted living facility or facilities by any agent,
2017 employee, owner, or representative of any assisted living
2018 facility or facilities is grounds for denial, suspension, or
2019 revocation of the license of the assisted living facility or

2020 facilities by or on behalf of which such contributions were
2021 solicited.
2022 (3) The admission or maintenance of assisted living
2023 facility residents whose care is supported, in whole or in part,
2024 by state funds may not be conditioned upon the receipt of any
2025 manner of contribution or donation from any person. The
2026 solicitation or receipt of contributions in violation of this
2027 subsection is grounds for denial, suspension, or revocation of
2028 license, as provided in s. 429.14 ~~s. 400.414~~, for any assisted
2029 living facility by or on behalf of which such contributions were
2030 solicited.
2031 (4) An assisted living facility may accept additional
2032 supplementation from third parties on behalf of residents
2033 receiving optional state supplementation in accordance with s.
2034 409.212.
2035 Section 46. Section 400.422, Florida Statutes, is
2036 renumbered as section 429.22, Florida Statutes, and amended to
2037 read:
2038 429.22 ~~400.422~~ Receivership proceedings.--
2039 (1) As an alternative to or in conjunction with an
2040 injunctive proceeding, the agency may petition a court of
2041 competent jurisdiction for the appointment of a receiver, if
2042 suitable alternate placements are not available, when any of the
2043 following conditions exist:
2044 (a) The facility is operating without a license and
2045 refuses to make application for a license as required by ss.
2046 429.07 and 429.08 ~~ss. 400.407 and 400.408~~.

2047 (b) The facility is closing or has informed the agency
2048 that it intends to close and adequate arrangements have not been
2049 made for relocation of the residents within 7 days, exclusive of
2050 weekends and holidays, of the closing of the facility.
2051 (c) The agency determines there exist in the facility
2052 conditions which present an imminent danger to the health,
2053 safety, or welfare of the residents of the facility or a
2054 substantial probability that death or serious physical harm
2055 would result therefrom.
2056 (d) The facility cannot meet its financial obligation for
2057 providing food, shelter, care, and utilities.
2058 (2) Petitions for receivership shall take precedence over
2059 other court business unless the court determines that some other
2060 pending proceeding, having similar statutory precedence, shall
2061 have priority. A hearing shall be conducted within 5 days of
2062 the filing of the petition, at which time all interested parties
2063 shall have the opportunity to present evidence pertaining to the
2064 petition. The agency shall notify, by certified mail, the owner
2065 or administrator of the facility named in the petition and the
2066 facility resident or, if applicable, the resident's
2067 representative or designee, or the resident's surrogate,
2068 guardian, or attorney in fact, of its filing, the substance of
2069 the violation, and the date and place set for the hearing. The
2070 court shall grant the petition only upon finding that the
2071 health, safety, or welfare of facility residents would be
2072 threatened if a condition existing at the time the petition was
2073 filed is permitted to continue. A receiver shall not be
2074 appointed ex parte unless the court determines that one or more

2075 of the conditions in subsection (1) exist; that the facility
2076 owner or administrator cannot be found; that all reasonable
2077 means of locating the owner or administrator and notifying him
2078 or her of the petition and hearing have been exhausted; or that
2079 the owner or administrator after notification of the hearing
2080 chooses not to attend. After such findings, the court may
2081 appoint any qualified person as a receiver, except it may not
2082 appoint any owner or affiliate of the facility which is in
2083 receivership. The receiver may be selected from a list of
2084 persons qualified to act as receivers developed by the agency
2085 and presented to the court with each petition for receivership.
2086 Under no circumstances may the agency or designated agency
2087 employee be appointed as a receiver for more than 60 days;
2088 however, the receiver may petition the court, one time only, for
2089 a 30-day extension. The court shall grant the extension upon a
2090 showing of good cause.
2091 (3) The receiver must make provisions for the continued
2092 health, safety, and welfare of all residents of the facility
2093 and:
2094 (a) Shall exercise those powers and perform those duties
2095 set out by the court.
2096 (b) Shall operate the facility in such a manner as to
2097 assure safety and adequate health care for the residents.
2098 (c) Shall take such action as is reasonably necessary to
2099 protect or conserve the assets or property of the facility for
2100 which the receiver is appointed, or the proceeds from any
2101 transfer thereof, and may use them only in the performance of

2102 the powers and duties set forth in this section and by order of
2103 the court.
2104 (d) May use the building, fixtures, furnishings, and any
2105 accompanying consumable goods in the provision of care and
2106 services to residents and to any other persons receiving
2107 services from the facility at the time the petition for
2108 receivership was filed. The receiver shall collect payments for
2109 all goods and services provided to residents or others during
2110 the period of the receivership at the same rate of payment
2111 charged by the owners at the time the petition for receivership
2112 was filed, or at a fair and reasonable rate otherwise approved
2113 by the court.
2114 (e) May correct or eliminate any deficiency in the
2115 structure or furnishings of the facility which endangers the
2116 safety or health of residents while they remain in the facility,
2117 if the total cost of correction does not exceed $10,000. The
2118 court may order expenditures for this purpose in excess of
2119 $10,000 on application from the receiver after notice to the
2120 owner and a hearing.
2121 (f) May let contracts and hire agents and employees to
2122 carry out the powers and duties of the receiver.
2123 (g) Shall honor all leases, mortgages, and secured
2124 transactions governing the building in which the facility is
2125 located and all goods and fixtures in the building of which the
2126 receiver has taken possession, but only to the extent of
2127 payments which, in the case of a rental agreement, are for the
2128 use of the property during the period of the receivership, or

2129 which, in the case of a purchase agreement, become due during
2130 the period of the receivership.
2131 (h) Shall have full power to direct and manage and to
2132 discharge employees of the facility, subject to any contract
2133 rights they may have. The receiver shall pay employees at the
2134 rate of compensation, including benefits, approved by the court.
2135 A receivership does not relieve the owner of any obligation to
2136 employees made prior to the appointment of a receiver and not
2137 carried out by the receiver.
2138 (i) Shall be entitled to and take possession of all
2139 property or assets of residents which are in the possession of a
2140 facility or its owner. The receiver shall preserve all property,
2141 assets, and records of residents of which the receiver takes
2142 possession and shall provide for the prompt transfer of the
2143 property, assets, and records to the new placement of any
2144 transferred resident. An inventory list certified by the owner
2145 and receiver shall be made immediately at the time the receiver
2146 takes possession of the facility.
2147 (4)(a) A person who is served with notice of an order of
2148 the court appointing a receiver and of the receiver's name and
2149 address shall be liable to pay the receiver for any goods or
2150 services provided by the receiver after the date of the order if
2151 the person would have been liable for the goods or services as
2152 supplied by the owner. The receiver shall give a receipt for
2153 each payment and shall keep a copy of each receipt on file. The
2154 receiver shall deposit accounts received in a separate account
2155 and shall use this account for all disbursements.

2156 (b) The receiver may bring an action to enforce the
2157 liability created by paragraph (a).
2158 (c) A payment to the receiver of any sum owing to the
2159 facility or its owner shall discharge any obligation to the
2160 facility to the extent of the payment.
2161 (5)(a) A receiver may petition the court that he or she
2162 not be required to honor any lease, mortgage, secured
2163 transaction, or other wholly or partially executory contract
2164 entered into by the owner of the facility if the rent, price, or
2165 rate of interest required to be paid under the agreement was
2166 substantially in excess of a reasonable rent, price, or rate of
2167 interest at the time the contract was entered into, or if any
2168 material provision of the agreement was unreasonable, when
2169 compared to contracts negotiated under similar conditions. Any
2170 relief in this form provided by the court shall be limited to
2171 the life of the receivership, unless otherwise determined by the
2172 court.
2173 (b) If the receiver is in possession of real estate or
2174 goods subject to a lease, mortgage, or security interest which
2175 the receiver has obtained a court order to avoid under paragraph
2176 (a), and if the real estate or goods are necessary for the
2177 continued operation of the facility under this section, the
2178 receiver may apply to the court to set a reasonable rental,
2179 price, or rate of interest to be paid by the receiver during the
2180 duration of the receivership. The court shall hold a hearing on
2181 the application within 15 days. The receiver shall send notice
2182 of the application to any known persons who own the property
2183 involved at least 10 days prior to the hearing. Payment by the

2184 receiver of the amount determined by the court to be reasonable
2185 is a defense to any action against the receiver for payment or
2186 for possession of the goods or real estate subject to the lease,
2187 security interest, or mortgage involved by any person who
2188 received such notice, but the payment does not relieve the owner
2189 of the facility of any liability for the difference between the
2190 amount paid by the receiver and the amount due under the
2191 original lease, security interest, or mortgage involved.
2192 (6) The court shall set the compensation of the receiver,
2193 which will be considered a necessary expense of a receivership.
2194 (7) A receiver may be held liable in a personal capacity
2195 only for the receiver's own gross negligence, intentional acts,
2196 or breach of fiduciary duty.
2197 (8) The court may require a receiver to post a bond.
2198 (9) The court may direct the agency to allocate funds from
2199 the Health Care Trust Fund to the receiver, subject to the
2200 provisions of s. 429.18(1) ~~s. 400.418(1)~~.
2201 (10) The court may terminate a receivership when:
2202 (a) The court determines that the receivership is no
2203 longer necessary because the conditions which gave rise to the
2204 receivership no longer exist or the agency grants the facility a
2205 new license; or
2206 (b) All of the residents in the facility have been
2207 transferred or discharged.
2208 (11) Within 30 days after termination, the receiver shall
2209 give the court a complete accounting of all property of which
2210 the receiver has taken possession, of all funds collected, and
2211 of the expenses of the receivership.

2212 (12) Nothing in this section shall be deemed to relieve
2213 any owner, administrator, or employee of a facility placed in
2214 receivership of any civil or criminal liability incurred, or any
2215 duty imposed by law, by reason of acts or omissions of the
2216 owner, administrator, or employee prior to the appointment of a
2217 receiver; nor shall anything contained in this section be
2218 construed to suspend during the receivership any obligation of
2219 the owner, administrator, or employee for payment of taxes or
2220 other operating and maintenance expenses of the facility or of
2221 the owner, administrator, employee, or any other person for the
2222 payment of mortgages or liens. The owner shall retain the right
2223 to sell or mortgage any facility under receivership, subject to
2224 approval of the court which ordered the receivership.
2225 Section 47. Section 400.424, Florida Statutes, is
2226 renumbered as section 429.24, Florida Statutes, and amended to
2227 read:
2228 429.24 ~~400.424~~ Contracts.--
2229 (1) The presence of each resident in a facility shall be
2230 covered by a contract, executed at the time of admission or
2231 prior thereto, between the licensee and the resident or his or
2232 her designee or legal representative. Each party to the contract
2233 shall be provided with a duplicate original thereof, and the
2234 licensee shall keep on file in the facility all such contracts.
2235 The licensee may not destroy or otherwise dispose of any such
2236 contract until 5 years after its expiration.
2237 (2) Each contract must contain express provisions
2238 specifically setting forth the services and accommodations to be
2239 provided by the facility; the rates or charges; provision for at

2240 least 30 days' written notice of a rate increase; the rights,
2241 duties, and obligations of the residents, other than those
2242 specified in s. 429.28 ~~s. 400.428~~; and other matters that the
2243 parties deem appropriate. Whenever money is deposited or
2244 advanced by a resident in a contract as security for performance
2245 of the contract agreement or as advance rent for other than the
2246 next immediate rental period:
2247 (a) Such funds shall be deposited in a banking institution
2248 in this state that is located, if possible, in the same
2249 community in which the facility is located; shall be kept
2250 separate from the funds and property of the facility; may not be
2251 represented as part of the assets of the facility on financial
2252 statements; and shall be used, or otherwise expended, only for
2253 the account of the resident.
2254 (b) The licensee shall, within 30 days of receipt of
2255 advance rent or a security deposit, notify the resident or
2256 residents in writing of the manner in which the licensee is
2257 holding the advance rent or security deposit and state the name
2258 and address of the depository where the moneys are being held.
2259 The licensee shall notify residents of the facility's policy on
2260 advance deposits.
2261 (3)(a) The contract shall include a refund policy to be
2262 implemented at the time of a resident's transfer, discharge, or
2263 death. The refund policy shall provide that the resident or
2264 responsible party is entitled to a prorated refund based on the
2265 daily rate for any unused portion of payment beyond the
2266 termination date after all charges, including the cost of
2267 damages to the residential unit resulting from circumstances

2268 other than normal use, have been paid to the licensee. For the
2269 purpose of this paragraph, the termination date shall be the
2270 date the unit is vacated by the resident and cleared of all
2271 personal belongings. If the amount of belongings does not
2272 preclude renting the unit, the facility may clear the unit and
2273 charge the resident or his or her estate for moving and storing
2274 the items at a rate equal to the actual cost to the facility,
2275 not to exceed 20 percent of the regular rate for the unit,
2276 provided that 14 days' advance written notification is given.
2277 If the resident's possessions are not claimed within 45 days
2278 after notification, the facility may dispose of them. The
2279 contract shall also specify any other conditions under which
2280 claims will be made against the refund due the resident. Except
2281 in the case of death or a discharge due to medical reasons, the
2282 refunds shall be computed in accordance with the notice of
2283 relocation requirements specified in the contract. However, a
2284 resident may not be required to provide the licensee with more
2285 than 30 days' notice of termination. If after a contract is
2286 terminated, the facility intends to make a claim against a
2287 refund due the resident, the facility shall notify the resident
2288 or responsible party in writing of the claim and shall provide
2289 said party with a reasonable time period of no less than 14
2290 calendar days to respond. The facility shall provide a refund
2291 to the resident or responsible party within 45 days after the
2292 transfer, discharge, or death of the resident. The agency shall
2293 impose a fine upon a facility that fails to comply with the
2294 refund provisions of the paragraph, which fine shall be equal to
2295 three times the amount due to the resident. One-half of the fine

2296 shall be remitted to the resident or his or her estate, and the
2297 other half to the Health Care Trust Fund to be used for the
2298 purpose specified in s. 429.18 ~~s. 400.418~~.
2299 (b) If a licensee agrees to reserve a bed for a resident
2300 who is admitted to a medical facility, including, but not
2301 limited to, a nursing home, health care facility, or psychiatric
2302 facility, the resident or his or her responsible party shall
2303 notify the licensee of any change in status that would prevent
2304 the resident from returning to the facility. Until such notice
2305 is received, the agreed-upon daily rate may be charged by the
2306 licensee.
2307 (c) The purpose of any advance payment and a refund policy
2308 for such payment, including any advance payment for housing,
2309 meals, or personal services, shall be covered in the contract.
2310 (4) The contract shall state whether or not the facility
2311 is affiliated with any religious organization and, if so, which
2312 organization and its general responsibility to the facility.
2313 (5) Neither the contract nor any provision thereof
2314 relieves any licensee of any requirement or obligation imposed
2315 upon it by this part or rules adopted under this part.
2316 (6) In lieu of the provisions of this section, facilities
2317 certified under chapter 651 shall comply with the requirements
2318 of s. 651.055.
2319 (7) Notwithstanding the provisions of this section,
2320 facilities which consist of 60 or more apartments may require
2321 refund policies and termination notices in accordance with the
2322 provisions of part II of chapter 83, provided that the lease is
2323 terminated automatically without financial penalty in the event

2324 of a resident's death or relocation due to psychiatric
2325 hospitalization or to medical reasons which necessitate services
2326 or care beyond which the facility is licensed to provide. The
2327 date of termination in such instances shall be the date the unit
2328 is fully vacated. A lease may be substituted for the contract
2329 if it meets the disclosure requirements of this section. For
2330 the purpose of this section, the term "apartment" means a room
2331 or set of rooms with a kitchen or kitchenette and lavatory
2332 located within one or more buildings containing other similar or
2333 like residential units.
2334 (8) The department may by rule clarify terms, establish
2335 procedures, clarify refund policies and contract provisions, and
2336 specify documentation as necessary to administer this section.
2337 Section 48. Section 400.4255, Florida Statutes, is
2338 renumbered as section 429.255, Florida Statutes, and amended to
2339 read:
2340 429.255 ~~400.4255~~ Use of personnel; emergency care.--
2341 (1)(a) Persons under contract to the facility, facility
2342 staff, or volunteers, who are licensed according to part I of
2343 chapter 464, or those persons exempt under s. 464.022(1), and
2344 others as defined by rule, may administer medications to
2345 residents, take residents' vital signs, manage individual weekly
2346 pill organizers for residents who self-administer medication,
2347 give prepackaged enemas ordered by a physician, observe
2348 residents, document observations on the appropriate resident's
2349 record, report observations to the resident's physician, and
2350 contract or allow residents or a resident's representative,
2351 designee, surrogate, guardian, or attorney in fact to contract

2352 with a third party, provided residents meet the criteria for
2353 appropriate placement as defined in s. 429.26 ~~s. 400.426~~.
2354 Nursing assistants certified pursuant to part II of chapter 464
2355 may take residents' vital signs as directed by a licensed nurse
2356 or physician.
2357 (b) All staff in facilities licensed under this part shall
2358 exercise their professional responsibility to observe residents,
2359 to document observations on the appropriate resident's record,
2360 and to report the observations to the resident's physician.
2361 However, the owner or administrator of the facility shall be
2362 responsible for determining that the resident receiving services
2363 is appropriate for residence in the facility.
2364 (c) In an emergency situation, licensed personnel may
2365 carry out their professional duties pursuant to part I of
2366 chapter 464 until emergency medical personnel assume
2367 responsibility for care.
2368 (2) In facilities licensed to provide extended congregate
2369 care, persons under contract to the facility, facility staff, or
2370 volunteers, who are licensed according to part I of chapter 464,
2371 or those persons exempt under s. 464.022(1), or those persons
2372 certified as nursing assistants pursuant to part II of chapter
2373 464, may also perform all duties within the scope of their
2374 license or certification, as approved by the facility
2375 administrator and pursuant to this part.
2376 (3) Facility staff may withhold or withdraw
2377 cardiopulmonary resuscitation if presented with an order not to
2378 resuscitate executed pursuant to s. 401.45. The department shall
2379 adopt rules providing for the implementation of such orders.

2380 Facility staff and facilities shall not be subject to criminal
2381 prosecution or civil liability, nor be considered to have
2382 engaged in negligent or unprofessional conduct, for withholding
2383 or withdrawing cardiopulmonary resuscitation pursuant to such an
2384 order and rules adopted by the department. The absence of an
2385 order to resuscitate executed pursuant to s. 401.45 does not
2386 preclude a physician from withholding or withdrawing
2387 cardiopulmonary resuscitation as otherwise permitted by law.
2388 Section 49. Section 400.4256, Florida Statutes, is
2389 renumbered as section 429.256, Florida Statutes, and amended to
2390 read:
2391 429.256 ~~400.4256~~ Assistance with self-administration of
2392 medication.--
2393 (1) For the purposes of this section, the term:
2394 (a) "Informed consent" means advising the resident, or the
2395 resident's surrogate, guardian, or attorney in fact, that an
2396 assisted living facility is not required to have a licensed
2397 nurse on staff, that the resident may be receiving assistance
2398 with self-administration of medication from an unlicensed
2399 person, and that such assistance, if provided by an unlicensed
2400 person, will or will not be overseen by a licensed nurse.
2401 (b) "Unlicensed person" means an individual not currently
2402 licensed to practice nursing or medicine who is employed by or
2403 under contract to an assisted living facility and who has
2404 received training with respect to assisting with the self-
2405 administration of medication in an assisted living facility as
2406 provided under s. 429.52 ~~s. 400.452~~ prior to providing such
2407 assistance as described in this section.

2408 (2) Residents who are capable of self-administering their
2409 own medications without assistance shall be encouraged and
2410 allowed to do so. However, an unlicensed person may, consistent
2411 with a dispensed prescription's label or the package directions
2412 of an over-the-counter medication, assist a resident whose
2413 condition is medically stable with the self-administration of
2414 routine, regularly scheduled medications that are intended to be
2415 self-administered. Assistance with self-medication by an
2416 unlicensed person may occur only upon a documented request by,
2417 and the written informed consent of, a resident or the
2418 resident's surrogate, guardian, or attorney in fact. For the
2419 purposes of this section, self-administered medications include
2420 both legend and over-the-counter oral dosage forms, topical
2421 dosage forms and topical ophthalmic, otic, and nasal dosage
2422 forms including solutions, suspensions, sprays, and inhalers.
2423 (3) Assistance with self-administration of medication
2424 includes:
2425 (a) Taking the medication, in its previously dispensed,
2426 properly labeled container, from where it is stored, and
2427 bringing it to the resident.
2428 (b) In the presence of the resident, reading the label,
2429 opening the container, removing a prescribed amount of
2430 medication from the container, and closing the container.
2431 (c) Placing an oral dosage in the resident's hand or
2432 placing the dosage in another container and helping the resident
2433 by lifting the container to his or her mouth.
2434 (d) Applying topical medications.
2435 (e) Returning the medication container to proper storage.

2436 (f) Keeping a record of when a resident receives
2437 assistance with self-administration under this section.
2438 (4) Assistance with self-administration does not include:
2439 (a) Mixing, compounding, converting, or calculating
2440 medication doses, except for measuring a prescribed amount of
2441 liquid medication or breaking a scored tablet or crushing a
2442 tablet as prescribed.
2443 (b) The preparation of syringes for injection or the
2444 administration of medications by any injectable route.
2445 (c) Administration of medications through intermittent
2446 positive pressure breathing machines or a nebulizer.
2447 (d) Administration of medications by way of a tube
2448 inserted in a cavity of the body.
2449 (e) Administration of parenteral preparations.
2450 (f) Irrigations or debriding agents used in the treatment
2451 of a skin condition.
2452 (g) Rectal, urethral, or vaginal preparations.
2453 (h) Medications ordered by the physician or health care
2454 professional with prescriptive authority to be given "as
2455 needed," unless the order is written with specific parameters
2456 that preclude independent judgment on the part of the unlicensed
2457 person, and at the request of a competent resident.
2458 (i) Medications for which the time of administration, the
2459 amount, the strength of dosage, the method of administration, or
2460 the reason for administration requires judgment or discretion on
2461 the part of the unlicensed person.

2462 (5) Assistance with the self-administration of medication
2463 by an unlicensed person as described in this section shall not
2464 be considered administration as defined in s. 465.003.
2465 (6) The department may by rule establish facility
2466 procedures and interpret terms as necessary to implement this
2467 section.
2468 Section 50. Section 400.426, Florida Statutes, is
2469 renumbered as section 429.26, Florida Statutes, and amended to
2470 read:
2471 429.26 ~~400.426~~ Appropriateness of placements; examinations
2472 of residents.--
2473 (1) The owner or administrator of a facility is
2474 responsible for determining the appropriateness of admission of
2475 an individual to the facility and for determining the continued
2476 appropriateness of residence of an individual in the facility.
2477 A determination shall be based upon an assessment of the
2478 strengths, needs, and preferences of the resident, the care and
2479 services offered or arranged for by the facility in accordance
2480 with facility policy, and any limitations in law or rule related
2481 to admission criteria or continued residency for the type of
2482 license held by the facility under this part. A resident may
2483 not be moved from one facility to another without consultation
2484 with and agreement from the resident or, if applicable, the
2485 resident's representative or designee or the resident's family,
2486 guardian, surrogate, or attorney in fact. In the case of a
2487 resident who has been placed by the department or the Department
2488 of Children and Family Services, the administrator must notify
2489 the appropriate contact person in the applicable department.

2490 (2) A physician or nurse practitioner who is employed by
2491 an assisted living facility to provide an initial examination
2492 for admission purposes may not have financial interest in the
2493 facility.
2494 (3) Persons licensed under part I of chapter 464 who are
2495 employed by or under contract with a facility shall, on a
2496 routine basis or at least monthly, perform a nursing assessment
2497 of the residents for whom they are providing nursing services
2498 ordered by a physician, except administration of medication, and
2499 shall document such assessment, including any substantial
2500 changes in a resident's status which may necessitate relocation
2501 to a nursing home, hospital, or specialized health care
2502 facility. Such records shall be maintained in the facility for
2503 inspection by the agency and shall be forwarded to the
2504 resident's case manager, if applicable.
2505 (4) If possible, each resident shall have been examined by
2506 a licensed physician or a licensed nurse practitioner within 60
2507 days before admission to the facility. The signed and completed
2508 medical examination report shall be submitted to the owner or
2509 administrator of the facility who shall use the information
2510 contained therein to assist in the determination of the
2511 appropriateness of the resident's admission and continued stay
2512 in the facility. The medical examination report shall become a
2513 permanent part of the record of the resident at the facility and
2514 shall be made available to the agency during inspection or upon
2515 request. An assessment that has been completed through the
2516 Comprehensive Assessment and Review for Long-Term Care Services
2517 (CARES) Program fulfills the requirements for a medical

2518 examination under this subsection and s. 429.07(3)(b)6. ~~s.~~
2519 ~~400.407(3)(b)6.~~
2520 (5) Except as provided in s. 429.07 ~~s. 400.407~~, if a
2521 medical examination has not been completed within 60 days before
2522 the admission of the resident to the facility, a licensed
2523 physician or licensed nurse practitioner shall examine the
2524 resident and complete a medical examination form provided by the
2525 agency within 30 days following the admission to the facility to
2526 enable the facility owner or administrator to determine the
2527 appropriateness of the admission. The medical examination form
2528 shall become a permanent part of the record of the resident at
2529 the facility and shall be made available to the agency during
2530 inspection by the agency or upon request.
2531 (6) Any resident accepted in a facility and placed by the
2532 department or the Department of Children and Family Services
2533 shall have been examined by medical personnel within 30 days
2534 before placement in the facility. The examination shall include
2535 an assessment of the appropriateness of placement in a facility.
2536 The findings of this examination shall be recorded on the
2537 examination form provided by the agency. The completed form
2538 shall accompany the resident and shall be submitted to the
2539 facility owner or administrator. Additionally, in the case of a
2540 mental health resident, the Department of Children and Family
2541 Services must provide documentation that the individual has been
2542 assessed by a psychiatrist, clinical psychologist, clinical
2543 social worker, or psychiatric nurse, or an individual who is
2544 supervised by one of these professionals, and determined to be
2545 appropriate to reside in an assisted living facility. The

2546 documentation must be in the facility within 30 days after the
2547 mental health resident has been admitted to the facility. An
2548 evaluation completed upon discharge from a state mental hospital
2549 meets the requirements of this subsection related to
2550 appropriateness for placement as a mental health resident
2551 providing it was completed within 90 days prior to admission to
2552 the facility. The applicable department shall provide to the
2553 facility administrator any information about the resident that
2554 would help the administrator meet his or her responsibilities
2555 under subsection (1). Further, department personnel shall
2556 explain to the facility operator any special needs of the
2557 resident and advise the operator whom to call should problems
2558 arise. The applicable department shall advise and assist the
2559 facility administrator where the special needs of residents who
2560 are recipients of optional state supplementation require such
2561 assistance.
2562 (7) The facility must notify a licensed physician when a
2563 resident exhibits signs of dementia or cognitive impairment or
2564 has a change of condition in order to rule out the presence of
2565 an underlying physiological condition that may be contributing
2566 to such dementia or impairment. The notification must occur
2567 within 30 days after the acknowledgment of such signs by
2568 facility staff. If an underlying condition is determined to
2569 exist, the facility shall arrange, with the appropriate health
2570 care provider, the necessary care and services to treat the
2571 condition.
2572 (8) The Department of Children and Family Services may
2573 require an examination for supplemental security income and

2574 optional state supplementation recipients residing in facilities
2575 at any time and shall provide the examination whenever a
2576 resident's condition requires it. Any facility administrator;
2577 personnel of the agency, the department, or the Department of
2578 Children and Family Services; or long-term care ombudsman
2579 council member who believes a resident needs to be evaluated
2580 shall notify the resident's case manager, who shall take
2581 appropriate action. A report of the examination findings shall
2582 be provided to the resident's case manager and the facility
2583 administrator to help the administrator meet his or her
2584 responsibilities under subsection (1).
2585 (9) If, at any time after admission to a facility, a
2586 resident appears to need care beyond that which the facility is
2587 licensed to provide, the agency shall require the resident to be
2588 physically examined by a licensed physician or licensed nurse
2589 practitioner. This examination shall, to the extent possible,
2590 be performed by the resident's preferred physician or nurse
2591 practitioner and shall be paid for by the resident with personal
2592 funds, except as provided in s. 429.18(1)(b) ~~s. 400.418(1)(b)~~.
2593 Following this examination, the examining physician or licensed
2594 nurse practitioner shall complete and sign a medical form
2595 provided by the agency. The completed medical form shall be
2596 submitted to the agency within 30 days after the date the
2597 facility owner or administrator is notified by the agency that
2598 the physical examination is required. After consultation with
2599 the physician or licensed nurse practitioner who performed the
2600 examination, a medical review team designated by the agency
2601 shall then determine whether the resident is appropriately

2602 residing in the facility. The medical review team shall base
2603 its decision on a comprehensive review of the resident's
2604 physical and functional status, including the resident's
2605 preferences, and not on an isolated health-related problem. In
2606 the case of a mental health resident, if the resident appears to
2607 have needs in addition to those identified in the community
2608 living support plan, the agency may require an evaluation by a
2609 mental health professional, as determined by the Department of
2610 Children and Family Services. A facility may not be required to
2611 retain a resident who requires more services or care than the
2612 facility is able to provide in accordance with its policies and
2613 criteria for admission and continued residency. Members of the
2614 medical review team making the final determination may not
2615 include the agency personnel who initially questioned the
2616 appropriateness of a resident's placement. Such determination is
2617 final and binding upon the facility and the resident. Any
2618 resident who is determined by the medical review team to be
2619 inappropriately residing in a facility shall be given 30 days'
2620 written notice to relocate by the owner or administrator, unless
2621 the resident's continued residence in the facility presents an
2622 imminent danger to the health, safety, or welfare of the
2623 resident or a substantial probability exists that death or
2624 serious physical harm would result to the resident if allowed to
2625 remain in the facility.
2626 (10) A terminally ill resident who no longer meets the
2627 criteria for continued residency may remain in the facility if
2628 the arrangement is mutually agreeable to the resident and the
2629 facility; additional care is rendered through a licensed

2630 hospice, and the resident is under the care of a physician who
2631 agrees that the physical needs of the resident are being met.
2632 (11) Facilities licensed to provide extended congregate
2633 care services shall promote aging in place by determining
2634 appropriateness of continued residency based on a comprehensive
2635 review of the resident's physical and functional status; the
2636 ability of the facility, family members, friends, or any other
2637 pertinent individuals or agencies to provide the care and
2638 services required; and documentation that a written service plan
2639 consistent with facility policy has been developed and
2640 implemented to ensure that the resident's needs and preferences
2641 are addressed.
2642 (12) No resident who requires 24-hour nursing supervision,
2643 except for a resident who is an enrolled hospice patient
2644 pursuant to part IV ~~VI~~ of ~~this~~ chapter 400, shall be retained in
2645 a facility licensed under this part.
2646 Section 51. Section 400.427, Florida Statutes, is
2647 renumbered as section 429.27, Florida Statutes, and amended to
2648 read:
2649 429.27 ~~400.427~~ Property and personal affairs of
2650 residents.--
2651 (1)(a) A resident shall be given the option of using his
2652 or her own belongings, as space permits; choosing his or her
2653 roommate; and, whenever possible, unless the resident is
2654 adjudicated incompetent or incapacitated under state law,
2655 managing his or her own affairs.
2656 (b) The admission of a resident to a facility and his or
2657 her presence therein shall not confer on the facility or its

2658 owner, administrator, employees, or representatives any
2659 authority to manage, use, or dispose of any property of the
2660 resident; nor shall such admission or presence confer on any of
2661 such persons any authority or responsibility for the personal
2662 affairs of the resident, except that which may be necessary for
2663 the safe management of the facility or for the safety of the
2664 resident.
2665 (2) A facility, or an owner, administrator, employee, or
2666 representative thereof, may not act as the guardian, trustee, or
2667 conservator for any resident of the assisted living facility or
2668 any of such resident's property. An owner, administrator, or
2669 staff member, or representative thereof, may not act as a
2670 competent resident's payee for social security, veteran's, or
2671 railroad benefits without the consent of the resident. Any
2672 facility whose owner, administrator, or staff, or representative
2673 thereof, serves as representative payee for any resident of the
2674 facility shall file a surety bond with the agency in an amount
2675 equal to twice the average monthly aggregate income or personal
2676 funds due to residents, or expendable for their account, which
2677 are received by a facility. Any facility whose owner,
2678 administrator, or staff, or a representative thereof, is granted
2679 power of attorney for any resident of the facility shall file a
2680 surety bond with the agency for each resident for whom such
2681 power of attorney is granted. The surety bond shall be in an
2682 amount equal to twice the average monthly income of the
2683 resident, plus the value of any resident's property under the
2684 control of the attorney in fact. The bond shall be executed by
2685 the facility as principal and a licensed surety company. The

2686 bond shall be conditioned upon the faithful compliance of the
2687 facility with this section and shall run to the agency for the
2688 benefit of any resident who suffers a financial loss as a result
2689 of the misuse or misappropriation by a facility of funds held
2690 pursuant to this subsection. Any surety company that cancels or
2691 does not renew the bond of any licensee shall notify the agency
2692 in writing not less than 30 days in advance of such action,
2693 giving the reason for the cancellation or nonrenewal. Any
2694 facility owner, administrator, or staff, or representative
2695 thereof, who is granted power of attorney for any resident of
2696 the facility shall, on a monthly basis, be required to provide
2697 the resident a written statement of any transaction made on
2698 behalf of the resident pursuant to this subsection, and a copy
2699 of such statement given to the resident shall be retained in
2700 each resident's file and available for agency inspection.
2701 (3) A facility, upon mutual consent with the resident,
2702 shall provide for the safekeeping in the facility of personal
2703 effects not in excess of $500 and funds of the resident not in
2704 excess of $200 cash, and shall keep complete and accurate
2705 records of all such funds and personal effects received. If a
2706 resident is absent from a facility for 24 hours or more, the
2707 facility may provide for the safekeeping of the resident's
2708 personal effects in excess of $500.
2709 (4) Any funds or other property belonging to or due to a
2710 resident, or expendable for his or her account, which is
2711 received by a facility shall be trust funds which shall be kept
2712 separate from the funds and property of the facility and other
2713 residents or shall be specifically credited to such resident.

2714 Such trust funds shall be used or otherwise expended only for
2715 the account of the resident. At least once every 3 months,
2716 unless upon order of a court of competent jurisdiction, the
2717 facility shall furnish the resident and his or her guardian,
2718 trustee, or conservator, if any, a complete and verified
2719 statement of all funds and other property to which this
2720 subsection applies, detailing the amount and items received,
2721 together with their sources and disposition. In any event, the
2722 facility shall furnish such statement annually and upon the
2723 discharge or transfer of a resident. Any governmental agency or
2724 private charitable agency contributing funds or other property
2725 to the account of a resident shall also be entitled to receive
2726 such statement annually and upon the discharge or transfer of
2727 the resident.
2728 (5) Any personal funds available to facility residents may
2729 be used by residents as they choose to obtain clothing, personal
2730 items, leisure activities, and other supplies and services for
2731 their personal use. A facility may not demand, require, or
2732 contract for payment of all or any part of the personal funds in
2733 satisfaction of the facility rate for supplies and services
2734 beyond that amount agreed to in writing and may not levy an
2735 additional charge to the individual or the account for any
2736 supplies or services that the facility has agreed by contract to
2737 provide as part of the standard monthly rate. Any service or
2738 supplies provided by the facility which are charged separately
2739 to the individual or the account may be provided only with the
2740 specific written consent of the individual, who shall be
2741 furnished in advance of the provision of the services or

2742 supplies with an itemized written statement to be attached to
2743 the contract setting forth the charges for the services or
2744 supplies.
2745 (6)(a) In addition to any damages or civil penalties to
2746 which a person is subject, any person who:
2747 1. Intentionally withholds a resident's personal funds,
2748 personal property, or personal needs allowance, or who demands,
2749 beneficially receives, or contracts for payment of all or any
2750 part of a resident's personal property or personal needs
2751 allowance in satisfaction of the facility rate for supplies and
2752 services; or
2753 2. Borrows from or pledges any personal funds of a
2754 resident, other than the amount agreed to by written contract
2755 under s. 429.24 ~~s. 400.424~~,
2756
2757 commits a misdemeanor of the first degree, punishable as
2758 provided in s. 775.082 or s. 775.083.
2759 (b) Any facility owner, administrator, or staff, or
2760 representative thereof, who is granted power of attorney for any
2761 resident of the facility and who misuses or misappropriates
2762 funds obtained through this power commits a felony of the third
2763 degree, punishable as provided in s. 775.082, s. 775.083, or s.
2764 775.084.
2765 (7) In the event of the death of a resident, a licensee
2766 shall return all refunds, funds, and property held in trust to
2767 the resident's personal representative, if one has been
2768 appointed at the time the facility disburses such funds, and, if
2769 not, to the resident's spouse or adult next of kin named in a

2770 beneficiary designation form provided by the facility to the
2771 resident. If the resident has no spouse or adult next of kin or
2772 such person cannot be located, funds due the resident shall be
2773 placed in an interest-bearing account, and all property held in
2774 trust by the facility shall be safeguarded until such time as
2775 the funds and property are disbursed pursuant to the Florida
2776 Probate Code. Such funds shall be kept separate from the funds
2777 and property of the facility and other residents of the
2778 facility. If the funds of the deceased resident are not
2779 disbursed pursuant to the Florida Probate Code within 2 years
2780 after the resident's death, the funds shall be deposited in the
2781 Health Care Trust Fund administered by the agency.
2782 (8) The department may by rule clarify terms and specify
2783 procedures and documentation necessary to administer the
2784 provisions of this section relating to the proper management of
2785 residents' funds and personal property and the execution of
2786 surety bonds.
2787 Section 52. Section 400.428, Florida Statutes, is
2788 renumbered as section 429.28, Florida Statutes, and amended to
2789 read:
2790 429.28 ~~400.428~~ Resident bill of rights.--
2791 (1) No resident of a facility shall be deprived of any
2792 civil or legal rights, benefits, or privileges guaranteed by
2793 law, the Constitution of the State of Florida, or the
2794 Constitution of the United States as a resident of a facility.
2795 Every resident of a facility shall have the right to:
2796 (a) Live in a safe and decent living environment, free
2797 from abuse and neglect.

2798 (b) Be treated with consideration and respect and with due
2799 recognition of personal dignity, individuality, and the need for
2800 privacy.
2801 (c) Retain and use his or her own clothes and other
2802 personal property in his or her immediate living quarters, so as
2803 to maintain individuality and personal dignity, except when the
2804 facility can demonstrate that such would be unsafe, impractical,
2805 or an infringement upon the rights of other residents.
2806 (d) Unrestricted private communication, including
2807 receiving and sending unopened correspondence, access to a
2808 telephone, and visiting with any person of his or her choice, at
2809 any time between the hours of 9 a.m. and 9 p.m. at a minimum.
2810 Upon request, the facility shall make provisions to extend
2811 visiting hours for caregivers and out-of-town guests, and in
2812 other similar situations.
2813 (e) Freedom to participate in and benefit from community
2814 services and activities and to achieve the highest possible
2815 level of independence, autonomy, and interaction within the
2816 community.
2817 (f) Manage his or her financial affairs unless the
2818 resident or, if applicable, the resident's representative,
2819 designee, surrogate, guardian, or attorney in fact authorizes
2820 the administrator of the facility to provide safekeeping for
2821 funds as provided in s. 429.27 ~~s. 400.427~~.
2822 (g) Share a room with his or her spouse if both are
2823 residents of the facility.

2824 (h) Reasonable opportunity for regular exercise several
2825 times a week and to be outdoors at regular and frequent
2826 intervals except when prevented by inclement weather.
2827 (i) Exercise civil and religious liberties, including the
2828 right to independent personal decisions. No religious beliefs
2829 or practices, nor any attendance at religious services, shall be
2830 imposed upon any resident.
2831 (j) Access to adequate and appropriate health care
2832 consistent with established and recognized standards within the
2833 community.
2834 (k) At least 45 days' notice of relocation or termination
2835 of residency from the facility unless, for medical reasons, the
2836 resident is certified by a physician to require an emergency
2837 relocation to a facility providing a more skilled level of care
2838 or the resident engages in a pattern of conduct that is harmful
2839 or offensive to other residents. In the case of a resident who
2840 has been adjudicated mentally incapacitated, the guardian shall
2841 be given at least 45 days' notice of a nonemergency relocation
2842 or residency termination. Reasons for relocation shall be set
2843 forth in writing. In order for a facility to terminate the
2844 residency of an individual without notice as provided herein,
2845 the facility shall show good cause in a court of competent
2846 jurisdiction.
2847 (l) Present grievances and recommend changes in policies,
2848 procedures, and services to the staff of the facility, governing
2849 officials, or any other person without restraint, interference,
2850 coercion, discrimination, or reprisal. Each facility shall
2851 establish a grievance procedure to facilitate the residents'

2852 exercise of this right. This right includes access to ombudsman
2853 volunteers and advocates and the right to be a member of, to be
2854 active in, and to associate with advocacy or special interest
2855 groups.
2856 (2) The administrator of a facility shall ensure that a
2857 written notice of the rights, obligations, and prohibitions set
2858 forth in this part is posted in a prominent place in each
2859 facility and read or explained to residents who cannot read.
2860 This notice shall include the name, address, and telephone
2861 numbers of the local ombudsman council and central abuse hotline
2862 and, when applicable, the Advocacy Center for Persons with
2863 Disabilities, Inc., and the Florida local advocacy council,
2864 where complaints may be lodged. The facility must ensure a
2865 resident's access to a telephone to call the local ombudsman
2866 council, central abuse hotline, Advocacy Center for Persons with
2867 Disabilities, Inc., and the Florida local advocacy council.
2868 (3)(a) The agency shall conduct a survey to determine
2869 general compliance with facility standards and compliance with
2870 residents' rights as a prerequisite to initial licensure or
2871 licensure renewal.
2872 (b) In order to determine whether the facility is
2873 adequately protecting residents' rights, the biennial survey
2874 shall include private informal conversations with a sample of
2875 residents and consultation with the ombudsman council in the
2876 planning and service area in which the facility is located to
2877 discuss residents' experiences within the facility.
2878 (c) During any calendar year in which no survey is
2879 conducted, the agency shall conduct at least one monitoring

2880 visit of each facility cited in the previous year for a class I
2881 or class II violation, or more than three uncorrected class III
2882 violations.
2883 (d) The agency may conduct periodic followup inspections
2884 as necessary to monitor the compliance of facilities with a
2885 history of any class I, class II, or class III violations that
2886 threaten the health, safety, or security of residents.
2887 (e) The agency may conduct complaint investigations as
2888 warranted to investigate any allegations of noncompliance with
2889 requirements required under this part or rules adopted under
2890 this part.
2891 (4) The facility shall not hamper or prevent residents
2892 from exercising their rights as specified in this section.
2893 (5) No facility or employee of a facility may serve notice
2894 upon a resident to leave the premises or take any other
2895 retaliatory action against any person who:
2896 (a) Exercises any right set forth in this section.
2897 (b) Appears as a witness in any hearing, inside or outside
2898 the facility.
2899 (c) Files a civil action alleging a violation of the
2900 provisions of this part or notifies a state attorney or the
2901 Attorney General of a possible violation of such provisions.
2902 (6) Any facility which terminates the residency of an
2903 individual who participated in activities specified in
2904 subsection (5) shall show good cause in a court of competent
2905 jurisdiction.
2906 (7) Any person who submits or reports a complaint
2907 concerning a suspected violation of the provisions of this part

2908 or concerning services and conditions in facilities, or who
2909 testifies in any administrative or judicial proceeding arising
2910 from such a complaint, shall have immunity from any civil or
2911 criminal liability therefor, unless such person has acted in bad
2912 faith or with malicious purpose or the court finds that there
2913 was a complete absence of a justiciable issue of either law or
2914 fact raised by the losing party.
2915 Section 53. Section 400.429, Florida Statutes, is
2916 renumbered as section 429.29, Florida Statutes, and amended to
2917 read:
2918 429.29 ~~400.429~~ Civil actions to enforce rights.--
2919 (1) Any person or resident whose rights as specified in
2920 this part are violated shall have a cause of action. The action
2921 may be brought by the resident or his or her guardian, or by a
2922 person or organization acting on behalf of a resident with the
2923 consent of the resident or his or her guardian, or by the
2924 personal representative of the estate of a deceased resident
2925 regardless of the cause of death. If the action alleges a claim
2926 for the resident's rights or for negligence that caused the
2927 death of the resident, the claimant shall be required to elect
2928 either survival damages pursuant to s. 46.021 or wrongful death
2929 damages pursuant to s. 768.21. If the action alleges a claim for
2930 the resident's rights or for negligence that did not cause the
2931 death of the resident, the personal representative of the estate
2932 may recover damages for the negligence that caused injury to the
2933 resident. The action may be brought in any court of competent
2934 jurisdiction to enforce such rights and to recover actual
2935 damages, and punitive damages for violation of the rights of a

2936 resident or negligence. Any resident who prevails in seeking
2937 injunctive relief or a claim for an administrative remedy is
2938 entitled to recover the costs of the action and a reasonable
2939 attorney's fee assessed against the defendant not to exceed
2940 $25,000. Fees shall be awarded solely for the injunctive or
2941 administrative relief and not for any claim or action for
2942 damages whether such claim or action is brought together with a
2943 request for an injunction or administrative relief or as a
2944 separate action, except as provided under s. 768.79 or the
2945 Florida Rules of Civil Procedure. Sections 429.29-429.298
2946 ~~400.429-400.4303~~ provide the exclusive remedy for a cause of
2947 action for recovery of damages for the personal injury or death
2948 of a resident arising out of negligence or a violation of rights
2949 specified in s. 429.28 ~~s. 400.428~~. This section does not
2950 preclude theories of recovery not arising out of negligence or
2951 s. 429.28 ~~s. 400.428~~ which are available to a resident or to the
2952 agency. The provisions of chapter 766 do not apply to any cause
2953 of action brought under ss. 429.29-429.298 ~~ss. 400.429-400.4303~~.
2954 (2) In any claim brought pursuant to this part alleging a
2955 violation of resident's rights or negligence causing injury to
2956 or the death of a resident, the claimant shall have the burden
2957 of proving, by a preponderance of the evidence, that:
2958 (a) The defendant owed a duty to the resident;
2959 (b) The defendant breached the duty to the resident;
2960 (c) The breach of the duty is a legal cause of loss,
2961 injury, death, or damage to the resident; and
2962 (d) The resident sustained loss, injury, death, or damage
2963 as a result of the breach.

2964
2965 Nothing in this part shall be interpreted to create strict
2966 liability. A violation of the rights set forth in s. 429.28 ~~s.~~
2967 ~~400.428~~ or in any other standard or guidelines specified in this
2968 part or in any applicable administrative standard or guidelines
2969 of this state or a federal regulatory agency shall be evidence
2970 of negligence but shall not be considered negligence per se.
2971 (3) In any claim brought pursuant to this section, a
2972 licensee, person, or entity shall have a duty to exercise
2973 reasonable care. Reasonable care is that degree of care which a
2974 reasonably careful licensee, person, or entity would use under
2975 like circumstances.
2976 (4) In any claim for resident's rights violation or
2977 negligence by a nurse licensed under part I of chapter 464, such
2978 nurse shall have the duty to exercise care consistent with the
2979 prevailing professional standard of care for a nurse. The
2980 prevailing professional standard of care for a nurse shall be
2981 that level of care, skill, and treatment which, in light of all
2982 relevant surrounding circumstances, is recognized as acceptable
2983 and appropriate by reasonably prudent similar nurses.
2984 (5) Discovery of financial information for the purpose of
2985 determining the value of punitive damages may not be had unless
2986 the plaintiff shows the court by proffer or evidence in the
2987 record that a reasonable basis exists to support a claim for
2988 punitive damages.
2989 (6) In addition to any other standards for punitive
2990 damages, any award of punitive damages must be reasonable in
2991 light of the actual harm suffered by the resident and the

2992 egregiousness of the conduct that caused the actual harm to the
2993 resident.
2994 (7) The resident or the resident's legal representative
2995 shall serve a copy of any complaint alleging in whole or in part
2996 a violation of any rights specified in this part to the Agency
2997 for Health Care Administration at the time of filing the initial
2998 complaint with the clerk of the court for the county in which
2999 the action is pursued. The requirement of providing a copy of
3000 the complaint to the agency does not impair the resident's legal
3001 rights or ability to seek relief for his or her claim.
3002 Section 54. Section 400.4293, Florida Statutes, is
3003 renumbered as section 429.293, Florida Statutes, and amended to
3004 read:
3005 429.293 ~~400.4293~~ Presuit notice; investigation;
3006 notification of violation of residents' rights or alleged
3007 negligence; claims evaluation procedure; informal discovery;
3008 review; settlement offer; mediation.--
3009 (1) As used in this section, the term:
3010 (a) "Claim for residents' rights violation or negligence"
3011 means a negligence claim alleging injury to or the death of a
3012 resident arising out of an asserted violation of the rights of a
3013 resident under s. 429.28 ~~s. 400.428~~ or an asserted deviation
3014 from the applicable standard of care.
3015 (b) "Insurer" means any self-insurer authorized under s.
3016 627.357, liability insurance carrier, joint underwriting
3017 association, or uninsured prospective defendant.
3018 (2) Prior to filing a claim for a violation of a
3019 resident's rights or a claim for negligence, a claimant alleging

3020 injury to or the death of a resident shall notify each
3021 prospective defendant by certified mail, return receipt
3022 requested, of an asserted violation of a resident's rights
3023 provided in s. 429.28 ~~s. 400.428~~ or deviation from the standard
3024 of care. Such notification shall include an identification of
3025 the rights the prospective defendant has violated and the
3026 negligence alleged to have caused the incident or incidents and
3027 a brief description of the injuries sustained by the resident
3028 which are reasonably identifiable at the time of notice. The
3029 notice shall contain a certificate of counsel that counsel's
3030 reasonable investigation gave rise to a good faith belief that
3031 grounds exist for an action against each prospective defendant.
3032 (3)(a) No suit may be filed for a period of 75 days after
3033 notice is mailed to any prospective defendant. During the 75-day
3034 period, the prospective defendants or their insurers shall
3035 conduct an evaluation of the claim to determine the liability of
3036 each defendant and to evaluate the damages of the claimants.
3037 Each defendant or insurer of the defendant shall have a
3038 procedure for the prompt evaluation of claims during the 75-day
3039 period. The procedure shall include one or more of the
3040 following:
3041 1. Internal review by a duly qualified facility risk
3042 manager or claims adjuster;
3043 2. Internal review by counsel for each prospective
3044 defendant;
3045 3. A quality assurance committee authorized under any
3046 applicable state or federal statutes or regulations; or

3047 4. Any other similar procedure that fairly and promptly
3048 evaluates the claims.
3049
3050 Each defendant or insurer of the defendant shall evaluate the
3051 claim in good faith.
3052 (b) At or before the end of the 75 days, the defendant or
3053 insurer of the defendant shall provide the claimant with a
3054 written response:
3055 1. Rejecting the claim; or
3056 2. Making a settlement offer.
3057 (c) The response shall be delivered to the claimant if not
3058 represented by counsel or to the claimant's attorney, by
3059 certified mail, return receipt requested. Failure of the
3060 prospective defendant or insurer of the defendant to reply to
3061 the notice within 75 days after receipt shall be deemed a
3062 rejection of the claim for purposes of this section.
3063 (4) The notification of a violation of a resident's rights
3064 or alleged negligence shall be served within the applicable
3065 statute of limitations period; however, during the 75-day
3066 period, the statute of limitations is tolled as to all
3067 prospective defendants. Upon stipulation by the parties, the 75-
3068 day period may be extended and the statute of limitations is
3069 tolled during any such extension. Upon receiving written notice
3070 by certified mail, return receipt requested, of termination of
3071 negotiations in an extended period, the claimant shall have 60
3072 days or the remainder of the period of the statute of
3073 limitations, whichever is greater, within which to file suit.

3074 (5) No statement, discussion, written document, report, or
3075 other work product generated by presuit claims evaluation
3076 procedures under this section is discoverable or admissible in
3077 any civil action for any purpose by the opposing party. All
3078 participants, including, but not limited to, physicians,
3079 investigators, witnesses, and employees or associates of the
3080 defendant, are immune from civil liability arising from
3081 participation in the presuit claims evaluation procedure. Any
3082 licensed physician or registered nurse may be retained by either
3083 party to provide an opinion regarding the reasonable basis of
3084 the claim. The presuit opinions of the expert are not
3085 discoverable or admissible in any civil action for any purpose
3086 by the opposing party.
3087 (6) Upon receipt by a prospective defendant of a notice of
3088 claim, the parties shall make discoverable information available
3089 without formal discovery as provided in subsection (7).
3090 (7) Informal discovery may be used by a party to obtain
3091 unsworn statements and the production of documents or things, as
3092 follows:
3093 (a) Unsworn statements.--Any party may require other
3094 parties to appear for the taking of an unsworn statement. Such
3095 statements may be used only for the purpose of claims evaluation
3096 and are not discoverable or admissible in any civil action for
3097 any purpose by any party. A party seeking to take the unsworn
3098 statement of any party must give reasonable notice in writing to
3099 all parties. The notice must state the time and place for taking
3100 the statement and the name and address of the party to be
3101 examined. Unless otherwise impractical, the examination of any

3102 party must be done at the same time by all other parties. Any
3103 party may be represented by counsel at the taking of an unsworn
3104 statement. An unsworn statement may be recorded electronically,
3105 stenographically, or on videotape. The taking of unsworn
3106 statements is subject to the provisions of the Florida Rules of
3107 Civil Procedure and may be terminated for abuses.
3108 (b) Documents or things.--Any party may request discovery
3109 of relevant documents or things. The documents or things must be
3110 produced, at the expense of the requesting party, within 20 days
3111 after the date of receipt of the request. A party is required to
3112 produce relevant and discoverable documents or things within
3113 that party's possession or control, if in good faith it can
3114 reasonably be done within the timeframe of the claims evaluation
3115 process.
3116 (8) Each request for and notice concerning informal
3117 discovery pursuant to this section must be in writing, and a
3118 copy thereof must be sent to all parties. Such a request or
3119 notice must bear a certificate of service identifying the name
3120 and address of the person to whom the request or notice is
3121 served, the date of the request or notice, and the manner of
3122 service thereof.
3123 (9) If a prospective defendant makes a written settlement
3124 offer, the claimant shall have 15 days from the date of receipt
3125 to accept the offer. An offer shall be deemed rejected unless
3126 accepted by delivery of a written notice of acceptance.
3127 (10) To the extent not inconsistent with this part, the
3128 provisions of the Florida Mediation Code, Florida Rules of Civil
3129 Procedure, shall be applicable to such proceedings.

3130 (11) Within 30 days after the claimant's receipt of
3131 defendant's response to the claim, the parties or their
3132 designated representatives shall meet in mediation to discuss
3133 the issues of liability and damages in accordance with the
3134 mediation rules of practice and procedures adopted by the
3135 Supreme Court. Upon stipulation of the parties, this 30-day
3136 period may be extended and the statute of limitations is tolled
3137 during the mediation and any such extension. At the conclusion
3138 of mediation, the claimant shall have 60 days or the remainder
3139 of the period of the statute of limitations, whichever is
3140 greater, within which to file suit.
3141 Section 55. Section 400.431, Florida Statutes, is
3142 renumbered as section 429.31, Florida Statutes, and amended to
3143 read:
3144 429.31 ~~400.431~~ Closing of facility; notice; penalty.--
3145 (1) Whenever a facility voluntarily discontinues
3146 operation, it shall inform the agency in writing at least 90
3147 days prior to the discontinuance of operation. The facility
3148 shall also inform each resident or the next of kin, legal
3149 representative, or agency acting on each resident's behalf, of
3150 the fact and the proposed time of such discontinuance, following
3151 the notification requirements provided in s. 429.28(1)(k) ~~s.~~
3152 ~~400.428(1)(k)~~. In the event a resident has no person to
3153 represent him or her, the facility shall be responsible for
3154 referral to an appropriate social service agency for placement.
3155 (2) Immediately upon the notice by the agency of the
3156 voluntary or involuntary termination of such operation, the
3157 agency shall monitor the transfer of residents to other

3158 facilities and ensure that residents' rights are being
3159 protected. The department, in consultation with the Department
3160 of Children and Family Services, shall specify procedures for
3161 ensuring that all residents who receive services are
3162 appropriately relocated.
3163 (3) All charges shall be prorated as of the date on which
3164 the facility discontinues operation, and if any payments have
3165 been made in advance, the payments for services not received
3166 shall be refunded to the resident or the resident's guardian
3167 within 10 working days of voluntary or involuntary closure of
3168 the facility, whether or not such refund is requested by the
3169 resident or guardian.
3170 (4) Immediately upon discontinuance of the operation of a
3171 facility, the owner shall surrender the license therefor to the
3172 agency, and the license shall be canceled.
3173 (5) The agency may levy a fine in an amount no greater
3174 than $5,000 upon each person or business entity that owns any
3175 interest in a facility that terminates operation without
3176 providing notice to the agency and the residents of the facility
3177 at least 30 days before operation ceases. This fine shall not
3178 be levied against any facility involuntarily closed at the
3179 initiation of the agency. The agency shall use the proceeds of
3180 the fines to operate the facility until all residents of the
3181 facility are relocated and shall deposit any balance of the
3182 proceeds into the Health Care Trust Fund established pursuant to
3183 s. 429.18 ~~s. 400.418~~.

3184 Section 56. Section 400.441, Florida Statutes, is
3185 renumbered as section 429.41, Florida Statutes, and amended to
3186 read:
3187 429.41 ~~400.441~~ Rules establishing standards.--
3188 (1) It is the intent of the Legislature that rules
3189 published and enforced pursuant to this section shall include
3190 criteria by which a reasonable and consistent quality of
3191 resident care and quality of life may be ensured and the results
3192 of such resident care may be demonstrated. Such rules shall
3193 also ensure a safe and sanitary environment that is residential
3194 and noninstitutional in design or nature. It is further
3195 intended that reasonable efforts be made to accommodate the
3196 needs and preferences of residents to enhance the quality of
3197 life in a facility. In order to provide safe and sanitary
3198 facilities and the highest quality of resident care
3199 accommodating the needs and preferences of residents, the
3200 department, in consultation with the agency, the Department of
3201 Children and Family Services, and the Department of Health,
3202 shall adopt rules, policies, and procedures to administer this
3203 part, which must include reasonable and fair minimum standards
3204 in relation to:
3205 (a) The requirements for and maintenance of facilities,
3206 not in conflict with the provisions of chapter 553, relating to
3207 plumbing, heating, cooling, lighting, ventilation, living space,
3208 and other housing conditions, which will ensure the health,
3209 safety, and comfort of residents and protection from fire
3210 hazard, including adequate provisions for fire alarm and other
3211 fire protection suitable to the size of the structure. Uniform

3212 firesafety standards shall be established and enforced by the
3213 State Fire Marshal in cooperation with the agency, the
3214 department, and the Department of Health.
3215 1. Evacuation capability determination.--
3216 a. The provisions of the National Fire Protection
3217 Association, NFPA 101A, Chapter 5, 1995 edition, shall be used
3218 for determining the ability of the residents, with or without
3219 staff assistance, to relocate from or within a licensed facility
3220 to a point of safety as provided in the fire codes adopted
3221 herein. An evacuation capability evaluation for initial
3222 licensure shall be conducted within 6 months after the date of
3223 licensure. For existing licensed facilities that are not
3224 equipped with an automatic fire sprinkler system, the
3225 administrator shall evaluate the evacuation capability of
3226 residents at least annually. The evacuation capability
3227 evaluation for each facility not equipped with an automatic fire
3228 sprinkler system shall be validated, without liability, by the
3229 State Fire Marshal, by the local fire marshal, or by the local
3230 authority having jurisdiction over firesafety, before the
3231 license renewal date. If the State Fire Marshal, local fire
3232 marshal, or local authority having jurisdiction over firesafety
3233 has reason to believe that the evacuation capability of a
3234 facility as reported by the administrator may have changed, it
3235 may, with assistance from the facility administrator, reevaluate
3236 the evacuation capability through timed exiting drills.
3237 Translation of timed fire exiting drills to evacuation
3238 capability may be determined:
3239 (I) Three minutes or less: prompt.

3240 (II) More than 3 minutes, but not more than 13 minutes:
3241 slow.
3242 (III) More than 13 minutes: impractical.
3243 b. The Office of the State Fire Marshal shall provide or
3244 cause the provision of training and education on the proper
3245 application of Chapter 5, NFPA 101A, 1995 edition, to its
3246 employees, to staff of the Agency for Health Care Administration
3247 who are responsible for regulating facilities under this part,
3248 and to local governmental inspectors. The Office of the State
3249 Fire Marshal shall provide or cause the provision of this
3250 training within its existing budget, but may charge a fee for
3251 this training to offset its costs. The initial training must be
3252 delivered within 6 months after July 1, 1995, and as needed
3253 thereafter.
3254 c. The Office of the State Fire Marshal, in cooperation
3255 with provider associations, shall provide or cause the provision
3256 of a training program designed to inform facility operators on
3257 how to properly review bid documents relating to the
3258 installation of automatic fire sprinklers. The Office of the
3259 State Fire Marshal shall provide or cause the provision of this
3260 training within its existing budget, but may charge a fee for
3261 this training to offset its costs. The initial training must be
3262 delivered within 6 months after July 1, 1995, and as needed
3263 thereafter.
3264 d. The administrator of a licensed facility shall sign an
3265 affidavit verifying the number of residents occupying the
3266 facility at the time of the evacuation capability evaluation.
3267 2. Firesafety requirements.--

3268 a. Except for the special applications provided herein,
3269 effective January 1, 1996, the provisions of the National Fire
3270 Protection Association, Life Safety Code, NFPA 101, 1994
3271 edition, Chapter 22 for new facilities and Chapter 23 for
3272 existing facilities shall be the uniform fire code applied by
3273 the State Fire Marshal for assisted living facilities, pursuant
3274 to s. 633.022.
3275 b. Any new facility, regardless of size, that applies for
3276 a license on or after January 1, 1996, must be equipped with an
3277 automatic fire sprinkler system. The exceptions as provided in
3278 section 22-2.3.5.1, NFPA 101, 1994 edition, as adopted herein,
3279 apply to any new facility housing eight or fewer residents. On
3280 July 1, 1995, local governmental entities responsible for the
3281 issuance of permits for construction shall inform, without
3282 liability, any facility whose permit for construction is
3283 obtained prior to January 1, 1996, of this automatic fire
3284 sprinkler requirement. As used in this part, the term "a new
3285 facility" does not mean an existing facility that has undergone
3286 change of ownership.
3287 c. Notwithstanding any provision of s. 633.022 or of the
3288 National Fire Protection Association, NFPA 101A, Chapter 5, 1995
3289 edition, to the contrary, any existing facility housing eight or
3290 fewer residents is not required to install an automatic fire
3291 sprinkler system, nor to comply with any other requirement in
3292 Chapter 23, NFPA 101, 1994 edition, that exceeds the firesafety
3293 requirements of NFPA 101, 1988 edition, that applies to this
3294 size facility, unless the facility has been classified as
3295 impractical to evacuate. Any existing facility housing eight or

3296 fewer residents that is classified as impractical to evacuate
3297 must install an automatic fire sprinkler system within the
3298 timeframes granted in this section.
3299 d. Any existing facility that is required to install an
3300 automatic fire sprinkler system under this paragraph need not
3301 meet other firesafety requirements of Chapter 23, NFPA 101, 1994
3302 edition, which exceed the provisions of NFPA 101, 1988 edition.
3303 The mandate contained in this paragraph which requires certain
3304 facilities to install an automatic fire sprinkler system
3305 supersedes any other requirement.
3306 e. This paragraph does not supersede the exceptions
3307 granted in NFPA 101, 1988 edition or 1994 edition.
3308 f. This paragraph does not exempt facilities from other
3309 firesafety provisions adopted under s. 633.022 and local
3310 building code requirements in effect before July 1, 1995.
3311 g. A local government may charge fees only in an amount
3312 not to exceed the actual expenses incurred by local government
3313 relating to the installation and maintenance of an automatic
3314 fire sprinkler system in an existing and properly licensed
3315 assisted living facility structure as of January 1, 1996.
3316 h. If a licensed facility undergoes major reconstruction
3317 or addition to an existing building on or after January 1, 1996,
3318 the entire building must be equipped with an automatic fire
3319 sprinkler system. Major reconstruction of a building means
3320 repair or restoration that costs in excess of 50 percent of the
3321 value of the building as reported on the tax rolls, excluding
3322 land, before reconstruction. Multiple reconstruction projects
3323 within a 5-year period the total costs of which exceed 50

3324 percent of the initial value of the building at the time the
3325 first reconstruction project was permitted are to be considered
3326 as major reconstruction. Application for a permit for an
3327 automatic fire sprinkler system is required upon application for
3328 a permit for a reconstruction project that creates costs that go
3329 over the 50-percent threshold.
3330 i. Any facility licensed before January 1, 1996, that is
3331 required to install an automatic fire sprinkler system shall
3332 ensure that the installation is completed within the following
3333 timeframes based upon evacuation capability of the facility as
3334 determined under subparagraph 1.:
3335 (I) Impractical evacuation capability, 24 months.
3336 (II) Slow evacuation capability, 48 months.
3337 (III) Prompt evacuation capability, 60 months.
3338
3339 The beginning date from which the deadline for the automatic
3340 fire sprinkler installation requirement must be calculated is
3341 upon receipt of written notice from the local fire official that
3342 an automatic fire sprinkler system must be installed. The local
3343 fire official shall send a copy of the document indicating the
3344 requirement of a fire sprinkler system to the Agency for Health
3345 Care Administration.
3346 j. It is recognized that the installation of an automatic
3347 fire sprinkler system may create financial hardship for some
3348 facilities. The appropriate local fire official shall, without
3349 liability, grant two 1-year extensions to the timeframes for
3350 installation established herein, if an automatic fire sprinkler
3351 installation cost estimate and proof of denial from two

3352 financial institutions for a construction loan to install the
3353 automatic fire sprinkler system are submitted. However, for any
3354 facility with a class I or class II, or a history of uncorrected
3355 class III, firesafety deficiencies, an extension must not be
3356 granted. The local fire official shall send a copy of the
3357 document granting the time extension to the Agency for Health
3358 Care Administration.
3359 k. A facility owner whose facility is required to be
3360 equipped with an automatic fire sprinkler system under Chapter
3361 23, NFPA 101, 1994 edition, as adopted herein, must disclose to
3362 any potential buyer of the facility that an installation of an
3363 automatic fire sprinkler requirement exists. The sale of the
3364 facility does not alter the timeframe for the installation of
3365 the automatic fire sprinkler system.
3366 l. Existing facilities required to install an automatic
3367 fire sprinkler system as a result of construction-type
3368 restrictions in Chapter 23, NFPA 101, 1994 edition, as adopted
3369 herein, or evacuation capability requirements shall be notified
3370 by the local fire official in writing of the automatic fire
3371 sprinkler requirement, as well as the appropriate date for final
3372 compliance as provided in this subparagraph. The local fire
3373 official shall send a copy of the document to the Agency for
3374 Health Care Administration.
3375 m. Except in cases of life-threatening fire hazards, if an
3376 existing facility experiences a change in the evacuation
3377 capability, or if the local authority having jurisdiction
3378 identifies a construction-type restriction, such that an

3379 automatic fire sprinkler system is required, it shall be
3380 afforded time for installation as provided in this subparagraph.
3381
3382 Facilities that are fully sprinkled and in compliance with other
3383 firesafety standards are not required to conduct more than one
3384 of the required fire drills between the hours of 11 p.m. and 7
3385 a.m., per year. In lieu of the remaining drills, staff
3386 responsible for residents during such hours may be required to
3387 participate in a mock drill that includes a review of evacuation
3388 procedures. Such standards must be included or referenced in the
3389 rules adopted by the State Fire Marshal. Pursuant to s.
3390 633.022(1)(b), the State Fire Marshal is the final
3391 administrative authority for firesafety standards established
3392 and enforced pursuant to this section. All licensed facilities
3393 must have an annual fire inspection conducted by the local fire
3394 marshal or authority having jurisdiction.
3395 3. Resident elopement requirements.--Facilities are
3396 required to conduct a minimum of two resident elopement
3397 prevention and response drills per year. All administrators and
3398 direct care staff must participate in the drills which shall
3399 include a review of procedures to address resident elopement.
3400 Facilities must document the implementation of the drills and
3401 ensure that the drills are conducted in a manner consistent with
3402 the facility's resident elopement policies and procedures.
3403 (b) The preparation and annual update of a comprehensive
3404 emergency management plan. Such standards must be included in
3405 the rules adopted by the department after consultation with the
3406 Department of Community Affairs. At a minimum, the rules must

3407 provide for plan components that address emergency evacuation
3408 transportation; adequate sheltering arrangements; postdisaster
3409 activities, including provision of emergency power, food, and
3410 water; postdisaster transportation; supplies; staffing;
3411 emergency equipment; individual identification of residents and
3412 transfer of records; communication with families; and responses
3413 to family inquiries. The comprehensive emergency management
3414 plan is subject to review and approval by the local emergency
3415 management agency. During its review, the local emergency
3416 management agency shall ensure that the following agencies, at a
3417 minimum, are given the opportunity to review the plan: the
3418 Department of Elderly Affairs, the Department of Health, the
3419 Agency for Health Care Administration, and the Department of
3420 Community Affairs. Also, appropriate volunteer organizations
3421 must be given the opportunity to review the plan. The local
3422 emergency management agency shall complete its review within 60
3423 days and either approve the plan or advise the facility of
3424 necessary revisions.
3425 (c) The number, training, and qualifications of all
3426 personnel having responsibility for the care of residents. The
3427 rules must require adequate staff to provide for the safety of
3428 all residents. Facilities licensed for 17 or more residents are
3429 required to maintain an alert staff for 24 hours per day.
3430 (d) All sanitary conditions within the facility and its
3431 surroundings which will ensure the health and comfort of
3432 residents. The rules must clearly delineate the
3433 responsibilities of the agency's licensure and survey staff, the
3434 county health departments, and the local authority having

3435 jurisdiction over fire safety and ensure that inspections are
3436 not duplicative. The agency may collect fees for food service
3437 inspections conducted by the county health departments and
3438 transfer such fees to the Department of Health.
3439 (e) License application and license renewal, transfer of
3440 ownership, proper management of resident funds and personal
3441 property, surety bonds, resident contracts, refund policies,
3442 financial ability to operate, and facility and staff records.
3443 (f) Inspections, complaint investigations, moratoriums,
3444 classification of deficiencies, levying and enforcement of
3445 penalties, and use of income from fees and fines.
3446 (g) The enforcement of the resident bill of rights
3447 specified in s. 429.28 ~~s. 400.428~~.
3448 (h) The care and maintenance of residents, which must
3449 include, but is not limited to:
3450 1. The supervision of residents;
3451 2. The provision of personal services;
3452 3. The provision of, or arrangement for, social and
3453 leisure activities;
3454 4. The arrangement for appointments and transportation to
3455 appropriate medical, dental, nursing, or mental health services,
3456 as needed by residents;
3457 5. The management of medication;
3458 6. The nutritional needs of residents;
3459 7. Resident records; and
3460 8. Internal risk management and quality assurance.
3461 (i) Facilities holding a limited nursing, extended
3462 congregate care, or limited mental health license.

3463 (j) The establishment of specific criteria to define
3464 appropriateness of resident admission and continued residency in
3465 a facility holding a standard, limited nursing, extended
3466 congregate care, and limited mental health license.
3467 (k) The use of physical or chemical restraints. The use
3468 of physical restraints is limited to half-bed rails as
3469 prescribed and documented by the resident's physician with the
3470 consent of the resident or, if applicable, the resident's
3471 representative or designee or the resident's surrogate,
3472 guardian, or attorney in fact. The use of chemical restraints
3473 is limited to prescribed dosages of medications authorized by
3474 the resident's physician and must be consistent with the
3475 resident's diagnosis. Residents who are receiving medications
3476 that can serve as chemical restraints must be evaluated by their
3477 physician at least annually to assess:
3478 1. The continued need for the medication.
3479 2. The level of the medication in the resident's blood.
3480 3. The need for adjustments in the prescription.
3481 (l) The establishment of specific policies and procedures
3482 on resident elopement. Facilities shall conduct a minimum of two
3483 resident elopement drills each year. All administrators and
3484 direct care staff shall participate in the drills. Facilities
3485 shall document the drills.
3486 (2) In adopting any rules pursuant to this part, the
3487 department, in conjunction with the agency, shall make distinct
3488 standards for facilities based upon facility size; the types of
3489 care provided; the physical and mental capabilities and needs of
3490 residents; the type, frequency, and amount of services and care

3491 offered; and the staffing characteristics of the facility. Rules
3492 developed pursuant to this section shall not restrict the use of
3493 shared staffing and shared programming in facilities that are
3494 part of retirement communities that provide multiple levels of
3495 care and otherwise meet the requirements of law and rule.
3496 Except for uniform firesafety standards, the department shall
3497 adopt by rule separate and distinct standards for facilities
3498 with 16 or fewer beds and for facilities with 17 or more beds.
3499 The standards for facilities with 16 or fewer beds shall be
3500 appropriate for a noninstitutional residential environment,
3501 provided that the structure is no more than two stories in
3502 height and all persons who cannot exit the facility unassisted
3503 in an emergency reside on the first floor. The department, in
3504 conjunction with the agency, may make other distinctions among
3505 types of facilities as necessary to enforce the provisions of
3506 this part. Where appropriate, the agency shall offer alternate
3507 solutions for complying with established standards, based on
3508 distinctions made by the department and the agency relative to
3509 the physical characteristics of facilities and the types of care
3510 offered therein.
3511 (3) The department shall submit a copy of proposed rules
3512 to the Speaker of the House of Representatives, the President of
3513 the Senate, and appropriate committees of substance for review
3514 and comment prior to the promulgation thereof.
3515 (a) Rules promulgated by the department shall encourage
3516 the development of homelike facilities which promote the
3517 dignity, individuality, personal strengths, and decisionmaking
3518 ability of residents.

3519 (b) The agency, in consultation with the department, may
3520 waive rules promulgated pursuant to this part in order to
3521 demonstrate and evaluate innovative or cost-effective congregate
3522 care alternatives which enable individuals to age in place.
3523 Such waivers may be granted only in instances where there is
3524 reasonable assurance that the health, safety, or welfare of
3525 residents will not be endangered. To apply for a waiver, the
3526 licensee shall submit to the agency a written description of the
3527 concept to be demonstrated, including goals, objectives, and
3528 anticipated benefits; the number and types of residents who will
3529 be affected, if applicable; a brief description of how the
3530 demonstration will be evaluated; and any other information
3531 deemed appropriate by the agency. Any facility granted a waiver
3532 shall submit a report of findings to the agency and the
3533 department within 12 months. At such time, the agency may renew
3534 or revoke the waiver or pursue any regulatory or statutory
3535 changes necessary to allow other facilities to adopt the same
3536 practices. The department may by rule clarify terms and
3537 establish waiver application procedures, criteria for reviewing
3538 waiver proposals, and procedures for reporting findings, as
3539 necessary to implement this subsection.
3540 (4) The agency may use an abbreviated biennial standard
3541 licensure inspection that consists of a review of key quality-
3542 of-care standards in lieu of a full inspection in facilities
3543 which have a good record of past performance. However, a full
3544 inspection shall be conducted in facilities which have had a
3545 history of class I or class II violations, uncorrected class III
3546 violations, confirmed ombudsman council complaints, or confirmed

3547 licensure complaints, within the previous licensure period
3548 immediately preceding the inspection or when a potentially
3549 serious problem is identified during the abbreviated inspection.
3550 The agency, in consultation with the department, shall develop
3551 the key quality-of-care standards with input from the State
3552 Long-Term Care Ombudsman Council and representatives of provider
3553 groups for incorporation into its rules. The department, in
3554 consultation with the agency, shall report annually to the
3555 Legislature concerning its implementation of this subsection.
3556 The report shall include, at a minimum, the key quality-of-care
3557 standards which have been developed; the number of facilities
3558 identified as being eligible for the abbreviated inspection; the
3559 number of facilities which have received the abbreviated
3560 inspection and, of those, the number that were converted to full
3561 inspection; the number and type of subsequent complaints
3562 received by the agency or department on facilities which have
3563 had abbreviated inspections; any recommendations for
3564 modification to this subsection; any plans by the agency to
3565 modify its implementation of this subsection; and any other
3566 information which the department believes should be reported.
3567 (5) A fee shall be charged by the department to any person
3568 requesting a copy of this part or rules promulgated under this
3569 part. Such fees shall not exceed the actual cost of duplication
3570 and postage.
3571 Section 57. Section 400.442, Florida Statutes, is
3572 renumbered as section 429.42, Florida Statutes, and amended to
3573 read:
3574 429.42 ~~400.442~~ Pharmacy and dietary services.--

3575 (1) Any assisted living facility in which the agency has
3576 documented a class I or class II deficiency or uncorrected class
3577 III deficiencies regarding medicinal drugs or over-the-counter
3578 preparations, including their storage, use, delivery, or
3579 administration, or dietary services, or both, during a biennial
3580 survey or a monitoring visit or an investigation in response to
3581 a complaint, shall, in addition to or as an alternative to any
3582 penalties imposed under s. 429.19 ~~s. 400.419~~, be required to
3583 employ the consultant services of a licensed pharmacist, a
3584 licensed registered nurse, or a registered or licensed
3585 dietitian, as applicable. The consultant shall, at a minimum,
3586 provide onsite quarterly consultation until the inspection team
3587 from the agency determines that such consultation services are
3588 no longer required.
3589 (2) A corrective action plan for deficiencies related to
3590 assistance with the self-administration of medication or the
3591 administration of medication must be developed and implemented
3592 by the facility within 48 hours after notification of such
3593 deficiency, or sooner if the deficiency is determined by the
3594 agency to be life-threatening.
3595 (3) The agency shall employ at least two pharmacists
3596 licensed pursuant to chapter 465 among its personnel who
3597 biennially inspect assisted living facilities licensed under
3598 this part, to participate in biennial inspections or consult
3599 with the agency regarding deficiencies relating to medicinal
3600 drugs or over-the-counter preparations.
3601 (4) The department may by rule establish procedures and
3602 specify documentation as necessary to implement this section.

3603 Section 58. Section 400.444, Florida Statutes, is
3604 renumbered as section 429.44, Florida Statutes, and amended to
3605 read:
3606 429.44 ~~400.444~~ Construction and renovation;
3607 requirements.--
3608 (1) The requirements for the construction and renovation
3609 of a facility shall comply with the provisions of chapter 553
3610 which pertain to building construction standards, including
3611 plumbing, electrical code, glass, manufactured buildings,
3612 accessibility for persons with disabilities, and the state
3613 minimum building code and with the provisions of s. 633.022,
3614 which pertain to uniform firesafety standards.
3615 (2) Upon notification by the local authority having
3616 jurisdiction over life-threatening violations which seriously
3617 threaten the health, safety, or welfare of a resident of a
3618 facility, the agency shall take action as specified in s. 429.14
3619 ~~s. 400.414~~.
3620 (3) The department may adopt rules to establish procedures
3621 and specify the documentation necessary to implement this
3622 section.
3623 Section 59. Section 400.447, Florida Statutes, is
3624 renumbered as section 429.47, Florida Statutes, and amended to
3625 read:
3626 429.47 ~~400.447~~ Prohibited acts; penalties for violation.--
3627 (1) It is unlawful for any person or public body to offer
3628 or advertise to the public, in any way by any medium whatever,
3629 personal services as defined in this act, without obtaining a
3630 valid current license. It is unlawful for any holder of a

3631 license issued pursuant to the provisions of this act to
3632 advertise or hold out to the public that it holds a license for
3633 a facility other than that for which it actually holds a
3634 license.
3635 (2) It is unlawful for any holder of a license issued
3636 pursuant to the provisions of this act to withhold from the
3637 agency any evidence of financial instability, including, but not
3638 limited to, bad checks, delinquent accounts, nonpayment of
3639 withholding taxes, unpaid utility expenses, nonpayment for
3640 essential services, or adverse court action concerning the
3641 financial viability of the facility or any other facility
3642 licensed under this part or under part II of chapter 400 ~~or part~~
3643 ~~III of this chapter~~ which is owned by the licensee.
3644 (3) Any person found guilty of violating subsection (1) or
3645 subsection (2) commits a misdemeanor of the second degree,
3646 punishable as provided in s. 775.083. Each day of continuing
3647 violation shall be considered a separate offense.
3648 (4) While a facility is under construction, the owner may
3649 advertise to the public prior to obtaining a license. Facilities
3650 that are certified under chapter 651 shall comply with the
3651 advertising provisions of s. 651.095 rather than those provided
3652 for in this subsection.
3653 (5) A freestanding facility shall not advertise or imply
3654 that any part of it is a nursing home. For the purpose of this
3655 subsection, "freestanding facility" means a facility that is not
3656 operated in conjunction with a nursing home to which residents
3657 of the facility are given priority when nursing care is

3658 required. A person who violates this subsection is subject to
3659 fine as specified in s. 429.19 ~~s. 400.419~~.
3660 (6) Any facility which is affiliated with any religious
3661 organization or which has a name implying religious affiliation
3662 shall include in its advertising whether or not it is affiliated
3663 with any religious organization and, if so, which organization.
3664 (7) A facility licensed under this part which is not part
3665 of a facility authorized under chapter 651 shall include the
3666 facility's license number as given by the agency in all
3667 advertising. A company or person owning more than one facility
3668 shall include at least one license number per advertisement.
3669 All advertising shall include the term "assisted living
3670 facility" before the license number.
3671 Section 60. Section 400.452, Florida Statutes, is
3672 renumbered as section 429.52, Florida Statutes, and amended to
3673 read:
3674 429.52 ~~400.452~~ Staff training and educational programs;
3675 core educational requirement.--
3676 (1) Administrators and other assisted living facility
3677 staff must meet minimum training and education requirements
3678 established by the Department of Elderly Affairs by rule. This
3679 training and education is intended to assist facilities to
3680 appropriately respond to the needs of residents, to maintain
3681 resident care and facility standards, and to meet licensure
3682 requirements.
3683 (2) The department shall establish a competency test and a
3684 minimum required score to indicate successful completion of the
3685 training and educational requirements. The competency test must

3686 be developed by the department in conjunction with the agency
3687 and providers. The required training and education must cover at
3688 least the following topics:
3689 (a) State law and rules relating to assisted living
3690 facilities.
3691 (b) Resident rights and identifying and reporting abuse,
3692 neglect, and exploitation.
3693 (c) Special needs of elderly persons, persons with mental
3694 illness, and persons with developmental disabilities and how to
3695 meet those needs.
3696 (d) Nutrition and food service, including acceptable
3697 sanitation practices for preparing, storing, and serving food.
3698 (e) Medication management, recordkeeping, and proper
3699 techniques for assisting residents with self-administered
3700 medication.
3701 (f) Firesafety requirements, including fire evacuation
3702 drill procedures and other emergency procedures.
3703 (g) Care of persons with Alzheimer's disease and related
3704 disorders.
3705 (3) Effective January 1, 2004, a new facility
3706 administrator must complete the required training and education,
3707 including the competency test, within a reasonable time after
3708 being employed as an administrator, as determined by the
3709 department. Failure to do so is a violation of this part and
3710 subjects the violator to an administrative fine as prescribed in
3711 s. 429.19 ~~s. 400.419~~. Administrators licensed in accordance with
3712 chapter 468, part II, are exempt from this requirement. Other

3713 licensed professionals may be exempted, as determined by the
3714 department by rule.
3715 (4) Administrators are required to participate in
3716 continuing education for a minimum of 12 contact hours every 2
3717 years.
3718 (5) Staff involved with the management of medications and
3719 assisting with the self-administration of medications under s.
3720 429.256 ~~s. 400.4256~~ must complete a minimum of 4 additional
3721 hours of training provided by a registered nurse, licensed
3722 pharmacist, or department staff. The department shall establish
3723 by rule the minimum requirements of this additional training.
3724 (6) Other facility staff shall participate in training
3725 relevant to their job duties as specified by rule of the
3726 department.
3727 (7) If the department or the agency determines that there
3728 are problems in a facility that could be reduced through
3729 specific staff training or education beyond that already
3730 required under this section, the department or the agency may
3731 require, and provide, or cause to be provided, the training or
3732 education of any personal care staff in the facility.
3733 (8) The department shall adopt rules related to these
3734 training requirements, the competency test, necessary
3735 procedures, and competency test fees.
3736 Section 61. Subsections (1), (10), and (18) of section
3737 400.462, Florida Statutes, are amended to read:
3738 400.462 Definitions.--As used in this part, the term:
3739 (1) "Administrator" means a direct employee, as defined in
3740 subsection (9). The administrator must be a licensed physician,

3741 physician assistant, or registered nurse licensed to practice in
3742 this state or an individual having at least 1 year of
3743 supervisory or administrative experience in home health care or
3744 in a facility licensed under chapter 395, ~~or under~~ part II ~~or~~
3745 ~~part III~~ of this chapter, or chapter 429. An administrator may
3746 manage a maximum of five licensed home health agencies located
3747 within one agency service district or within an immediately
3748 contiguous county. If the home health agency is licensed under
3749 this chapter and is part of a retirement community that provides
3750 multiple levels of care, an employee of the retirement community
3751 may administer the home health agency and up to a maximum of
3752 four entities licensed under this chapter or chapter 429 that
3753 are owned, operated, or managed by the same corporate entity. An
3754 administrator shall designate, in writing, for each licensed
3755 entity, a qualified alternate administrator to serve during
3756 absences.
3757 (10) "Director of nursing" means a registered nurse who is
3758 a direct employee, as defined in subsection (9), of the agency
3759 and who is a graduate of an approved school of nursing and is
3760 licensed in this state; who has at least 1 year of supervisory
3761 experience as a registered nurse; and who is responsible for
3762 overseeing the professional nursing and home health aid delivery
3763 of services of the agency. A director of nursing may be the
3764 director of a maximum of five licensed home health agencies
3765 operated by a related business entity and located within one
3766 agency service district or within an immediately contiguous
3767 county. If the home health agency is licensed under this chapter
3768 and is part of a retirement community that provides multiple

3769 levels of care, an employee of the retirement community may
3770 serve as the director of nursing of the home health agency and
3771 of up to four entities licensed under this chapter or chapter
3772 429 which are owned, operated, or managed by the same corporate
3773 entity.
3774 (18) "Nurse registry" means any person that procures,
3775 offers, promises, or attempts to secure health-care-related
3776 contracts for registered nurses, licensed practical nurses,
3777 certified nursing assistants, home health aides, companions, or
3778 homemakers, who are compensated by fees as independent
3779 contractors, including, but not limited to, contracts for the
3780 provision of services to patients and contracts to provide
3781 private duty or staffing services to health care facilities
3782 licensed under chapter 395, ~~or~~ this chapter, or chapter 429 or
3783 other business entities.
3784 Section 62. Paragraphs (h), (i), and (n) of subsection (5)
3785 of section 400.464, Florida Statutes, are amended to read:
3786 400.464 Home health agencies to be licensed; expiration of
3787 license; exemptions; unlawful acts; penalties.--
3788 (5) The following are exempt from the licensure
3789 requirements of this part:
3790 (h) The delivery of assisted living facility services for
3791 which the assisted living facility is licensed under part I ~~III~~
3792 of ~~this~~ chapter 429, to serve its residents in its facility.
3793 (i) The delivery of hospice services for which the hospice
3794 is licensed under part IV ~~VI~~ of this chapter, to serve hospice
3795 patients admitted to its service.

3796 (n) The delivery of adult family care home services for
3797 which the adult family care home is licensed under part II ~~VII~~
3798 of ~~this~~ chapter 429, to serve the residents in its facility.
3799 Section 63. Subsection (2) of section 400.497, Florida
3800 Statutes, is amended to read:
3801 400.497 Rules establishing minimum standards.--The agency
3802 shall adopt, publish, and enforce rules to implement this part,
3803 including, as applicable, ss. 400.506 and 400.509, which must
3804 provide reasonable and fair minimum standards relating to:
3805 (2) Shared staffing. The agency shall allow shared
3806 staffing if the home health agency is part of a retirement
3807 community that provides multiple levels of care, is located on
3808 one campus, is licensed under this chapter or chapter 429, and
3809 otherwise meets the requirements of law and rule.
3810 Section 64. Section 400.552, Florida Statutes, is
3811 renumbered as section 429.903, Florida Statutes, and amended to
3812 read:
3813 429.903 ~~400.552~~ Applicability.--Any facility that comes
3814 within the definition of an adult day care center which is not
3815 exempt under s. 429.905 ~~s. 400.553~~ must be licensed by the
3816 agency as an adult day care center.
3817 Section 65. Section 400.555, Florida Statutes, is
3818 renumbered as section 429.909, Florida Statutes, and amended to
3819 read:
3820 429.909 ~~400.555~~ Application for license.--
3821 (1) An application for a license to operate an adult day
3822 care center must be made to the agency on forms furnished by the
3823 agency and must be accompanied by the appropriate license fee

3824 unless the applicant is exempt from payment of the fee as
3825 provided in s. 429.907(4) ~~s. 400.554(4)~~.
3826 (2) The applicant for licensure must furnish:
3827 (a) A description of the physical and mental capabilities
3828 and needs of the participants to be served and the availability,
3829 frequency, and intensity of basic services and of supportive and
3830 optional services to be provided;
3831 (b) Satisfactory proof of financial ability to operate and
3832 conduct the center in accordance with the requirements of this
3833 part, which must include, in the case of an initial application,
3834 a 1-year operating plan and proof of a 3-month operating reserve
3835 fund; and
3836 (c) Proof of adequate liability insurance coverage.
3837 (d) Proof of compliance with level 2 background screening
3838 as required under s. 429.919 ~~s. 400.5572~~.
3839 (e) A description and explanation of any exclusions,
3840 permanent suspensions, or terminations of the application from
3841 the Medicare or Medicaid programs. Proof of compliance with
3842 disclosure of ownership and control interest requirements of the
3843 Medicare or Medicaid programs shall be accepted in lieu of this
3844 submission.
3845 Section 66. Section 400.556, Florida Statutes, is
3846 renumbered as section 429.911, Florida Statutes, and amended to
3847 read:
3848 429.911 ~~400.556~~ Denial, suspension, revocation of license;
3849 administrative fines; investigations and inspections.--
3850 (1) The agency may deny, revoke, or suspend a license
3851 under this part or may impose an administrative fine against the

3852 owner of an adult day care center or its operator or employee in
3853 the manner provided in chapter 120.
3854 (2) Each of the following actions by the owner of an adult
3855 day care center or by its operator or employee is a ground for
3856 action by the agency against the owner of the center or its
3857 operator or employee:
3858 (a) An intentional or negligent act materially affecting
3859 the health or safety of center participants.
3860 (b) A violation of this part or of any standard or rule
3861 under this part.
3862 (c) A failure of persons subject to level 2 background
3863 screening under s. 429.174(1) ~~s. 400.4174(1)~~ to meet the
3864 screening standards of s. 435.04, or the retention by the center
3865 of an employee subject to level 1 background screening standards
3866 under s. 429.174(2) ~~s. 400.4174(2)~~ who does not meet the
3867 screening standards of s. 435.03 and for whom exemptions from
3868 disqualification have not been provided by the agency.
3869 (d) Failure to follow the criteria and procedures provided
3870 under part I of chapter 394 relating to the transportation,
3871 voluntary admission, and involuntary examination of center
3872 participants.
3873 (e) Multiple or repeated violations of this part or of any
3874 standard or rule adopted under this part.
3875 (f) Exclusion, permanent suspension, or termination of the
3876 owner, if an individual, officer, or board member of the adult
3877 day care center, if the owner is a firm, corporation,
3878 partnership, or association, or any person owning 5 percent or
3879 more of the center, from the Medicare or Medicaid program.

3880 (3) The agency is responsible for all investigations and
3881 inspections conducted pursuant to this part.
3882 Section 67. Section 400.557, Florida Statutes, is
3883 renumbered as section 429.915, Florida Statutes, and amended to
3884 read:
3885 429.915 ~~400.557~~ Expiration of license; renewal;
3886 conditional license or permit.--
3887 (1) A license issued for the operation of an adult day
3888 care center, unless sooner suspended or revoked, expires 2 years
3889 after the date of issuance. The agency shall notify a licensee
3890 at least 120 days before the expiration date that license
3891 renewal is required to continue operation. The notification must
3892 be provided electronically or by mail delivery. At least 90 days
3893 prior to the expiration date, an application for renewal must be
3894 submitted to the agency. A license shall be renewed, upon the
3895 filing of an application on forms furnished by the agency, if
3896 the applicant has first met the requirements of this part and of
3897 the rules adopted under this part. The applicant must file with
3898 the application satisfactory proof of financial ability to
3899 operate the center in accordance with the requirements of this
3900 part and in accordance with the needs of the participants to be
3901 served and an affidavit of compliance with the background
3902 screening requirements of s. 429.919 ~~s. 400.5572~~.
3903 (2) A licensee against whom a revocation or suspension
3904 proceeding is pending at the time for license renewal may be
3905 issued a conditional license effective until final disposition
3906 by the agency of the proceeding. If judicial relief is sought
3907 from the final disposition, the court having jurisdiction may

3908 issue a conditional permit effective for the duration of the
3909 judicial proceeding.
3910 (3) The agency may issue a conditional license to an
3911 applicant for license renewal or change of ownership if the
3912 applicant fails to meet all standards and requirements for
3913 licensure. A conditional license issued under this subsection
3914 must be limited to a specific period not exceeding 6 months, as
3915 determined by the agency, and must be accompanied by an approved
3916 plan of correction.
3917 Section 68. Section 400.5572, Florida Statutes, is
3918 renumbered as section 429.919, Florida Statutes, and amended to
3919 read:
3920 429.919 ~~400.5572~~ Background screening.--
3921 (1)(a) Level 2 background screening must be conducted on
3922 each of the following persons, who shall be considered employees
3923 for the purposes of conducting screening under chapter 435:
3924 1. The adult day care center owner if an individual, the
3925 operator, and the financial officer.
3926 2. An officer or board member if the owner of the adult
3927 day care center is a firm, corporation, partnership, or
3928 association, or any person owning 5 percent or more of the
3929 facility, if the agency has probable cause to believe that such
3930 person has been convicted of any offense prohibited by s.
3931 435.04. For each officer, board member, or person owning 5
3932 percent or more who has been convicted of any such offense, the
3933 facility shall submit to the agency a description and
3934 explanation of the conviction at the time of license
3935 application. This subparagraph does not apply to a board member

3936 of a not-for-profit corporation or organization if the board
3937 member serves solely in a voluntary capacity, does not regularly
3938 take part in the day-to-day operational decisions of the
3939 corporation or organization, receives no remuneration for his or
3940 her services, and has no financial interest and has no family
3941 members with a financial interest in the corporation or
3942 organization, provided that the board member and facility submit
3943 a statement affirming that the board member's relationship to
3944 the facility satisfies the requirements of this subparagraph.
3945 (b) Proof of compliance with level 2 screening standards
3946 which has been submitted within the previous 5 years to meet any
3947 facility or professional licensure requirements of the agency or
3948 the Department of Health satisfies the requirements of this
3949 subsection.
3950 (c) The agency may grant a provisional license to an adult
3951 day care center applying for an initial license when each
3952 individual required by this subsection to undergo screening has
3953 completed the Department of Law Enforcement background check,
3954 but has not yet received results from the Federal Bureau of
3955 Investigation, or when a request for an exemption from
3956 disqualification has been submitted to the agency pursuant to s.
3957 435.07, but a response has not been issued.
3958 (2) The owner or administrator of an adult day care center
3959 must conduct level 1 background screening as set forth in
3960 chapter 435 on all employees hired on or after October 1, 1998,
3961 who provide basic services or supportive and optional services
3962 to the participants. Such persons satisfy this requirement if:

3963 (a) Proof of compliance with level 1 screening
3964 requirements obtained to meet any professional license
3965 requirements in this state is provided and accompanied, under
3966 penalty of perjury, by a copy of the person's current
3967 professional license and an affidavit of current compliance with
3968 the background screening requirements.
3969 (b) The person required to be screened has been
3970 continuously employed, without a breach in service that exceeds
3971 180 days, in the same type of occupation for which the person is
3972 seeking employment and provides proof of compliance with the
3973 level 1 screening requirement which is no more than 2 years old.
3974 Proof of compliance must be provided directly from one employer
3975 or contractor to another, and not from the person screened. Upon
3976 request, a copy of screening results shall be provided to the
3977 person screened by the employer retaining documentation of the
3978 screening.
3979 (c) The person required to be screened is employed by a
3980 corporation or business entity or related corporation or
3981 business entity that owns, operates, or manages more than one
3982 facility or agency licensed under this chapter <u>or under chapter</u>
3983 <u>400</u>, and for whom a level 1 screening was conducted by the
3984 corporation or business entity as a condition of initial or
3985 continued employment.
3986 Section 69. Subsection (5) of section 400.601, Florida
3987 Statutes, is amended to read:
3988 400.601 Definitions.--As used in this part, the term:
3989 (5) "Hospice residential unit" means a homelike living
3990 facility, other than a facility licensed under other parts of

3991 this chapter, ~~or~~ under chapter 395, or under chapter 429, that
3992 is operated by a hospice for the benefit of its patients and is
3993 considered by a patient who lives there to be his or her primary
3994 residence.
3995 Section 70. Section 400.618, Florida Statutes, is
3996 renumbered as section 429.65, Florida Statutes, and amended to
3997 read:
3998 429.65 ~~400.618~~ Definitions.--As used in this part, the
3999 term:
4000 (1) "Activities of daily living" means functions and tasks
4001 for self-care, including eating, bathing, grooming, dressing,
4002 ambulating, and other similar tasks.
4003 (2) "Adult family-care home" means a full-time, family-
4004 type living arrangement, in a private home, under which a person
4005 who owns or rents the home provides room, board, and personal
4006 care, on a 24-hour basis, for no more than five disabled adults
4007 or frail elders who are not relatives. The following family-type
4008 living arrangements are not required to be licensed as an adult
4009 family-care home:
4010 (a) An arrangement whereby the person who owns or rents
4011 the home provides room, board, and personal services for not
4012 more than two adults who do not receive optional state
4013 supplementation under s. 409.212. The person who provides the
4014 housing, meals, and personal care must own or rent the home and
4015 reside therein.
4016 (b) An arrangement whereby the person who owns or rents
4017 the home provides room, board, and personal services only to his
4018 or her relatives.

4019 (c) An establishment that is licensed as an assisted
4020 living facility under this chapter ~~part III~~.
4021 (3) "Agency" means the Agency for Health Care
4022 Administration.
4023 (4) "Aging in place" means remaining in a noninstitutional
4024 living environment despite the physical or mental changes that
4025 may occur in a person who is aging. For aging in place to occur,
4026 needed services are added, increased, or adjusted to compensate
4027 for a person's physical or mental changes.
4028 (5) "Appropriate placement" means that the resident's
4029 needs can be met by the adult family-care home or can be met by
4030 services arranged by the adult family-care home or the resident.
4031 (6) "Chemical restraint" means a pharmacologic drug that
4032 physically limits, restricts, or deprives an individual of
4033 movement or mobility, and is used for discipline or convenience
4034 and not required for the treatment of medical symptoms.
4035 (7) "Department" means the Department of Elderly Affairs.
4036 (8) "Disabled adult" means any person between 18 and 59
4037 years of age, inclusive, who is a resident of the state and who
4038 has one or more permanent physical or mental limitations that
4039 restrict the person's ability to perform the normal activities
4040 of daily living.
4041 (9) "Frail elder" means a functionally impaired elderly
4042 person who is 60 years of age or older and who has physical or
4043 mental limitations that restrict the person's ability to perform
4044 the normal activities of daily living and that impede the
4045 person's capacity to live independently.

4046 (10) "Personal services" or "personal care" includes
4047 individual assistance with or supervision of the activities of
4048 daily living and the self-administration of medication, and
4049 other similar services.
4050 (11) "Provider" means a person who is licensed to operate
4051 an adult family-care home.
4052 (12) "Relative" means an individual who is the father,
4053 mother, son, daughter, brother, sister, grandfather,
4054 grandmother, great-grandfather, great-grandmother, uncle, aunt,
4055 first cousin, nephew, niece, husband, wife, father-in-law,
4056 mother-in-law, son-in-law, daughter-in-law, brother-in-law,
4057 sister-in-law, stepfather, stepmother, stepson, stepdaughter,
4058 stepbrother, stepsister, half brother, or half sister of a
4059 provider.
4060 (13) "Relief person" means an adult designated by the
4061 provider to supervise the residents during the provider's
4062 absence.
4063 (14) "Resident" means a person receiving room, board, and
4064 personal care in an adult family-care home.
4065 Section 71. Section 400.6194, Florida Statutes, is
4066 renumbered as section 429.69, Florida Statutes, and amended to
4067 read:
4068 429.69 ~~400.6194~~ Denial, revocation, or suspension of a
4069 license.--The agency may deny, suspend, or revoke a license for
4070 any of the following reasons:
4071 (1) Failure of any of the persons required to undergo
4072 background screening under s. 429.67 ~~s. 400.619~~ to meet the

4073 level 1 screening standards of s. 435.03, unless an exemption
4074 from disqualification has been provided by the agency.
4075 (2) An intentional or negligent act materially affecting
4076 the health, safety, or welfare of the adult family-care home
4077 residents.
4078 (3) Submission of fraudulent information or omission of
4079 any material fact on a license application or any other document
4080 required by the agency.
4081 (4) Failure to pay an administrative fine assessed under
4082 this part.
4083 (5) A violation of this part or adopted rules which
4084 results in conditions or practices that directly threaten the
4085 physical or emotional health, safety, or welfare of residents.
4086 (6) Failure to correct cited fire code violations that
4087 threaten the health, safety, or welfare of residents.
4088 (7) Failure to submit a completed initial license
4089 application or to complete an application for license renewal
4090 within the specified timeframes.
4091 (8) Exclusion, permanent suspension, or termination of the
4092 provider from the Medicare or Medicaid program.
4093 Section 72. Section 400.621, Florida Statutes, is
4094 renumbered as section 429.73, Florida Statutes, and amended to
4095 read:
4096 429.73 ~~400.621~~ Rules and standards relating to adult
4097 family-care homes.--
4098 (1) The department, in consultation with the Department of
4099 Health, the Department of Children and Family Services, and the
4100 agency shall, by rule, establish minimum standards to ensure the

4101 health, safety, and well-being of each resident in the adult
4102 family-care home. The rules must address:
4103 (a) Requirements for the physical site of the facility and
4104 facility maintenance.
4105 (b) Services that must be provided to all residents of an
4106 adult family-care home and standards for such services, which
4107 must include, but need not be limited to:
4108 1. Room and board.
4109 2. Assistance necessary to perform the activities of daily
4110 living.
4111 3. Assistance necessary to administer medication.
4112 4. Supervision of residents.
4113 5. Health monitoring.
4114 6. Social and leisure activities.
4115 (c) Standards and procedures for license application and
4116 annual license renewal, advertising, proper management of each
4117 resident's funds and personal property and personal affairs,
4118 financial ability to operate, medication management,
4119 inspections, complaint investigations, and facility, staff, and
4120 resident records.
4121 (d) Qualifications, training, standards, and
4122 responsibilities for providers and staff.
4123 (e) Compliance with chapter 419, relating to community
4124 residential homes.
4125 (f) Criteria and procedures for determining the
4126 appropriateness of a resident's placement and continued
4127 residency in an adult family-care home. A resident who requires
4128 24-hour nursing supervision may not be retained in an adult

4129 family-care home unless such resident is an enrolled hospice
4130 patient and the resident's continued residency is mutually
4131 agreeable to the resident and the provider.
4132 (g) Procedures for providing notice and assuring the least
4133 possible disruption of residents' lives when residents are
4134 relocated, an adult family-care home is closed, or the ownership
4135 of an adult family-care home is transferred.
4136 (h) Procedures to protect the residents' rights as
4137 provided in s. 429.85 ~~s. 400.628~~.
4138 (i) Procedures to promote the growth of adult family-care
4139 homes as a component of a long-term care system.
4140 (j) Procedures to promote the goal of aging in place for
4141 residents of adult family-care homes.
4142 (2) The department shall by rule provide minimum standards
4143 and procedures for emergencies. Pursuant to s. 633.022, the
4144 State Fire Marshal, in consultation with the department and the
4145 agency, shall adopt uniform firesafety standards for adult
4146 family-care homes.
4147 (3) The department shall adopt rules providing for the
4148 implementation of orders not to resuscitate. The provider may
4149 withhold or withdraw cardiopulmonary resuscitation if presented
4150 with an order not to resuscitate executed pursuant to s. 401.45.
4151 The provider shall not be subject to criminal prosecution or
4152 civil liability, nor be considered to have engaged in negligent
4153 or unprofessional conduct, for withholding or withdrawing
4154 cardiopulmonary resuscitation pursuant to such an order and
4155 rules adopted by the department.

4156 (4) The provider of any adult family-care home that is in
4157 operation at the time any rules are adopted or amended under
4158 this part may be given a reasonable time, not exceeding 6
4159 months, within which to comply with the new or revised rules and
4160 standards.
4161 Section 73. Section 400.628, Florida Statutes, is
4162 renumbered as section 429.85, Florida Statutes, and amended to
4163 read:
4164 429.85 ~~400.628~~ Residents' bill of rights.--
4165 (1) A resident of an adult family-care home may not be
4166 deprived of any civil or legal rights, benefits, or privileges
4167 guaranteed by law, the State Constitution, or the Constitution
4168 of the United States solely by reason of status as a resident of
4169 the home. Each resident has the right to:
4170 (a) Live in a safe and decent living environment, free
4171 from abuse and neglect.
4172 (b) Be treated with consideration and respect and with due
4173 recognition of personal dignity, individuality, and privacy.
4174 (c) Keep and use the resident's own clothes and other
4175 personal property in the resident's immediate living quarters,
4176 so as to maintain individuality and personal dignity, except
4177 when the provider can demonstrate that to do so would be unsafe
4178 or an infringement upon the rights of other residents.
4179 (d) Have unrestricted private communication, including
4180 receiving and sending unopened correspondence, having access to
4181 a telephone, and visiting with any person of his or her choice,
4182 at any time between the hours of 9 a.m. and 9 p.m. at a minimum.

4183 (e) Be free to participate in and benefit from community
4184 services and activities and to achieve the highest possible
4185 level of independence, autonomy, and interaction within the
4186 community.
4187 (f) Manage the resident's own financial affairs unless the
4188 resident or the resident's guardian authorizes the provider to
4189 provide safekeeping for funds in accordance with procedures
4190 equivalent to those provided in s. 429.27 ~~s. 400.427~~.
4191 (g) Share a room with the resident's spouse if both are
4192 residents of the home.
4193 (h) Have reasonable opportunity for regular exercise
4194 several times a week and to be outdoors at regular and frequent
4195 intervals.
4196 (i) Exercise civil and religious liberties, including the
4197 right to independent personal decisions. Religious beliefs or
4198 practices and attendance at religious services may not be
4199 imposed upon a resident.
4200 (j) Have access to adequate and appropriate health care.
4201 (k) Be free from chemical and physical restraints.
4202 (l) Have at least 30 days' notice of relocation or
4203 termination of residency from the home unless, for medical
4204 reasons, the resident is certified by a physician to require an
4205 emergency relocation to a facility providing a more skilled
4206 level of care or the resident engages in a pattern of conduct
4207 that is harmful or offensive to other residents. If a resident
4208 has been adjudicated mentally incompetent, the resident's
4209 guardian must be given at least 30 days' notice, except in an
4210 emergency, of the relocation of a resident or of the termination

4211 of a residency. The reasons for relocating a resident must be
4212 set forth in writing.
4213 (m) Present grievances and recommend changes to the
4214 provider, to staff, or to any other person without restraint,
4215 interference, coercion, discrimination, or reprisal. This right
4216 includes the right to have access to ombudsman volunteers and
4217 advocates and the right to be a member of, to be active in, and
4218 to associate with advocacy or special interest groups.
4219 (2) The provider shall ensure that residents and their
4220 legal representatives are made aware of the rights, obligations,
4221 and prohibitions set forth in this part. Residents must also be
4222 given the names, addresses, and telephone numbers of the local
4223 ombudsman council and the central abuse hotline where they may
4224 lodge complaints.
4225 (3) The adult family-care home may not hamper or prevent
4226 residents from exercising the rights specified in this section.
4227 (4) A provider or staff of an adult family-care home may
4228 not serve notice upon a resident to leave the premises or take
4229 any other retaliatory action against any person who:
4230 (a) Exercises any right set forth in this section.
4231 (b) Appears as a witness in any hearing, in or out of the
4232 adult family-care home.
4233 (c) Files a civil action alleging a violation of this part
4234 or notifies a state attorney or the Attorney General of a
4235 possible violation of this part.
4236 (5) Any adult family-care home that terminates the
4237 residency of an individual who has participated in activities

4238 specified in subsection (4) must show good cause for the
4239 termination in a court of competent jurisdiction.
4240 (6) Any person who reports a complaint concerning a
4241 suspected violation of this part or the services and conditions
4242 in an adult family-care home, or who testifies in any
4243 administrative or judicial proceeding arising from such a
4244 complaint, is immune from any civil or criminal liability
4245 therefor, unless the person acted in bad faith or with malicious
4246 purpose or the court finds that there was a complete absence of
4247 a justiciable issue of either law or fact raised by the losing
4248 party.
4249 Section 74. Paragraphs (c), (d), (e), and (f) of
4250 subsection (5) of section 400.93, Florida Statutes, are amended
4251 to read:
4252 400.93 Licensure required; exemptions; unlawful acts;
4253 penalties.--
4254 (5) The following are exempt from home medical equipment
4255 provider licensure, unless they have a separate company,
4256 corporation, or division that is in the business of providing
4257 home medical equipment and services for sale or rent to
4258 consumers at their regular or temporary place of residence
4259 pursuant to the provisions of this part:
4260 (c) Assisted living facilities licensed under chapter 429
4261 ~~part III~~, when serving their residents.
4262 (d) Home health agencies licensed under part III ~~IV~~.
4263 (e) Hospices licensed under part IV ~~VI~~.

4264 (f) Intermediate care facilities, homes for special
4265 services, and transitional living facilities licensed under part
4266 V ~~VIII~~.
4267 Section 75. Paragraph (c) of subsection (10) of section
4268 400.962, Florida Statutes, is amended to read:
4269 400.962 License required; license application.--
4270 (10)
4271 (c) Proof of compliance with the level 2 background
4272 screening requirements of chapter 435 which has been submitted
4273 within the previous 5 years in compliance with any other
4274 licensure requirements under this chapter or chapter 429
4275 satisfies the requirements of paragraph (a). Proof of compliance
4276 with background screening which has been submitted within the
4277 previous 5 years to fulfill the requirements of the Financial
4278 Services Commission and the Office of Insurance Regulation under
4279 chapter 651 as part of an application for a certificate of
4280 authority to operate a continuing care retirement community
4281 satisfies the requirements for the Department of Law Enforcement
4282 and Federal Bureau of Investigation background checks.
4283 Section 76. Paragraph (b) of subsection (1) of section
4284 400.980, Florida Statutes, is amended to read:
4285 400.980 Health care services pools.--
4286 (1) As used in this section, the term:
4287 (b) "Health care services pool" means any person, firm,
4288 corporation, partnership, or association engaged for hire in the
4289 business of providing temporary employment in health care
4290 facilities, residential facilities, and agencies for licensed,
4291 certified, or trained health care personnel including, without

4292 limitation, nursing assistants, nurses' aides, and orderlies.
4293 However, the term does not include nursing registries, a
4294 facility licensed under this chapter or chapter 429 ~~400~~, a
4295 health care services pool established within a health care
4296 facility to provide services only within the confines of such
4297 facility, or any individual contractor directly providing
4298 temporary services to a health care facility without use or
4299 benefit of a contracting agent.
4300 Section 77. Paragraphs (a), (b), (c), and (d) of
4301 subsection (4) of section 400.9905, Florida Statutes, are
4302 amended to read:
4303 400.9905 Definitions.--
4304 (4) "Clinic" means an entity at which health care services
4305 are provided to individuals and which tenders charges for
4306 reimbursement for such services, including a mobile clinic and a
4307 portable equipment provider. For purposes of this part, the term
4308 does not include and the licensure requirements of this part do
4309 not apply to:
4310 (a) Entities licensed or registered by the state under
4311 chapter 395; or entities licensed or registered by the state and
4312 providing only health care services within the scope of services
4313 authorized under their respective licenses granted under ss.
4314 383.30-383.335, chapter 390, chapter 394, chapter 397, this
4315 chapter except part X ~~XIII~~, chapter 429, chapter 463, chapter
4316 465, chapter 466, chapter 478, part I of chapter 483, chapter
4317 484, or chapter 651; end-stage renal disease providers
4318 authorized under 42 C.F.R. part 405, subpart U; or providers
4319 certified under 42 C.F.R. part 485, subpart B or subpart H; or

4320 any entity that provides neonatal or pediatric hospital-based
4321 health care services by licensed practitioners solely within a
4322 hospital licensed under chapter 395.
4323 (b) Entities that own, directly or indirectly, entities
4324 licensed or registered by the state pursuant to chapter 395; or
4325 entities that own, directly or indirectly, entities licensed or
4326 registered by the state and providing only health care services
4327 within the scope of services authorized pursuant to their
4328 respective licenses granted under ss. 383.30-383.335, chapter
4329 390, chapter 394, chapter 397, this chapter except part X ~~XIII~~,
4330 chapter 429, chapter 463, chapter 465, chapter 466, chapter 478,
4331 part I of chapter 483, chapter 484, chapter 651; end-stage renal
4332 disease providers authorized under 42 C.F.R. part 405, subpart
4333 U; or providers certified under 42 C.F.R. part 485, subpart B or
4334 subpart H; or any entity that provides neonatal or pediatric
4335 hospital-based health care services by licensed practitioners
4336 solely within a hospital licensed under chapter 395.
4337 (c) Entities that are owned, directly or indirectly, by an
4338 entity licensed or registered by the state pursuant to chapter
4339 395; or entities that are owned, directly or indirectly, by an
4340 entity licensed or registered by the state and providing only
4341 health care services within the scope of services authorized
4342 pursuant to their respective licenses granted under ss. 383.30-
4343 383.335, chapter 390, chapter 394, chapter 397, this chapter
4344 except part X ~~XIII~~, chapter 429, chapter 463, chapter 465,
4345 chapter 466, chapter 478, part I of chapter 483, chapter 484, or
4346 chapter 651; end-stage renal disease providers authorized under
4347 42 C.F.R. part 405, subpart U; or providers certified under 42

4348 C.F.R. part 485, subpart B or subpart H; or any entity that
4349 provides neonatal or pediatric hospital-based health care
4350 services by licensed practitioners solely within a hospital
4351 under chapter 395.
4352 (d) Entities that are under common ownership, directly or
4353 indirectly, with an entity licensed or registered by the state
4354 pursuant to chapter 395; or entities that are under common
4355 ownership, directly or indirectly, with an entity licensed or
4356 registered by the state and providing only health care services
4357 within the scope of services authorized pursuant to their
4358 respective licenses granted under ss. 383.30-383.335, chapter
4359 390, chapter 394, chapter 397, this chapter except part X ~~XIII~~,
4360 chapter 429, chapter 463, chapter 465, chapter 466, chapter 478,
4361 part I of chapter 483, chapter 484, or chapter 651; end-stage
4362 renal disease providers authorized under 42 C.F.R. part 405,
4363 subpart U; or providers certified under 42 C.F.R. part 485,
4364 subpart B or subpart H; or any entity that provides neonatal or
4365 pediatric hospital-based health care services by licensed
4366 practitioners solely within a hospital licensed under chapter
4367 395.
4368 Section 78. Subsection (12) of section 401.23, Florida
4369 Statutes, is amended to read:
4370 401.23 Definitions.--As used in this part, the term:
4371 (12) "Interfacility transfer" means the transportation by
4372 ambulance of a patient between two facilities licensed under
4373 chapter 393, chapter 395, ~~or~~ chapter 400, or chapter 429,
4374 pursuant to this part.

4375 Section 79. Paragraph (b) of subsection (2) of section
4376 402.164, Florida Statutes, is amended to read:
4377 402.164 Legislative intent; definitions.--
4378 (2) As used in ss. 402.164-402.167, the term:
4379 (b) "Client" means a client as defined in s. 393.063, s.
4380 394.67, s. 397.311, or s. 400.960, a forensic client or client
4381 as defined in s. 916.106, a child or youth as defined in s.
4382 39.01, a child as defined in s. 827.01, a family as defined in
4383 s. 414.0252, a participant as defined in s. 429.901 ~~s. 400.551~~,
4384 a resident as defined in s. 429.02 ~~s. 400.402~~, a Medicaid
4385 recipient or recipient as defined in s. 409.901, a child
4386 receiving child care as defined in s. 402.302, a disabled adult
4387 as defined in s. 410.032 or s. 410.603, or a victim as defined
4388 in s. 39.01 or s. 415.102 as each definition applies within its
4389 respective chapter.
4390 Section 80. Subsection (10) of section 408.032, Florida
4391 Statutes, is amended to read:
4392 408.032 Definitions relating to Health Facility and
4393 Services Development Act.--As used in ss. 408.031-408.045, the
4394 term:
4395 (10) "Hospice" or "hospice program" means a hospice as
4396 defined in part IV ~~VI~~ of chapter 400.
4397 Section 81. Paragraph (b) of subsection (2) of section
4398 408.033, Florida Statutes, is amended to read:
4399 408.033 Local and state health planning.--
4400 (2) FUNDING.--
4401 (b)1. A hospital licensed under chapter 395, a nursing
4402 home licensed under chapter 400, and an assisted living facility

4403 licensed under chapter 429 ~~400~~ shall be assessed an annual fee
4404 based on number of beds.
4405 2. All other facilities and organizations listed in
4406 paragraph (a) shall each be assessed an annual fee of $150.
4407 3. Facilities operated by the Department of Children and
4408 Family Services, the Department of Health, or the Department of
4409 Corrections and any hospital which meets the definition of rural
4410 hospital pursuant to s. 395.602 are exempt from the assessment
4411 required in this subsection.
4412 Section 82. Subsection (2) of section 408.034, Florida
4413 Statutes, is amended to read:
4414 408.034 Duties and responsibilities of agency; rules.--
4415 (2) In the exercise of its authority to issue licenses to
4416 health care facilities and health service providers, as provided
4417 under chapters 393 and~~,~~ 395~~,~~ and parts II and IV ~~VI~~ of chapter
4418 400, the agency may not issue a license to any health care
4419 facility or health service provider that fails to receive a
4420 certificate of need or an exemption for the licensed facility or
4421 service.
4422 Section 83. Subsections (28) and (29) of section 408.07,
4423 Florida Statutes, are amended to read:
4424 408.07 Definitions.--As used in this chapter, with the
4425 exception of ss. 408.031-408.045, the term:
4426 (28) "Home health agency" means an organization licensed
4427 under part III ~~IV~~ of chapter 400.
4428 (29) "Hospice" means an organization licensed under part
4429 IV ~~VI~~ of chapter 400.

4430 Section 84. Subsection (3) of section 408.831, Florida
4431 Statutes, is amended to read:
4432 408.831 Denial, suspension, or revocation of a license,
4433 registration, certificate, or application.--
4434 (3) This section provides standards of enforcement
4435 applicable to all entities licensed or regulated by the Agency
4436 for Health Care Administration. This section controls over any
4437 conflicting provisions of chapters 39, 381, 383, 390, 391, 393,
4438 394, 395, 400, 408, 429, 468, 483, and 641 or rules adopted
4439 pursuant to those chapters.
4440 Section 85. Subsection (2) of section 409.212, Florida
4441 Statutes, is amended to read:
4442 409.212 Optional supplementation.--
4443 (2) The base rate of payment for optional state
4444 supplementation shall be established by the department within
4445 funds appropriated. Additional amounts may be provided for
4446 mental health residents in facilities designed to provide
4447 limited mental health services as provided for in s. 429.075 ~~s.~~
4448 ~~400.4075~~. The base rate of payment does not include the personal
4449 needs allowance.
4450 Section 86. Paragraph (e) of subsection (4) of section
4451 409.221, Florida Statutes, is amended to read:
4452 409.221 Consumer-directed care program.--
4453 (4) CONSUMER-DIRECTED CARE.--
4454 (e) Services.--Consumers shall use the budget allowance
4455 only to pay for home and community-based services that meet the
4456 consumer's long-term care needs and are a cost-efficient use of

4457 funds. Such services may include, but are not limited to, the
4458 following:
4459 1. Personal care.
4460 2. Homemaking and chores, including housework, meals,
4461 shopping, and transportation.
4462 3. Home modifications and assistive devices which may
4463 increase the consumer's independence or make it possible to
4464 avoid institutional placement.
4465 4. Assistance in taking self-administered medication.
4466 5. Day care and respite care services, including those
4467 provided by nursing home facilities pursuant to s. 400.141(6) or
4468 by adult day care facilities licensed pursuant to s. 429.907 ~~s.~~
4469 ~~400.554~~.
4470 6. Personal care and support services provided in an
4471 assisted living facility.
4472 Section 87. Subsection (4) of section 409.905, Florida
4473 Statutes, is amended to read:
4474 409.905 Mandatory Medicaid services.--The agency may make
4475 payments for the following services, which are required of the
4476 state by Title XIX of the Social Security Act, furnished by
4477 Medicaid providers to recipients who are determined to be
4478 eligible on the dates on which the services were provided. Any
4479 service under this section shall be provided only when medically
4480 necessary and in accordance with state and federal law.
4481 Mandatory services rendered by providers in mobile units to
4482 Medicaid recipients may be restricted by the agency. Nothing in
4483 this section shall be construed to prevent or limit the agency
4484 from adjusting fees, reimbursement rates, lengths of stay,

4485 number of visits, number of services, or any other adjustments
4486 necessary to comply with the availability of moneys and any
4487 limitations or directions provided for in the General
4488 Appropriations Act or chapter 216.
4489 (4) HOME HEALTH CARE SERVICES.--The agency shall pay for
4490 nursing and home health aide services, supplies, appliances, and
4491 durable medical equipment, necessary to assist a recipient
4492 living at home. An entity that provides services pursuant to
4493 this subsection shall be licensed under part III ~~IV~~ of chapter
4494 400. These services, equipment, and supplies, or reimbursement
4495 therefor, may be limited as provided in the General
4496 Appropriations Act and do not include services, equipment, or
4497 supplies provided to a person residing in a hospital or nursing
4498 facility.
4499 (a) In providing home health care services, the agency may
4500 require prior authorization of care based on diagnosis.
4501 (b) The agency shall implement a comprehensive utilization
4502 management program that requires prior authorization of all
4503 private duty nursing services, an individualized treatment plan
4504 that includes information about medication and treatment orders,
4505 treatment goals, methods of care to be used, and plans for care
4506 coordination by nurses and other health professionals. The
4507 utilization management program shall also include a process for
4508 periodically reviewing the ongoing use of private duty nursing
4509 services. The assessment of need shall be based on a child's
4510 condition, family support and care supplements, a family's
4511 ability to provide care, and a family's and child's schedule
4512 regarding work, school, sleep, and care for other family

4513 dependents. When implemented, the private duty nursing
4514 utilization management program shall replace the current
4515 authorization program used by the Agency for Health Care
4516 Administration and the Children's Medical Services program of
4517 the Department of Health. The agency may competitively bid on a
4518 contract to select a qualified organization to provide
4519 utilization management of private duty nursing services. The
4520 agency is authorized to seek federal waivers to implement this
4521 initiative.
4522 Section 88. Subsection (14) of section 409.906, Florida
4523 Statutes, is amended to read:
4524 409.906 Optional Medicaid services.--Subject to specific
4525 appropriations, the agency may make payments for services which
4526 are optional to the state under Title XIX of the Social Security
4527 Act and are furnished by Medicaid providers to recipients who
4528 are determined to be eligible on the dates on which the services
4529 were provided. Any optional service that is provided shall be
4530 provided only when medically necessary and in accordance with
4531 state and federal law. Optional services rendered by providers
4532 in mobile units to Medicaid recipients may be restricted or
4533 prohibited by the agency. Nothing in this section shall be
4534 construed to prevent or limit the agency from adjusting fees,
4535 reimbursement rates, lengths of stay, number of visits, or
4536 number of services, or making any other adjustments necessary to
4537 comply with the availability of moneys and any limitations or
4538 directions provided for in the General Appropriations Act or
4539 chapter 216. If necessary to safeguard the state's systems of
4540 providing services to elderly and disabled persons and subject

4541 to the notice and review provisions of s. 216.177, the Governor
4542 may direct the Agency for Health Care Administration to amend
4543 the Medicaid state plan to delete the optional Medicaid service
4544 known as "Intermediate Care Facilities for the Developmentally
4545 Disabled." Optional services may include:
4546 (14) HOSPICE CARE SERVICES.--The agency may pay for all
4547 reasonable and necessary services for the palliation or
4548 management of a recipient's terminal illness, if the services
4549 are provided by a hospice that is licensed under part IV ~~VI~~ of
4550 chapter 400 and meets Medicare certification requirements.
4551 Section 89. Subsection (7) and paragraph (a) of subsection
4552 (8) of section 409.907, Florida Statutes, are amended to read:
4553 409.907 Medicaid provider agreements.--The agency may make
4554 payments for medical assistance and related services rendered to
4555 Medicaid recipients only to an individual or entity who has a
4556 provider agreement in effect with the agency, who is performing
4557 services or supplying goods in accordance with federal, state,
4558 and local law, and who agrees that no person shall, on the
4559 grounds of handicap, race, color, or national origin, or for any
4560 other reason, be subjected to discrimination under any program
4561 or activity for which the provider receives payment from the
4562 agency.
4563 (7) The agency may require, as a condition of
4564 participating in the Medicaid program and before entering into
4565 the provider agreement, that the provider submit information, in
4566 an initial and any required renewal applications, concerning the
4567 professional, business, and personal background of the provider
4568 and permit an onsite inspection of the provider's service

4569 location by agency staff or other personnel designated by the
4570 agency to perform this function. The agency shall perform a
4571 random onsite inspection, within 60 days after receipt of a
4572 fully complete new provider's application, of the provider's
4573 service location prior to making its first payment to the
4574 provider for Medicaid services to determine the applicant's
4575 ability to provide the services that the applicant is proposing
4576 to provide for Medicaid reimbursement. The agency is not
4577 required to perform an onsite inspection of a provider or
4578 program that is licensed by the agency, that provides services
4579 under waiver programs for home and community-based services, or
4580 that is licensed as a medical foster home by the Department of
4581 Children and Family Services. As a continuing condition of
4582 participation in the Medicaid program, a provider shall
4583 immediately notify the agency of any current or pending
4584 bankruptcy filing. Before entering into the provider agreement,
4585 or as a condition of continuing participation in the Medicaid
4586 program, the agency may also require that Medicaid providers
4587 reimbursed on a fee-for-services basis or fee schedule basis
4588 which is not cost-based, post a surety bond not to exceed
4589 $50,000 or the total amount billed by the provider to the
4590 program during the current or most recent calendar year,
4591 whichever is greater. For new providers, the amount of the
4592 surety bond shall be determined by the agency based on the
4593 provider's estimate of its first year's billing. If the
4594 provider's billing during the first year exceeds the bond
4595 amount, the agency may require the provider to acquire an
4596 additional bond equal to the actual billing level of the

4597 provider. A provider's bond shall not exceed $50,000 if a
4598 physician or group of physicians licensed under chapter 458,
4599 chapter 459, or chapter 460 has a 50 percent or greater
4600 ownership interest in the provider or if the provider is an
4601 assisted living facility licensed under ~~part III of~~ chapter 429
4602 ~~400~~. The bonds permitted by this section are in addition to the
4603 bonds referenced in s. 400.179(5)(d). If the provider is a
4604 corporation, partnership, association, or other entity, the
4605 agency may require the provider to submit information concerning
4606 the background of that entity and of any principal of the
4607 entity, including any partner or shareholder having an ownership
4608 interest in the entity equal to 5 percent or greater, and any
4609 treating provider who participates in or intends to participate
4610 in Medicaid through the entity. The information must include:
4611 (a) Proof of holding a valid license or operating
4612 certificate, as applicable, if required by the state or local
4613 jurisdiction in which the provider is located or if required by
4614 the Federal Government.
4615 (b) Information concerning any prior violation, fine,
4616 suspension, termination, or other administrative action taken
4617 under the Medicaid laws, rules, or regulations of this state or
4618 of any other state or the Federal Government; any prior
4619 violation of the laws, rules, or regulations relating to the
4620 Medicare program; any prior violation of the rules or
4621 regulations of any other public or private insurer; and any
4622 prior violation of the laws, rules, or regulations of any
4623 regulatory body of this or any other state.

4624 (c) Full and accurate disclosure of any financial or
4625 ownership interest that the provider, or any principal, partner,
4626 or major shareholder thereof, may hold in any other Medicaid
4627 provider or health care related entity or any other entity that
4628 is licensed by the state to provide health or residential care
4629 and treatment to persons.
4630 (d) If a group provider, identification of all members of
4631 the group and attestation that all members of the group are
4632 enrolled in or have applied to enroll in the Medicaid program.
4633 (8)(a) Each provider, or each principal of the provider if
4634 the provider is a corporation, partnership, association, or
4635 other entity, seeking to participate in the Medicaid program
4636 must submit a complete set of his or her fingerprints to the
4637 agency for the purpose of conducting a criminal history record
4638 check. Principals of the provider include any officer,
4639 director, billing agent, managing employee, or affiliated
4640 person, or any partner or shareholder who has an ownership
4641 interest equal to 5 percent or more in the provider. However, a
4642 director of a not-for-profit corporation or organization is not
4643 a principal for purposes of a background investigation as
4644 required by this section if the director: serves solely in a
4645 voluntary capacity for the corporation or organization, does not
4646 regularly take part in the day-to-day operational decisions of
4647 the corporation or organization, receives no remuneration from
4648 the not-for-profit corporation or organization for his or her
4649 service on the board of directors, has no financial interest in
4650 the not-for-profit corporation or organization, and has no
4651 family members with a financial interest in the not-for-profit

4652 corporation or organization; and if the director submits an
4653 affidavit, under penalty of perjury, to this effect to the
4654 agency and the not-for-profit corporation or organization
4655 submits an affidavit, under penalty of perjury, to this effect
4656 to the agency as part of the corporation's or organization's
4657 Medicaid provider agreement application. Notwithstanding the
4658 above, the agency may require a background check for any person
4659 reasonably suspected by the agency to have been convicted of a
4660 crime. This subsection shall not apply to:
4661 1. A hospital licensed under chapter 395;
4662 2. A nursing home licensed under chapter 400;
4663 3. A hospice licensed under chapter 400;
4664 4. An assisted living facility licensed under chapter 429;
4665 ~~400.~~
4666 5. A unit of local government, except that requirements of
4667 this subsection apply to nongovernmental providers and entities
4668 when contracting with the local government to provide Medicaid
4669 services. The actual cost of the state and national criminal
4670 history record checks must be borne by the nongovernmental
4671 provider or entity; or
4672 6. Any business that derives more than 50 percent of its
4673 revenue from the sale of goods to the final consumer, and the
4674 business or its controlling parent either is required to file a
4675 form 10-K or other similar statement with the Securities and
4676 Exchange Commission or has a net worth of $50 million or more.
4677 Section 90. Paragraph (c) of subsection (5) of section
4678 409.912, Florida Statutes, is amended to read:

4679 409.912 Cost-effective purchasing of health care.--The
4680 agency shall purchase goods and services for Medicaid recipients
4681 in the most cost-effective manner consistent with the delivery
4682 of quality medical care. To ensure that medical services are
4683 effectively utilized, the agency may, in any case, require a
4684 confirmation or second physician's opinion of the correct
4685 diagnosis for purposes of authorizing future services under the
4686 Medicaid program. This section does not restrict access to
4687 emergency services or poststabilization care services as defined
4688 in 42 C.F.R. part 438.114. Such confirmation or second opinion
4689 shall be rendered in a manner approved by the agency. The agency
4690 shall maximize the use of prepaid per capita and prepaid
4691 aggregate fixed-sum basis services when appropriate and other
4692 alternative service delivery and reimbursement methodologies,
4693 including competitive bidding pursuant to s. 287.057, designed
4694 to facilitate the cost-effective purchase of a case-managed
4695 continuum of care. The agency shall also require providers to
4696 minimize the exposure of recipients to the need for acute
4697 inpatient, custodial, and other institutional care and the
4698 inappropriate or unnecessary use of high-cost services. The
4699 agency shall contract with a vendor to monitor and evaluate the
4700 clinical practice patterns of providers in order to identify
4701 trends that are outside the normal practice patterns of a
4702 provider's professional peers or the national guidelines of a
4703 provider's professional association. The vendor must be able to
4704 provide information and counseling to a provider whose practice
4705 patterns are outside the norms, in consultation with the agency,
4706 to improve patient care and reduce inappropriate utilization.

4707 The agency may mandate prior authorization, drug therapy
4708 management, or disease management participation for certain
4709 populations of Medicaid beneficiaries, certain drug classes, or
4710 particular drugs to prevent fraud, abuse, overuse, and possible
4711 dangerous drug interactions. The Pharmaceutical and Therapeutics
4712 Committee shall make recommendations to the agency on drugs for
4713 which prior authorization is required. The agency shall inform
4714 the Pharmaceutical and Therapeutics Committee of its decisions
4715 regarding drugs subject to prior authorization. The agency is
4716 authorized to limit the entities it contracts with or enrolls as
4717 Medicaid providers by developing a provider network through
4718 provider credentialing. The agency may competitively bid single-
4719 source-provider contracts if procurement of goods or services
4720 results in demonstrated cost savings to the state without
4721 limiting access to care. The agency may limit its network based
4722 on the assessment of beneficiary access to care, provider
4723 availability, provider quality standards, time and distance
4724 standards for access to care, the cultural competence of the
4725 provider network, demographic characteristics of Medicaid
4726 beneficiaries, practice and provider-to-beneficiary standards,
4727 appointment wait times, beneficiary use of services, provider
4728 turnover, provider profiling, provider licensure history,
4729 previous program integrity investigations and findings, peer
4730 review, provider Medicaid policy and billing compliance records,
4731 clinical and medical record audits, and other factors. Providers
4732 shall not be entitled to enrollment in the Medicaid provider
4733 network. The agency shall determine instances in which allowing
4734 Medicaid beneficiaries to purchase durable medical equipment and

4735 other goods is less expensive to the Medicaid program than long-
4736 term rental of the equipment or goods. The agency may establish
4737 rules to facilitate purchases in lieu of long-term rentals in
4738 order to protect against fraud and abuse in the Medicaid program
4739 as defined in s. 409.913. The agency may seek federal waivers
4740 necessary to administer these policies.
4741 (5) By December 1, 2005, the Agency for Health Care
4742 Administration, in partnership with the Department of Elderly
4743 Affairs, shall create an integrated, fixed-payment delivery
4744 system for Medicaid recipients who are 60 years of age or older.
4745 The Agency for Health Care Administration shall implement the
4746 integrated system initially on a pilot basis in two areas of the
4747 state. In one of the areas enrollment shall be on a voluntary
4748 basis. The program must transfer all Medicaid services for
4749 eligible elderly individuals who choose to participate into an
4750 integrated-care management model designed to serve Medicaid
4751 recipients in the community. The program must combine all
4752 funding for Medicaid services provided to individuals 60 years
4753 of age or older into the integrated system, including funds for
4754 Medicaid home and community-based waiver services; all Medicaid
4755 services authorized in ss. 409.905 and 409.906, excluding funds
4756 for Medicaid nursing home services unless the agency is able to
4757 demonstrate how the integration of the funds will improve
4758 coordinated care for these services in a less costly manner; and
4759 Medicare coinsurance and deductibles for persons dually eligible
4760 for Medicaid and Medicare as prescribed in s. 409.908(13).
4761 (c) The agency must ensure that the capitation-rate-
4762 setting methodology for the integrated system is actuarially

4763 sound and reflects the intent to provide quality care in the
4764 least restrictive setting. The agency must also require
4765 integrated-system providers to develop a credentialing system
4766 for service providers and to contract with all Gold Seal nursing
4767 homes, where feasible, and exclude, where feasible, chronically
4768 poor-performing facilities and providers as defined by the
4769 agency. The integrated system must provide that if the recipient
4770 resides in a noncontracted residential facility licensed under
4771 chapter 400 or chapter 429 at the time the integrated system is
4772 initiated, the recipient must be permitted to continue to reside
4773 in the noncontracted facility as long as the recipient desires.
4774 The integrated system must also provide that, in the absence of
4775 a contract between the integrated-system provider and the
4776 residential facility licensed under chapter 400 or chapter 429,
4777 current Medicaid rates must prevail. The agency and the
4778 Department of Elderly Affairs must jointly develop procedures to
4779 manage the services provided through the integrated system in
4780 order to ensure quality and recipient choice.
4781 Section 91. Section 410.031, Florida Statutes, is amended
4782 to read:
4783 410.031 Legislative intent.--It is the intent of the
4784 Legislature to encourage the provision of care for disabled
4785 adults in family-type living arrangements in private homes as an
4786 alternative to institutional or nursing home care for such
4787 persons. The provisions of ss. 410.031-410.036 are intended to
4788 be supplemental to the provisions of chapters ~~chapter~~ 400 and
4789 429, relating to the licensing and regulation of nursing homes
4790 and assisted living facilities, and do not exempt any person who

4791 is otherwise subject to regulation under chapter 400 or chapter
4792 429.
4793 Section 92. Section 410.034, Florida Statutes, is amended
4794 to read:
4795 410.034 Department determination of fitness to provide
4796 home care.--In accordance with s. 429.02 ~~s. 400.402~~, a person
4797 caring for an adult who is related to such person by blood or
4798 marriage is not subject to the Assisted Living Facilities Act.
4799 If, however, the person who plans to provide home care under
4800 this act is found by the department to be unable to provide this
4801 care, the department shall notify the person wishing to provide
4802 home care of this determination, and the person shall not be
4803 eligible for subsidy payments under ss. 410.031-410.036.
4804 Section 93. Section 415.1111, Florida Statutes, is amended
4805 to read:
4806 415.1111 Civil actions.--A vulnerable adult who has been
4807 abused, neglected, or exploited as specified in this chapter has
4808 a cause of action against any perpetrator and may recover actual
4809 and punitive damages for such abuse, neglect, or exploitation.
4810 The action may be brought by the vulnerable adult, or that
4811 person's guardian, by a person or organization acting on behalf
4812 of the vulnerable adult with the consent of that person or that
4813 person's guardian, or by the personal representative of the
4814 estate of a deceased victim without regard to whether the cause
4815 of death resulted from the abuse, neglect, or exploitation. The
4816 action may be brought in any court of competent jurisdiction to
4817 enforce such action and to recover actual and punitive damages
4818 for any deprivation of or infringement on the rights of a

4819 vulnerable adult. A party who prevails in any such action may be
4820 entitled to recover reasonable attorney's fees, costs of the
4821 action, and damages. The remedies provided in this section are
4822 in addition to and cumulative with other legal and
4823 administrative remedies available to a vulnerable adult.
4824 Notwithstanding the foregoing, any civil action for damages
4825 against any licensee or entity who establishes, controls,
4826 conducts, manages, or operates a facility licensed under part II
4827 of chapter 400 relating to its operation of the licensed
4828 facility shall be brought pursuant to s. 400.023, or against any
4829 licensee or entity who establishes, controls, conducts, manages,
4830 or operates a facility licensed under part I ~~III~~ of chapter 429
4831 ~~400~~ relating to its operation of the licensed facility shall be
4832 brought pursuant to s. 429.29 ~~s. 400.429~~. Such licensee or
4833 entity shall not be vicariously liable for the acts or omissions
4834 of its employees or agents or any other third party in an action
4835 brought under this section.
4836 Section 94. Paragraph (d) of subsection (1) of section
4837 419.001, Florida Statutes, is amended to read:
4838 419.001 Site selection of community residential homes.--
4839 (1) For the purposes of this section, the following
4840 definitions shall apply:
4841 (d) "Resident" means any of the following: a frail elder
4842 as defined in s. 429.65 ~~s. 400.618~~; a physically disabled or
4843 handicapped person as defined in s. 760.22(7)(a); a
4844 developmentally disabled person as defined in s. 393.063; a
4845 nondangerous mentally ill person as defined in s. 394.455(18);

4846 or a child as defined in s. 39.01(14), s. 984.03(9) or (12), or
4847 s. 985.03(8).
4848 Section 95. Section 430.601, Florida Statutes, is amended
4849 to read:
4850 430.601 Home care for the elderly; legislative intent.--It
4851 is the intent of the Legislature to encourage the provision of
4852 care for the elderly in family-type living arrangements in
4853 private homes as an alternative to institutional or nursing home
4854 care for such persons. The provisions of ss. 430.601-430.606 are
4855 intended to be supplemental to the provisions of chapters
4856 ~~chapter~~ 400 and 429, relating to the licensing and regulation of
4857 nursing homes and assisted living facilities, and do not exempt
4858 any person who is otherwise subject to regulation under those
4859 chapters ~~the provisions of that chapter~~.
4860 Section 96. Subsection (7) of section 430.703, Florida
4861 Statutes, is amended to read:
4862 430.703 Definitions.--As used in this act, the term:
4863 (7) "Other qualified provider" means an entity licensed
4864 under chapter 400 or chapter 429 that demonstrates a long-term
4865 care continuum and meets all requirements pursuant to an
4866 interagency agreement between the agency and the department.
4867 Section 97. Paragraph (a) of subsection (3) of section
4868 435.03, Florida Statutes, is amended to read:
4869 435.03 Level 1 screening standards.--
4870 (3) Standards must also ensure that the person:
4871 (a) For employees and employers licensed or registered
4872 pursuant to chapter 400 or chapter 429, and for employees and
4873 employers of developmental services institutions as defined in

4874 s. 393.063, intermediate care facilities for the developmentally
4875 disabled as defined in s. 393.063, and mental health treatment
4876 facilities as defined in s. 394.455, meets the requirements of
4877 this chapter.
4878 Section 98. Paragraph (a) of subsection (4) of section
4879 435.04, Florida Statutes, is amended to read:
4880 435.04 Level 2 screening standards.--
4881 (4) Standards must also ensure that the person:
4882 (a) For employees or employers licensed or registered
4883 pursuant to chapter 400 or chapter 429, does not have a
4884 confirmed report of abuse, neglect, or exploitation as defined
4885 in s. 415.102(6), which has been uncontested or upheld under s.
4886 415.103.
4887 Section 99. Paragraph (g) of subsection (1) of section
4888 440.13, Florida Statutes, is amended to read:
4889 440.13 Medical services and supplies; penalty for
4890 violations; limitations.--
4891 (1) DEFINITIONS.--As used in this section, the term:
4892 (g) "Health care facility" means any hospital licensed
4893 under chapter 395 and any health care institution licensed under
4894 chapter 400 or chapter 429.
4895 Section 100. Subsection (1) of section 465.0235, Florida
4896 Statutes, is amended to read:
4897 465.0235 Automated pharmacy systems used by long-term care
4898 facilities, hospices, or state correctional institutions.--
4899 (1) A pharmacy may provide pharmacy services to a long-
4900 term care facility or hospice licensed under chapter 400 or
4901 chapter 429 or a state correctional institution operated under

4902 chapter 944 through the use of an automated pharmacy system that
4903 need not be located at the same location as the pharmacy.
4904 Section 101. Subsection (8) of section 468.1685, Florida
4905 Statutes, is amended to read:
4906 468.1685 Powers and duties of board and department.--It is
4907 the function and duty of the board, together with the
4908 department, to:
4909 (8) Set up procedures by rule for advising and acting
4910 together with the Department of Health and other boards of other
4911 health professions in matters affecting procedures and methods
4912 for effectively enforcing the purpose of this part and the
4913 administration of chapters ~~chapter~~ 400 and 429.
4914 Section 102. Paragraph (k) of subsection (1) of section
4915 468.505, Florida Statutes, is amended to read:
4916 468.505 Exemptions; exceptions.--
4917 (1) Nothing in this part may be construed as prohibiting
4918 or restricting the practice, services, or activities of:
4919 (k) A person employed by a hospital licensed under chapter
4920 395, ~~or~~ by a nursing home ~~or assisted living facility~~ licensed
4921 under part II ~~or part III~~ of chapter 400, by an assisted living
4922 facility licensed under chapter 429, or by a continuing care
4923 facility certified under chapter 651, if the person is employed
4924 in compliance with the laws and rules adopted thereunder
4925 regarding the operation of its dietetic department.
4926 Section 103. Subsection (11) of section 477.025, Florida
4927 Statutes, is amended to read:
4928 477.025 Cosmetology salons; specialty salons; requisites;
4929 licensure; inspection; mobile cosmetology salons.--

4930 (11) Facilities licensed under part II ~~or part III~~ of
4931 chapter 400 or part I of chapter 429 are ~~shall be~~ exempt from
4932 ~~the provisions of~~ this section, and a cosmetologist licensed
4933 pursuant to s. 477.019 may provide salon services exclusively
4934 for facility residents.
4935 Section 104. Subsection (5) of section 483.285, Florida
4936 Statutes, is amended to read:
4937 483.285 Application of part; exemptions.--This part
4938 applies to all multiphasic health testing centers within the
4939 state, but does not apply to:
4940 (5) A home health agency licensed under part III ~~IV~~ of
4941 chapter 400.
4942 Section 105. Paragraph (a) of subsection (2) of section
4943 509.032, Florida Statutes, is amended to read:
4944 509.032 Duties.--
4945 (2) INSPECTION OF PREMISES.--
4946 (a) The division has responsibility and jurisdiction for
4947 all inspections required by this chapter. The division has
4948 responsibility for quality assurance. Each licensed
4949 establishment shall be inspected at least biannually, except for
4950 transient and nontransient apartments, which shall be inspected
4951 at least annually, and shall be inspected at such other times as
4952 the division determines is necessary to ensure the public's
4953 health, safety, and welfare. The division shall establish a
4954 system to determine inspection frequency. Public lodging units
4955 classified as resort condominiums or resort dwellings are not
4956 subject to this requirement, but shall be made available to the
4957 division upon request. If, during the inspection of a public

4958 lodging establishment classified for renting to transient or
4959 nontransient tenants, an inspector identifies vulnerable adults
4960 who appear to be victims of neglect, as defined in s. 415.102,
4961 or, in the case of a building that is not equipped with
4962 automatic sprinkler systems, tenants or clients who may be
4963 unable to self-preserve in an emergency, the division shall
4964 convene meetings with the following agencies as appropriate to
4965 the individual situation: the Department of Health, the
4966 Department of Elderly Affairs, the area agency on aging, the
4967 local fire marshal, the landlord and affected tenants and
4968 clients, and other relevant organizations, to develop a plan
4969 which improves the prospects for safety of affected residents
4970 and, if necessary, identifies alternative living arrangements
4971 such as facilities licensed under part II ~~or part III~~ of chapter
4972 400 or under chapter 429.
4973 Section 106. Subsection (1) of section 509.241, Florida
4974 Statutes, is amended to read:
4975 509.241 Licenses required; exceptions.--
4976 (1) LICENSES; ANNUAL RENEWALS.--Each public lodging
4977 establishment and public food service establishment shall obtain
4978 a license from the division. Such license may not be transferred
4979 from one place or individual to another. It shall be a
4980 misdemeanor of the second degree, punishable as provided in s.
4981 775.082 or s. 775.083, for such an establishment to operate
4982 without a license. Local law enforcement shall provide immediate
4983 assistance in pursuing an illegally operating establishment. The
4984 division may refuse a license, or a renewal thereof, to any
4985 establishment that is not constructed and maintained in

4986 accordance with law and with the rules of the division. The
4987 division may refuse to issue a license, or a renewal thereof, to
4988 any establishment an operator of which, within the preceding 5
4989 years, has been adjudicated guilty of, or has forfeited a bond
4990 when charged with, any crime reflecting on professional
4991 character, including soliciting for prostitution, pandering,
4992 letting premises for prostitution, keeping a disorderly place,
4993 or illegally dealing in controlled substances as defined in
4994 chapter 893, whether in this state or in any other jurisdiction
4995 within the United States, or has had a license denied, revoked,
4996 or suspended pursuant to s. 429.14 ~~s. 400.414~~. Licenses shall be
4997 renewed annually, and the division shall adopt a rule
4998 establishing a staggered schedule for license renewals. If any
4999 license expires while administrative charges are pending against
5000 the license, the proceedings against the license shall continue
5001 to conclusion as if the license were still in effect.
5002 Section 107. Subsection (1) of section 627.6617, Florida
5003 Statutes, is amended to read:
5004 627.6617 Coverage for home health care services.--
5005 (1) Any group health insurance policy providing coverage
5006 on an expense-incurred basis shall provide coverage for home
5007 health care by a home health care agency licensed pursuant to
5008 part III ~~IV~~ of chapter 400. Such coverage may be limited to home
5009 health care under a plan of treatment prescribed by a licensed
5010 physician. Services may be performed by a registered graduate
5011 nurse, a licensed practical nurse, a physical therapist, a
5012 speech therapist, an occupational therapist, or a home health
5013 aide. Provisions for utilization review may be imposed, provided

5014 that similar provisions apply to all other types of health care
5015 services.
5016 Section 108. Subsection (1) of section 627.732, Florida
5017 Statutes, is amended to read:
5018 627.732 Definitions.--As used in ss. 627.730-627.7405, the
5019 term:
5020 (1) "Broker" means any person not possessing a license
5021 under chapter 395, chapter 400, chapter 429, chapter 458,
5022 chapter 459, chapter 460, chapter 461, or chapter 641 who
5023 charges or receives compensation for any use of medical
5024 equipment and is not the 100-percent owner or the 100-percent
5025 lessee of such equipment. For purposes of this section, such
5026 owner or lessee may be an individual, a corporation, a
5027 partnership, or any other entity and any of its 100-percent-
5028 owned affiliates and subsidiaries. For purposes of this
5029 subsection, the term "lessee" means a long-term lessee under a
5030 capital or operating lease, but does not include a part-time
5031 lessee. The term "broker" does not include a hospital or
5032 physician management company whose medical equipment is
5033 ancillary to the practices managed, a debt collection agency, or
5034 an entity that has contracted with the insurer to obtain a
5035 discounted rate for such services; nor does the term include a
5036 management company that has contracted to provide general
5037 management services for a licensed physician or health care
5038 facility and whose compensation is not materially affected by
5039 the usage or frequency of usage of medical equipment or an
5040 entity that is 100-percent owned by one or more hospitals or

5041 physicians. The term "broker" does not include a person or
5042 entity that certifies, upon request of an insurer, that:
5043 (a) It is a clinic licensed under ss. 400.990-400.995;
5044 (b) It is a 100-percent owner of medical equipment; and
5045 (c) The owner's only part-time lease of medical equipment
5046 for personal injury protection patients is on a temporary basis
5047 not to exceed 30 days in a 12-month period, and such lease is
5048 solely for the purposes of necessary repair or maintenance of
5049 the 100-percent-owned medical equipment or pending the arrival
5050 and installation of the newly purchased or a replacement for the
5051 100-percent-owned medical equipment, or for patients for whom,
5052 because of physical size or claustrophobia, it is determined by
5053 the medical director or clinical director to be medically
5054 necessary that the test be performed in medical equipment that
5055 is open-style. The leased medical equipment cannot be used by
5056 patients who are not patients of the registered clinic for
5057 medical treatment of services. Any person or entity making a
5058 false certification under this subsection commits insurance
5059 fraud as defined in s. 817.234. However, the 30-day period
5060 provided in this paragraph may be extended for an additional 60
5061 days as applicable to magnetic resonance imaging equipment if
5062 the owner certifies that the extension otherwise complies with
5063 this paragraph.
5064 Section 109. Subsection (2) of section 651.011, Florida
5065 Statutes, is amended to read:
5066 651.011 Definitions.--For the purposes of this chapter,
5067 the term:

5068 (2) "Continuing care" or "care" means furnishing pursuant
5069 to a contract shelter and either nursing care or personal
5070 services as defined in s. 429.02 ~~s. 400.402~~, whether such
5071 nursing care or personal services are provided in the facility
5072 or in another setting designated by the contract for continuing
5073 care, to an individual not related by consanguinity or affinity
5074 to the provider furnishing such care, upon payment of an
5075 entrance fee. Other personal services provided shall be
5076 designated in the continuing care contract. Contracts to provide
5077 continuing care include agreements to provide care for any
5078 duration, including contracts that are terminable by either
5079 party.
5080 Section 110. Paragraph (c) of subsection (2) of section
5081 651.022, Florida Statutes, is amended to read:
5082 651.022 Provisional certificate of authority;
5083 application.--
5084 (2) The application for a provisional certificate of
5085 authority shall be on a form prescribed by the commission and
5086 shall contain the following information:
5087 (c)1. Evidence that the applicant is reputable and of
5088 responsible character. If the applicant is a firm, association,
5089 organization, partnership, business trust, corporation, or
5090 company, the form shall require evidence that the members or
5091 shareholders are reputable and of responsible character, and the
5092 person in charge of providing care under a certificate of
5093 authority shall likewise be required to produce evidence of
5094 being reputable and of responsible character.

5095 2. Evidence satisfactory to the office of the ability of
5096 the applicant to comply with the provisions of this chapter and
5097 with rules adopted by the commission pursuant to this chapter.
5098 3. A statement of whether a person identified in the
5099 application for a provisional certificate of authority or the
5100 administrator or manager of the facility, if such person has
5101 been designated, or any such person living in the same location:
5102 a. Has been convicted of a felony or has pleaded nolo
5103 contendere to a felony charge, or has been held liable or has
5104 been enjoined in a civil action by final judgment, if the felony
5105 or civil action involved fraud, embezzlement, fraudulent
5106 conversion, or misappropriation of property.
5107 b. Is subject to a currently effective injunctive or
5108 restrictive order or federal or state administrative order
5109 relating to business activity or health care as a result of an
5110 action brought by a public agency or department, including,
5111 without limitation, an action affecting a license under chapter
5112 400 <u>or chapter 429</u>.
5113
5114 The statement shall set forth the court or agency, the date of
5115 conviction or judgment, and the penalty imposed or damages
5116 assessed, or the date, nature, and issuer of the order. Before
5117 determining whether a provisional certificate of authority is to
5118 be issued, the office may make an inquiry to determine the
5119 accuracy of the information submitted pursuant to subparagraphs
5120 1. and 2.
5121 Section 111. Subsection (6) of section 651.023, Florida
5122 Statutes, is amended to read:

5123 651.023 Certificate of authority; application.--
5124 (6) The timeframes provided under s. 651.022(5) and (6)
5125 apply to applications submitted under s. 651.021(2). The office
5126 may not issue a certificate of authority under this chapter to
5127 any facility which does not have a component which is to be
5128 licensed pursuant to part II ~~or part III~~ of chapter 400 or part
5129 I of chapter 429 or which will not offer personal services or
5130 nursing services through written contractual agreement. Any
5131 written contractual agreement must be disclosed in the
5132 continuing care contract and is subject to the provisions of s.
5133 651.1151, relating to administrative, vendor, and management
5134 contracts.
5135 Section 112. Subsection (8) of section 651.055, Florida
5136 Statutes, is amended to read:
5137 651.055 Contracts; right to rescind.--
5138 (8) The provisions of this section shall control over any
5139 conflicting provisions contained in part II ~~or part III~~ of
5140 chapter 400 or in part I of chapter 429.
5141 Section 113. Subsection (5) of section 651.095, Florida
5142 Statutes, is amended to read:
5143 651.095 Advertisements; requirements; penalties.--
5144 (5) The provisions of this section shall control over any
5145 conflicting provisions contained in part II ~~or part III~~ of
5146 chapter 400 or in part I of chapter 429.
5147 Section 114. Subsections (1), (4), (6), (7), and (8) of
5148 section 651.118, Florida Statutes, are amended to read:
5149 651.118 Agency for Health Care Administration;
5150 certificates of need; sheltered beds; community beds.--

5151 (1) The provisions of this section shall control in the
5152 case of conflict with the provisions of the Health Facility and
5153 Services Development Act, ss. 408.031-408.045; the provisions of
5154 chapter 395; ~~or~~ the provisions of part II ~~parts II and III~~ of
5155 chapter 400; or the provisions of part I of chapter 429.
5156 (4) The Agency for Health Care Administration shall
5157 approve one sheltered nursing home bed for every four proposed
5158 residential units, including those that are licensed under part
5159 I of chapter 429 ~~part III of chapter 400~~, in the continuing care
5160 facility unless the provider demonstrates the need for a lesser
5161 number of sheltered nursing home beds based on proposed
5162 utilization by prospective residents or demonstrates the need
5163 for additional sheltered nursing home beds based on actual
5164 utilization and demand by current residents.
5165 (6) Unless the provider already has a component that is to
5166 be a part of the continuing care facility and that is licensed
5167 under chapter 395, ~~or~~ part II ~~or part III~~ of chapter 400, or
5168 part I of chapter 429 at the time of construction of the
5169 continuing care facility, the provider must construct the
5170 nonnursing home portion of the facility and the nursing home
5171 portion of the facility at the same time. If a provider
5172 constructs less than the number of residential units approved in
5173 the certificate of authority, the number of licensed sheltered
5174 nursing home beds shall be reduced by a proportionate share.
5175 (7) Notwithstanding the provisions of subsection (2), at
5176 the discretion of the continuing care provider, sheltered
5177 nursing home beds may be used for persons who are not residents
5178 of the continuing care facility and who are not parties to a

5179 continuing care contract for a period of up to 5 years after the
5180 date of issuance of the initial nursing home license. A provider
5181 whose 5-year period has expired or is expiring may request the
5182 Agency for Health Care Administration for an extension, not to
5183 exceed 30 percent of the total sheltered nursing home beds, if
5184 the utilization by residents of the nursing home facility in the
5185 sheltered beds will not generate sufficient income to cover
5186 nursing home facility expenses, as evidenced by one of the
5187 following:
5188 (a) The nursing home facility has a net loss for the most
5189 recent fiscal year as determined under generally accepted
5190 accounting principles, excluding the effects of extraordinary or
5191 unusual items, as demonstrated in the most recently audited
5192 financial statement; or
5193 (b) The nursing home facility would have had a pro forma
5194 loss for the most recent fiscal year, excluding the effects of
5195 extraordinary or unusual items, if revenues were reduced by the
5196 amount of revenues from persons in sheltered beds who were not
5197 residents, as reported on by a certified public accountant.
5198
5199 The agency shall be authorized to grant an extension to the
5200 provider based on the evidence required in this subsection. The
5201 agency may request a continuing care facility to use up to 25
5202 percent of the patient days generated by new admissions of
5203 nonresidents during the extension period to serve Medicaid
5204 recipients for those beds authorized for extended use if there
5205 is a demonstrated need in the respective service area and if
5206 funds are available. A provider who obtains an extension is

5207 prohibited from applying for additional sheltered beds under the
5208 provision of subsection (2), unless additional residential units
5209 are built or the provider can demonstrate need by continuing
5210 care facility residents to the Agency for Health Care
5211 Administration. The 5-year limit does not apply to up to five
5212 sheltered beds designated for inpatient hospice care as part of
5213 a contractual arrangement with a hospice licensed under part IV
5214 ~~VI~~ of chapter 400. A continuing care facility that uses such
5215 beds after the 5-year period shall report such use to the Agency
5216 for Health Care Administration. For purposes of this subsection,
5217 "resident" means a person who, upon admission to the continuing
5218 care facility, initially resides in a part of the continuing
5219 care facility not licensed under part II of chapter 400.
5220 (8) A provider may petition the Agency for Health Care
5221 Administration to use a designated number of sheltered nursing
5222 home beds to provide extended congregate care as defined in s.
5223 429.02 ~~s. 400.402~~ if the beds are in a distinct area of the
5224 nursing home which can be adapted to meet the requirements for
5225 extended congregate care. The provider may subsequently use such
5226 beds as sheltered beds after notifying the agency of the
5227 intended change. Any sheltered beds used to provide extended
5228 congregate care pursuant to this subsection may not qualify for
5229 funding under the Medicaid waiver. Any sheltered beds used to
5230 provide extended congregate care pursuant to this subsection may
5231 share common areas, services, and staff with beds designated for
5232 nursing home care, provided that all of the beds are under
5233 common ownership. For the purposes of this subsection, fire and

5234 life safety codes applicable to nursing home facilities shall
5235 apply.
5236 Section 115. Subsection (2) of section 765.1103, Florida
5237 Statutes, is amended to read:
5238 765.1103 Pain management and palliative care.--
5239 (2) Health care providers and practitioners regulated
5240 under chapter 458, chapter 459, or chapter 464 must, as
5241 appropriate, comply with a request for pain management or
5242 palliative care from a patient under their care or, for an
5243 incapacitated patient under their care, from a surrogate, proxy,
5244 guardian, or other representative permitted to make health care
5245 decisions for the incapacitated patient. Facilities regulated
5246 under chapter 395, ~~or~~ chapter 400, or chapter 429 must comply
5247 with the pain management or palliative care measures ordered by
5248 the patient's physician.
5249 Section 116. Subsection (2) of section 765.205, Florida
5250 Statutes, is amended to read:
5251 765.205 Responsibility of the surrogate.--
5252 (2) The surrogate may authorize the release of information
5253 and medical records to appropriate persons to ensure the
5254 continuity of the principal's health care and may authorize the
5255 admission, discharge, or transfer of the principal to or from a
5256 health care facility or other facility or program licensed under
5257 chapter 400 or chapter 429.
5258 Section 117. Subsection (1) of section 768.735, Florida
5259 Statutes, is amended to read:
5260 768.735 Punitive damages; exceptions; limitation.--

5261 (1) Sections 768.72(2)-(4), 768.725, and 768.73 do not
5262 apply to any civil action based upon child abuse, abuse of the
5263 elderly under chapter 415, or abuse of the developmentally
5264 disabled. Such actions are governed by applicable statutes and
5265 controlling judicial precedent. This section does not apply to
5266 claims brought pursuant to s. 400.023 or s. 429.29 ~~s. 400.429~~.
5267 Section 118. Paragraph (h) of subsection (1) of section
5268 893.13, Florida Statutes, is amended to read:
5269 893.13 Prohibited acts; penalties.--
5270 (1)
5271 (h) Except as authorized by this chapter, it is unlawful
5272 for any person to sell, manufacture, or deliver, or possess with
5273 intent to sell, manufacture, or deliver, a controlled substance
5274 in, on, or within 1,000 feet of the real property comprising an
5275 assisted living facility, as that term is used in chapter 429
5276 ~~400~~. Any person who violates this paragraph with respect to:
5277 1. A controlled substance named or described in s.
5278 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
5279 commits a felony of the first degree, punishable as provided in
5280 s. 775.082, s. 775.083, or s. 775.084.
5281 2. A controlled substance named or described in s.
5282 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
5283 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
5284 the second degree, punishable as provided in s. 775.082, s.
5285 775.083, or s. 775.084.
5286 Section 119. Paragraph (a) of subsection (4) of section
5287 943.0585, Florida Statutes, is amended to read:

5288 943.0585 Court-ordered expunction of criminal history
5289 records.--The courts of this state have jurisdiction over their
5290 own procedures, including the maintenance, expunction, and
5291 correction of judicial records containing criminal history
5292 information to the extent such procedures are not inconsistent
5293 with the conditions, responsibilities, and duties established by
5294 this section. Any court of competent jurisdiction may order a
5295 criminal justice agency to expunge the criminal history record
5296 of a minor or an adult who complies with the requirements of
5297 this section. The court shall not order a criminal justice
5298 agency to expunge a criminal history record until the person
5299 seeking to expunge a criminal history record has applied for and
5300 received a certificate of eligibility for expunction pursuant to
5301 subsection (2). A criminal history record that relates to a
5302 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
5303 s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071,
5304 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
5305 s. 916.1075, or a violation enumerated in s. 907.041 may not be
5306 expunged, without regard to whether adjudication was withheld,
5307 if the defendant was found guilty of or pled guilty or nolo
5308 contendere to the offense, or if the defendant, as a minor, was
5309 found to have committed, or pled guilty or nolo contendere to
5310 committing, the offense as a delinquent act. The court may only
5311 order expunction of a criminal history record pertaining to one
5312 arrest or one incident of alleged criminal activity, except as
5313 provided in this section. The court may, at its sole discretion,
5314 order the expunction of a criminal history record pertaining to
5315 more than one arrest if the additional arrests directly relate

5316 to the original arrest. If the court intends to order the
5317 expunction of records pertaining to such additional arrests,
5318 such intent must be specified in the order. A criminal justice
5319 agency may not expunge any record pertaining to such additional
5320 arrests if the order to expunge does not articulate the
5321 intention of the court to expunge a record pertaining to more
5322 than one arrest. This section does not prevent the court from
5323 ordering the expunction of only a portion of a criminal history
5324 record pertaining to one arrest or one incident of alleged
5325 criminal activity. Notwithstanding any law to the contrary, a
5326 criminal justice agency may comply with laws, court orders, and
5327 official requests of other jurisdictions relating to expunction,
5328 correction, or confidential handling of criminal history records
5329 or information derived therefrom. This section does not confer
5330 any right to the expunction of any criminal history record, and
5331 any request for expunction of a criminal history record may be
5332 denied at the sole discretion of the court.
5333 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
5334 criminal history record of a minor or an adult which is ordered
5335 expunged by a court of competent jurisdiction pursuant to this
5336 section must be physically destroyed or obliterated by any
5337 criminal justice agency having custody of such record; except
5338 that any criminal history record in the custody of the
5339 department must be retained in all cases. A criminal history
5340 record ordered expunged that is retained by the department is
5341 confidential and exempt from the provisions of s. 119.07(1) and
5342 s. 24(a), Art. I of the State Constitution and not available to
5343 any person or entity except upon order of a court of competent

5344 jurisdiction. A criminal justice agency may retain a notation
5345 indicating compliance with an order to expunge.
5346 (a) The person who is the subject of a criminal history
5347 record that is expunged under this section or under other
5348 provisions of law, including former s. 893.14, former s. 901.33,
5349 and former s. 943.058, may lawfully deny or fail to acknowledge
5350 the arrests covered by the expunged record, except when the
5351 subject of the record:
5352 1. Is a candidate for employment with a criminal justice
5353 agency;
5354 2. Is a defendant in a criminal prosecution;
5355 3. Concurrently or subsequently petitions for relief under
5356 this section or s. 943.059;
5357 4. Is a candidate for admission to The Florida Bar;
5358 5. Is seeking to be employed or licensed by or to contract
5359 with the Department of Children and Family Services or the
5360 Department of Juvenile Justice or to be employed or used by such
5361 contractor or licensee in a sensitive position having direct
5362 contact with children, the developmentally disabled, the aged,
5363 or the elderly as provided in s. 110.1127(3), s. 393.063, s.
5364 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
5365 409.175(2)(i), s. 415.102(4), s. 916.106(10) and (13), s.
5366 985.407, ~~or~~ chapter 400, or chapter 429; or
5367 6. Is seeking to be employed or licensed by the Department
5368 of Education, any district school board, any university
5369 laboratory school, any charter school, any private or parochial
5370 school, or any local governmental entity that licenses child
5371 care facilities.

5372 Section 120. Paragraph (a) of subsection (4) of section
5373 943.059, Florida Statutes, is amended to read:
5374 943.059 Court-ordered sealing of criminal history
5375 records.--The courts of this state shall continue to have
5376 jurisdiction over their own procedures, including the
5377 maintenance, sealing, and correction of judicial records
5378 containing criminal history information to the extent such
5379 procedures are not inconsistent with the conditions,
5380 responsibilities, and duties established by this section. Any
5381 court of competent jurisdiction may order a criminal justice
5382 agency to seal the criminal history record of a minor or an
5383 adult who complies with the requirements of this section. The
5384 court shall not order a criminal justice agency to seal a
5385 criminal history record until the person seeking to seal a
5386 criminal history record has applied for and received a
5387 certificate of eligibility for sealing pursuant to subsection
5388 (2). A criminal history record that relates to a violation of s.
5389 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
5390 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s.
5391 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or
5392 a violation enumerated in s. 907.041 may not be sealed, without
5393 regard to whether adjudication was withheld, if the defendant
5394 was found guilty of or pled guilty or nolo contendere to the
5395 offense, or if the defendant, as a minor, was found to have
5396 committed or pled guilty or nolo contendere to committing the
5397 offense as a delinquent act. The court may only order sealing of
5398 a criminal history record pertaining to one arrest or one
5399 incident of alleged criminal activity, except as provided in

5400 this section. The court may, at its sole discretion, order the
5401 sealing of a criminal history record pertaining to more than one
5402 arrest if the additional arrests directly relate to the original
5403 arrest. If the court intends to order the sealing of records
5404 pertaining to such additional arrests, such intent must be
5405 specified in the order. A criminal justice agency may not seal
5406 any record pertaining to such additional arrests if the order to
5407 seal does not articulate the intention of the court to seal
5408 records pertaining to more than one arrest. This section does
5409 not prevent the court from ordering the sealing of only a
5410 portion of a criminal history record pertaining to one arrest or
5411 one incident of alleged criminal activity. Notwithstanding any
5412 law to the contrary, a criminal justice agency may comply with
5413 laws, court orders, and official requests of other jurisdictions
5414 relating to sealing, correction, or confidential handling of
5415 criminal history records or information derived therefrom. This
5416 section does not confer any right to the sealing of any criminal
5417 history record, and any request for sealing a criminal history
5418 record may be denied at the sole discretion of the court.
5419 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal
5420 history record of a minor or an adult which is ordered sealed by
5421 a court of competent jurisdiction pursuant to this section is
5422 confidential and exempt from the provisions of s. 119.07(1) and
5423 s. 24(a), Art. I of the State Constitution and is available only
5424 to the person who is the subject of the record, to the subject's
5425 attorney, to criminal justice agencies for their respective
5426 criminal justice purposes, or to those entities set forth in

5427 subparagraphs (a)1., 4., 5., and 6. for their respective
5428 licensing and employment purposes.
5429 (a) The subject of a criminal history record sealed under
5430 this section or under other provisions of law, including former
5431 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
5432 deny or fail to acknowledge the arrests covered by the sealed
5433 record, except when the subject of the record:
5434 1. Is a candidate for employment with a criminal justice
5435 agency;
5436 2. Is a defendant in a criminal prosecution;
5437 3. Concurrently or subsequently petitions for relief under
5438 this section or s. 943.0585;
5439 4. Is a candidate for admission to The Florida Bar;
5440 5. Is seeking to be employed or licensed by or to contract
5441 with the Department of Children and Family Services or the
5442 Department of Juvenile Justice or to be employed or used by such
5443 contractor or licensee in a sensitive position having direct
5444 contact with children, the developmentally disabled, the aged,
5445 or the elderly as provided in s. 110.1127(3), s. 393.063, s.
5446 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
5447 409.175(2)(i), s. 415.102(4), s. 415.103, s. 916.106(10) and
5448 (13), s. 985.407, ~~or~~ chapter 400<u>, or chapter 429</u>; or
5449 6. Is seeking to be employed or licensed by the Department
5450 of Education, any district school board, any university
5451 laboratory school, any charter school, any private or parochial
5452 school, or any local governmental entity that licenses child
5453 care facilities.

5454 Section 121. The Division of Statutory Revision of the
5455 Office of Legislative Services is requested to prepare a
5456 reviser's bill for introduction at a subsequent session of the
5457 Legislature to conform the Florida Statutes to changes made by
5458 this act.
5459 Section 122. This act shall take effect July 1, 2006.

Amendments to HB 501 CS by Rep. Clarke

Amendments #1, #2, and #3 to HB 501 CS permit licensed physician assistants to provide certain medical examinations to residents of assisted living facilities.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **HB 501 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

---

1 Council/Committee hearing bill: Health & Families Council
2 Representative(s) Clarke offered the following:
3
4 **Amendment (with directory and title amendments)**
5 Remove line(s) 2490 and insert:
6 (2) A physician, licensed physician assistant, or nurse
7 practitioner who is employed by

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

Bill No. **HB 501 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Health & Families Council
2 Representative(s) Clarke offered the following:
3
4 **Amendment (with directory and title amendments)**
5 Remove line(s) 2506 and insert:
6 a licensed physician, a licensed physician assistant, or a
7 licensed nurse practitioner within 60

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COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Health & Families Council
2 Representative(s) Clarke offered the following:
3
4 **Amendment (with directory and title amendments)**
5 Remove line(s) 2585-2599 and insert:
6
7 (9) If, at any time after admission to a facility, a
8 resident appears to need care beyond that which the facility is
9 licensed to provide, the agency shall require the resident to be
10 physically examined by a licensed physician, physician
11 assistant, or licensed nurse practitioner. This examination
12 shall, to the extent possible, be performed by the resident's
13 preferred physician or nurse practitioner and shall be paid for
14 by the resident with personal funds, except as provided in s.
15 429.18(1)(b) ~~s. 400.418(1)(b)~~. Following this examination, the
16 examining physician, physician assistant, or licensed nurse
17 practitioner shall complete and sign a medical form provided by
18 the agency. The completed medical form shall be submitted to
19 the agency within 30 days after the date the facility owner or
20 administrator is notified by the agency that the physical
21 examination is required. After consultation with the physician,

22 physician assistant, or licensed nurse practitioner who
23 performed the
24
25 ========== T I T L E A M E N D M E N T ==========
26 Remove line(s) 33-34 and insert:
27
28 changes made by the act; providing that physician assistants are
29 subject to certain requirements in the same manner as
30 physicians; requesting the Division of

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1417 CS Hospices
SPONSOR(S): Sansom
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1598

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Elder & Long-Term Care Committee	8 Y, 0 N, w/CS	DePalma	Walsh
2) Health Care Appropriations Committee	11 Y, 0 N, w/CS	Speir	Massengale
3) Health & Families Council		DePalma	Moore
4)			
5)			

SUMMARY ANALYSIS

House Bill 1417 CS amends the definition of "hospice" contained in s. 400.601(3), F.S., to remove the requirement that hospices be organized as not-for-profit corporations, and directs the Office of Program Policy Analysis and Government Accountability to submit a report by January 1, 2010 analyzing the impact of for-profit hospices on the delivery of care to terminally ill patients in the state. Additionally, the CS provides legislative intent that no change in law be made to licensure and certificate of need provisions until 2012.

The CS requires all entities in the state offering, describing or advertising hospice services to state the year of initial state licensure.

The CS permits the Agency for Health Care Administration to deny a license to any hospice that fails to meet any condition imposed by the agency in the certificate of need. It requires hospices to use trained volunteers in an amount equal to at least 5 percent of total patient care or administrative hours of all paid employees and staff.

The CS also requires the Department of Elderly Affairs, in conjunction with the Agency for Health Care Administration and all hospices licensed in Florida, to develop quality and effectiveness outcome measures, consider and adopt national initiatives, and develop an annual report.

The CS appears to have no fiscal impact on state or local government.

The CS provides a severability clause, and an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty—The CS allows for-profit hospices to be licensed in Florida, subject to certificate of need requirements.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Hospice Care for Terminally ill Patients

Hospice care is an alternative approach to the traditional medical model for end-of-life care. Hospice programs specialize in providing basic medical care, palliation and pain management, and social, psychological, and spiritual support to terminally-ill[1] individuals and their families. In Fiscal Year 2004-2005, Florida hospice programs provided care to more than 98,000 individuals with terminal illnesses.[2] Nationally, the number of individuals receiving hospice care has increased 300 percent in the last decade, from 340,000 hospice patients in 1994 to 1,060,000 patients in 2004.[3]

With one exception, s. 400.601(3), F.S., requires hospice programs to operate as not-for-profit corporations, as defined in chapter 617, F.S.[4] Section 400.602(5), F.S., authorizes a hospice that was incorporated on or before July 1, 1978 to be transferred to a for-profit or not-for-profit entity, while s. 400.602(6), F.S., further permits any entity entitled to licensure under s. 400.602(5), F.S., to obtain a license for up to two additional hospices.[5]

Two for-profit entities, Vitas Healthcare Corporation of Florida and Vitas Healthcare Corporation of Central Florida, each purchased a not-for-profit hospice established before July 1, 1978 in accordance with s. 400.602(5), F.S. Both Vitas Healthcare Corporation of Florida and Vitas Healthcare Corporation of Central Florida have obtained licenses for two additional hospices,[6] as permitted in s. 400.602(6), F.S. There are only four remaining hospices that were incorporated on or before July 1, 1978, that could be sold to for-profit hospices pursuant to s. 400.602(5), F.S.:

- Hospice of the Florida Suncoast (Pinellas County).
- Hospice of St. Francis (Brevard County).
- Hospice of Palm Beach County.
- Hospice of Gold Coast Home Health Services (Broward County).

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[1] To be eligible for hospice services in Florida, patients must receive a referral from their attending or primary physician for hospice care based on a diagnosis of a terminal illness with a life expectancy of one year or less, per s. 400.601(10), F.S.
[2] *Florida's Certificate of Need Process Ensures Qualified Hospice Programs; Performance Reporting Is Important to Assess Hospice Quality,* Report 06-29, March 2006, Office of Program Policy Analysis and Government Accountability.
[3] *NHPCO's 2004 Facts and Figures*, accessed March 23, 2006, National Hospice and Palliative Care Organization, available at: http://www.nhpco.org/files/public/Facts_Figures_for2004data.pdf.
[4] A not-for-profit corporation is defined in s. 617.01401(5), F.S., as a corporation, no part of the income or profit of which is distributable to its members, directors, or officers.
[5] Such entity may obtain a license for up to two additional hospices "in accordance with the other requirements of this part and upon receipt of any certificate of need that may be required under the provisions of ss. 408.031-408.045, F.S."
[6] On March 23, 2006, the license status of the hospice run by Vitas Healthcare Corporations of Florida in Boynton Beach, Florida (Palm Beach County) indicated that the facility had received a provisional license pending necessary background screening. Hospice licenses can be reviewed at http://facilitylocator.floridahealthstat.com/FacilityFind.aspx?pFaclType=22&pFaclName=&pFaclCity=&pFaclZip=&pCounty=ALL&pFaclInspectionRegion=ALL.

All entities desiring a license to provide hospice services in the state must first obtain a certificate of need (CON) from the Agency for Health Care Administration (AHCA). Under s. 408.043(2), F.S., the need for a new or expanded hospice must be determined on the basis of the need for, and availability of, hospice services in the community. Other guidelines provide the following:

- The formula on which the CON is based must discourage regional monopolies and promote competition.
- The inpatient hospice care component of a hospice which is a freestanding facility, or a part of a facility, which is primarily engaged in providing inpatient care and related services and is not licensed as a health care facility, must also be required to obtain a CON.
- Provision of hospice care by any current provider of health care is a significant change in service, and therefore requires a CON for such services.

AHCA has established 27 service areas for hospices[7] as follows:

- Service Area 1 consists of Escambia, Okaloosa, Santa Rosa, and Walton Counties.
- Service Area 2A consists of Bay, Calhoun, Gulf, Holmes, Jackson, and Washington Counties.
- Service Area 2B consists of Franklin, Gadsden, Jefferson, Leon, Liberty, Madison, Taylor, and Wakulla Counties.
- Service Area 3A consists of Alachua, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Lafayette, Levy, Putnam, Suwannee, and Union Counties.
- Service Area 3B consists of Marion County.
- Service Area 3C consists of Citrus County.
- Service Area 3D consists of Hernando County.
- Service Area 3E consists of Lake and Sumter Counties.
- Service Area 4A consists of Baker, Clay, Duval, Nassau, and St. Johns Counties.
- Service Area 4B consists of Flagler and Volusia Counties.
- Service Area 5A consists of Pasco County.
- Service Area 5B consists of Pinellas County.
- Service Area 6A consists of Hillsborough County.
- Service Area 6B consists of Hardee, Highlands, and Polk Counties.
- Service Area 6C consists of Manatee County.
- Service Area 7A consists of Brevard County.
- Service Area 7B consists of Orange and Osceola Counties.
- Service Area 7C consists of Seminole County.
- Service Area 8A consists of Charlotte and DeSoto Counties.
- Service Area 8B consists of Collier County.
- Service Area 8C consists of Glades, Hendry and Lee Counties.
- Service Area 8D consists of Sarasota County.
- Service Area 9A consists of Indian River County.
- Service Area 9B consists of Martin, Okeechobee, and St. Lucie Counties.
- Service Area 9C consists of Palm Beach County.
- Service Area 10 consists of Broward County.
- Service Area 11 consists of Dade and Monroe Counties.

OPPAGA Review of Florida's Hospice Care Industry

Pursuant to a legislative request, the Office of Program Policy Analysis and Government Accountability (OPPAGA) performed a review of the state's hospice industry in March 2006, as well as a survey of the

[7] Rule 59C-1.0355, F.A.C.

various approaches to regulating hospice facilities utilized by eight other states,[8] in an effort to evaluate Florida's system of providing hospice care to terminally-ill patients.[9] According to the report,

> Florida's method of regulating hospice programs differs from other states in two major ways. Florida is the only state that requires new hospice programs to operate as not-for-profit corporations and is one of only 12 states that comprehensively regulates the growth of hospice programs using a Certificate of Need process.[10]

OPPAGA reports ownership status does not appear to affect performance of hospice programs

Noting that available information on the issue is limited, OPPAGA reported that "ownership status does not appear to affect hospice care in Florida or in other states." Hospice officials in states authorizing both not-for-profit and for-profit hospice facilities reported having no evidence suggesting that ownership status affects the quality of hospice care provided.

Additionally, OPPAGA noted that there was no significant difference in the number of complaints or allegations received by AHCA relating to either not-for-profit or for-profit hospice programs, though the total number of hospice allegations in the state was small.[11]

OPPAGA recommended that the Legislature direct AHCA and the Department of Elderly Affairs (DOEA) to work with Florida hospice programs to develop standardized quality and outcome measures, as well as a mechanism for collecting and maintaining such information. Moreover, the report urged hospice programs in the state to consider participating in national initiatives such as those developed by the National Hospice and Palliative Care Organization (NHPCO).

OPPAGA recommends continued CON approval for new hospice programs

OPPAGA further recommended that, if it elected to license new for-profit hospice programs in the state, the Legislature should maintain its current CON process. The OPPAGA report indicated that such process "ensures that new hospice programs operate only in areas of the state where current hospice programs are not able to meet projected hospice needs," thereby preventing an excess of hospice facilities within a single geographic locale. OPPAGA reported that the CON process also ensures that "hospice programs have the expertise, financial resources, and commitment to meet the needs of their communities."

OPPAGA noted that AHCA is currently exploring modifications to its methodology for identifying areas of the state where existing programs may not be meeting the need for hospice care services.

EFFECT OF PROPOSED CHANGES

House Bill 1417 CS amends the definition of "hospice" contained in s. 400.601(3), F.S., to remove the requirement that hospices be organized as a not-for-profit corporation, as defined in chapter 617, F.S.

The CS directs OPPAGA to submit a report analyzing the impact of for-profit hospices on the delivery of care to terminally ill patients in the state by January 1, 2010 to the President of the Senate and the Speaker of the House of Representatives. This report is required to include a review of the quality of care offered by for-profit hospices, changes in the competitive marketplace in hospice service areas, and any other information deemed pertinent.

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[8] The eight states surveyed (Alabama, Illinois, Maryland, Virginia, Ohio, Tennessee, Texas, and California) are similar to Florida in terms of either size and/or elderly population.

[9] *Florida's Certificate of Need Process Ensures Qualified Hospice Programs; Performance Reporting Is Important to Assess Hospice Quality*, Office of Program Policy Analysis and Government Accountability, *supra*.

[10] Ibid.

[11] Between August, 2002 and July, 2005, AHCA received a total of only 279 allegations pertaining to hospice operations.

The CS also deletes ss. 400.602(5) and (6), F.S., relating to the ability of hospices incorporated prior to July 1, 1978 to be transferred to a for-profit entity, and thereafter obtain licensure for up to two additional hospices.

The CS requires all entities in the state offering, describing, or advertising hospice services to state the year of initial licensure as a hospice in the state or the year of initial licensure of the hospice entity or affiliate based in the state that owns the hospice, both directly beneath the name of the licensed entity in a font no less than 25 percent of the font size for the entity's name or other indication of hospice services, and prominently at least one time on any document, item, or other medium offering, describing, or advertising hospice services or hospice-like services. Materials relating to the care and treatment of an existing hospice patient are excluded from this requirement.

The CS permits AHCA to deny a license to a hospice that fails to meet any condition for the provision of hospice care or services imposed by the agency in the certificate of need, unless such hospice is able to demonstrate that good cause exists for the failure.

Hospices are required by the CS to use trained volunteers in defined roles and under the supervision of a designated hospice employee, in an amount that equals at least 5 percent of total patient care or administrative hours provided by all paid hospice employees and contract staff in the aggregate. The CS also requires a hospice to document and report the use of volunteers, including a record of the number of volunteers and the number of hours and the tasks performed by each.

The CS provides legislative intent that no change in law be made to the hospice licensure and certificate of need provisions until 2012, in order to correctly analyze and evaluate the impact of this act on the quality of hospice care in the state.

By December 31, 2007, the Department of Elderly Affairs (DOEA), in consultation with AHCA and all hospices licensed in the state, is required to develop outcome measures to determine the quality and effectiveness of hospice care in Florida. At a minimum, the CS requires these outcome measures to include a requirement that 50 percent of patients reporting severe pain on a 0 to 10 scale report a reduction to 5 or less by the end of the fourth day of care.

The CS requires DOEA, in conjunction with AHCA and all hospices licensed in the state, to consider and adopt national initiatives, such as those developed by the National Hospice and Palliative Care Organization, to set benchmarks for measuring the quality of hospice care provided in the state; and to develop an annual report that analyzes and evaluates information collected under various data collection or reporting provisions.

The CS provides a severability clause, and an effective date of July 1, 2006.

C. SECTION DIRECTORY:

Section 1. Amends s. 400.601(3), F.S., deleting the requirement that a hospice be a not-for-profit corporation, organized pursuant to Chapter 617, F.S.

Section 2. Amends s. 400.602, F.S., specifying certain advertising and distribution requirements; deleting provisions relating to the ability of hospices incorporated prior to July 1, 1978 to be transferred to a for-profit entity.

Section 3. Amends s. 400.606, F.S., permitting AHCA to deny a license where a hospice fails to meet any condition for the provision of hospice care or services imposed by the agency in the certificate of need.

Section 4. Amends s. 400.6105, F.S., requiring a hospice to use trained volunteers, and establishing documentation and reporting requirements.

Section 5. Directing OPPAGA to submit a report analyzing the impact of for-profit hospices on the delivery of care to terminally-ill patients by January 1, 2010.

Section 6. Providing legislative intent that no change in law be made to the hospice licensure and certificate of need provisions until the year 2012.

Section 7. Requiring DOEA, in conjunction with AHCA and all hospices licensed in Florida, to develop certain outcome measures by December 31, 2007, as well as consider and adopt certain national initiatives, and develop an annual report.

Section 8. Providing severability.

Section 9. Providing an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Both the Department of Elderly Affairs and AHCA report that, although department staff will need to evaluate data and generate certain reports, such tasks can be completed within current department and agency resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

While the fiscal impact of allowing for-profit hospice facilities in the state is presently unknown, the CS directs OPPAGA to submit a report analyzing the impact of for-profit hospices on the delivery and quality of hospice care, as well as reviewing changes in the competitive marketplace in hospice service areas, by January 1, 2010.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Counties and municipalities are unaffected by this legislation.

2. Other:

   See "Drafting Issues" below.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The legislative intent provided in Section 6 of the CS that "no change in law be made to the hospice licensure and certificate of need provisions until the year 2012 ..." leaves unanswered the question of when in the year 2012 the Legislature intends to permit or pursue legislative changes. Further, to the extent the intent seeks to bind the action of future legislatures, it is likely that the language will be viewed as aspirational in effect.[12]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its March 28, 2006 meeting, the Committee on Elder and Long-Term Care adopted a strike-all amendment to House Bill 1417:

- Amends the definition of "hospice" in s. 400.601, F.S., to remove the requirement that a hospice be organized as a not-for-profit corporation under chapter 617, F.S..
- Provides that an entity offering hospice services must state the year of initial state licensure directly beneath the name of the licensed entity in a font no less than 25 percent of the font size for the entity's name, and prominently at least one time on any document, item, or other medium offering, describing, or advertising hospice services.
- Requires that a hospice serve the entire service area for which it is licensed and, for counties in the service area with a population of 50,000 or less, requiring a hospice to have a plan for providing hospice care and meeting the needs for hospice care and for reporting access and utilization for the county residents, and to locate an office in the county with local hospice staff or trained volunteers within six months of initial licensure.
- Deletes sections (5) and (6) of s. 400.602, F.S., relating to the ability of hospices incorporated prior to July 1, 1978 to be transferred to a for-profit entity, and thereafter obtain licensure for up to two additional hospices.
- Requires AHCA to deny a license or renewal of a license to any hospice that fails to meet any commitment for the provision of hospice care or services made in the application for certificate of need or any condition for the provision of hospice care or services specified in the certificate of need, unless such hospice can demonstrate that meeting a commitment or condition is premature to the initial issuance of a license.
- Requires hospices to use trained volunteers in an amount that equals 5 percent of total patient care hours of all paid hospice employees and contract staff, and providing certain documentation and reporting requirements.

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[12] See *Neu v. Miami Herald Pub. Co.*, 462 So. 2d 821 (Fla. 1985).

- Directs OPPAGA to submit a report by January 1, 2010 to the President of the Senate and the Speaker of the House of Representatives that analyzes the impact of for-profit hospices on the delivery and quality of care to terminally-ill patients and reviews changes in the competitive marketplace in hospice service areas.
- Provides legislative intent that no change in law or in administrative rule be made to the hospice licensure and certificate of need provisions until the year 2012.
- Requires DOEA, in conjunction with AHCA and all hospices licensed in the state, to develop certain outcome measures to determine the quality and effectiveness of hospice care in Florida by December 31, 2007, to consider and adopt national initiatives setting benchmarks for measuring the quality of hospice care provided in the state, and to develop an annual report that analyzes and evaluates information collected under various data collection or reporting provisions.
- Provides a severability clause.

The committee favorably reported a committee substitute for the bill.

At its April 11, 2006 meeting, the Health Care Appropriations Committee adopted a strike-all amendment to House Bill 1417 CS that was different in the following ways:

- Excludes materials relating to the care of an existing hospice patient from the initial year of licensing disclosure requirements.
- Removed language that requires a hospice to serve the entire service area for which it is licensed and, for counties in the service area with a population of 50,000 or less, requiring a hospice to have a plan for providing hospice care and meeting the needs for hospice care and for reporting access and utilization for the county residents, and to locate an office in the county with local hospice staff or trained volunteers within six months of initial licensure.
- Removed language that allows AHCA to deny a license or renewal of a license to any hospice that fails to meet any commitment for the provision of hospice care.
- Removed language that allows AHCA to deny a license renewal to any hospice that fails to meet any condition for the provision of hospice care or services specified in the certificate of need, unless such hospice can demonstrate that meeting a commitment or condition is premature to the initial issuance of a license.

The committee favorably reported a committee substitute, and this analysis is drafted to that committee substitute.

CHAMBER ACTION

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1 The Health Care Appropriations Committee recommends the
2 following:
3
4 **Council/Committee Substitute**
5 Remove the entire bill and insert:
6 A bill to be entitled
7 An act relating to hospices; amending s. 400.601, F.S.;
8 revising the definition of the term "hospice"; amending s.
9 400.602, F.S.; requiring that a hospice state the year of
10 initial licensure in the state; prescribing the manner and
11 placement of such notification; providing an exception;
12 deleting provisions authorizing the transfer of certain
13 hospices and the acquisition of additional licenses;
14 amending s. 400.606, F.S.; providing that the Agency for
15 Health Care Administration may not deny a license to
16 applicants that fail to meet certain conditions when good
17 cause for such failure can be demonstrated; amending s.
18 400.6105, F.S.; requiring a hospice to use trained
19 volunteers and to document and report certain volunteer
20 information; requiring the Office of Program Policy
21 Analysis and Government Accountability to submit a report
22 to the Legislature; providing legislative intent;
23 requiring the Department of Elderly Affairs, in

24 conjunction with the agency and all hospices licensed in
25 the state, to develop certain outcome measures; providing
26 for adoption of national initiatives; requiring an annual
27 report; providing for severability; providing an effective
28 date.
29
30 Be It Enacted by the Legislature of the State of Florida:
31
32 Section 1. Subsection (3) of section 400.601, Florida
33 Statutes, is amended to read:
34 400.601 Definitions.--As used in this part, the term:
35 (3) "Hospice" means a centrally administered corporation
36 ~~not for profit, as defined in chapter 617,~~ providing a continuum
37 of palliative and supportive care for the terminally ill patient
38 and his or her family.
39 Section 2. Section 400.602, Florida Statutes, is amended
40 to read:
41 400.602 Licensure required; prohibited acts; exemptions;
42 display, transferability of license.--
43 (1)(a) It is unlawful to operate or maintain a hospice
44 without first obtaining a license from the agency.
45 (b) It is unlawful for any person or legal entity not
46 licensed as a hospice under this part to use the word "hospice"
47 in its name, or to offer or advertise hospice services or
48 hospice-like services in such a way as to mislead a person to
49 believe that the offeror is a hospice licensed under this part.
50 <u>(c) It is unlawful for any person or legal entity</u>
51 <u>offering, describing, or advertising hospice services or</u>

52 hospice-like services or otherwise holding itself out as a
53 hospice to do so without stating the year of initial licensure
54 as a hospice in the state or the year of initial licensure of
55 the hospice entity or affiliate based in the state that owns the
56 hospice. At a minimum, the year of initial licensure must be
57 stated directly beneath the name of the licensed entity in a
58 type no less than 25 percent of the size of the type used for
59 the name or other indication of hospice services or hospice-like
60 services and must be prominently stated at least one time on any
61 document, item, or other medium offering, describing, or
62 advertising hospice services or hospice-like services. This
63 requirement excludes any materials relating to the care and
64 treatment of an existing hospice patient.
65 (2) Services provided by a hospital, nursing home, or
66 other health care facility, health care provider, or caregiver,
67 or under the Community Care for the Elderly Act, do not
68 constitute a hospice unless the facility, provider, or caregiver
69 establishes a separate and distinct administrative program to
70 provide home, residential, and homelike inpatient hospice
71 services.
72 (3)(a) A separately licensed hospice may not use a name
73 which is substantially the same as the name of another hospice
74 licensed under this part.
75 (b) A licensed hospice which intends to change its name or
76 address must notify the agency at least 60 days before making
77 the change.
78 (4) The license shall be displayed in a conspicuous place
79 inside the hospice program office; shall be valid only in the

80 possession of the person or public agency to which it is issued;
81 shall not be subject to sale, assignment, or other transfer,
82 voluntary or involuntary; and shall not be valid for any hospice
83 other than the hospice for which originally issued.
84 ~~(5) Notwithstanding s. 400.601(3), any hospice operating~~
85 ~~in corporate form exclusively as a hospice, incorporated on or~~
86 ~~before July 1, 1978, may be transferred to a for-profit or not-~~
87 ~~for-profit entity, and may transfer the license to that entity.~~
88 ~~(6) Notwithstanding s. 400.601(3), at any time after July~~
89 ~~1, 1995, any entity entitled to licensure under subsection (5)~~
90 ~~may obtain a license for up to two additional hospices in~~
91 ~~accordance with the other requirements of this part and upon~~
92 ~~receipt of any certificate of need that may be required under~~
93 ~~the provisions of ss. 408.031-408.045.~~
94 Section 3. Subsection (7) is added to section 400.606,
95 Florida Statutes, to read:
96 400.606 License; application; renewal; conditional license
97 or permit; certificate of need.--
98 (7) The agency may deny a license to an applicant that
99 fails to meet any condition for the provision of hospice care or
100 services imposed by the agency on a certificate of need by final
101 agency action, unless the applicant can demonstrate that good
102 cause exists for the applicant's failure to meet such condition.
103 Section 4. Subsection (4) of section 400.6105, Florida
104 Statutes, is amended to read:
105 400.6105 Staffing and personnel.--
106 (4) A hospice must maintain a trained volunteer staff for
107 the purpose of providing both administrative support and direct

108 patient care. A hospice must use trained volunteers who work in
109 defined roles and under the supervision of a designated hospice
110 employee for an amount of time that equals at least 5 percent of
111 the total patient care or administrative hours provided by all
112 paid hospice employees and contract staff in the aggregate. The
113 hospice shall document and report the use of volunteers,
114 including maintaining a record of the number of volunteers, the
115 number of hours worked by each volunteer, and the tasks
116 performed by each volunteer.
117 Section 5. No later than January 1, 2010, the Office of
118 Program Policy Analysis and Government Accountability shall
119 submit to the President of the Senate and the Speaker of the
120 House of Representatives a report analyzing the impact of for-
121 profit hospices on the delivery of care to terminally ill
122 patients and include in the report a review of the quality of
123 care offered by for-profit hospices, changes in the competitive
124 marketplace in hospice service areas, and any other information
125 deemed pertinent.
126 Section 6. To protect the citizens of the state, it is the
127 intent of the Legislature that no change in law be made to the
128 hospice licensure and certificate-of-need provisions until the
129 year 2012 to correctly analyze and evaluate the impact of this
130 act on the quality of hospice care in the state.
131 Section 7. (1) No later than December 31, 2007, the
132 Department of Elderly Affairs, in conjunction with the Agency
133 for Health Care Administration and all hospices licensed in the
134 state, shall develop outcome measures to determine the quality
135 and effectiveness of hospice care in the state. At a minimum,

136 these outcome measures shall include a requirement that 50
137 percent of patients who report severe pain on a 0-to-10 scale
138 must report a reduction to 5 or less by the end of the 4th day
139 of care on the hospice program.
140 (2) The Department of Elderly Affairs, in conjunction with
141 the Agency for Health Care Administration and all hospices
142 licensed in the state, shall:
143 (a) Consider and adopt national initiatives, such as those
144 developed by the National Hospice and Palliative Care
145 Organization, to set benchmarks for measuring the quality of
146 hospice care provided in the state.
147 (b) Develop an annual report that analyzes and evaluates
148 the information collected under this act and any other data
149 collection or reporting provisions of law.
150 Section 8. If any provision of this act or its application
151 to any person or circumstance is held invalid, the invalidity
152 does not affect other provisions or applications of this act
153 which can be given effect without the invalid provision or
154 application, and to this end the provisions of this act are
155 severable.
156 Section 9. This act shall take effect July 1, 2006.

HB 1449 CS

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1449 CS Brain Tumor Research
SPONSOR(S): Gannon and others
TIED BILLS: HB 1451 **IDEN./SIM. BILLS:** SB 2566

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care General Committee	10 Y, 0 N, w/CS	Ciccone	Brown-Barrios
2) Health Care Appropriations Committee	15 Y, 0 N, w/CS	Money	Massengale
3) Health & Families Council		Ciccone	Moore
4)			
5)			

SUMMARY ANALYSIS

House Bill 1449 CS establishes the Florida Center for Brain Tumor Research within the Evelyn F. and William L. McKnight Brain Institute of the University of Florida. The bill provides legislative intent regarding the need for coordination among researchers and health care providers in the effort to find cures for cancerous and noncancerous brain tumors.

The bill directs the University of Florida McKnight Brain Institute to work with other institutions and organizations to develop and maintain an automated centralized database of individuals with brain tumors. The bill creates the Florida Center for Brain Tumor Research within the Evelyn F. and William L. McKnight Brain Institute of the University of Florida and directs the center to provide a central repository for brain tumor biopsies. In addition, the center is directed to improve and monitor brain tumor biomedical research programs, facilitate funding opportunities, and foster improved technology transfer of brain tumor research findings into clinical trials and public use.

The bill creates a scientific advisory council within the Florida Center for Brain Tumor Research. Membership includes biomedical researchers, physicians, clinicians, and representatives from public and private universities and hospitals, and members of the council serve without compensation.

The bill provides $500,000 from the General Revenue Fund to the Evelyn F. and William L. McKnight Brain Institute of the University of Florida for the 2006-2007 fiscal year. The level of funding for brain tumor research and the procurement of brain tumor biopsies shall be commensurate with the level of funding provided.

The effective date of the bill is July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—The bill expands the duties and responsibilities of the Department of Health to develop and maintain an automated, electronic, and centralized brain tumor registry.

Empower families—Individuals in need of information and treatment of cancerous and noncancerous brain tumors would benefit from the advances in information and technology as biomedical research extends to expand clinical research trials and eventual cures.

B. EFFECT OF PROPOSED CHANGES:

Current sections of law delineate a growing emphasis to encourage biomedical and clinical trial research in a variety of tumor-related areas of study in Florida. Several universities, including the University of Florida, University of Miami and the University of South Florida have well established programs dealing with cancerous and noncancerous brain tumor research. In addition, the H. Lee Moffitt Cancer Center and Research Institute and the Florida Hospital in Orlando are listed in the national registry of brain tumor centers. Publicly and privately funded research consortiums such as the Evelyn F. and William L. McKnight Brain Institute of the University of Florida provide a continuum of innovative research opportunities to foster communication and coordination among researchers and institutions, increase federal and other grant opportunities and expand the related economic industry growth.

The bill directs the University of Florida McKnight Brain Institute to work with other institutions and organizations to develop and maintain an automated centralized database of individuals with brain tumors. The bill creates the Florida Center for Brain Tumor Research within the Evelyn F. and William L. McKnight Brain Institute of the University of Florida and directs the center to provide a central repository for brain tumor biopsies. In addition, the center is directed to improve and monitor brain tumor biomedical research programs, facilitate funding opportunities, and foster improved technology transfer of brain tumor research findings into clinical trials and public use.

The bill creates a scientific advisory council within the Florida Center for Brain Tumor Research. Membership includes biomedical researchers, physicians, clinicians, and representatives from public and private universities and hospitals, and members of the council serve without compensation.

Background

Tumors – General Definition

A tumor or neoplasm refers to a "new growth" of cells that already exist in a certain part of the body. Many different tumors can occur in the nervous system. They often cause headaches, seizures or neurological deficits. Tumors can be either benign or malignant. Malignant tumors are referred to as cancers. Tumor treatments can consist of surgical resection or biopsy, radiation approaches or drug treatment approaches (chemotherapy). Other tumors can be treated with modification of the body's own immune system (immunotherapy).[1]

There are many types of brain tumor disorders including acoustic neuroma, astrocytoma, brain metastasis, and glioblastoma. Because of the many and varied types of brain tumors, treatment is complicated. Brain tumors in children are different from those in adults and are often treated differently. Although as many as 69 percent of children will survive, they are often left with long term

[1] *See Department of Neurological Surgery, University of Pittsburg, www.neurosurgery.pitt.edu/conditions*

side effects. In addition, brain tumors are the third leading cause of death in young adults ages 20—39.[2]

The American Cancer Society estimates that 18,820 Americans have been diagnosed with malignant brain or spinal cord tumors in 2005 and that 12,820 of these patients will die from these malignant tumors; 930 of these deaths that occurred in 2005 were in Florida.

The National Brain Tumor Foundation reports the following statistics:

- Each year approximately 190,000 people in the United States will be diagnosed with a primary or metastatic brain tumor.
- Brain tumors are the leading cause of Solid Tumor death in children under age 20 now surpassing acute lymphoblastic leukemia (ALL), and are the third leading cause of cancer death in young adults ages 20-39.
- Brain tumor patients, including those with certain "benign" brain tumors, have poorer survival rates than breast cancer patients.
- Metastatic brain tumors (cancer that spreads from other parts of the body to the brain) occur at some point in 10 to 15 percent of persons with cancer and are the most common type of brain tumor. The incidence of brain tumors has been increasing as cancer patients live longer.
- In the United States, the overall incidence of all primary brain tumors is more than 14 per 100,000 people.
- Because brain tumors are located at the control center for thought, emotion and movement, their effects on an individual's physical and cognitive abilities can be devastating.
- Brain tumors are treated by surgery, radiation therapy and chemotherapy, used either individually or in combination.
- Only 31 percent of males and 30 percent of females survive five years following the diagnosis of a primary or malignant brain tumor.
- Brain tumors in children are different from those in adults and are often treated differently. Although as many as 69 percent of children with brain tumors will survive, they are often left with long-term side effects.
- Enhancing the quality of life of people with brain tumors requires access to quality specialty care, clinical trials, follow-up care and rehabilitative services. Improving the outlook for adults and children with brain tumors requires research into the causes of and better treatments of brain tumors.
- Complete and accurate data on all primary brain tumors are needed to provide the foundation for research leading to improved diagnosis and treatment and to investigations of its causes.

Brain Tumor Symptoms And Treatment

Symptoms of a brain tumor can include headaches (of sufficient discomfort to disrupt sleep),.seizures in a person who does not have a history of seizures, cognitive or personality changes, eye weakness, nausea or vomiting, speech disturbances, or memory loss. While these are the most common symptoms of a brain tumor, they can also indicate other medical problems.

At present, surgery is the primary treatment for brain tumors that lie within those membranes covering the brain or in parts of the brain that can be removed without damaging critical neurogical functions. Because a tumor can regrow if any tumor cells are left behind, surgeons strive to remove the entire tumor whenever possible. Radiation therapy and chemotherapy, in general are used as secondary or adjuvant treatment for tumors that cannot be removed by surgery alone.

C. SECTION DIRECTORY:

[2] National Brain Tumor Foundation website www.braintumor.org/patient/treatment

Section 1. Creates section 381.853, F.S., and provides legislative intent regarding cancerous and noncancerous biomedical research; directing the University of Florida McKnight Brain Institute to work with other institutions and organizations to develop and maintain a centralized database of brain tumor information; creating the Florida Center for Brain Tumor Research within the Evelyn F. and William L. McKnight Brain Institute of the University of Florida; and creating a scientific advisory council.

Section 2. Provides an appropriation.

Section 3. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

See Fiscal Note above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not require counties or municipalities to take an action requiring the expenditure of funds, nor does it reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor does it reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 28, 2006, the House Health Care General Committee passed House Bill 1449 CS and adopted one strike-all amendment that made the following changes:

- Directed the Scripps Research Institute to work with the University of Florida McKnight Brain Institute to maintain a brain tumor registry.
- Established the Florida Center for Brain Tumor Research within the Scripps Research Institute.
- Provided for the brain tumor biomedical technology summit to include scientists conducting basic peer-reviewed scientific research.
- Specified that the center shall include clinicians among researchers, physicians and hospitals fostering partnerships, information sharing and membership in the scientific advisory council.
- Provided annual reporting requirements.
- Specified up to 10 percent of the $4 million appropriation to the Florida Center for Brain Tumor Research may be used for administrative costs.

The analysis is drafted to the committee substitute.

On April 11, 2006, the Health Care Appropriations Committee passed House Bill 1449 CS and adopted one strike-all amendment that made the following changes:

- Established the Florida Center for Brain Tumor Research within the Evelyn F. and William L. McKnight Brain Institute of the University of Florida in lieu of the Scripps Research Institute.
- Directs the University of Florida McKnight Brain Institute to work with other institutions and organizations to develop and maintain an automated centralized database of individuals with brain tumors.
- Removed Department of Health rule making authority.
- Removed the 10 percent allowance for administrative costs.
- Provides $500,000 from the General Revenue Fund to the Evelyn F. and William L. McKnight Brain Institute of the University of Florida for the 2006-2007 fiscal year.
- Provides that the level of funding for brain tumor research and the procurement of brain tumor biopsies shall be commensurate with the level of funding provided.

The analysis is drafted to the committee substitute.

CHAMBER ACTION

1 The Health Care Appropriations Committee recommends the
2 following:
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to brain tumor research; creating s.
7 381.853, F.S.; providing legislative findings and intent;
8 requiring the Evelyn F. and William L. McKnight Brain
9 Institute of the University of Florida to develop and
10 maintain a brain tumor registry; providing that
11 individuals may choose not to be listed in the registry;
12 establishing the Florida Center for Brain Tumor Research
13 within the Evelyn F. and William L. McKnight Brain
14 Institute of the University of Florida; providing purpose
15 and goal of the center; providing for a competitive grant
16 process for awarding certain funds; requiring the center
17 to hold an annual brain tumor biomedical technology
18 summit; providing for clinical trials and collaboration
19 between certain entities; requiring the center to submit
20 an annual report to the Governor, Legislature, and
21 Secretary of Health; providing for funding; establishing a
22 scientific advisory council and providing for membership,

23 terms of office, meetings, and compensation; providing an
24 appropriation; providing an effective date.
25
26 Be It Enacted by the Legislature of the State of Florida:
27
28 Section 1. Section 381.853, Florida Statutes, is created
29 to read:
30 381.853 Florida Center for Brain Tumor Research.--
31 (1) The Legislature finds that each year an estimated
32 190,000 citizens of the United States are diagnosed with
33 cancerous and noncancerous brain tumors and that biomedical
34 research is the key to finding cures for these tumors. The
35 Legislature further finds that, although brain tumor research is
36 being conducted throughout the state, there is a lack of
37 coordinated efforts among researchers and health care providers.
38 Therefore, the Legislature finds that there is a significant
39 need for a coordinated effort to achieve the goal of curing
40 brain tumors. The Legislature further finds that the biomedical
41 technology sector meets the criteria of a high-impact sector,
42 pursuant to s. 288.108(6), having a high importance to the
43 state's economy with a significant potential for growth and
44 contribution to our universities and quality of life.
45 (2) It is the intent of the Legislature to establish a
46 coordinated effort among the state's public and private
47 universities and hospitals and the biomedical industry to
48 discover brain tumor cures and develop brain tumor treatment
49 modalities. Moreover, it is the intent of the Legislature to

50 expand the state's economy by attracting biomedical researchers
51 and research companies to the state.
52 (3) The Evelyn F. and William L. McKnight Brain Institute
53 of the University of Florida shall work with other institutions
54 and organizations to develop and maintain a brain tumor registry
55 that is an automated, electronic, and centralized database of
56 individuals with brain tumors. The individual, or the parent or
57 guardian of the individual if the individual is a minor, may
58 refuse to participate in the brain tumor registry by signing a
59 form obtained from the department or from the health care
60 practitioner or entity that provides brain tumor care or
61 treatment which indicates that the individual does not wish to
62 be included in the registry. The decision to not participate in
63 the registry must be noted in the registry.
64 (4) The Florida Center for Brain Tumor Research is
65 established within the Evelyn F. and William L. McKnight Brain
66 Institute of the University of Florida.
67 (a) The purpose of the center is to foster collaboration
68 with brain cancer research organizations and other institutions,
69 provide a central repository for brain tumor biopsies from
70 individuals throughout the state, improve and monitor brain
71 tumor biomedical research programs within the state, facilitate
72 funding opportunities, and foster improved technology transfer
73 of brain tumor research findings into clinical trials and
74 widespread public use.
75 (b) The goal of the center is to find cures for brain
76 tumors.

77 (c) Funds specifically appropriated by the Legislature for
78 peer-reviewed brain tumor research shall be awarded using a
79 competitive grant process developed by the center.
80 (d) The center shall hold an annual brain tumor biomedical
81 technology summit in the state to which scientists conducting
82 basic peer-reviewed scientific research from the state's public
83 and private universities, teaching hospitals, and for-profit and
84 nonprofit institutions are invited to share biomedical research
85 findings in order to expedite the discovery of cures. Summit
86 attendees shall cover the costs of such attendance or obtain
87 sponsorship for such attendance.
88 (e) The center shall encourage clinical trials in the
89 state on research that holds the promise of curing brain tumors.
90 The center shall facilitate the formation of partnerships
91 between researchers, physicians, clinicians, and hospitals for
92 the purpose of sharing new techniques and new research findings
93 and coordinating the voluntary donation of brain tumor biopsies.
94 (f) The center shall facilitate the formation of
95 partnerships between researchers, physicians, clinicians, and
96 hospitals in the state.
97 (g) The center shall submit an annual report to the
98 Governor, the President of the Senate, the Speaker of the House
99 of Representatives, and the Secretary of Health no later than
100 January 15 that contains recommendations for legislative changes
101 necessary to foster a positive climate for the pursuit of brain
102 tumor research and the development of treatment modalities in
103 the state.

104 (h) The center shall be funded through private, state, and
105 federal sources.
106 (5) There is established within the center a scientific
107 advisory council that includes biomedical researchers,
108 physicians, clinicians, and representatives from public and
109 private universities and hospitals. The council shall meet at
110 least annually.
111 (a) The council shall consist of:
112 1. Two members from the Florida Center for Brain Tumor
113 Research within the Evelyn F. and William L. McKnight Brain
114 Institute of the University of Florida appointed by the
115 Governor.
116 2. Two members from the Scripps Research Institute, one of
117 whom must have expertise in basic brain tumor research,
118 appointed by the Speaker of the House of Representatives.
119 3. Two members from other public and private universities
120 and institutions directly involved in brain tumor research
121 appointed by the President of the Senate.
122 4. Two physicians directly involved in the treatment of
123 brain tumor patients appointed by the Secretary of Health.
124 (b) Council members shall serve staggered 4-year terms.
125 (c) Council members shall serve without compensation, and
126 each organization represented shall cover all expenses of its
127 representative.
128 Section 2. The sum of $500,000 is appropriated from the
129 General Revenue Fund to the Evelyn F. and William L. McKnight
130 Brain Institute of the University of Florida for the 2006-2007
131 fiscal year. The level of funding for brain tumor research and

132 the procurement of brain tumor biopsies shall be commensurate
133 with the level of funding provided.
134 Section 3. This act shall take effect July 1, 2006.

Amendment to HB 1449 CS by Rep. Gannon

Removes redundant language which is already referenced in paragraph (e) and redesignates subsequent paragraphs.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **1449**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	_____	

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1 Council/Committee hearing bill: Health & Families Council
2 Representative(s) Gannon offered the following:
3
4 **Amendment**
5 Remove line(s) 94-96
6 (redesignate subsequent paragraphs)

HB 1503 CS

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1503 CS Agency for Persons with Disabilities
SPONSOR(S): Galvano
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Elder & Long-Term Care Committee	8 Y, 0 N, w/CS	DePalma	Walsh
2) Health Care Appropriations Committee	15 Y, 0 N, w/CS	Ekholm	Massengale
3) Health & Families Council		DePalma	Moore
4)			
5)			

SUMMARY ANALYSIS

In 2004, the Developmental Disabilities program in the Department of Children and Family Services (DCF, or "the department") was transferred to the newly-created Agency for Persons with Disabilities (APD, or "the agency").[1] Although the powers, duties, assets and liabilities of the former Developmental Disabilities (DD) Program Office of DCF were transferred to APD, various statutes relating to the DD Program Office were not amended and updated to reflect the creation of APD, or to clarify the agency's jurisdiction.

House Bill 1503 CS proposes several substantive, conforming and technical changes to statutes relating to individuals with disabilities and the Agency for Persons with Disabilities.

The Agency for Persons with Disabilities reports no fiscal impact associated with the bill.

The CS provides an effective date of July 1, 2006.

[1] Chapter 2004-267, L.O.F.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government—The bill provides substantive and technical amendments necessary to clearly reflect the Agency for Persons with Disabilities' 2004 creation, and specify the agency's powers and responsibilities.

Empower Families—The bill specifies that individuals have the right to be free from restraint or seclusion, and provides legislative intent to achieve an ongoing reduction in the use of restraint and seclusion.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

The Agency for Persons with Disabilities

In 2004, the Developmental Disabilities program in the Department of Children and Family Services (DCF or department) was transferred to the newly-created Agency for Persons with Disabilities (APD or agency).[2] Although the powers, duties, assets, and liabilities of the former Developmental Disabilities (DD) Program Office of DCF were transferred to APD, various statutes relating to the DD Program Office were not amended and updated to reflect the creation of the agency and to clarify the jurisdiction of APD.

The agency is responsible for providing services for persons with developmental disabilities in Florida. The stated agency mission is to support persons with developmental disabilities in living, learning, and working in all aspects of community life.[3] The goals of the agency include increasing the number of persons with developmental disabilities who are employed in integrated settings, promoting consumer independence through increasing choice, reducing reliance on institutional settings, reducing the waiting list for services, and improving consumer outcomes and service quality.[4]

A developmental disability is defined as "a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely."[5] An individual is eligible for services if their domicile is in Florida, they have a developmental disability, and are three years of age or older.[6] Children who are at high risk of having a developmental disability and are between the ages of 3 and 5 are also eligible for services.[7]

Services provided by the agency include an array of community services and supports, as well as a limited institutional program, and include employment and training services, environmental adaptive equipment, personal or family supports, residential habilitation, support coordination, therapeutic supports, and wellness management. There may be eligibility requirements specific to a particular

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[2] Chapter 2004-267, L.O.F.
[3] Agency for Persons with Disabilities, briefing materials, October 18, 2005.
[4] *Ibid.*
[5] s. 393.063(10), F.S.
[6] Children from birth to three years of age with developmental disabilities are served by Children's Medical Services in the Department of Health, s. 393.064, F.S.
[7] "High-risk child" is defined in s. 393.063(23) F.S.

service or support in addition to the general eligibility criteria for services from APD. The majority of services provided to clients of the agency are funded by Medicaid and authorized through a federal waiver.

The Developmental Disabilities Home and Community-Based Services (DD-HCBS) waiver program is a Medicaid funded program and the largest source of funding for APD services. Services provided through the DD-HCBS waiver program enable children and adults to live in a family setting in their own home or in a licensed residential setting, thereby avoiding institutionalization. Clients receiving services through this program are also eligible for all services in the Medicaid state plan.

The Family and Supported Living (FSL) waiver makes services available to children and adults who live with their family or in their own home. Although fewer DD services are available under this waiver, clients are also eligible for all services in the Medicaid state plan.

The agency estimated that the total enrollment in both waiver programs for FY 2005/2006 will be 32,603 clients. The enrollment for all waiver state funded only services is projected by APD to be approximately 40,000 by the end of Fiscal Year 2005/2006.[8]

The agency also provides fiscal and programmatic management of developmental disabilities institutions and those community-based services currently funded by only state funds. Statewide, there are three developmental disabilities institutions serving approximately 1,100 residents.

In recent years, the developmental disabilities program has instituted a number of fiscal and programmatic management controls intended to address escalating costs and growing waiting lists for services. These include a standardized rate structure, prior service authorization, pre-payment billing review, and support coordination. In addition, the Legislature has significantly increased funding to the program, allowing the agency to greatly increase the number of clients served, while reducing the waiting list for services.

PROPOSED CHANGES

Throughout the bill the term "person who is developmentally disabled" has been changed to "person with a developmental disability." In addition, conforming changes to statute sections resulting from the committee substitute are made throughout, along with corrections to agency names resulting from the 2004 reorganization (e.g., "Department of Children and Family Services" becomes "Agency for Persons with Disabilities" as appropriate).

Senate Confirmation; Creation of Division of Budget and Planning and Division of Operations [Section 1]

The bill amends s. 20.197, F.S., and provides for Senate confirmation of the Governor's appointee to serve as director of the Agency for Persons with Disabilities (APD or the agency). The bill directs APD to include both a Division of Budget and Planning and a Division of Operations, and further provides that the director of APD may recommend establishing additional divisions, bureaus, sections and subsections of the agency as necessary to promote efficient and effective agency operation.

Access to Confidential Records and Reports [Section 3]

Currently, the Department of Health (DOH), the Agency for Health Care Administration (AHCA), and the Department of Elderly Affairs (DOEA) have access to abuse records as provided in s. 39.202, F.S., and s. 415.107, F.S. Prior to 2004, when the Developmental Disabilities program was administered by DCF, the program had access to both child and adult abuse records and investigations. Access to

[8] Agency for Persons with Disabilities, briefing materials.

these records provided information necessary for licensing facilities housing DD clients and provided managers with reports of abuse or neglect to clients in licensed facilities. These records are confidential pursuant to s. 39.202, F.S., and s. 415.107, F.S.,[9] and the agency is now unable to access reports that involve instances of alleged abuse that occur in facilities licensed by APD. As a result, since 2004, whenever DCF has had to remove a resident from an APD-licensed facility because of abuse or neglect in that facility, DCF has been unable to share any information about the abuse with the agency.

The bill inserts employees, authorized agents and contract providers of APD into the list of persons, officials and agencies granted access to certain child abuse and neglect records. Similar access to these records is granted to APD officials responsible for administration of the agency's child and adult protective services programs, for taking administrative action concerning an employee alleged to have perpetrated the abuse, abandonment or neglect of a child or the abuse, neglect or exploitation of a vulnerable adult, or for employment of agency personnel.

Court-ordered Developmental Disability Services [Section 4]

Pursuant to s. 39.407, F.S., a court may order a dependent child to be examined by a health care professional, psychiatrist, psychologist, or developmental disability evaluation team. The judge may also order the child to receive mental health or developmental disabilities services from a psychiatrist, psychologist, or other appropriate service providers. According to APD, the references to developmental disabilities in this section are inconsistent with other provisions in state and federal law and are creating confusion for clients, families, child welfare workers, and the courts. Although mental health services may be ordered by a court, eligibility for services for persons with disabilities, including children, are determined in accordance with ch. 393, F.S., which specifies the criteria for qualifying an individual for services.

Jurisdiction for challenges to APD actions regarding services and eligibility for services is governed by 42 USC 1396a, 42 CFR 431.200 et seq., and 65-2.042 F.A.C., through the fair hearings process. In the event APD denies or reduces a service, a client is entitled to a fair hearing. If APD prevails, the client can appeal to the appropriate District Court of Appeals. If the client prevails at a fair hearing, APD cannot appeal.

The agency maintains that, unlike DCF, APD is not a party to these proceedings. Some dependency courts, pursuant to s. 39.407(5), F.S., have ordered APD to provide services to children. The agency has challenged these court orders via Petitions for Writs of Prohibition, claiming a lack of jurisdiction, and prevailed at the appellate level.[10] The Florida Supreme Court is presently considering granting certiorari on two of these cases.

The bill amends s. 39.407(5), F.S., to delete references to developmental disabilities services.

Agency Purchase of Automotive Equipment; Licensure of Food Service Facilities [Sections 5, 6]

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[9] s. 39.202 (1), F.S., reads "[i]n order to protect the rights of the child and the child's parents or other persons responsible for the child's welfare, all records held by the department concerning reports of child abandonment, abuse, or neglect, including reports made to the central abuse hotline and all records generated as a result of such reports, shall be confidential and exempt from the provisions of s. 119.07(1) and shall not be disclosed except as specifically authorized by this chapter. Such exemption from s. 119.07(1) applies to information in the possession of those entities granted access as set forth in this section." Section 415.107, F.S., reads, "[i]n order to protect the rights of the individual or other persons responsible for the welfare of a vulnerable adult, all records concerning reports of abuse, neglect, or exploitation of the vulnerable adult, including reports made to the central abuse hotline, and all records generated as a result of such reports shall be confidential and exempt from s. 119.07(1) and may not be disclosed except as specifically authorized by ss. 415.101-415.113."

[10] See generally *Agency for Persons with Disabilities v. F.G.*, 917 So. 2d 837 (Fla. 3rd DCA 2005) (holding that a trial court lacks constitutional or statutory authority to subpoena duces tecum officers of the state concerning a matter that is within their executive authority); *Agency for Persons with Disabilities v. R.N.*, 917 So. 2d 199 (Fla. 3rd DCA 2005).

The bill amends s. 287.155, F.S., and inserts APD into the list of entities authorized to purchase certain automotive equipment. The bill also specifies that APD is included among the entities licensing food service facilities that are exempt from certain licensure requirements in s. 381.0072(3)(a), F.S.

The Developmental Disabilities Prevention and Community Services Act [Sections 8, 9, 10]

The bill repeals s. 393.061, F.S., which previously specified that Chapter 393 was to be known as the "Developmental Disabilities Prevention and Community Services Act."

The bill specifies certain legislative findings relating to treatment of individuals with developmental disabilities, and proposes several definitional changes:

- Deletes definitions for "day habilitation facility," "day habilitation service," "enclave," "epilepsy," "follow-along services," "job coach," "mobile work crew," "normalization principle," "reassessment," and "supported employee."
- Moves the definition of "comprehensive transitional education program" presently found in s. 393.063(7), F.S., to newly created s. 393.18, F.S., and notes that the primary goal of services offered through such programs is incorporating the principle of self-determination—not normalization—in establishing permanent residence for persons with maladaptive behaviors in facilities unassociated with the comprehensive transitional education program.
- Moves the definition of "severe self-injurious behavior" presently found in s. 393.063(39), F.S., to s. 393.0641, F.S., creating a diagnostic, treatment, training and research program for clients exhibiting such behavior.
- Provides that "adult day training" refers to training services that take place in a nonresidential setting, separate from the home or facility in which the client resides, and which are intended to support the participation of clients in daily, meaningful and valued routines of the community, and which may include work-like settings that do not meet the definition of supported employment.
- Deletes the definition of a "comprehensive transitional education program", and a reference to the program as established in s. 393.18, F.S.,—newly created by the CS—is included;
- Specifies that a "developmental disability" must manifest itself before the age of 18.
- Deletes cross-references to other definitions of "direct service provider" found in chapters 39 and 415, F.S., specifies that such providers must have direct face-to-face contact with a client while providing services, and deletes the requirement that providers not be a relative of the client to whom they are providing services.
- Specifies that an "express and informed consent" occurs after an individual makes a "knowing" decision without any element of force, fraud, deceit, duress, or other form of constraint or coercion.
- Amends the definition for a "licensed care facility" to indicate that such facilities are to be licensed under chapter 393, F.S.
- Provides that a "group home facility" is to be licensed under chapter 393, F.S., and deletes a provision in this definition specifying that group home facilities shall not be considered commercial enterprises.
- Provides that a "high risk child" is a child from 3 to 5 years of age[11] exhibiting certain characteristics.
- Specifies that the services contemplated under the definition of "medical/dental services" includes medically-necessary services provided or ordered for a client by a person licensed under chapters 458, 459, or 466, F.S.
- Specifies that, among those services considered "personal care services," meal preparation is to be included; provides that personal care services are services that "are incidental to the care

[11] s. 393.063(23), F.S., currently provides that a "high-risk child" is a child from birth to 5 years of age exhibiting certain characteristics.

furnished and essential to the health, safety, and welfare of the client," deletes that portion of the definition indicating that personal care services are not to be construed to mean the provision of medical, nursing, dental, or mental health services by the staff of a facility; also deletes the portion of the definition indicating that an emergency response device installed in the apartment or living area of a resident is not classified as a personal service.

- Specifies that the retardation exhibited by an individual suffering from "Prader-Willi syndrome" is mild to moderate mental retardation.
- Specifies that "residential habilitation" means supervision and training with the acquisition, retention or improvement in skills related to activities of daily living, such as personal hygiene skills, homemaking skills, and the social and adaptive skills necessary to enable the individual to reside in the community.
- Deletes a provision found in the definition of "retardation" providing that significantly sub-average general intellectual functioning must manifest during the period from conception to age 18.
- Creates a definition for "self-determination" as an individual's freedom to exercise the same rights as all other citizens, authority to exercise control over—and prioritize use of—funds needed for one's own support, responsibility for the wise use of public funds, and self advocacy to speak and advocate for oneself to gain independence and ensure that individuals with a developmental disability are treated equally.
- Deletes the portion of the definition of "supported employment" requiring that such employment must be provided in a normal employment setting, which provides at least 20 hours employment per week.

Additionally, the bill supplies definitions for "restraint" and "seclusion."

- A "restraint" refers to a physical device, method, or drug used to control dangerous behavior. A physical restraint is any manual method or physical device, material, or equipment attached or adjacent to the individual's body so that he or she cannot easily remove the restraint and which restricts freedom of movement or normal access to one's body. A drug used as a restraint is a medication used to control the person's behavior or to restrict his or her freedom of movement and is not a standard treatment for the person's medical or psychiatric condition. The bill specifies that physically holding a person during a procedure to forcibly administer psychotropic medication is a physical restraint, and provides that restraint does not include physical devices, such as orthopedically-prescribed appliances, surgical dressings and bandages, supportive body bands, or other physical holding when necessary for routine physical examinations and tests; or for purposes of orthopedic, surgical, or other similar medical treatment; or when used to provide support for the achievement of functional body position or proper balance; or when used to protect a person from falling out of bed.
- "Seclusion" refers to the involuntary isolation of a person in a room or area from which the person is prevented from leaving. Such prevention may be by physical barrier or by a staff member who is acting in a manner, or who is physically situated, so as to prevent the person from leaving the room or area. The bill specifies that seclusion does not refer to isolation because of the medical condition or symptoms of the individual.

Developmental Disabilities Prevention Services [Section 11]

Provision of developmental disabilities prevention services is split between APD and the Division of Children's Medical Services within the Department of Health (CMS). The bill amends s. 393.064, F.S., and clarifies that APD is to provide such services for children with developmental disabilities age 3 to 5 and their families, while CMS is responsible for providing these services for children with developmental disabilities from birth to age 3 and their families. The bill provides that such services may include individual evaluations or assessments necessary to diagnose a developmental disability or high-risk condition and to determine appropriate, individual family and support services.

Client Application Procedures and Eligibility Criteria [Section 13]

The bill provides that application for services shall be made in writing to the agency, in the "service area"—and not the "district"—in which the applicant resides, and specifies that applicant review is the responsibility of the agency, and not employees of the agency's developmental services program. Two additional provisions are also added to s. 393.065, F.S., in the bill. First, with the exception of clients deemed to be in crisis whom the agency shall serve as described in rule, the bill directs APD to place at the top of its wait list for waiver services those children on the wait list who are from the child welfare system with an open case in the Department of Children and Family Services' statewide automated child welfare information system. Second, the bill provides APD with rulemaking authority to specify application procedures and eligibility criteria for the above section.

Family and Individual Support Plans [Section 14]

The bill requires APD to provide, either directly or through contract, for the development of a family support plan for children ages birth to 18 years of age, and an individual support plan for each client. The bill also deletes a provision prohibiting the state from deducting residential costs for children from social security disability payments.[12] In addition to APD, the bill provides that a designated contractor may also submit the required annual report to the client required under s. 393.0651(7), F.S.

Dual Employment of Agency Employees [Section 15]

The bill creates s. 393.0654, F.S., relating to direct service providers. This section specifies that it is not a violation of s. 112.313(7), F.S.,[13] for a direct service provider who is employed by the agency to own, operate, or work in a private facility that is a service provider under contract with the agency under certain circumstances. These circumstances include where the employee does not have any role in agency placement recommendations or the client decisionmaking process; where the provider's employment with the agency does not compromise the ability of the client to make a voluntary choice among private providers; where the employee's outside employment does not create a conflict with, or impede the full and faithful discharge of, such employee's public duties; and where the provider discusses the dual employment or ownership status with the agency and all clients within the care of such provider.

Background Screening of Direct Service Providers [Sections 16, 17]

The bill amends s. 393.0655(1)(d), F.S., relating to the screening of direct service providers, by specifying that individuals 12 years of age or older, including family members, residing with a direct services provider providing services to clients in his or her own place of residence, are subject to background screening. The bill further provides that a direct service provider who is awaiting the completion of background screening is temporarily exempt from the screening requirements of s. 393.0655, F.S., if such provider is under the direct and constant visual supervision of persons who meet such screening requirements. This exemption expires 90 days after the provider first provides care or services to clients, has access to a client's living areas, or has access to a client's funds or personal property. The bill also provides that an employer refusing to dismiss a manager, supervisor or direct care provider who has been found to be in noncompliance with the standards of s. 393.0655, F.S., shall result in automatic denial, termination, or revocation of that employer's license or certification, in addition to other remedies pursued by the agency.

The bill revises s. 393.0657, F.S., relating to individuals not required to be refingerprinted or rescreened,[14] and specifies that individuals who have undergone any portion of the background

[12] The agency maintains that they will continue to abide by court rulings that prohibit such deductions, but that they propose taking this language out of the statute in the event that there are later modifications to the ruling on which this provision is based.
[13] Relating to conflicting employment or contractual relationships.
[14] Under current law, human resource personnel who have been fingerprinted or screened pursuant to chapters 393, 394, 397, 402, and 409, F.S., and teachers who have been fingerprinted pursuant to chapter 1012, F.S., who have not been

screening required under s. 393.0655, F.S., within the last 12 months are not required to repeat such screening to comply with that portion of the screening requirements. Documentation of past background screening is required, and individuals shall be required to undergo screening for any remaining background screening requirements that have never been conducted, or have not been completed within the last 12 months.

Agency Purchase of Services [Section 18]

The bill provides that community-based services that are purchased instead of provided directly by the agency when determined to be more cost-efficient must be approved by APD, specifies that the rulemaking authority given under this section is intended for the agency to provide definitions, eligibility criteria, and procedures for the purchase of services; and provides that adult day training and personal care services are among the community-based services that are medically necessary to prevent institutionalization.

Facility Licensure and Regulation [Section 19]

The bill amends s. 393.067, F.S., and provides the agency with rulemaking authority to provide application procedures, provider qualifications, facility and client care standards, requirements for client records, staff training requirements, and certain facility monitoring requirements. The bill also clarifies that the inspections and reviews of facilities and programs required to be conducted by the agency are to occur annually.

The bill deletes references to comprehensive transitional education programs and transfers them to newly-created s. 393.18, F.S.

The bill deletes various other provisions found in s. 393.067, F.S., including provisions regulating facility and provider background screening.

The bill amends s. 393.067, F.S., and specifies that, as a prerequisite for issuance of an initial license, or for renewal of an existing license, the applicant, manager, supervisor, and all staff members of a direct service provider must submit to background screening as required under s. 393.0655, F.S. A license will not be issued or renewed where the applicant and any of the managers, supervisors, or direct service providers of the facility or program have failed such background screening, and the bill provides that APD shall determine by rule the frequency of background screening. Applicants are required to submit—with each initial or renewal application—a signed affidavit stating that the applicant is in compliance with all background screening requirements. The bill further specifies that among the rules to be adopted by the agency pursuant to s. 393.067(7), F.S., the agency is to adopt rules relating to incident-reporting requirements.

The bill removes a requirement in s. 393.067, F.S., that the Agency for Health Care Administration (AHCA) collaborate with APD and, in consultation with DCF, adopt rules governing facilities and the establishment of minimum standards for the preparation and annual update of a comprehensive emergency management plan. The bill specifies that, during its review of the comprehensive emergency management plan, the local emergency management agency shall ensure that APD and the Department of Community Affairs are given a similar opportunity to review the plan.

The bill specifies the facilities subject to unannounced inspection by APD to determine compliance with chapter requirements and agency rules.

Fines and Penalties; Receivership Proceedings [Sections 20, 21, 23]

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unemployed for more than 90 days thereafter, and who attest to the completion of such fingerprinting or screening are not required to be refingerprinted or rescreened in order to comply with any direct service provider screening or fingerprinting requirements.

The bill amends s. 393.0673, F.S., and specifies that the agency may deny, revoke, or suspend a facility license or impose an administrative fine not exceeding $1,000 per violation per day if the applicant or licensee has falsely represented or omitted a material fact in its license application, has had prior action taken against it under the Medicaid or Medicare program, or has failed to comply with other requirements of chapter 393, F.S. APD is provided with rulemaking authority in s. 393.0673, F.S., to develop criteria for the purpose of evaluating the severity of violations of s. 393.0655, F.S., s. 393.067, F.S., or adopted rules, as well as for determining the amount of fines imposed. The bill also amends s. 393.0674, F.S., and specifies that it is a first degree misdemeanor for any person to willfully, knowingly, or intentionally provide or attempt to provide supports or services with direct care providers who are not in compliance with the above background screening requirements.

The bill amends s. 393.0678, F.S., and specifies that the agency is not authorized to petition for appointment of a receivership on behalf of an intermediate care facility for the developmentally disabled.

Family Care Program and In-Home Subsidies [Sections 24, 25]

The bill amends s. 393.064, F.S., and explicitly provides that services and support available to families and individuals with developmental disabilities through the family care program shall emphasize self-determination. The bill deletes "supported employment" from among the various services and support authorized under the family care program, and deletes language indicating that the in-home subsidies referred to in s. 393.068(2)(d), F.S., are not subject to any other payment method or rate schedule other than what is provided in s. 393.0695, F.S.

The bill also amends s. 393.0695, F.S., and requires APD to reassess the maximum amounts for provision of in-home subsidies quarterly, instead of annually, and provides the agency with rulemaking authority to administer the provision of in-home subsidies, including developing standards and procedures governing eligibility for services, selection of housing, selection of providers, planning for services, and requirements for ongoing monitoring.

Involuntary Admission to Residential Services [Section 27]

The bill amends s. 393.11, F.S., relating to involuntary admission to residential services, or civil commitment. The bill specifies that the involuntary commitment of an individual with mental retardation or autism who is charged with a felony offense shall be determined in accordance with s. 916.302, F.S.,[15] relating to forensic treatment and training, and deletes related provisions regulating involuntary admission to residential services arising out of chapter 916.

The bill specifies that the report filed by the agency following its evaluation of the person being considered for involuntary admission must contain a determination of whether such person is eligible for services. Similarly, the report submitted by the examining committee must include a determination of whether, using diagnostic capabilities established by the agency, the individual is eligible for agency services.

The bill amends s. 393.11(7), F.S., and changes the location of the involuntary admission hearing to the county in which the original petition is filed, instead of the county (or nearby county) in which the individual resides. The bill clarifies that the issue of the competency of a person with mental retardation or autism, for the purposes of assigning guardianship, is to be determined in a separate proceeding according to the procedures and requirements of chapter 744, F.S.,[16] and the issue of the competency of a person with mental retardation or autism, for purposes of determining whether the person is competent to proceed in a criminal trial, shall be determined in accordance with chapter 916, F.S. The

[15] Chapter 916 relates to mentally deficient and mentally ill defendants.
[16] Chapter 744 relates to guardianship.

bill further specifies that, at any time and without notice, any person involuntarily admitted into residential care, or the person's parent or legal guardian on his or her behalf, is entitled to file a petition for a writ of *habeus corpus* to question the cause, legality, and appropriateness of the person's involuntary admission.

Use of Restraints and Seclusion [Section 29]

The bill conforms s. 393.13, F.S., to changes made in the definitions found in s. 393.063, F.S. It provides legislative intent that the development of community-based services that provide opportunities for inclusion in the community should continue. Legislative intent is also provided to achieve "an ongoing reduction in the use of restraint and seclusion in facilities and programs serving persons with developmental disabilities."

The bill changes a reference in s. 393.13(4)(c)(1), F.S., from "behavioral modification programming" to "behavioral-analysis services", and deletes a reference to minimum wage for clients engaged in work programs requiring compliance with federal wage and hour laws in s. 393.13(h), F.S.

The bill specifies that medication shall not be used as a substitute for behavioral analysis services. It also deletes the reference to minimum wage protection provided in s. 393.13, F.S., for clients engaged in work programs requiring compliance with federal wage and hour laws.

The bill specifies that clients shall have the right to be free from restraint or seclusion,[17] and clarifies the use of restraint or seclusion in emergencies or to protect the client or others. The bill deletes a provision specifying that mechanical supports used in normative situations to achieve proper body position and balance are not considered restraints. The bill also deletes provisions covered by the definitions provided in s. 393.063, F.S.

APD is required to adopt rules for standards and procedures relating to the use of restraint and seclusion, and removes a requirement that APD post a copy of such rules, once adopted, in each living unit of residential facilities. A copy of these rules is to be given to the client, parent, guardian or guardian advocate, and all staff members of licensed facilities, and is required to be made a part of all staff pre-service and in-service training programs.

The bill specifies that the central record required to be maintained for each client shall be established by APD at the time such client is determined eligible for services and maintained by the client's support coordinator, and is required to contain information pertaining to admission, diagnosis and treatment history, present condition, and other such information as may be required. The bill specifies that this central client record is the property of APD. Also, the bill provides that, among the entities granted access to this otherwise-confidential record, a staff member of the facility where the client resides is provided with access when the facility administrator or APD director deems it necessary for the treatment of the client, maintenance of adequate records, compilation of treatment data, or evaluation of programs. The bill deletes a provision specifying that all central records for each client in residential facilities are to be kept on uniform forms distributed by the APD and are to accurately summarize each client's history and present condition.

The bill specifies that the resident government required to be maintained at each residential facility may include, at the option of the resident government, representatives of advocacy groups for persons with developmental disabilities from the community. The bill deletes a provision specifying that a facility's resident government is to work closely with the Florida local advocacy council and the district administrator.

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[17] According to the Advocacy Center for Persons with Disabilities in a letter dated March 12, 2006, based on data from the federal Centers for Medicare and Medicaid Services (CMS), Florida has the highest per-capita restraint/seclusion related death rate of any state during 2004 and 2005. Letter on file with the Committee.

Prohibited Sexual Misconduct [Section 30]

The bill changes the definition found in s. 393.135, F.S., relating to prohibited sexual misconduct, from "employee" to "covered person." A covered person is any paid staff member, volunteer or intern of the agency, any person under contract with the agency, and any person providing care or support to a client on behalf of the agency or its providers. The CS redefines "sexual misconduct" as sexual activity between a covered person and a client to whom the covered person renders services, care, or support on behalf of the agency or its providers, or between the covered person and another client who lives in the same home as the client to whom the covered person is rendering the services, care, or support, regardless of the client's consent. It is a felony of the second degree for a covered person to engage in sexual misconduct with an individual with a developmental disability who resides in a residential facility and is eligible[18] to receive services from the agency under chapter 393, F.S.

The bill deletes a provision of s. 393.135(4), F.S., providing that the section does not apply to a covered person who has no reason to believe that the person with whom the employee engaged in sexual misconduct is a client receiving agency services. The bill also deletes a provision requiring APD's inspector general to immediately conduct an administrative investigation, upon receiving a report from a covered person who has witnessed sexual misconduct or who otherwise knows or has reasonable cause to suspect that a person engaged in sexual misconduct, and, if there is probable cause to believe that sexual misconduct has occurred, requiring the inspector general to notify the state attorney in the circuit in which the incident occurred.

The Community Resources Development Loan Program [Section 31]

The bill specifies the Legislature's intent that APD develop and administer a loan program to provide support and encouragement in the establishment of community-based foster care, group home, and supported employment programs for persons with developmental disabilities. The bill deletes the Community Resources Development Trust Fund originally created in the State Treasury, and creates a Community Resources Development Loan Program in APD for the purpose of granting loans to eligible programs for the initial costs of development of the programs. The bill specifies that, in order to be eligible for the program, a foster home, group home, or supported employment program must serve persons with disabilities, be a non-profit corporation, partnership, or sole proprietorship, and must be in compliance with the zoning regulations of the local community.

The bill provides that loans may be made to pay for the costs of development and structural modification, the purchase of equipment and fire and safety devices, preoperational staff training, and the purchase of insurance. The bill specifies that repayment by a program on any loan granted by the agency shall be deposited into the agency's Administrative Trust Fund, and moneys repaid shall be used to fund new loans. A program operating as a non-profit corporation that seeks forgiveness on a loan shall submit to the agency an annual statement setting forth certain information. Upon approval of the annual statement, the agency may forgive up to 20 percent of the loan. Funds received by the agency from enforcement of a lien against a program are to be deposited in the agency's Administrative Trust Fund, and used to fund new loans.

Certification of Behavior Analysts [Section 32]

The bill amends s. 393.17, F.S., and provides that APD may establish a certification process for behavior analysts in order to ensure that only qualified employees and service providers provide behavioral analysis services to clients. Such procedures are to be established by rule, and must include criteria for scope of practice, certain qualifications for certification, and decertification procedures that may be used to determine whether an individual continues to meet the qualifications for certification and, if not, the procedures necessary to decertify an employee or service provider.

[18] Under current law, s. 393.135(2), F.S., requires that the individual with a developmental disability "receives services from a family care program."

The bill further specifies that APD shall recognize the certification of behavior analysts awarded by a non-profit corporation if such corporation adheres to the national standards of boards setting professional credentials. The certification procedure recognized by the agency must undergo regular psychometric review and validation, pursuant to a job analysis survey of the profession and standards established by content experts in the field.

Operation of Comprehensive Transitional Education Programs [Section 33]

The bill creates s. 393.18, F.S., relating to comprehensive transitional education programs. It requires that the staff of such centers include behavior analysts certified pursuant to s. 393.17, F.S., and provides that continuous shift staff are required to implement several of the component services. The bulk of this section is transferred from the definition section in s. 393.063, F.S.

Developmental Disabilities Institutions' Trust Accounts [Section 34]

The bill creates s. 393.23, F.S., relating to trust funds for developmental disabilities institutions, and provides that all receipts from the operation of canteens, vending machines, hobby shops, sheltered workshops, activity centers, farming projects, and other like activities operated in a developmental disabilities institution—as well as moneys donated to the institution—must be deposited in a trust account in any bank, credit union, or savings and loan association authorized by the State Treasury if the moneys are available on demand. The bill specifies that moneys in the trust account must be expended for the benefit, education, and welfare of clients (unless a donor provides a separate intent). Trust account money may not be used for the benefit of agency employees, or to pay the wages of such employees. The bill specifies that the "welfare of the clients" includes the expenditure of funds for the purchase of items for resale at canteens or vending machines, and for the establishment, maintenance, and operation of canteens, hobby shops, recreational or entertainment facilities, sheltered workshops, activity centers, farming projects, or other like facilities or programs established at the institutions for the benefit of clients.

A developmental disabilities institution may invest any money not necessary for immediate use in a trust account, and the interest earned and other increments derived from the investments of the money must be deposited into the trust account for the benefit of clients. The bill specifies that the accounting system of an institution must account separately for revenues and expenses for each activity, and the institution is required to reconcile the trust account to its accounting system and check registers, and to the accounting system of the Chief Financial Officer. Sales tax collected by the institution as a result of sales is to be deposited into the trust account and remitted to the Department of Revenue, and funds are required to be expended in accordance with requirements and guidelines established by the Chief Financial Officer.

General Rule Authority [Section 35]

The mandatory rulemaking directive contained in s. 393.501(1), F.S., is made optional, and the bill deletes a requirement that the rules address, for intermediate care facilities for the mentally retarded, the rate and location of facility development and level of care. The bill transfers an exemption to the 1,000-foot-radius requirement of s. 419.001(2), F.S.,[19] for certain alternative living centers and independent living education centers from s. 393.067(4), F.S., to s. 393.501(2), F.S.

[19] s. 419.001(2), F.S., specifies that "[h]omes of six or fewer residents which otherwise meet the definition of a community residential home shall be deemed a single-family unit and a noncommercial, residential use for the purpose of local laws and ordinances. Homes of six or fewer residents which otherwise meet the definition of a community residential home shall be allowed in single-family or multifamily zoning without approval by the local government, provided that such homes shall not be located within a radius of 1,000 feet of another existing such home with six or fewer residents. Such homes with six or fewer residents shall not be required to comply with the notification provisions of this section; provided, however, that the sponsoring agency or the department notifies the local government at the time of home occupancy that the home is licensed by the department."

The Use of Restraints and Seclusion in Programs and Services for Persons with Mental Illnesses [Sections 36, 37, 38, 39]

The bill amends s. 394.453, F.S., relating to mental health, to add that it is the policy of the state that the use of restraint and seclusion on clients is justified only as an emergency safety measure to be used in response to imminent danger to the client or others, and noting that the Legislature intends to achieve an ongoing reduction in the use of restraint and seclusion in programs and facilities serving persons with mental illness. The bill also inserts identical definitions of "restraint" and "seclusion" proposed for inclusion in s. 393.063, F.S., into s. 394.455, F.S. The bill provides that rules adopted pursuant to s. 394.457(5)(b), F.S., must include provisions governing the use of restraint or seclusion, which:

- Are consistent with recognized best practices and professional judgment.
- Prohibit inherently dangerous restraint or seclusion procedures.
- Establish limitations on the use and duration of restraint and seclusion.
- Establish measures to ensure the safety of program participants and staff during an incident of restraint or seclusion.
- Establish procedures for staff to follow before, during, and after incidents of restraint or seclusion.
- Establish professional qualifications of and training for staff who may order or be engaged in the use of restraint or seclusion.
- Establish mandatory reporting, data-collection, and data-dissemination procedures and requirements.

The bill amends the rulemaking authority granted to the Department of Children and Family Services in s. 394.879, F.S., to include provisions governing the use of restraint or seclusion that satisfy the above criteria.

Intermediate Care Facilities for the Developmentally Disabled [Sections 42, 43, 44]

The bill inserts the definitions of "restraint" and "seclusion" proposed for inclusion in s. 393.063, F.S., into s. 400.960, F.S., relating to intermediate care facilities for the developmentally disabled, and conforms other definitions to changes made in s. 393.063, F.S.

The bill adds a provision to s. 400.962, F.S., requiring an applicant for a license to operate an intermediate care facility to agree to provide or arrange for active treatment services. The bill provides that AHCA is to adopt, by rule, standards for such active treatment services, and specifies that active treatment services are provided in accordance with the individual support plan and reimbursed as part of the per diem rate as paid under the Medicaid program.

The bill also amends s. 400.967, F.S., to provide that APD—and not the Department of Children and Family Services (DCF)—shall consult with the Agency for Health Care Administration (AHCA) in its adoption and enforcement of rules necessary to administer part XI of chapter 400, F.S. Also, APD is included in the list of agencies permitted to review the comprehensive emergency management plan, and DCF is subsequently removed from the list. The bill provides that rules relating to the use of restraint and seclusion in an intermediate care facility for the developmentally-disabled must:

- be consistent with recognized best practices;
- prohibit inherently dangerous restraint or seclusion procedures;
- establish limitations on the use and duration of restraint and seclusion;
- establish measures to ensure the safety of program participants and staff during an incident of restraint or seclusion;

- establish procedures for staff to follow before, during, and after incidents of restraint or seclusion, including individualized plans for the use of restraint or seclusion in emergency situations;
- establish professional qualifications of and training for staff who may order or be engaged in the use of restraint or seclusion;
- establish requirements for facility data collection and reporting; and
- establish procedures relating to the documentation of the use of restraint or seclusion in the client's facility or program record.

Sharing of Confidential Information; Claims Procedures [Sections 45, 46, 47]

The bill amends s. 402.115, F.S., and includes APD in the list of agencies authorized to share confidential information, or information exempt from disclosure under chapter 119, F.S., on any individual who is or has been the subject of a program within the jurisdiction of each agency. The bill also amends s. 402.17, F.S., and requires APD to protect the financial interest of the state with respect to claims that the state may have for the care and maintenance of clients of the agency.

The bill incorporates APD within the State Institutions Claims Program contained in s. 402.181, F.S., and also includes APD among the entities required to work with the Department of Legal Affairs to streamline the process of investigations, hearings, and determinations of certain claims to ensure that eligible claimants receive restitution within a reasonable time.

County Contracts Authorized for Services and Facilities for Mental Health and Developmental Disabilities [Section 48]

The bill amends s. 402.20, F.S., to provide that county commissioners providing monetary grants and facilities, or entering into renewable contracts for services and facilities, for persons with mental illness or developmental disabilities may make periodic inspections to assure that the services or facilities provided meet APD standards, in addition to DCF standards.

Consumer-Directed Care Programs [Section 52]

The bill amends s. 409.221, F.S., relating to consumer-directed care programs in Medicaid, by adding APD as an agency that can manage such programs. Currently, the Department of Elderly Affairs is responsible for the administration of the consumer-directed care program, which permits agency clients to select and manage their Medicaid waiver services. While some of the persons served in the program are elderly, more than 85 percent are clients of APD.

Family Support Planning Process [Section 55]

The bill clarifies the family support planning process detailed in s. 411.224, F.S., by specifying that children age 3 through 5 who are served by APD must be included. The CS further provides that such family support plans must replace individual habilitation plans for children from 3 through 5 years old who are served by APD.

Children's Early Investment Program [Section 56]

The bill specifies that the Department of Health (DOH) is to adopt rules necessary to implement s. 411.232, F.S., relating to the Children's Early Investment Program.

Miscellaneous Provisions

The bill amends the definition of "facility" found in s. 415.102, F.S., by specifying that the term "facility" may include either a residential facility licensed under chapter 393, F.S., or an adult day training center. [Section 57]

The bill includes APD among the departments and agencies required by s. 415.1035, F.S., to work with DCF to ensure that every facility that serves vulnerable adults informs residents of their right to report abusive, neglectful or exploitative practices. [Section 58]

Similarly, the bill inserts APD into s. 415.1055, F.S., and provides that, upon receipt of a report that alleges that an employee or agent of APD, acting in an official capacity, has committed an act of abuse, neglect, or exploitation, DCF shall notify the state attorney in whose circuit the abuse, neglect, or exploitation occurred. When a report has been received and DCF has reason to believe that a vulnerable adult resident of a facility licensed by APD has been the victim of abuse, neglect, or exploitation, DCF is required to provide a copy of its investigation to APD. [Section 59]

The bill inserts employees or agents of APD responsible for carrying out protective investigations, ongoing protective services, or licensure or approval of certain nursing facilities into the list of entities authorized to access otherwise-confidential reports and records under s. 415.107, F.S. The bill also provides access to these records and reports to any appropriate official of APD responsible for the following:

- Administration or supervision of the programs for the prevention, investigation, or treatment of abuse, neglect, or exploitation of vulnerable adults when carrying out an official function.
- Taking appropriate administrative action concerning an employee alleged to have perpetrated abuse, neglect, or exploitation of a vulnerable adult in an institution. [Section 60]

The bill amends s. 944.602, F.S., by requiring the Department of Corrections (DOC) to notify APD—and not DCF—prior to the release of mentally retarded inmates. That sufficient time be allowed to notify the inmate or the inmate's representative, written notification of available community services is required at least seven days prior to the inmate's release. [Section 64]

The bill also inserts APD into s. 945.025, F.S., by requiring DCF and APD to cooperate to ensure the delivery of services to persons under custody or supervision of the Department of Corrections, and by specifying that, when it is the intent of DOC to transfer a mentally ill or retarded prisoner to either DCF or APD, an involuntary commitment hearing shall be held. The bill also deletes an obsolete provision in this section relating to redesignation of certain facilities as correctional facilities. [Section 65]

The bill amends s. 947.185, F.S., by providing that the Parole Commission may require, as a condition of parole, any inmate who has been diagnosed as mentally retarded to apply for services from APD upon release. [Section 66]

The bill specifies that under s. 985.224, F.S., if a detention petition or petition for delinquency has been filed, and a developmental disability is suspected or alleged, the court may order a diagnostic team from the APD to evaluate the child. [Section 67]

The bill includes APD in s. 1003.58, F.S., relating to the provision of educational programs to students in residential care facilities. [Section 68]

The bill amends s. 17.61, F.S., by providing that APD may not invest trust fund moneys as provided in s. 17.61, F.S., except for the Federal Grants Trust Fund and the Tobacco Settlement Trust Fund. [Section 69].

The bill deletes a provision in s. 984.22, F.S., specifying that, in cases in which a child is placed in foster care with DCF, child support payments are to be deposited in the Community Resources Development Trust Fund. [Section 72]

The bill provides an effective date of July 1, 2006.

C. SECTION DIRECTORY:

Section 1. Amends s. 20.197, F.S., providing for Senate confirmation of APD director, and requiring APD to include a Division of Budget and Planning and a Division of Operations, as well as other divisions needed to promote efficient and effective operation of the agency.

Section 2. Amends s. 39.001, F.S., relating to the development of the comprehensive state plan.

Section 3. Amends s. 39.202, F.S., relating to confidentiality of reports and records in cases of child abuse or neglect.

Section 4. Amends s. 39.407, F.S., relating to medical, psychiatric, and psychological examination and treatments.

Section 5. Amends s. 287.155, F.S., relating to departmental purchase of automotive equipment.

Section 6. Amends s. 381.0072, F.S., relating to licensure of food service establishments.

Section 7. Amends s. 393.14, F.S., relating to the Genetics and Newborn Screening Advisory Council.

Section 8. Repeals s. 393.061, F.S., providing a short title.

Section 9. Amends s. 393.062, F.S., providing legislative findings and intent.

Section 10. Amends s. 393.063, F.S., providing definitions.

Section 11. Amends s. 393.064, F.S., relating to developmental disabilities preventative services and programs.

Section 12. Amends s. 393.0641, F.S., relating to the program for the prevention and treatment of severe self-injurious behavior.

Section 13. Amends s. 393.065, F.S., relating to application for services and eligibility determinations.

Section 14. Amends s. 393.0651, F.S., relating to family or individual support plans.

Section 15. Creates s. 393.0654, F.S., relating to dual employment of direct service providers.

Section 16. Amends s. 393.0655, F.S., relating to screening of direct service providers.

Section 17. Amends s. 393.0657, F.S., relating to persons not required to be re-fingerprinted or re-screened.

Section 18. Amends s. 393.066, F.S., relating to purchase of community services and treatment.

Section 19. Amends s. 393.067, F.S., relating to facility licensure and regulation.

Section 20. Amends s. 393.0673, F.S., relating to administrative fines.

Section 21. Amends s. 393.0674, F.S., relating to penalties.

Section 22. Amends s. 393.0675, F.S., relating to injunctive proceedings.

Section 23. Amends s. 393.0678, F.S., relating to receivership proceedings.

Section 24. Amends s. 393.068, F.S., relating to the family care program.

Section 25. Amends s. 393.0695, F.S., relating to provision of in-home subsidies.

Section 26. Amends s. 393.075, F.S., relating to general liability coverage.

Section 27. Amends s. 393.11, F.S., relating to involuntary admission to residential services.

Section 28. Amends s. 393.122, F.S., relating to applications for continued residential services.

Section 29. Amends s. 393.13, F.S., relating to treatment of persons with developmental disabilities, and the Bill of Rights of Persons with Developmental Disabilities.

Section 30. Amends s. 393.135, F.S., relating to prohibited sexual misconduct.

Section 31. Amends s. 393.15, F.S., relating to the Community Resources Development Loan Program.

Section 32. Amends s. 393.17, F.S., relating to certification of behavior analysts.

Section 33. Creates s. 393.18, F.S., relating to comprehensive transitional education programs.

Section 34. Creates s. 393.23, F.S., relating to developmental disabilities institutions' trust accounts.

Section 35. Amends s. 393.501, F.S., relating to agency rulemaking authority and certain zoning requirements.

Section 36. Amends s. 394.453, F.S., relating to legislative intent for treatment of individuals with mental illnesses.

Section 37. Amends s. 394.455, F.S., providing definitions.

Section 38. Amends s. 394.457, F.S., relating to rulemaking authority.

Section 39. Amends s. 394.879, F.S., relating to rulemaking authority.

Section 40. Amends s. 397.405, F.S., providing exemptions from licensure.

Section 41. Amends s. 400.419, F.S., relating to violations and imposition of administrative fines.

Section 42. Amends s. 400.960, F.S., providing definitions.

Section 43. Amends s. 400.962, F.S., regarding requirements for an applicant to operate an intermediate care facility.

Section 44. Amends s. 400.967, F.S., relating to rules and classification of deficiencies.

Section 45. Amends s. 402.115, F.S., relating to the sharing of confidential or exempt information.

Section 46. Amends s. 402.17, F.S., relating to claims for care and maintenance, and trust property.

Section 47. Amends s. 402.181, F.S., relating to the State Institutions Claims Program.

Section 48. Amends s. 402.20, F.S., relating to county contracts authorized for services and facilities for mental health and developmental disabilities.

Section 49. Amends s. 402.22, F.S., relating to education programs for students residing in residential care facilities operated by the Department of Children and Family Services or the Agency for Persons with Disabilities.

Section 50. Amends s. 402.33, F.S., relating to departmental authority to charge fees for services provided.

Section 51. Amends s. 408.036, F.S., relating to projects subject to review.

Section 52. Amends s. 409.221, F.S., relating to consumer-directed care programs.

Section 53. Amends s. 409.908, F.S., relating to reimbursement of Medicaid providers.

Section 54. Amends s. 409.9127, F.S., relating to preauthorization and concurrent utilization review and conflict of interest standards.

Section 55. Amends s. 411.224, F.S., relating to the family support planning process.

Section 56. Amends s. 411.232, F.S., relating to the Children's Early Investment Program.

Section 57. Amends s. 415.102, F.S., adding to the definition of "facility."

Section 58. Amends s. 415.1035, F.S., relating to a facility's duty to inform residents of their right to report abusive, neglectful, or exploitative practices.

Section 59. Amends s. 415.1055, F.S., relating to notification to administrative entities.

Section 60. Amends s. 415.107, F.S., relating to confidentiality of department reports and records.

Section 61. Amends s. 435.03, F.S., relating to Level 1 screening standards.

Section 62. Amends s. 490.014, F.S., relating to licensure exemptions.

Section 63. Amends s. 491.014, F.S., relating to licensure exemptions.

Section 64. Amends s. 944.602, F.S., relating to agency notification requirements prior to the release of mentally retarded inmates.

Section 65. Amends s. 945.025, F.S., relating to department jurisdiction.

Section 66. Amends s. 947.185, F.S., relating to application for mental retardation services as a condition of parole.

Section 67. Amends s. 985.224, F.S., relating to medical, psychiatric, psychological, substance abuse, and educational examination and treatment.

Section 68. Amends s. 1003.58, F.S., relating to students in residential care facilities.

Section 69. Amends s. 17.61, F.S., relating to powers and duties in the investment of certain funds.

Section 70. Amends s. 400.464, F.S., relating to licensure of home health agencies.

Section 71. Amends s. 744.704, F.S., relating to powers and duties of guardians.

Section 72. Amends s. 984.22, F.S., relating to powers of disposition.

Section 73. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Agency for Persons with Disabilities reports no fiscal impact associated with this legislation.

2. Expenditures:

   The Agency for Persons with Disabilities reports no fiscal impact associated with this legislation.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If the definitional changes proposed in this legislation result in a loss of service eligibility, individuals currently receiving services from the agency will have to seek services elsewhere.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not affect counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill provides the Agency for Persons with Disabilities with rulemaking authority to implement several of the provisions proposed in this legislation.

Additionally, the bill specifies that the Department of Health (DOH) is to adopt rules necessary to implement s. 411.232, F.S., relating to the Children's Early Investment Program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Several advocacy entities have expressed concern over the proposed amendment to s. 39.407(5), F.S., which removes the authority of family court judges to order that services be provided to dependent children with developmental disabilities.

Similarly, various advocacy organizations are troubled that the legislation's definitional changes in s. 393.063, F.S.—specifically the deletion of definitions of certain services in this section, and the deletion of the definition of "epilepsy"—may result in the eventual elimination of such services and have the effect of excluding certain individuals presently receiving agency services from receiving such services in the future.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its March 28, 2006 meeting the Committee on Elder and Long-Term Care adopted an extensive strike-all amendment to HB 1503. Additionally, an amendment to the strike-all was adopted which removed a proposed amendment to s. 419.001, F.S., relating to site selection of community residential homes, to avoid conflict with House Bill 351, relating to community residential homes.

The committee favorably reported a committee substitute.

At its April 11, 2006 meeting the Health Care Appropriations Committee adopted several amendments to House Bill 1503 CS. These amendments:

- Clarified the use of restraint and seclusion in cases of emergency or to protect the client or others.
- Made terms used in the definitions consistent.
- Included a new requirement for an applicant for a license to operate an intermediate care facility regarding the provision of active treatment services.
- Modified the section of the bill regarding procedures for restraint and seclusion.
- Deleted sections of the bill amending ss. 984.19, 984.225, and 984.226, F.S., regarding screenings and referrals of children.
- Made a technical correction regarding investment of certain funds.

The committee favorably reported a committee substitute. The analysis is drafted to the committee substitute.

CHAMBER ACTION

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1 The Health Care Appropriations Committee recommends the
2 following:
3
4 **Council/Committee Substitute**
5 Remove the entire bill and insert:
6 A bill to be entitled
7 An act relating to persons with disabilities; amending s.
8 20.197, F.S.; requiring the director of the Agency for
9 Persons with Disabilities to be subject to confirmation by
10 the Senate; requiring the agency to create a Division of
11 Budget and Planning and a Division of Operations;
12 authorizing the director to recommend creating additional
13 subdivisions of the agency in order to promote efficient
14 and effective operation of the agency; amending s. 39.001,
15 F.S., relating to the development of a comprehensive state
16 plan for children; conforming provisions to the transfer
17 of duties from the Developmental Disabilities Program
18 Office within the Department of Children and Family
19 Services to the Agency for Persons with Disabilities;
20 amending s. 39.202, F.S.; providing for certain employees,
21 agents, and contract providers of the agency to have
22 access to records concerning cases of child abuse or
23 neglect for specified purposes; amending s. 39.407, F.S.;

24 deleting provisions authorizing the treatment of a child
25 under ch. 393, F.S., if the child is alleged to be
26 dependent; amending s. 287.155, F.S.; authorizing the
27 agency to purchase vehicles under certain circumstances;
28 amending ss. 381.0072 and 383.14, F.S., relating to food
29 service licenses and the Genetics and Newborn Screening
30 Advisory Council, respectively; conforming provisions to
31 the transfer of duties from the Developmental Disabilities
32 Program Office within the Department of Children and
33 Family Services to the Agency for Persons with
34 Disabilities; repealing s. 393.061, F.S., relating to a
35 short title; amending s. 393.062, F.S.; revising
36 legislative findings and intent to conform to changes in
37 terminology; amending s. 393.063, F.S.; revising the
38 definitions applicable to ch. 393, F.S., relating to
39 developmental disabilities; amending s. 393.064, F.S.;
40 revising the duties of the Agency for Persons with
41 Disabilities with respect to prevention services,
42 evaluations and assessments, intervention services, and
43 support services; amending s. 393.0641, F.S.; defining the
44 term "severe self-injurious behavior" for purposes of a
45 program of prevention and treatment for individuals
46 exhibiting such behavior; amending s. 393.065, F.S.,
47 relating to application for services and the determination
48 of eligibility for services; providing for children in the
49 child welfare system to be placed at the top of the
50 agency's wait list for waiver services; authorizing the
51 agency to adopt rules; amending s. 393.0651, F.S.,

52 relating to support plans for families and individuals;
53 revising the age at which support plans are developed for
54 children; deleting a prohibition against assessing certain
55 fees; creating s. 393.0654, F.S.; specifying circumstances
56 under which an employee of the agency may own, operate, or
57 work in a private facility under contract with the agency;
58 amending s. 393.0655, F.S.; revising the screening
59 requirements for direct service providers; providing a
60 temporary exemption from screening requirements for
61 certain providers; amending s. 393.0657, F.S.; revising an
62 exemption from certain requirements for refingerprinting
63 and rescreening; amending s. 393.066, F.S.; revising
64 certain requirements for the services provided by the
65 agency; requiring agency approval for purchased services;
66 revising the agency's rulemaking authority; amending s.
67 393.067, F.S.; revising requirements governing the
68 agency's licensure procedures; revising the requirements
69 for background screening of applicants for licensure and
70 managers, supervisors, and staff members of service
71 providers; requiring that the agency adopt rules governing
72 the reporting of incidents; deleting certain
73 responsibilities of the Agency for Health Care
74 Administration with respect to the development and review
75 of emergency management plans; amending s. 393.0673, F.S.;
76 providing circumstances under which the agency may deny,
77 revoke, or suspend a license or impose a fine; requiring
78 the Agency for Persons with Disabilities to adopt rules
79 for evaluating violations and determining the amount of

80 fines; amending s. 393.0674, F.S.; providing a penalty for
81 failure by a provider to comply with background screening
82 requirements; amending s. 393.0675, F.S.; deleting certain
83 obsolete provisions requiring that a provider be of good
84 moral character; amending s. 393.0678, F.S.; deleting
85 provisions governing receivership proceedings for an
86 intermediate care facility for the developmentally
87 disabled; amending s. 393.068, F.S.; requiring that the
88 family care program emphasize self-determination; removing
89 supported employment from the list of services available
90 under the family care program; revising certain
91 requirements for reimbursing a family care program
92 provider; amending s. 393.0695, F.S., relating to in-home
93 subsidies; requiring that the Agency for Persons with
94 Disabilities adopt rules for such subsidies; amending s.
95 393.075, F.S., relating to liability coverage for
96 facilities licensed by the agency; conforming terminology;
97 amending s. 393.11, F.S.; revising provisions governing
98 the involuntary admission of a person to residential
99 services; clarifying provisions governing involuntary
100 commitment; requiring that a person who is charged with a
101 felony will have his or her competency determined under
102 ch. 916, F.S.; conforming terminology; amending s.
103 393.122, F.S.; clarifying requirements governing
104 applications for continued residential services; amending
105 s. 393.13, F.S., relating to the Bill of Rights of Persons
106 Who are Developmentally Disabled; deleting a provision
107 protecting minimum wage compensation for certain programs;

108 limiting the use of restraint and seclusion; requiring the
109 agency to adopt rules governing the use of restraint or
110 seclusion; revising requirements for client records;
111 deleting certain requirements governing local advocacy
112 councils; allowing the resident government to include
113 disability advocates from the community; amending s.
114 393.135, F.S.; revising definitions; clarifying provisions
115 making such misconduct a second-degree felony; amending s.
116 393.15, F.S.; establishing the Community Resources
117 Development Loan Program to provide loans to foster homes,
118 group homes, and supported employment programs; providing
119 legislative intent; providing eligibility requirements;
120 providing authorized uses of loan funds; requiring that
121 the agency adopt rules governing the loan program;
122 providing requirements for repaying loans; amending s.
123 393.17, F.S.; authorizing the agency to establish
124 certification programs for persons providing services to
125 clients; requiring that the agency establish a
126 certification program for behavior analysts; requiring
127 that the program be reviewed and validated; creating s.
128 393.18, F.S.; providing for a comprehensive transition
129 education program for persons who have severe or moderate
130 maladaptive behaviors; specifying the types of treatment
131 and education centers providing services under the
132 program; providing requirements for licensure; requiring
133 individual education plans for persons receiving services;
134 limiting the number of persons who may receive services in
135 such a program; authorizing licensure of certain existing

136 programs; creating s. 393.23, F.S.; requiring that
137 receipts from operating canteens, vending machines, and
138 other like activities in a developmental disabilities
139 institution be deposited in a trust account in a bank,
140 credit union, or savings and loan association; describing
141 how the moneys earned may be expended; allowing for the
142 investment of the funds; requiring that the accounting
143 system at the institution account for the revenues and
144 expenses of the activities; requiring that sales tax
145 moneys be remitted to the Department of Revenue; amending
146 s. 393.501, F.S.; revising the agency's rulemaking
147 authority; providing requirements for rules governing
148 alternative living centers and independent living
149 education centers; amending s. 394.453, F.S.; declaring
150 that the policy of the state is to achieve an ongoing
151 reduction of the use of restraint and seclusion on persons
152 with mental illness who are served by programs and
153 facilities operated, licensed, or monitored by the agency;
154 amending s. 394.455, F.S.; defining the terms "restraint"
155 and "seclusion" for purposes of the Baker Act; amending s.
156 394.457, F.S.; requiring the Department of Children and
157 Family Services to adopt rules for the use of restraint
158 and seclusion for cases handled under the Baker Act;
159 amending s. 394.879, F.S.; requiring that rules be adopted
160 for the use of restraint and seclusion; amending s.
161 397.405, F.S.; clarifying an exemption from licensure
162 provided to certain facilities licensed under ch. 393,
163 F.S.; amending s. 400.419, F.S.; requiring that a list of

164 facilities subject to sanctions or fines be disseminated
165 to the Agency for Persons with Disabilities; amending s.
166 400.960, F.S.; revising definitions for purposes of part
167 XI of ch. 400, F.S., relating to nursing homes and related
168 facilities; amending 400.962, F.S.; requiring an applicant
169 for a license to operate an intermediate care facility to
170 agree to provide or arrange for active treatment services;
171 providing rulemaking authority; amending s. 400.967, F.S.,
172 relating to rules and classification of deficiencies;
173 conforming provisions to the transfer of duties from the
174 Department of Children and Family Services to the Agency
175 for Persons with Disabilities; requiring that rules be
176 adopted for the use of restraint and seclusion; amending
177 ss. 402.115, 402.17, 402.181, 402.20, 402.22, and 402.33,
178 F.S.; including the Agency for Persons with Disabilities
179 within provisions governing the sharing of information,
180 claims for the care and maintenance of facility residents,
181 county contracts for services for persons with
182 developmental disabilities, education programs for
183 students who reside in state facilities, and fees for
184 services; conforming provisions to changes made by the
185 act; correcting a cross-reference; amending s. 408.036,
186 F.S., relating to projects that are exempt from obtaining
187 a certificate of need; conforming terminology; amending s.
188 409.221, F.S., relating to the consumer directed care
189 program; conforming provisions to changes made by the act;
190 amending ss. 409.908 and 409.9127, F.S., relating to the
191 Medicaid program; conforming a cross-reference; deleting

192 obsolete provisions; amending ss. 411.224 and 411.232,
193 F.S.; conforming provisions to the transfer of duties from
194 the Developmental Disabilities Program Office within the
195 Department of Children and Family Services to the Agency
196 for Persons with Disabilities; amending ss. 415.102,
197 415.1035, 415.1055, and 415.107, F.S.; conforming
198 terminology; including the Agency for Persons with
199 Disabilities within provisions providing requirements that
200 a facility inform residents of certain rights,
201 notification requirements for administrative entities, and
202 requirements for maintaining the confidentiality of
203 reports and records; amending s. 435.03, F.S., relating to
204 screening standards; conforming terminology and a cross-
205 reference; amending ss. 490.014 and 491.014, F.S.,
206 relating to exemptions from licensure for psychologists
207 and certain specified counselors, respectively; conforming
208 provisions to changes made by the act; amending ss.
209 944.602, 945.025, 947.185, and 985.224, F.S., relating to
210 the Department of Corrections, the Parole Commission, and
211 petitions alleging delinquency; conforming provisions to
212 the transfer of duties from the Developmental Disabilities
213 Program Office within the Department of Children and
214 Family Services to the Agency for Persons with
215 Disabilities; amending s. 1003.58, F.S.; including
216 facilities operated by the Agency for Persons with
217 Disabilities within provisions governing the residential
218 care of students; amending ss. 17.61 and 400.464, F.S.,
219 relating to investment of certain funds and home health

220 services for persons with disabilities, respectively;
221 conforming provisions to changes made by the act; amending
222 s. 744.704, F.S.; correcting a cross-reference; amending
223 s. 984.22, F.S.; removing a provision that specifies fines
224 be deposited into the Community Resources Development
225 Trust Fund; providing an effective date.
226
227 Be It Enacted by the Legislature of the State of Florida:
228
229 Section 1. Section 20.197, Florida Statutes, is amended to
230 read:
231 20.197 Agency for Persons with Disabilities.--There is
232 created the Agency for Persons with Disabilities, housed within
233 the Department of Children and Family Services for
234 administrative purposes only. The agency shall be a separate
235 budget entity not subject to control, supervision, or direction
236 by the Department of Children and Family Services in any manner,
237 including, but not limited to, personnel, purchasing,
238 transactions involving real or personal property, and budgetary
239 matters.
240 (1) The director of the agency shall be the agency head
241 for all purposes and shall be appointed by the Governor, subject
242 to confirmation by the Senate, and shall serve at the pleasure
243 of the Governor. The director shall administer the affairs of
244 the agency ~~and establish administrative units as needed~~ and may,
245 within available resources, employ assistants, professional
246 staff, and other employees as necessary to discharge the powers
247 and duties of the agency.

248 (2) The agency shall include a Division of Budget and
249 Planning and a Division of Operations. In addition, and in
250 accordance with s. 20.04, the director of the agency may
251 recommend establishing additional divisions, bureaus, sections,
252 and subsections of the agency in order to promote efficient and
253 effective operation of the agency.
254 (3) ~~(2)~~ The agency is ~~shall be~~ responsible for providing
255 ~~the provision of~~ all services provided to persons with
256 developmental disabilities under ~~pursuant to~~ chapter 393,
257 including the operation of all state institutional programs and
258 the programmatic management of Medicaid waivers established to
259 provide services to persons with developmental disabilities.
260 (4) ~~(3)~~ The agency shall engage in such other
261 administrative activities as are deemed necessary to effectively
262 and efficiently address the needs of the agency's clients.
263 (5) ~~(4)~~ The agency shall enter into an interagency
264 agreement that delineates the responsibilities of the Agency for
265 Health Care Administration for the following:
266 (a) The terms and execution of contracts with Medicaid
267 providers for the provision of services provided through
268 Medicaid, including federally approved waiver programs.
269 (b) The billing, payment, and reconciliation of claims for
270 Medicaid services reimbursed by the agency.
271 (c) The implementation of utilization management measures,
272 including the prior authorization of services plans and the
273 streamlining and consolidation of waivers services, to ensure
274 the cost-effective provision of needed Medicaid services and to
275 maximize the number of persons with access to such services.

276 (d) A system of approving each client's plan of care to
277 ensure that the services on the plan of care are those that
278 without which the client would require the services of an
279 intermediate care facility for the developmentally disabled.
280 Section 2. Paragraph (b) of subsection (7) of section
281 39.001, Florida Statutes, is amended to read:
282 39.001 Purposes and intent; personnel standards and
283 screening.--
284 (7) PLAN FOR COMPREHENSIVE APPROACH.--
285 (b) The development of the comprehensive state plan shall
286 be accomplished in the following manner:
287 1. The department shall establish an interprogram task
288 force comprised of the Program Director for Family Safety, or a
289 designee, a representative from the Child Care Services Program
290 Office, a representative from the Family Safety Program Office,
291 a representative from the Mental Health Program Office, a
292 representative from the Substance Abuse Program Office, a
293 representative from the Agency for Persons with Disabilities
294 ~~Developmental Disabilities Program Office~~, and a representative
295 from the Division of Children's Medical Services Network
296 ~~Prevention and Intervention~~ of the Department of Health.
297 Representatives of the Department of Law Enforcement and of the
298 Department of Education shall serve as ex officio members of the
299 interprogram task force. The interprogram task force shall be
300 responsible for:
301 a. Developing a plan of action for better coordination and
302 integration of the goals, activities, and funding pertaining to
303 the prevention of child abuse, abandonment, and neglect

304 conducted by the department in order to maximize staff and
305 resources at the state level. The plan of action shall be
306 included in the state plan.
307 b. Providing a basic format to be utilized by the
308 districts in the preparation of local plans of action in order
309 to provide for uniformity in the district plans and to provide
310 for greater ease in compiling information for the state plan.
311 c. Providing the districts with technical assistance in
312 the development of local plans of action, if requested.
313 d. Examining the local plans to determine if all the
314 requirements of the local plans have been met and, if they have
315 not, informing the districts of the deficiencies and requesting
316 the additional information needed.
317 e. Preparing the state plan for submission to the
318 Legislature and the Governor. Such preparation shall include the
319 collapsing of information obtained from the local plans, the
320 cooperative plans with the Department of Education, and the plan
321 of action for coordination and integration of departmental
322 activities into one comprehensive plan. The comprehensive plan
323 shall include a section reflecting general conditions and needs,
324 an analysis of variations based on population or geographic
325 areas, identified problems, and recommendations for change. In
326 essence, the plan shall provide an analysis and summary of each
327 element of the local plans to provide a statewide perspective.
328 The plan shall also include each separate local plan of action.
329 f. Working with the specified state agency in fulfilling
330 the requirements of subparagraphs 2., 3., 4., and 5.

331 2. The department, the Department of Education, and the
332 Department of Health shall work together in developing ways to
333 inform and instruct parents of school children and appropriate
334 district school personnel in all school districts in the
335 detection of child abuse, abandonment, and neglect and in the
336 proper action that should be taken in a suspected case of child
337 abuse, abandonment, or neglect, and in caring for a child's
338 needs after a report is made. The plan for accomplishing this
339 end shall be included in the state plan.
340 3. The department, the Department of Law Enforcement, and
341 the Department of Health shall work together in developing ways
342 to inform and instruct appropriate local law enforcement
343 personnel in the detection of child abuse, abandonment, and
344 neglect and in the proper action that should be taken in a
345 suspected case of child abuse, abandonment, or neglect.
346 4. Within existing appropriations, the department shall
347 work with other appropriate public and private agencies to
348 emphasize efforts to educate the general public about the
349 problem of and ways to detect child abuse, abandonment, and
350 neglect and in the proper action that should be taken in a
351 suspected case of child abuse, abandonment, or neglect. The plan
352 for accomplishing this end shall be included in the state plan.
353 5. The department, the Department of Education, and the
354 Department of Health shall work together on the enhancement or
355 adaptation of curriculum materials to assist instructional
356 personnel in providing instruction through a multidisciplinary
357 approach on the identification, intervention, and prevention of
358 child abuse, abandonment, and neglect. The curriculum materials

359 shall be geared toward a sequential program of instruction at
360 the four progressional levels, K-3, 4-6, 7-9, and 10-12.
361 Strategies for encouraging all school districts to utilize the
362 curriculum are to be included in the comprehensive state plan
363 for the prevention of child abuse, abandonment, and neglect.
364 6. Each district of the department shall develop a plan
365 for its specific geographical area. The plan developed at the
366 district level shall be submitted to the interprogram task force
367 for utilization in preparing the state plan. The district local
368 plan of action shall be prepared with the involvement and
369 assistance of the local agencies and organizations listed in
370 paragraph (a), as well as representatives from those
371 departmental district offices participating in the treatment and
372 prevention of child abuse, abandonment, and neglect. In order to
373 accomplish this, the district administrator in each district
374 shall establish a task force on the prevention of child abuse,
375 abandonment, and neglect. The district administrator shall
376 appoint the members of the task force in accordance with the
377 membership requirements of this section. In addition, the
378 district administrator shall ensure that each subdistrict is
379 represented on the task force; and, if the district does not
380 have subdistricts, the district administrator shall ensure that
381 both urban and rural areas are represented on the task force.
382 The task force shall develop a written statement clearly
383 identifying its operating procedures, purpose, overall
384 responsibilities, and method of meeting responsibilities. The
385 district plan of action to be prepared by the task force shall
386 include, but shall not be limited to:

387 a. Documentation of the magnitude of the problems of child
388 abuse, including sexual abuse, physical abuse, and emotional
389 abuse, and child abandonment and neglect in its geographical
390 area.
391 b. A description of programs currently serving abused,
392 abandoned, and neglected children and their families and a
393 description of programs for the prevention of child abuse,
394 abandonment, and neglect, including information on the impact,
395 cost-effectiveness, and sources of funding of such programs.
396 c. A continuum of programs and services necessary for a
397 comprehensive approach to the prevention of all types of child
398 abuse, abandonment, and neglect as well as a brief description
399 of such programs and services.
400 d. A description, documentation, and priority ranking of
401 local needs related to child abuse, abandonment, and neglect
402 prevention based upon the continuum of programs and services.
403 e. A plan for steps to be taken in meeting identified
404 needs, including the coordination and integration of services to
405 avoid unnecessary duplication and cost, and for alternative
406 funding strategies for meeting needs through the reallocation of
407 existing resources, utilization of volunteers, contracting with
408 local universities for services, and local government or private
409 agency funding.
410 f. A description of barriers to the accomplishment of a
411 comprehensive approach to the prevention of child abuse,
412 abandonment, and neglect.
413 g. Recommendations for changes that can be accomplished
414 only at the state program level or by legislative action.

415 Section 3. Paragraphs (a) and (h) of subsection (2) of
416 section 39.202, Florida Statutes, are amended to read:
417 39.202 Confidentiality of reports and records in cases of
418 child abuse or neglect.--
419 (2) Except as provided in subsection (4), access to such
420 records, excluding the name of the reporter which shall be
421 released only as provided in subsection (5), shall be granted
422 only to the following persons, officials, and agencies:
423 (a) Employees, authorized agents, or contract providers of
424 the department, the Department of Health, the Agency for Persons
425 with Disabilities, or county agencies responsible for carrying
426 out:
427 1. Child or adult protective investigations;
428 2. Ongoing child or adult protective services;
429 3. Healthy Start services; or
430 4. Licensure or approval of adoptive homes, foster homes,
431 ~~or~~ child care facilities, facilities licensed under chapter 393,
432 or family day care homes or informal child care providers who
433 receive subsidized child care funding, or other homes used to
434 provide for the care and welfare of children.
435 5. Services for victims of domestic violence when provided
436 by certified domestic violence centers working at the
437 department's request as case consultants or with shared clients.
438
439 Also, employees or agents of the Department of Juvenile Justice
440 responsible for the provision of services to children, pursuant
441 to chapters 984 and 985.

442 (h) Any appropriate official of the department or the
443 Agency for Persons with Disabilities who is responsible for:
444 1. Administration or supervision of the department's
445 program for the prevention, investigation, or treatment of child
446 abuse, abandonment, or neglect, or abuse, neglect, or
447 exploitation of a vulnerable adult, when carrying out his or her
448 official function;
449 2. Taking appropriate administrative action concerning an
450 employee of the department or the agency who is alleged to have
451 perpetrated child abuse, abandonment, or neglect, or abuse,
452 neglect, or exploitation of a vulnerable adult; or
453 3. Employing and continuing employment of personnel of the
454 department or the agency.
455 Section 4. Subsection (5) of section 39.407, Florida
456 Statutes, is amended to read:
457 39.407 Medical, psychiatric, and psychological examination
458 and treatment of child; physical or mental examination of parent
459 or person requesting custody of child.--
460 (5) A judge may order a child in an out-of-home placement
461 to be treated by a licensed health care professional based on
462 evidence that the child should receive treatment. The judge may
463 also order such child to receive mental health ~~or developmental~~
464 ~~disabilities~~ services from a psychiatrist, psychologist, or
465 other appropriate service provider. Except as provided in
466 subsection (6), if it is necessary to place the child in a
467 residential facility for such services, the procedures and
468 criteria established in s. 394.467 ~~or chapter 393~~ shall be used~~,~~
469 ~~whichever is applicable~~. A child may be provided ~~developmental~~

470 ~~disabilities or~~ mental health services in emergency situations,
471 pursuant to the procedures and criteria contained in s.
472 394.463(1) ~~or chapter 393, whichever is applicable~~.
473 Section 5. Section 287.155, Florida Statutes, is amended
474 to read:
475 287.155 Motor vehicles; purchase by Division of
476 Universities, Department of Children and Family Services, Agency
477 for Persons with Disabilities, Department of Health, Department
478 of Juvenile Justice, and Department of Corrections.--
479 (1) The Division of Universities of the Department of
480 Education, the Department of Children and Family Services, the
481 Agency for Persons with Disabilities, the Department of Health,
482 the Department of Juvenile Justice, and the Department of
483 Corrections may ~~are hereby authorized~~, subject to the approval
484 of the Department of Management Services, ~~to~~ purchase
485 automobiles, trucks, tractors, and other automotive equipment
486 for the use of institutions under the management of the Division
487 of Universities, the Department of Children and Family Services,
488 the Agency for Persons with Disabilities, the Department of
489 Health, and the Department of Corrections, and for the use of
490 residential facilities managed or contracted by the Department
491 of Juvenile Justice.
492 (2) The Department of Corrections shall, prior to
493 purchasing motor vehicles, seek to procure the motor vehicles
494 from those vehicles renovated pursuant to correctional work
495 programs of the Department of Corrections, and for the use of
496 residential facilities managed or contracted by the Department
497 of Juvenile Justice.

498 (3) The Department of Health is authorized, subject to the
499 approval of the Department of Management Services, to purchase
500 automobiles, trucks, and other automotive equipment for use by
501 county health departments.
502 Section 6. Paragraph (a) of subsection (3) of section
503 381.0072, Florida Statutes, is amended to read:
504 381.0072 Food service protection.--It shall be the duty of
505 the Department of Health to adopt and enforce sanitation rules
506 consistent with law to ensure the protection of the public from
507 food-borne illness. These rules shall provide the standards and
508 requirements for the storage, preparation, serving, or display
509 of food in food service establishments as defined in this
510 section and which are not permitted or licensed under chapter
511 500 or chapter 509.
512 (3) LICENSES REQUIRED.--
513 (a) Licenses; annual renewals.--Each food service
514 establishment regulated under this section shall obtain a
515 license from the department annually. Food service establishment
516 licenses shall expire annually and are ~~shall~~ not ~~be~~ transferable
517 from one place or individual to another. However, those
518 facilities licensed by the department's Office of Licensure and
519 Certification, the Child Care Services Program Office, or the
520 Agency for Persons with ~~Developmental~~ Disabilities ~~Program~~
521 ~~Office~~ are exempt from this subsection. It shall be a
522 misdemeanor of the second degree, punishable as provided in s.
523 381.0061, s. 775.082, or s. 775.083, for such an establishment
524 to operate without this license. The department may refuse a
525 license, or a renewal thereof, to any establishment that is not

526 constructed or maintained in accordance with law and with the
527 rules of the department. Annual application for renewal is ~~shall~~
528 not ~~be~~ required.
529 Section 7. Subsection (5) of section 383.14, Florida
530 Statutes, is amended to read:
531 383.14 Screening for metabolic disorders, other hereditary
532 and congenital disorders, and environmental risk factors.--
533 (5) ADVISORY COUNCIL.--There is established a Genetics and
534 Newborn Screening Advisory Council made up of 15 members
535 appointed by the Secretary of Health. The council shall be
536 composed of two consumer members, three practicing
537 pediatricians, at least one of whom must be a pediatric
538 hematologist, one representative from each of the four medical
539 schools in the state, the Secretary of Health or his or her
540 designee, one representative from the Department of Health
541 representing Children's Medical Services, one representative
542 from the Florida Hospital Association, one individual with
543 experience in newborn screening programs, one individual
544 representing audiologists, and one representative from the
545 Agency for Persons with Disabilities ~~Developmental Disabilities~~
546 ~~Program Office of the Department of Children and Family~~
547 ~~Services~~. All appointments shall be for a term of 4 years. The
548 chairperson of the council shall be elected from the membership
549 of the council and shall serve for a period of 2 years. The
550 council shall meet at least semiannually or upon the call of the
551 chairperson. The council may establish ad hoc or temporary
552 technical advisory groups to assist the council with specific
553 topics which come before the council. Council members shall

554 serve without pay. Pursuant to the provisions of s. 112.061, the
555 council members are entitled to be reimbursed for per diem and
556 travel expenses. It is the purpose of the council to advise the
557 department about:
558 (a) Conditions for which testing should be included under
559 the screening program and the genetics program.
560 (b) Procedures for collection and transmission of
561 specimens and recording of results.
562 (c) Methods whereby screening programs and genetics
563 services for children now provided or proposed to be offered in
564 the state may be more effectively evaluated, coordinated, and
565 consolidated.
566 Section 8. Section 393.061, Florida Statutes, is repealed.
567 Section 9. Section 393.062, Florida Statutes, is amended
568 to read:
569 393.062 Legislative findings and declaration of
570 intent.--The Legislature finds and declares that existing state
571 programs for the treatment of individuals with developmental
572 disabilities ~~who are developmentally disabled~~, which often
573 unnecessarily place clients in institutions, are unreasonably
574 costly, are ineffective in bringing the individual client to his
575 or her maximum potential, and are in fact debilitating to many ~~a~~
576 ~~great majority of~~ clients. A redirection in state treatment
577 programs for individuals with developmental disabilities ~~who are~~
578 ~~developmentally disabled~~ is necessary if any significant
579 amelioration of the problems faced by such individuals is ever
580 to take place. Such redirection should place primary emphasis on
581 programs that ~~have the potential to~~ prevent or reduce the

582 severity of developmental disabilities. Further, the ~~Legislature~~
583 ~~declares that~~ greatest priority shall be given to the
584 development and implementation of community-based ~~residential~~
585 ~~placements,~~ services that~~, and treatment programs for~~
586 ~~individuals who are developmentally disabled which~~ will enable
587 ~~such~~ individuals with developmental disabilities to achieve
588 their greatest potential for independent and productive living,
589 ~~which will~~ enable them to live in their own homes or in
590 residences located in their own communities, and ~~which will~~
591 permit them to be diverted or removed from unnecessary
592 institutional placements. This goal ~~The Legislature finds that~~
593 ~~the eligibility criteria for intermediate-care facilities for~~
594 ~~the developmentally disabled which are specified in the Medicaid~~
595 ~~state plan in effect on the effective date of this act are~~
596 ~~essential to the system of residential services. The Legislature~~
597 ~~declares that the goal of this act, to improve the quality of~~
598 ~~life of all developmentally disabled persons by the development~~
599 ~~and implementation of community-based residential placements,~~
600 ~~services, and treatment,~~ cannot be met without ensuring the
601 availability of community residential opportunities ~~for~~
602 ~~developmentally disabled persons~~ in the residential areas of
603 this state. The Legislature, therefore, declares that all
604 persons with developmental disabilities who live in licensed
605 community homes shall have a family living environment
606 comparable to other Floridians and~~. The Legislature intends~~ that
607 such residences shall be considered and treated as a functional
608 equivalent of a family unit and not as an institution, business,
609 or boarding home. The Legislature further declares that, in

610 developing community-based programs and services for individuals
611 with developmental disabilities ~~who are developmentally~~
612 ~~disabled~~, private businesses, not-for-profit corporations, units
613 of local government, and other organizations capable of
614 providing needed services to clients in a cost-efficient manner
615 shall be given preference in lieu of operation of programs
616 directly by state agencies. Finally, it is the intent of the
617 Legislature that all caretakers unrelated to individuals with
618 developmental disabilities receiving care shall be of good moral
619 character.
620 Section 10. Section 393.063, Florida Statutes, is amended
621 to read:
622 393.063 Definitions.--For the purposes of this chapter,
623 the term:
624 (1) "Agency" means the Agency for Persons with
625 Disabilities.
626 (2) "Adult day training" means training services which
627 take place in a nonresidential setting, separate from the home
628 or facility in which the client resides, are intended to support
629 the participation of clients in daily, meaningful, and valued
630 routines of the community, and may include work-like settings
631 that do not meet the definition of supported employment.
632 (3) ~~(2)~~ "Autism" means a pervasive, neurologically based
633 developmental disability of extended duration which causes
634 severe learning, communication, and behavior disorders with age
635 of onset during infancy or childhood. Individuals with autism
636 exhibit impairment in reciprocal social interaction, impairment
637 in verbal and nonverbal communication and imaginative ability,

638 and a markedly restricted repertoire of activities and
639 interests.
640 (4) ~~(3)~~ "Cerebral palsy" means a group of disabling
641 symptoms of extended duration which results from damage to the
642 developing brain that may occur before, during, or after birth
643 and that results in the loss or impairment of control over
644 voluntary muscles. For the purposes of this definition, cerebral
645 palsy does not include those symptoms or impairments resulting
646 solely from a stroke.
647 (5) ~~(4)~~ "Client" means any person determined eligible by
648 the agency for services under this chapter.
649 (6) ~~(5)~~ "Client advocate" means a friend or relative of the
650 client, or of the client's immediate family, who advocates for
651 the best interests of the client in any proceedings under this
652 chapter in which the client or his or her family has the right
653 or duty to participate.
654 (7) ~~(6)~~ "Comprehensive assessment" means the process used
655 to determine eligibility for services under this chapter.
656 (8) ~~(7)~~ "Comprehensive transitional education program"
657 means the program established in s. 393.18. ~~a group of jointly~~
658 ~~operating centers or units, the collective purpose of which is~~
659 ~~to provide a sequential series of educational care, training,~~
660 ~~treatment, habilitation, and rehabilitation services to persons~~
661 ~~who have developmental disabilities and who have severe or~~
662 ~~moderate maladaptive behaviors. However, nothing in this~~
663 ~~subsection shall require such programs to provide services only~~
664 ~~to persons with developmental disabilities. All such services~~
665 ~~shall be temporary in nature and delivered in a structured~~

666 ~~residential setting with the primary goal of incorporating the~~
667 ~~normalization principle to establish permanent residence for~~
668 ~~persons with maladaptive behaviors in facilities not associated~~
669 ~~with the comprehensive transitional education program. The staff~~
670 ~~shall include psychologists and teachers who shall be available~~
671 ~~to provide services in each component center or unit of the~~
672 ~~program. The psychologists shall be individuals who are licensed~~
673 ~~in this state and certified as behavior analysts in this state,~~
674 ~~or individuals who are certified as behavior analysts pursuant~~
675 ~~to s. 393.17.~~
676 ~~(a) Comprehensive transitional education programs shall~~
677 ~~include a minimum of two component centers or units, one of~~
678 ~~which shall be either an intensive treatment and educational~~
679 ~~center or a transitional training and educational center, which~~
680 ~~provide services to persons with maladaptive behaviors in the~~
681 ~~following sequential order:~~
682 ~~1. Intensive treatment and educational center. This~~
683 ~~component is a self-contained residential unit providing~~
684 ~~intensive psychological and educational programming for persons~~
685 ~~with severe maladaptive behaviors, whose behaviors preclude~~
686 ~~placement in a less restrictive environment due to the threat of~~
687 ~~danger or injury to themselves or others.~~
688 ~~2. Transitional training and educational center. This~~
689 ~~component is a residential unit for persons with moderate~~
690 ~~maladaptive behaviors, providing concentrated psychological and~~
691 ~~educational programming emphasizing a transition toward a less~~
692 ~~restrictive environment.~~

693 ~~3. Community transition residence. This component is a~~
694 ~~residential center providing educational programs and such~~
695 ~~support services, training, and care as are needed to assist~~
696 ~~persons with maladaptive behaviors to avoid regression to more~~
697 ~~restrictive environments while preparing them for more~~
698 ~~independent living. Continuous-shift staff shall be required for~~
699 ~~this component.~~
700 ~~4. Alternative living center. This component is a~~
701 ~~residential unit providing an educational and family living~~
702 ~~environment for persons with maladaptive behaviors, in a~~
703 ~~moderately unrestricted setting. Residential staff shall be~~
704 ~~required for this component.~~
705 ~~5. Independent living education center. This component is~~
706 ~~a facility providing a family living environment for persons~~
707 ~~with maladaptive behaviors, in a largely unrestricted setting~~
708 ~~which includes education and monitoring appropriate to support~~
709 ~~the development of independent living skills.~~
710 ~~(b) Centers or units that are components of a~~
711 ~~comprehensive transitional education program are subject to the~~
712 ~~license issued to the comprehensive transitional education~~
713 ~~program and may be located on either single or multiple sites.~~
714 ~~(c) Comprehensive transitional education programs shall~~
715 ~~develop individual education plans for each person with~~
716 ~~maladaptive behaviors who receives services therein. Such~~
717 ~~individual education plans shall be developed in accordance with~~
718 ~~the criteria specified in 20 U.S.C. ss. 401 et seq., and 34~~
719 ~~C.F.R. part 300.~~

720 ~~(d) In no instance shall the total number of persons with~~
721 ~~maladaptive behaviors being provided services in a comprehensive~~
722 ~~transitional education program exceed 120.~~
723 ~~(e) This subsection shall authorize licensure for~~
724 ~~comprehensive transitional education programs which by July 1,~~
725 ~~1989:~~
726 ~~1. Are in actual operation; or~~
727 ~~2. Own a fee simple interest in real property for which a~~
728 ~~county or city government has approved zoning allowing for the~~
729 ~~placement of the facilities described in this subsection, and~~
730 ~~have registered an intent with the department to operate a~~
731 ~~comprehensive transitional education program. However, nothing~~
732 ~~shall prohibit the assignment by such a registrant to another~~
733 ~~entity at a different site within the state, so long as there is~~
734 ~~compliance with all criteria of the comprehensive transitional~~
735 ~~education program and local zoning requirements and provided~~
736 ~~that each residential facility within the component centers or~~
737 ~~units of the program authorized under this subparagraph shall~~
738 ~~not exceed a capacity of 15 persons.~~
739 ~~(8) "Day habilitation facility" means any nonresidential~~
740 ~~facility which provides day habilitation services.~~
741 ~~(9) "Day habilitation service" means assistance with the~~
742 ~~acquisition, retention, or improvement in self-help,~~
743 ~~socialization, and adaptive skills which takes place in a~~
744 ~~nonresidential setting, separate from the home or facility in~~
745 ~~which the individual resides. Day habilitation services shall~~
746 ~~focus on enabling the individual to attain or maintain his or~~
747 ~~her maximum functional level and shall be coordinated with any~~

748 ~~physical, occupational, or speech therapies listed in the plan~~
749 ~~of care.~~
750 (9) ~~(10)~~ "Developmental disability" means a disorder or
751 syndrome that is attributable to retardation, cerebral palsy,
752 autism, spina bifida, or Prader-Willi syndrome; that manifests
753 before the age of 18; and that constitutes a substantial
754 handicap that can reasonably be expected to continue
755 indefinitely.
756 (10) ~~(11)~~ "Developmental disabilities institution" means a
757 state-owned and state-operated facility, formerly known as a
758 "Sunland Center," providing for the care, habilitation, and
759 rehabilitation of clients with developmental disabilities.
760 (11) ~~(12)~~ "Direct service provider~~,~~" ~~also known as~~
761 ~~"caregiver" in chapters 39 and 415 or "caretaker" in provisions~~
762 ~~relating to employment security checks,~~ means a person 18 years
763 of age or older who has direct face-to-face contact with a
764 client while providing services to the client ~~individuals with~~
765 ~~developmental disabilities~~, or has access to a client's living
766 areas or to a client's funds or personal property~~, and is not a~~
767 ~~relative of such individuals~~.
768 (12) ~~(13)~~ "Domicile" means the place where a client legally
769 resides, which place is his or her permanent home. Domicile may
770 be established as provided in s. 222.17. Domicile may not be
771 established in Florida by a minor who has no parent domiciled in
772 Florida, or by a minor who has no legal guardian domiciled in
773 Florida, or by any alien not classified as a resident alien.
774 ~~(14) "Enclave" means a work station in public or private~~
775 ~~business or industry where a small group of persons with~~

776 ~~developmental disabilities is employed and receives training and~~
777 ~~support services or follow-along services among nonhandicapped~~
778 ~~workers.~~
779 ~~(15) "Epilepsy" means a chronic brain disorder of various~~
780 ~~causes which is characterized by recurrent seizures due to~~
781 ~~excessive discharge of cerebral neurons. When found concurrently~~
782 ~~with retardation, autism, or cerebral palsy, epilepsy is~~
783 ~~considered a secondary disability for which the client is~~
784 ~~eligible to receive services to ameliorate this condition~~
785 ~~pursuant to this chapter.~~
786 (13) ~~(16)~~ "Express and informed consent" means consent
787 voluntarily given in writing with sufficient knowledge and
788 comprehension of the subject matter ~~involved~~ to enable the
789 person giving consent to make a knowing ~~an understanding and~~
790 ~~enlightened~~ decision without any element of force, fraud,
791 deceit, duress, or other form of constraint or coercion.
792 (14) ~~(17)~~ "Family care program" means the program
793 established in s. 393.068.
794 ~~(18) "Follow-along services" means those support services~~
795 ~~provided to persons with developmental disabilities in all~~
796 ~~supported employment programs and may include, but are not~~
797 ~~limited to, family support, assistance in meeting transportation~~
798 ~~and medical needs, employer intervention, performance~~
799 ~~evaluation, advocacy, replacement, retraining or promotional~~
800 ~~assistance, or other similar support services.~~
801 (15) ~~(19)~~ "Foster care facility" means a residential
802 facility licensed under this chapter which provides a family
803 living environment including supervision and care necessary to

804 meet the physical, emotional, and social needs of its residents.
805 The capacity of such a facility may ~~shall~~ not be more than three
806 residents.
807 (16) ~~(20)~~ "Group home facility" means a residential
808 facility licensed under this chapter which provides a family
809 living environment including supervision and care necessary to
810 meet the physical, emotional, and social needs of its residents.
811 The capacity of such a facility shall be at least 4 but not more
812 than 15 residents. ~~For the purposes of this chapter, group home~~
813 ~~facilities shall not be considered commercial enterprises.~~
814 (17) ~~(21)~~ "Guardian advocate" means a person appointed by a
815 written order of the court to represent a person with
816 developmental disabilities under s. 393.12.
817 (18) ~~(22)~~ "Habilitation" means the process by which a
818 client is assisted to acquire and maintain those life skills
819 which enable the client to cope more effectively with the
820 demands of his or her condition and environment and to raise the
821 level of his or her physical, mental, and social efficiency. It
822 includes, but is not limited to, programs of formal structured
823 education and treatment.
824 (19) ~~(23)~~ "High-risk child" means, for the purposes of this
825 chapter, a child from 3 ~~birth~~ to 5 years of age with one or more
826 of the following characteristics:
827 (a) A developmental delay in cognition, language, or
828 physical development.
829 (b) A child surviving a catastrophic infectious or
830 traumatic illness known to be associated with developmental
831 delay, when funds are specifically appropriated.

832 (c) A child with a parent or guardian with developmental
833 disabilities who requires assistance in meeting the child's
834 developmental needs.
835 (d) A child who has a physical or genetic anomaly
836 associated with developmental disability.
837 (20) ~~(24)~~ "Intermediate care facility for the
838 developmentally disabled" or "ICF/DD" means a residential
839 facility licensed and certified pursuant to part XI of chapter
840 400.
841 ~~(25) "Job coach" means a person who provides employment-~~
842 ~~related training at a worksite to individuals with developmental~~
843 ~~disabilities.~~
844 (21) ~~(26)~~ "Medical/dental services" means medically
845 necessary ~~those~~ services which are provided or ordered for a
846 client by a person licensed under ~~pursuant to the provisions of~~
847 chapter 458, chapter 459, or chapter 466. Such services may
848 include, but are not limited to, prescription drugs, specialized
849 therapies, nursing supervision, hospitalization, dietary
850 services, prosthetic devices, surgery, specialized equipment and
851 supplies, adaptive equipment, and other services as required to
852 prevent or alleviate a medical or dental condition.
853 ~~(27) "Mobile work crew" means a group of workers employed~~
854 ~~by an agency that provides services outside the agency, usually~~
855 ~~under service contracts.~~
856 ~~(28) "Normalization principle" means the principle of~~
857 ~~letting the client obtain an existence as close to the normal as~~
858 ~~possible, making available to the client patterns and conditions~~

859 ~~of everyday life which are as close as possible to the norm and~~
860 ~~patterns of the mainstream of society.~~
861 (22) ~~(29)~~ "Personal care services" means ~~include, but are~~
862 ~~not limited to, such services as:~~ individual assistance with or
863 supervision of essential activities of daily living for self-
864 care, including ambulation, bathing, dressing, eating, grooming,
865 and toileting, and other similar services that are incidental to
866 the care furnished and essential to the health, safety, and
867 welfare of the client when there is no one else available to
868 perform those services ~~the agency may define by rule~~. ~~"Personal~~
869 ~~services" shall not be construed to mean the provision of~~
870 ~~medical, nursing, dental, or mental health services by the staff~~
871 ~~of a facility, except as provided in this chapter. In addition,~~
872 ~~an emergency response device installed in the apartment or~~
873 ~~living area of a resident shall not be classified as a personal~~
874 ~~service.~~
875 (23) ~~(30)~~ "Prader-Willi syndrome" means an inherited
876 condition typified by neonatal hypotonia with failure to thrive,
877 hyperphagia or an excessive drive to eat which leads to obesity
878 usually at 18 to 36 months of age, mild to moderate mental
879 retardation, hypogonadism, short stature, mild facial
880 dysmorphism, and a characteristic neurobehavior.
881 ~~(31) "Reassessment" means a process which periodically~~
882 ~~develops, through annual review and revision of a client's~~
883 ~~family or individual support plan, a knowledgeable statement of~~
884 ~~current needs and past development for each client.~~

885 (24) ~~(32)~~ "Relative" means an individual who is connected
886 by affinity or consanguinity to the client and who is 18 years
887 of age or older ~~more~~.
888 (25) ~~(33)~~ "Resident" means any person with developmental
889 disabilities ~~who is developmentally disabled~~ residing at a
890 residential facility ~~in the state~~, whether or not such person is
891 a client of the agency.
892 (26) ~~(34)~~ "Residential facility" means a facility providing
893 room and board and personal care for persons with developmental
894 disabilities.
895 (27) ~~(35)~~ "Residential habilitation" means supervision and
896 training ~~assistance provided~~ with the acquisition, retention, or
897 improvement in skills related to activities of daily living,
898 such as personal hygiene skills ~~grooming and cleanliness~~,
899 homemaking skills ~~bedmaking and household chores, eating and the~~
900 ~~preparation of food~~, and the social and adaptive skills
901 necessary to enable the individual to reside in the community ~~a~~
902 ~~noninstitutional setting~~.
903 (28) ~~(36)~~ "Residential habilitation center" means a
904 community residential facility licensed under this chapter which
905 ~~that~~ provides ~~residential~~ habilitation services. The capacity of
906 such a facility shall not be fewer than nine residents. After
907 October 1, 1989, ~~no~~ new residential habilitation centers may not
908 ~~shall~~ be licensed and the licensed capacity ~~shall not be~~
909 ~~increased~~ for any existing residential habilitation center may
910 not be increased.
911 (29) ~~(37)~~ "Respite service" means appropriate, short-term,
912 temporary care that is provided to a person with developmental

913 disabilities to meet the planned or emergency needs of the
914 person or the family or other direct service provider.
915 (30) "Restraint" means a physical device, method, or drug
916 used to control dangerous behavior.
917 (a) A physical restraint is any manual method or physical
918 or mechanical device, material, or equipment attached or
919 adjacent to the individual's body so that he or she cannot
920 easily remove the restraint and which restricts freedom of
921 movement or normal access to one's body.
922 (b) A drug used as a restraint is a medication used to
923 control the person's behavior or to restrict his or her freedom
924 of movement and is not a standard treatment for the person's
925 medical or psychiatric condition. Physically holding a person
926 during a procedure to forcibly administer psychotropic
927 medication is a physical restraint.
928 (c) Restraint does not include physical devices, such as
929 orthopedically prescribed appliances, surgical dressings and
930 bandages, supportive body bands, or other physical holding when
931 necessary for routine physical examinations and tests; for
932 purposes of orthopedic, surgical, or other similar medical
933 treatment; when used to provide support for the achievement of
934 functional body position or proper balance; or when used to
935 protect a person from falling out of bed.
936 (31) ~~(38)~~ "Retardation" means significantly subaverage
937 general intellectual functioning existing concurrently with
938 deficits in adaptive behavior ~~and manifested during the period~~
939 ~~from conception to age 18~~. "Significantly subaverage general
940 intellectual functioning," for the purpose of this definition,

941 means performance which is two or more standard deviations from
942 the mean score on a standardized intelligence test specified in
943 the rules of the agency. "Adaptive behavior," for the purpose of
944 this definition, means the effectiveness or degree with which an
945 individual meets the standards of personal independence and
946 social responsibility expected of his or her age, cultural
947 group, and community.
948 (32) "Seclusion" means the involuntary isolation of a
949 person in a room or area from which the person is prevented from
950 leaving. The prevention may be by physical barrier or by a staff
951 member who is acting in a manner, or who is physically situated,
952 so as to prevent the person from leaving the room or area. For
953 the purposes of this chapter, the term does not mean isolation
954 due to the medical condition or symptoms of the person.
955 (33) "Self-determination" means an individual's freedom to
956 exercise the same rights as all other citizens, authority to
957 exercise control over funds needed for one's own support,
958 including prioritizing these funds when necessary,
959 responsibility for the wise use of public funds, and self
960 advocacy to speak and advocate for oneself in order to gain
961 independence and ensure that individuals with a developmental
962 disability are treated equally.
963 ~~(39) "Severe self-injurious behavior" means any chronic~~
964 ~~behavior that results in injury to the person's own body, which~~
965 ~~includes, but is not limited to, self-hitting, head banging,~~
966 ~~self-biting, scratching, and the ingestion of harmful or~~
967 ~~potentially harmful nutritive or nonnutritive substances.~~

968 (34) ~~(40)~~ "Specialized therapies" means those treatments or
969 activities prescribed by and provided by an appropriately
970 trained, licensed, or certified professional or staff person and
971 may include, but are not limited to, physical therapy, speech
972 therapy, respiratory therapy, occupational therapy, behavior
973 therapy, physical management services, and related specialized
974 equipment and supplies.
975 (35) ~~(41)~~ "Spina bifida" means, for purposes of this
976 chapter, a person with a medical diagnosis of spina bifida
977 cystica or myelomeningocele.
978 (36) ~~(42)~~ "Support coordinator" means a person who is
979 designated by the agency to assist individuals and families in
980 identifying their capacities, needs, and resources, as well as
981 finding and gaining access to necessary supports and services;
982 coordinating the delivery of supports and services; advocating
983 on behalf of the individual and family; maintaining relevant
984 records; and monitoring and evaluating the delivery of supports
985 and services to determine the extent to which they meet the
986 needs and expectations identified by the individual, family, and
987 others who participated in the development of the support plan.
988 ~~(43) "Supported employee" means a person who requires and~~
989 ~~receives supported employment services in order to maintain~~
990 ~~community-based employment.~~
991 (37) ~~(44)~~ "Supported employment" means employment located
992 or provided in ~~a normal employment setting which provides at~~
993 ~~least 20 hours employment per week in~~ an integrated work
994 setting, with earnings paid on a commensurate wage basis, and
995 for which continued support is needed for job maintenance.

996 (38) ~~(45)~~ "Supported living" means a category of
997 individually determined services designed and coordinated in
998 such a manner as to provide assistance to adult clients who
999 require ongoing supports to live as independently as possible in
1000 their own homes, to be integrated into the community, and to
1001 participate in community life to the fullest extent possible.
1002 (39) ~~(46)~~ "Training" means a planned approach to assisting
1003 a client to attain or maintain his or her maximum potential and
1004 includes services ranging from sensory stimulation to
1005 instruction in skills for independent living and employment.
1006 (40) ~~(47)~~ "Treatment" means the prevention, amelioration,
1007 or cure of a client's physical and mental disabilities or
1008 illnesses.
1009 Section 11. Subsections (1), (2), and (4) of section
1010 393.064, Florida Statutes, are amended to read:
1011 393.064 Prevention.--
1012 (1) The agency shall give priority to the development,
1013 planning, and implementation of programs which have the
1014 potential to prevent, correct, cure, or reduce the severity of
1015 developmental disabilities. The agency shall direct an
1016 interagency and interprogram effort for the continued
1017 development of a prevention plan and program. The agency shall
1018 identify, through demonstration projects, through program
1019 evaluation, and through monitoring of programs and projects
1020 conducted outside of the agency, any medical, social, economic,
1021 or educational methods, techniques, or procedures that have the
1022 potential to effectively ameliorate, correct, or cure
1023 developmental disabilities. The agency ~~program~~ shall determine

1024 the costs and benefits that would be associated with such
1025 prevention efforts and shall implement, or recommend the
1026 implementation of, those methods, techniques, or procedures
1027 which are found likely to be cost-beneficial.
1028 (2) Prevention services provided by the agency shall
1029 ~~developmental services program~~ include services to high-risk ~~and~~
1030 ~~developmentally disabled~~ children from 3 ~~birth~~ to 5 years of
1031 age, and their families, to meet the intent of chapter 411.
1032 Except for services for children from birth to age 3 years which
1033 ~~Such services shall include individual evaluations or~~
1034 ~~assessments necessary to diagnose a developmental disability or~~
1035 ~~high-risk condition and to determine appropriate individual~~
1036 ~~family and support services, unless evaluations or assessments~~
1037 are the responsibility of the Division of Children's Medical
1038 Services in the Department of Health ~~Prevention and Intervention~~
1039 ~~for children ages birth to 3 years eligible for services under~~
1040 ~~this chapter~~ or part H of the Individuals with Disabilities
1041 Education Act, such services ~~and~~ may include:
1042 (a) Individual evaluations or assessments necessary to
1043 diagnose a developmental disability or high-risk condition and
1044 to determine appropriate, individual family and support
1045 services.
1046 (b) ~~(a)~~ Early intervention services, including
1047 developmental training and specialized therapies. ~~Early~~
1048 ~~intervention services, which are the responsibility of the~~
1049 ~~Division of Children's Medical Services Prevention and~~
1050 ~~Intervention for children ages birth to 3 years who are eligible~~
1051 ~~for services under this chapter or under part H of the~~

1052 ~~Individuals with Disabilities Education Act, shall not be~~
1053 ~~provided through the developmental services program unless~~
1054 ~~funding is specifically appropriated to the developmental~~
1055 ~~services program for this purpose.~~
1056 (c) ~~(b)~~ Support services, such as respite care, parent
1057 education and training, parent-to-parent counseling, homemaker
1058 services, and other services which allow families to maintain
1059 and provide quality care to children in their homes. ~~The~~
1060 ~~Division of Children's Medical Services Prevention and~~
1061 ~~Intervention is responsible for the provision of services to~~
1062 ~~children from birth to 3 years who are eligible for services~~
1063 ~~under this chapter.~~
1064 (4) There is created at the developmental disabilities
1065 ~~services~~ institution in Gainesville a research and education
1066 unit. Such unit shall be named the Raymond C. Philips Research
1067 and Education Unit. The functions of such unit shall include:
1068 (a) Research into the etiology of developmental
1069 disabilities.
1070 (b) Ensuring that new knowledge is rapidly disseminated
1071 throughout ~~the developmental services program of~~ the agency.
1072 (c) Diagnosis of unusual conditions and syndromes
1073 associated with developmental disabilities in clients identified
1074 throughout ~~the~~ developmental disabilities ~~services~~ programs.
1075 (d) Evaluation of families of clients with developmental
1076 disabilities of genetic origin in order to provide them with
1077 genetic counseling aimed at preventing the recurrence of the
1078 disorder in other family members.

1079 (e) Ensuring that health professionals in the
1080 developmental disabilities ~~services~~ institution at Gainesville
1081 have access to information systems that will allow them to
1082 remain updated on newer knowledge and maintain their
1083 postgraduate education standards.
1084 (f) Enhancing staff training for professionals throughout
1085 the agency in the areas of genetics and developmental
1086 disabilities.
1087 Section 12. Section 393.0641, Florida Statutes, is amended
1088 to read:
1089 393.0641 Program for the prevention and treatment of
1090 severe self-injurious behavior.--
1091 (1) Contingent upon specific appropriations, there is
1092 created a diagnostic, treatment, training, and research program
1093 for clients exhibiting severe self-injurious behavior. As used
1094 in this section, the term "severe self-injurious behavior" means
1095 any chronic behavior that results in injury to the person's own
1096 body, including, but not limited to, self-hitting, head banging,
1097 self-biting, scratching, and the ingestion of harmful or
1098 potentially harmful nutritive or nonnutritive substances.
1099 (2) The ~~This~~ program shall:
1100 (a) Serve as a resource center for information, training,
1101 and program development.
1102 (b) Research the diagnosis and treatment of severe self-
1103 injurious behavior, and related disorders, and develop methods
1104 of prevention and treatment of self-injurious behavior.
1105 (c) Identify individuals in critical need.

1106 (d) Develop treatment programs which are meaningful to
1107 individuals with developmental disabilities, in critical need,
1108 while safeguarding and respecting the legal and human rights of
1109 the individuals.
1110 (e) Disseminate research findings on the prevention and
1111 treatment of severe self-injurious behavior.
1112 (f) Collect data on the type, severity, incidence, and
1113 demographics of individuals with severe self-injurious behavior,
1114 and disseminate the data.
1115 (3) ~~(2)~~ The ~~This~~ program shall adhere to the provisions of
1116 s. 393.13.
1117 (4) ~~(3)~~ The agency may contract for the provision of any
1118 portion or all of the services required by the program.
1119 (5) ~~(4)~~ The agency may ~~has the authority to~~ license this
1120 program and ~~shall~~ adopt rules to administer ~~implement~~ the
1121 program.
1122 Section 13. Subsections (1) and (4) of section 393.065,
1123 Florida Statutes, are amended, and subsections (5) and (6) are
1124 added to that section, to read:
1125 393.065 Application and eligibility determination.--
1126 (1) Application for services shall be made in writing to
1127 the agency, in the service area ~~district~~ in which the applicant
1128 resides. The agency ~~Employees of the agency's developmental~~
1129 ~~services program~~ shall review each applicant for eligibility
1130 within 45 days after the date the application is signed for
1131 children under 6 years of age and within 60 days after the date
1132 the application is signed for all other applicants. When
1133 necessary to definitively identify individual conditions or

1134 needs, the agency shall provide a comprehensive assessment. Only
1135 applicants ~~individuals~~ whose domicile is in Florida are eligible
1136 for services. Information accumulated by other agencies,
1137 including professional reports and collateral data, shall be
1138 considered in this process when available.
1139 (4) The agency shall assess the level of need and medical
1140 necessity for prospective residents of intermediate-care
1141 facilities for the developmentally disabled ~~after October 1,~~
1142 ~~1999~~. The agency may enter into an agreement with the Department
1143 of Elderly Affairs for its Comprehensive Assessment and Review
1144 for Long-Term-Care Services (CARES) program to conduct
1145 assessments to determine the level of need and medical necessity
1146 for long-term-care services under this chapter. To the extent
1147 permissible under federal law, the assessments shall ~~must~~ be
1148 funded under Title XIX of the Social Security Act.
1149 (5) With the exception of clients deemed to be in crisis
1150 whom the agency shall serve as described in rule, the agency
1151 shall place at the top of its wait list for waiver services
1152 those children on the wait list who are from the child welfare
1153 system with an open case in the Department of Children and
1154 Family Services' statewide automated child welfare information
1155 system.
1156 (6) The agency may adopt rules specifying application
1157 procedures and eligibility criteria as needed to administer this
1158 section.
1159 Section 14. Section 393.0651, Florida Statutes, is amended
1160 to read:

1161 393.0651 Family or individual support plan.--The agency
1162 shall provide directly or contract for the development of a ~~an~~
1163 ~~appropriate~~ family support plan for children ages 3 ~~birth~~ to 18
1164 years of age and an individual support plan for each client. ~~The~~
1165 ~~parent or guardian of~~ The client ~~or~~, if competent, the client's
1166 parent or guardian ~~client~~, or, when appropriate, the client
1167 advocate, shall be consulted in the development of the plan and
1168 shall receive a copy of the plan. Each plan must ~~shall~~ include
1169 the most appropriate, least restrictive, and most cost-
1170 beneficial environment for accomplishment of the objectives for
1171 client progress and a specification of all services authorized.
1172 The plan must ~~shall~~ include provisions for the most appropriate
1173 level of care for the client. Within the specification of needs
1174 and services for each client, when residential care is
1175 necessary, the agency shall move toward placement of clients in
1176 residential facilities based within the client's community. The
1177 ultimate goal of each plan, whenever possible, shall be to
1178 enable the client to live a dignified life in the least
1179 restrictive setting, be that in the home or in the community.
1180 For children under 6 years of age, the family support plan shall
1181 be developed within the 45-day application period as specified
1182 in s. 393.065(1); for all applicants 6 years of age or older,
1183 the family or individual support plan shall be developed within
1184 the 60-day period as specified in that subsection.
1185 (1) The agency shall develop and specify by rule the core
1186 components of support plans ~~to be used by each district~~.
1187 (2)~~(a)~~ The family or individual support plan shall be
1188 integrated with the individual education plan (IEP) for all

1189 clients who are public school students entitled to a free
1190 appropriate public education under the Individuals with
1191 Disabilities Education Act, I.D.E.A., as amended. The family or
1192 individual support plan and IEP shall be implemented to maximize
1193 the attainment of educational and habilitation goals.
1194 (a) If the IEP for a student enrolled in a public school
1195 program indicates placement in a public or private residential
1196 program is necessary to provide special education and related
1197 services to a client, the local education agency shall provide
1198 for the costs of that service in accordance with the
1199 requirements of the Individuals with Disabilities Education Act,
1200 I.D.E.A., as amended. This shall not preclude local education
1201 agencies and the agency from sharing the residential service
1202 costs of students who are clients and require residential
1203 placement. ~~Under no circumstances shall clients entitled to a~~
1204 ~~public education or their parents be assessed a fee by the~~
1205 ~~agency under s. 402.33 for placement in a residential program.~~
1206 (b) For clients who are entering or exiting the school
1207 system, an interdepartmental staffing team composed of
1208 representatives of the agency and the local school system shall
1209 develop a written transitional living and training plan with the
1210 participation of the client or with the parent or guardian of
1211 the client, or the client advocate, as appropriate.
1212 (3) Each family or individual support plan shall be
1213 facilitated through case management designed solely to advance
1214 the individual needs of the client.
1215 (4) In the development of the family or individual support
1216 plan, a client advocate may be appointed by the support planning

1217 team for a client who is a minor or for a client who is not
1218 capable of express and informed consent when:
1219 (a) The parent or guardian cannot be identified;
1220 (b) The whereabouts of the parent or guardian cannot be
1221 discovered; or
1222 (c) The state is the only legal representative of the
1223 client.
1224
1225 Such appointment shall not be construed to extend the powers of
1226 the client advocate to include any of those powers delegated by
1227 law to a legal guardian.
1228 (5) The agency shall place a client in the most
1229 appropriate and least restrictive, and cost-beneficial,
1230 residential facility according to his or her individual support
1231 ~~habilitation~~ plan. ~~The parent or guardian of~~ The client ~~or~~, if
1232 competent, the client's parent or guardian ~~client~~, or, when
1233 appropriate, the client advocate, and the administrator of the
1234 ~~residential~~ facility to which placement is proposed shall be
1235 consulted in determining the appropriate placement for the
1236 client. Considerations for placement shall be made in the
1237 following order:
1238 (a) Client's own home or the home of a family member or
1239 direct service provider.
1240 (b) Foster care facility.
1241 (c) Group home facility.
1242 (d) Intermediate care facility for the developmentally
1243 disabled.

1244 (e) Other facilities licensed by the agency which offer
1245 special programs for people with developmental disabilities.
1246 (f) Developmental disabilities ~~services~~ institution.
1247 (6) In developing a client's annual family or individual
1248 support plan, the individual or family with the assistance of
1249 the support planning team shall identify measurable objectives
1250 for client progress and shall specify a time period expected for
1251 achievement of each objective.
1252 (7) The individual, family, and support coordinator shall
1253 review progress in achieving the objectives specified in each
1254 client's family or individual support plan, and shall revise the
1255 plan annually, following consultation with the client, if
1256 competent, or with the parent or guardian of the client, or,
1257 when appropriate, the client advocate. The agency or designated
1258 contractor shall annually report in writing to the client, if
1259 competent, or to the parent or guardian of the client, or to the
1260 client advocate, when appropriate, with respect to the client's
1261 habilitative and medical progress.
1262 (8) Any client, or any parent of a minor client, or
1263 guardian, authorized guardian advocate, or client advocate for a
1264 client, who is substantially affected by the client's initial
1265 family or individual support plan, or the annual review thereof,
1266 shall have the right to file a notice to challenge the decision
1267 pursuant to ss. 120.569 and 120.57. Notice of such right to
1268 appeal shall be included in all support plans provided by the
1269 agency.
1270 Section 15. Section 393.0654, Florida Statutes, is created
1271 to read.

1272 393.0654 Direct service providers; private sector
1273 services.--It is not a violation of s. 112.313(7) for a direct
1274 service provider who is employed by the agency to own, operate,
1275 or work in a private facility that is a service provider under
1276 contract with the agency if:
1277 (1) The employee does not have any role in the agency's
1278 placement recommendations or the client's decisionmaking process
1279 regarding placement;
1280 (2) The direct service provider's employment with the
1281 agency does not compromise the ability of the client to make a
1282 voluntary choice among private providers for services;
1283 (3) The employee's employment outside the agency does not
1284 create a conflict with the employee's public duties and does not
1285 impede the full and faithful discharge of the employee's duties
1286 as assigned by the agency; and
1287 (4) The service provider discloses the dual employment or
1288 ownership status to the agency and all clients within the
1289 provider's care. The disclosure must be given to the agency, the
1290 client, and the client's guardian or guardian advocate, if
1291 appropriate.
1292 Section 16. Section 393.0655, Florida Statutes, is amended
1293 to read:
1294 393.0655 Screening of direct service providers.--
1295 (1) MINIMUM STANDARDS.--The agency shall require level 2
1296 employment screening pursuant to chapter 435 for direct service
1297 providers who are unrelated to their clients, including support
1298 coordinators, and managers and supervisors of residential
1299 facilities or comprehensive transitional education programs

1300 licensed under this chapter ~~s. 393.067~~ and any other person,
1301 including volunteers, who provide care or services, who have
1302 access to a client's living areas, or who have access to a
1303 client's funds or personal property. Background screening shall
1304 include employment history checks as provided in s. 435.03(1)
1305 and local criminal records checks through local law enforcement
1306 agencies.
1307 (a) A volunteer who assists on an intermittent basis for
1308 less than 40 hours per month does not have to be screened if the
1309 volunteer is under the direct and constant visual supervision of
1310 persons who meet the screening requirements of this section.
1311 (b) Licensed physicians, nurses, or other professionals
1312 licensed and regulated by the Department of Health are not
1313 subject to background screening pursuant to this section if they
1314 are providing a service that is within their scope of licensed
1315 practice.
1316 (c) A person selected by the family or the individual with
1317 developmental disabilities and paid by the family or the
1318 individual to provide supports or services is not required to
1319 have a background screening under this section.
1320 (d) Persons 12 years of age or older, including family
1321 members, residing with a ~~the~~ direct services provider who
1322 provides services to clients in his or her own place of
1323 residence~~, including family members,~~ are subject to background
1324 screening; however, such persons who are 12 to 18 years of age
1325 shall be screened for delinquency records only.
1326 (e) A direct service provider who is awaiting the
1327 completion of background screening is temporarily exempt from

1328 the screening requirements under this section if the provider is
1329 under the direct and constant visual supervision of persons who
1330 meet the screening requirements of this section. Such exemption
1331 expires 90 days after the direct service provider first provides
1332 care or services to clients, has access to a client's living
1333 areas, or has access to a client's funds or personal property.
1334 (2) EXEMPTIONS FROM DISQUALIFICATION.--The agency may
1335 grant exemptions from disqualification from working with
1336 children or adults with developmental disabilities only as
1337 provided in s. 435.07.
1338 (3) PAYMENT FOR PROCESSING OF FINGERPRINTS AND STATE
1339 CRIMINAL RECORDS CHECKS.--The costs of processing fingerprints
1340 and the state criminal records checks shall be borne by the
1341 employer or by the employee or individual who is being screened.
1342 (4) TERMINATION ~~EXCLUSION FROM OWNING, OPERATING, OR BEING~~
1343 ~~EMPLOYED BY A DIRECT SERVICE PROVIDER RESIDENTIAL FACILITY~~;
1344 HEARINGS PROVIDED.--
1345 (a) The agency shall deny, suspend, terminate, or revoke a
1346 license, certification, rate agreement, purchase order, or
1347 contract, or pursue other remedies provided in s. 393.0673, s.
1348 393.0675, or s. 393.0678 in addition to or in lieu of denial,
1349 suspension, termination, or revocation for failure to comply
1350 with this section.
1351 (b) When the agency has reasonable cause to believe that
1352 grounds for denial or termination of employment exist, it shall
1353 notify, in writing, the employer and the person ~~direct service~~
1354 ~~provider~~ affected, stating the specific record that ~~which~~
1355 indicates noncompliance with the standards in this section.

1356 (c) The procedures established for hearing under chapter
1357 120 shall be available to the employer and the person affected
1358 ~~direct service provider~~ in order to present evidence relating
1359 either to the accuracy of the basis of exclusion or to the
1360 denial of an exemption from disqualification.
1361 (d) Refusal on the part of an employer to dismiss a
1362 manager, supervisor, or direct service provider who has been
1363 found to be in noncompliance with standards of this section
1364 shall result in automatic denial, termination, or revocation of
1365 the license or~~,~~ certification, rate agreement, purchase order,
1366 or contract, in addition to any other remedies pursued by the
1367 agency.
1368 Section 17. Section 393.0657, Florida Statutes, is amended
1369 to read:
1370 393.0657 Persons not required to be refingerprinted or
1371 rescreened.--Persons who have undergone any portion of the
1372 background screening required under s. 393.0655 within the last
1373 12 months are ~~Any provision of law to the contrary~~
1374 ~~notwithstanding, human resource personnel who have been~~
1375 ~~fingerprinted or screened pursuant to chapters 393, 394, 397,~~
1376 ~~402, and 409, and teachers who have been fingerprinted pursuant~~
1377 ~~to chapter 1012, who have not been unemployed for more than 90~~
1378 ~~days thereafter, and who under the penalty of perjury attest to~~
1379 ~~the completion of such fingerprinting or screening and to~~
1380 ~~compliance with the provisions of this section and the standards~~
1381 ~~for good moral character as contained in such provisions as ss.~~
1382 ~~110.1127(3), 393.0655(1), 394.457(6), 397.451, 402.305(2), and~~
1383 ~~409.175(6), shall~~ not ~~be~~ required to repeat such screening ~~be~~

1384 ~~refingerprinted or rescreened~~ in order to comply with the ~~any~~
1385 ~~direct service provider~~ screening ~~or fingerprinting~~
1386 requirements. Such persons are responsible for providing
1387 documentation of the screening and shall undergo screening for
1388 any remaining background screening requirements that have never
1389 been conducted or have not been completed within the last 12
1390 months.
1391 Section 18. Section 393.066, Florida Statutes, is amended
1392 to read:
1393 393.066 Community services and treatment ~~for persons who~~
1394 ~~are developmentally disabled~~.--
1395 (1) The agency shall plan, develop, organize, and
1396 implement its programs of services and treatment for persons
1397 with developmental disabilities ~~who are developmentally disabled~~
1398 to allow clients to live as independently as possible in their
1399 own homes or communities and to achieve productive lives as
1400 close to normal as possible. All elements of community-based
1401 services shall be made available, and eligibility for these
1402 services shall be consistent across the state. ~~In addition, all~~
1403 ~~purchased services shall be approved by the agency.~~
1404 (2) All services needed shall be purchased instead of
1405 provided directly by the agency, when such arrangement is more
1406 cost-efficient than having those services provided directly. All
1407 purchased services must be approved by the agency.
1408 (3) Community-based services that are medically necessary
1409 to prevent institutionalization shall, to the extent of
1410 available resources, include:

1411 (a) Adult day training ~~habilitation~~ services~~, including~~
1412 ~~developmental training services~~.
1413 (b) Family care services.
1414 (c) Guardian advocate referral services.
1415 (d) Medical/dental services, except that medical services
1416 shall not be provided to clients with spina bifida except as
1417 specifically appropriated by the Legislature.
1418 (e) Parent training.
1419 (f) Personal care services.
1420 (g) ~~(f)~~ Recreation.
1421 (h) ~~(g)~~ Residential facility services.
1422 (i) ~~(h)~~ Respite services.
1423 (j) ~~(i)~~ Social services.
1424 (k) ~~(j)~~ Specialized therapies.
1425 (l) ~~(k)~~ Supported employment~~, including enclave, job coach,~~
1426 ~~mobile work crew, and follow-along services~~.
1427 (m) ~~(l)~~ Supported living.
1428 (n) ~~(m)~~ Training, including behavioral-analysis services
1429 ~~behavioral programming~~.
1430 (o) ~~(n)~~ Transportation.
1431 (p) ~~(o)~~ Other habilitative and rehabilitative services as
1432 needed.
1433 (4) The agency shall utilize the services of private
1434 businesses, not-for-profit organizations, and units of local
1435 government whenever such services are more cost-efficient than
1436 such services provided directly by the department, including
1437 arrangements for provision of residential facilities.

1438 (5) In order to improve the potential for utilization of
1439 more cost-effective, community-based residential facilities, the
1440 agency shall promote the statewide development of day
1441 habilitation services for clients who live with a direct service
1442 provider in a community-based residential facility and who do
1443 not require 24-hour-a-day care in a hospital or other health
1444 care institution, but who may, in the absence of day
1445 habilitation services, require admission to a developmental
1446 disabilities institution. Each day service facility shall
1447 provide a protective physical environment for clients, ensure
1448 that direct service providers meet minimum screening standards
1449 as required in s. 393.0655, make available to all day
1450 habilitation service participants at least one meal on each day
1451 of operation, provide facilities to enable participants to
1452 obtain needed rest while attending the program, as appropriate,
1453 and provide social and educational activities designed to
1454 stimulate interest and provide socialization skills.
1455 (6) To promote independence and productivity, the agency
1456 shall provide supports and services, within available resources,
1457 to assist clients enrolled in Medicaid waivers who choose to
1458 pursue gainful employment.
1459 (7) For the purpose of making needed community-based
1460 residential facilities available at the least possible cost to
1461 the state, the agency is authorized to lease privately owned
1462 residential facilities under long-term rental agreements, if
1463 such rental agreements are projected to be less costly to the
1464 state over the useful life of the facility than state purchase
1465 or state construction of such a facility.

1466 (8) The agency may adopt rules providing definitions,
1467 eligibility criteria, and procedures for the purchase of
1468 services ~~to ensure compliance with federal laws or regulations~~
1469 ~~that apply to services~~ provided pursuant to this section.
1470 Section 19. Section 393.067, Florida Statutes, is amended
1471 to read:
1472 393.067 Facility licensure ~~of residential facilities and~~
1473 ~~comprehensive transitional education programs~~.--
1474 (1) The agency shall provide through its licensing
1475 authority and by rule license application procedures, ~~a system~~
1476 ~~of~~ provider qualifications, facility and client care standards,
1477 requirements for client records, requirements for staff
1478 qualifications and training ~~criteria for meeting standards~~, and
1479 requirements for monitoring foster care ~~for residential~~
1480 facilities, group home facilities, residential habilitation
1481 centers, and comprehensive transitional education programs that
1482 serve agency clients.
1483 (2) The agency shall conduct annual inspections and
1484 reviews of ~~residential~~ facilities and ~~comprehensive transitional~~
1485 ~~education~~ programs licensed under this section ~~annually~~.
1486 (3) An application for a license under this section must
1487 ~~for a residential facility or a comprehensive transitional~~
1488 ~~education program shall~~ be made to the agency on a form
1489 furnished by it and shall be accompanied by the appropriate
1490 license fee.
1491 (4) The application shall be under oath and shall contain
1492 the following:

1493 (a) The name and address of the applicant, if an applicant
1494 is an individual; if the applicant is a firm, partnership, or
1495 association, the name and address of each member thereof; if the
1496 applicant is a corporation, its name and address and the name
1497 and address of each director and each officer thereof; and the
1498 name by which the facility or program is to be known.
1499 (b) The location of the facility or program for which a
1500 license is sought.
1501 (c) The name of the person or persons under whose
1502 management or supervision the facility or program will be
1503 conducted.
1504 (d) The number and type of residents or clients for which
1505 maintenance, care, education, or treatment is to be provided by
1506 the facility or program.
1507 (e) The number and location of the component centers or
1508 units which will compose the comprehensive transitional
1509 education program.
1510 (f) A description of the types of services and treatment
1511 to be provided by the facility or program.
1512 (g) Information relating to the number, experience, and
1513 training of the employees of the facility or program.
1514 (h) Certification that the staff of the facility or
1515 program will receive training to detect and prevent sexual abuse
1516 of residents and clients.
1517 (i) Such other information as the agency determines is
1518 necessary to carry out the provisions of this chapter.
1519 ~~(5) The applicant shall submit evidence which establishes~~
1520 ~~the good moral character of the manager or supervisor of the~~

1521 ~~facility or program and the direct service providers in the~~
1522 ~~facility or program and its component centers or units. A~~
1523 ~~license may be issued if all the screening materials have been~~
1524 ~~timely submitted; however, a license may not be issued or~~
1525 ~~renewed if any of the direct service providers have failed the~~
1526 ~~screening required by s. 393.0655.~~
1527 ~~(a)1. A licensed residential facility or comprehensive~~
1528 ~~transitional education program which applies for renewal of its~~
1529 ~~license shall submit to the agency a list of direct service~~
1530 ~~providers who have worked on a continuous basis at the applicant~~
1531 ~~facility or program since submitting fingerprints to the agency~~
1532 ~~or the Department of Children and Family Services, identifying~~
1533 ~~those direct service providers for whom a written assurance of~~
1534 ~~compliance was provided by the agency or department and~~
1535 ~~identifying those direct service providers who have recently~~
1536 ~~begun working at the facility or program and are awaiting the~~
1537 ~~results of the required fingerprint check along with the date of~~
1538 ~~the submission of those fingerprints for processing. The agency~~
1539 ~~shall by rule determine the frequency of requests to the~~
1540 ~~Department of Law Enforcement to run state criminal records~~
1541 ~~checks for such direct service providers except for those direct~~
1542 ~~service providers awaiting the results of initial fingerprint~~
1543 ~~checks for employment at the applicant facility or program. The~~
1544 ~~agency shall review the records of the direct service providers~~
1545 ~~at the applicant facility or program with respect to the crimes~~
1546 ~~specified in s. 393.0655 and shall notify the facility or~~
1547 ~~program of its findings. When disposition information is missing~~
1548 ~~on a criminal record, it is the responsibility of the person~~

1549 ~~being screened, upon request of the agency, to obtain and supply~~
1550 ~~within 30 days the missing disposition information to the~~
1551 ~~agency. Failure to supply the missing information within 30 days~~
1552 ~~or to show reasonable efforts to obtain such information shall~~
1553 ~~result in automatic disqualification.~~
1554 ~~2. The applicant shall sign an affidavit under penalty of~~
1555 ~~perjury stating that all new direct service providers have been~~
1556 ~~fingerprinted and that the facility's or program's remaining~~
1557 ~~direct service providers have worked at the applicant facility~~
1558 ~~or program on a continuous basis since being initially screened~~
1559 ~~at that facility or program or have a written assurance of~~
1560 ~~compliance from the agency or department.~~
1561 (5) ~~(b)~~ As a prerequisite for issuance of an ~~the~~ initial or
1562 renewal license, the applicant, and any manager, supervisor, and
1563 staff member of the direct service provider of a facility or
1564 program licensed under this section, must have submitted to
1565 background screening as required under s. 393.0655. A license
1566 may not be issued or renewed if the applicant or any manager,
1567 supervisor, or staff member of the direct service provider has
1568 failed background screenings as required under s. 393.0655. The
1569 agency shall determine by rule the frequency of background
1570 screening. The applicant shall submit with each initial or
1571 renewal application a signed affidavit under penalty of perjury
1572 stating that the applicant and any manager, supervisor, or staff
1573 member of the direct service provider is in compliance with all
1574 requirements for background screening. ~~to a residential facility~~
1575 ~~or comprehensive transitional education program:~~

1576 ~~1. The applicant shall submit to the agency a complete set~~
1577 ~~of fingerprints, taken by an authorized law enforcement agency~~
1578 ~~or an employee of the agency who is trained to take~~
1579 ~~fingerprints, for the manager, supervisor, or direct service~~
1580 ~~providers of the facility or program;~~
1581 ~~2. The agency shall submit the fingerprints to the~~
1582 ~~Department of Law Enforcement for state processing and for~~
1583 ~~federal processing by the Federal Bureau of Investigation; and~~
1584 ~~3. The agency shall review the record of the manager or~~
1585 ~~supervisor with respect to the crimes specified in s.~~
1586 ~~393.0655(1) and shall notify the applicant of its findings. When~~
1587 ~~disposition information is missing on a criminal record, it is~~
1588 ~~the responsibility of the manager or supervisor, upon request of~~
1589 ~~the agency, to obtain and supply within 30 days the missing~~
1590 ~~disposition information to the agency. Failure to supply the~~
1591 ~~missing information within 30 days or to show reasonable efforts~~
1592 ~~to obtain such information shall result in automatic~~
1593 ~~disqualification.~~
1594 ~~(c) The agency or a residential facility or comprehensive~~
1595 ~~transitional education program may not use the criminal records~~
1596 ~~or juvenile records of a person obtained under this subsection~~
1597 ~~for any purpose other than determining if that person meets the~~
1598 ~~minimum standards for good moral character for a manager or~~
1599 ~~supervisor of, or direct service provider in, such a facility or~~
1600 ~~program. The criminal records or juvenile records obtained by~~
1601 ~~the agency or a residential facility or comprehensive~~
1602 ~~transitional education program for determining the moral~~

1603 ~~character of a manager, supervisor, or direct service provider~~
1604 ~~are exempt from s. 119.07(1).~~
1605 ~~(6) Each applicant for licensure as an intermediate care~~
1606 ~~facility for the developmentally disabled must comply with the~~
1607 ~~following requirements:~~
1608 ~~(a) Upon receipt of a completed, signed, and dated~~
1609 ~~application, the agency shall require background screening, in~~
1610 ~~accordance with the level 2 standards for screening set forth in~~
1611 ~~chapter 435, of the managing employee, or other similarly titled~~
1612 ~~individual who is responsible for the daily operation of the~~
1613 ~~facility, and of the financial officer, or other similarly~~
1614 ~~titled individual who is responsible for the financial operation~~
1615 ~~of the center, including billings for resident care and~~
1616 ~~services. The applicant must comply with the procedures for~~
1617 ~~level 2 background screening as set forth in chapter 435, as~~
1618 ~~well as the requirements of s. 435.03(3).~~
1619 ~~(b) The agency may require background screening of any~~
1620 ~~other individual who is an applicant if the agency has probable~~
1621 ~~cause to believe that he or she has been convicted of a crime or~~
1622 ~~has committed any other offense prohibited under the level 2~~
1623 ~~standards for screening set forth in chapter 435.~~
1624 ~~(c) Proof of compliance with the level 2 background~~
1625 ~~screening requirements of chapter 435 which has been submitted~~
1626 ~~within the previous 5 years in compliance with any other health~~
1627 ~~care licensure requirements of this state is acceptable in~~
1628 ~~fulfillment of the requirements of paragraph (a).~~
1629 ~~(d) A provisional license may be granted to an applicant~~
1630 ~~when each individual required by this section to undergo~~

1631 ~~background screening has met the standards for the Department of~~
1632 ~~Law Enforcement background check, but the agency has not yet~~
1633 ~~received background screening results from the Federal Bureau of~~
1634 ~~Investigation, or a request for a disqualification exemption has~~
1635 ~~been submitted to the agency as set forth in chapter 435, but a~~
1636 ~~response has not yet been issued. A standard license may be~~
1637 ~~granted to the applicant upon the agency's receipt of a report~~
1638 ~~of the results of the Federal Bureau of Investigation background~~
1639 ~~screening for each individual required by this section to~~
1640 ~~undergo background screening which confirms that all standards~~
1641 ~~have been met, or upon the granting of a disqualification~~
1642 ~~exemption by the agency as set forth in chapter 435. Any other~~
1643 ~~person who is required to undergo level 2 background screening~~
1644 ~~may serve in his or her capacity pending the agency's receipt of~~
1645 ~~the report from the Federal Bureau of Investigation. However,~~
1646 ~~the person may not continue to serve if the report indicates any~~
1647 ~~violation of background screening standards and a~~
1648 ~~disqualification exemption has not been requested of and granted~~
1649 ~~by the agency as set forth in chapter 435.~~
1650 ~~(e) Each applicant must submit to the agency, with its~~
1651 ~~application, a description and explanation of any exclusions,~~
1652 ~~permanent suspensions, or terminations of the applicant from the~~
1653 ~~Medicare or Medicaid programs. Proof of compliance with the~~
1654 ~~requirements for disclosure of ownership and control interests~~
1655 ~~under the Medicaid or Medicare programs shall be accepted in~~
1656 ~~lieu of this submission.~~
1657 ~~(f) Each applicant must submit to the agency a description~~
1658 ~~and explanation of any conviction of an offense prohibited under~~

1659 ~~the level 2 standards of chapter 435 by a member of the board of~~
1660 ~~directors of the applicant, its officers, or any individual~~
1661 ~~owning 5 percent or more of the applicant. This requirement does~~
1662 ~~not apply to a director of a not-for-profit corporation or~~
1663 ~~organization if the director serves solely in a voluntary~~
1664 ~~capacity for the corporation or organization, does not regularly~~
1665 ~~take part in the day-to-day operational decisions of the~~
1666 ~~corporation or organization, receives no remuneration for his or~~
1667 ~~her services on the corporation or organization's board of~~
1668 ~~directors, and has no financial interest and has no family~~
1669 ~~members with a financial interest in the corporation or~~
1670 ~~organization, provided that the director and the not-for-profit~~
1671 ~~corporation or organization include in the application a~~
1672 ~~statement affirming that the director's relationship to the~~
1673 ~~corporation satisfies the requirements of this paragraph.~~
1674 ~~(g) A license may not be granted to an applicant if the~~
1675 ~~applicant or managing employee has been found guilty of,~~
1676 ~~regardless of adjudication, or has entered a plea of nolo~~
1677 ~~contendere or guilty to, any offense prohibited under the level~~
1678 ~~2 standards for screening set forth in chapter 435, unless an~~
1679 ~~exemption from disqualification has been granted by the agency~~
1680 ~~as set forth in chapter 435.~~
1681 ~~(h) The agency may deny or revoke licensure if the~~
1682 ~~applicant:~~
1683 ~~1. Has falsely represented a material fact in the~~
1684 ~~application required by paragraph (e) or paragraph (f), or has~~
1685 ~~omitted any material fact from the application required by~~
1686 ~~paragraph (e) or paragraph (f); or~~

1687 ~~2. Has had prior action taken against the applicant under~~
1688 ~~the Medicaid or Medicare program as set forth in paragraph (e).~~
1689 ~~(i) An application for license renewal must contain the~~
1690 ~~information required under paragraphs (e) and (f).~~
1691 (6) ~~(7)~~ The applicant shall furnish satisfactory proof of
1692 financial ability to operate and conduct the facility or program
1693 in accordance with the requirements of this chapter and adopted
1694 ~~all~~ rules ~~promulgated hereunder~~.
1695 (7) ~~(8)~~ The agency shall adopt rules establishing minimum
1696 standards for ~~licensure of residential~~ facilities and
1697 ~~comprehensive transitional education~~ programs licensed under
1698 this section, including rules requiring facilities and programs
1699 to train staff to detect and prevent sexual abuse of residents
1700 and clients, minimum standards of quality and adequacy of client
1701 care, incident-reporting requirements, and uniform firesafety
1702 standards established by the State Fire Marshal which are
1703 appropriate to the size of the facility or of the component
1704 centers or units of the program.
1705 (8) ~~(9)~~ The agency ~~and the Agency for Health Care~~
1706 ~~Administration~~, after consultation with the Department of
1707 Community Affairs, shall adopt rules for foster care ~~residential~~
1708 facilities, group home facilities, and residential habilitation
1709 centers which establish ~~under the respective regulatory~~
1710 ~~jurisdiction of each establishing~~ minimum standards for the
1711 preparation and annual update of a comprehensive emergency
1712 management plan. At a minimum, the rules must provide for plan
1713 components that address emergency evacuation transportation;
1714 adequate sheltering arrangements; postdisaster activities,

1715 including emergency power, food, and water; postdisaster
1716 transportation; supplies; staffing; emergency equipment;
1717 individual identification of residents and transfer of records;
1718 and responding to family inquiries. The comprehensive emergency
1719 management plan for all comprehensive transitional education
1720 programs and for homes serving individuals who have complex
1721 medical conditions is subject to review and approval by the
1722 local emergency management agency. During its review, the local
1723 emergency management agency shall ensure that the agency and the
1724 Department of Community Affairs ~~following agencies~~, at a
1725 minimum, are given the opportunity to review the plan~~: the~~
1726 ~~Agency for Health Care Administration, the Agency for Persons~~
1727 ~~with Disabilities, and the Department of Community Affairs~~.
1728 Also, appropriate volunteer organizations must be given the
1729 opportunity to review the plan. The local emergency management
1730 agency shall complete its review within 60 days and either
1731 approve the plan or advise the facility of necessary revisions.
1732 (9) ~~(10)~~ The agency may conduct unannounced inspections to
1733 determine compliance by foster care ~~residential~~ facilities,
1734 group home facilities, residential habilitation centers, and
1735 comprehensive transitional education programs with the
1736 applicable provisions of this chapter and the rules adopted
1737 pursuant hereto, including the rules adopted for training staff
1738 of a facility or a program to detect and prevent sexual abuse of
1739 residents and clients. The facility or program shall make copies
1740 of inspection reports available to the public upon request.
1741 ~~(11) An alternative living center and an independent~~
1742 ~~living education center, as defined in s. 393.063, shall be~~

1743 ~~subject to the provisions of s. 419.001, except that such~~
1744 ~~centers shall be exempt from the 1,000-foot radius requirement~~
1745 ~~of s. 419.001(2) if:~~
1746 ~~(a) Such centers are located on a site zoned in a manner~~
1747 ~~so that all the component centers of a comprehensive transition~~
1748 ~~education center may be located thereon; or~~
1749 ~~(b) There are no more than three such centers within said~~
1750 ~~radius of 1,000 feet.~~
1751 (10) ~~(12)~~ Each ~~residential~~ facility or ~~comprehensive~~
1752 ~~transitional education~~ program licensed under this section ~~by~~
1753 ~~the agency~~ shall forward annually to the agency a true and
1754 accurate sworn statement of its costs of providing care to
1755 clients funded by the agency.
1756 (11) ~~(13)~~ The agency may audit the records of any
1757 ~~residential~~ facility or ~~comprehensive transitional education~~
1758 program that it has reason to believe may not be in full
1759 compliance with the provisions of this section; provided that,
1760 any financial audit of such facility or program shall be limited
1761 to the records of clients funded by the agency.
1762 (12) ~~(14)~~ The agency shall establish, for the purpose of
1763 control of licensure costs, a uniform management information
1764 system and a uniform reporting system with uniform definitions
1765 and reporting categories.
1766 (13) ~~(15)~~ Facilities and programs licensed pursuant to this
1767 section shall adhere to all rights specified in s. 393.13,
1768 including those enumerated in s. 393.13(4).
1769 (14) ~~(16)~~ An ~~No~~ unlicensed ~~residential~~ facility or
1770 ~~comprehensive transitional education~~ program may not ~~shall~~

1771 receive state funds. A license for the operation of a facility
1772 or program shall not be renewed if the licensee has any
1773 outstanding fines assessed pursuant to this chapter wherein
1774 final adjudication of such fines has been entered.
1775 (15) ~~(17)~~ The agency is ~~shall~~ not ~~be~~ required to contract
1776 with new facilities licensed after October 1, 1989, pursuant to
1777 this chapter. Pursuant to chapter 287, the agency shall continue
1778 to contract within available resources for residential services
1779 with facilities licensed prior to October 1, 1989, if such
1780 facilities comply with the provisions of this chapter and all
1781 other applicable laws and regulations.
1782 Section 20. Section 393.0673, Florida Statutes, is amended
1783 to read:
1784 393.0673 Denial, suspension, revocation of license;
1785 moratorium on admissions; administrative fines; procedures.--
1786 (1) The agency may deny, revoke, or suspend a license or
1787 impose an administrative fine, not to exceed $1,000 per
1788 violation per day, if the applicant or licensee:
1789 (a) Has falsely represented, or omitted a material fact in
1790 its license application submitted under s. 393.067.
1791 (b) Has had prior action taken against it under the
1792 Medicaid or Medicare program.
1793 (c) Has failed to comply with the applicable requirements
1794 of this chapter or rules applicable to the applicant or licensee
1795 ~~for a violation of any provision of s. 393.0655 or s. 393.067 or~~
1796 ~~rules adopted pursuant thereto~~.

1797 (2) All hearings shall be held within the county in which
1798 the licensee or applicant operates or applies for a license to
1799 operate a facility as defined herein.
1800 (3) ~~(2)~~ The agency, as a part of any final order issued by
1801 it under ~~the provisions of~~ this chapter, may impose such fine as
1802 it deems proper, except that such fine may not exceed $1,000 for
1803 each violation. Each day a violation of this chapter occurs
1804 constitutes a separate violation and is subject to a separate
1805 fine, but in no event may the aggregate amount of any fine
1806 exceed $10,000. Fines paid by any facility licensee under the
1807 provisions of this subsection shall be deposited in the Resident
1808 Protection Trust Fund and expended as provided in s. 400.063.
1809 (4) ~~(3)~~ The agency may issue an order immediately
1810 suspending or revoking a license when it determines that any
1811 condition in the facility presents a danger to the health,
1812 safety, or welfare of the residents in the facility.
1813 (5) ~~(4)~~ The agency may impose an immediate moratorium on
1814 admissions to any facility when the department determines that
1815 any condition in the facility presents a threat to the health,
1816 safety, or welfare of the residents in the facility.
1817 (6) The agency shall establish by rule criteria for
1818 evaluating the severity of violations and for determining the
1819 amount of fines imposed.
1820 Section 21. Subsection (1) of section 393.0674, Florida
1821 Statutes, is amended to read:
1822 393.0674 Penalties.--
1823 (1) It is a misdemeanor of the first degree, punishable as

1824 provided in s. 775.082 or s. 775.083, for any person willfully,
1825 knowingly, or intentionally to:
1826 (a) Fail, by false statement, misrepresentation,
1827 impersonation, or other fraudulent means, to disclose in any
1828 application for voluntary or paid employment a material fact
1829 used in making a determination as to such person's
1830 qualifications to be a direct service provider;
1831 (b) Provide or attempt to provide supports or services
1832 with direct service providers who are not in compliance
1833 ~~noncompliance~~ with the background screening requirements ~~minimum~~
1834 ~~standards for good moral character as contained~~ in this chapter;
1835 or
1836 (c) Use information from the criminal records or central
1837 abuse hotline obtained under s. 393.0655, s. 393.066, or s.
1838 393.067 for any purpose other than screening that person for
1839 employment as specified in those sections or release such
1840 information to any other person for any purpose other than
1841 screening for employment as specified in those sections.
1842 Section 22. Subsection (3) of section 393.0675, Florida
1843 Statutes, is amended to read:
1844 393.0675 Injunctive proceedings authorized.--
1845 (3) The agency may institute proceedings for an injunction
1846 in a court of competent jurisdiction to terminate the operation
1847 of a provider of supports or services if such provider has
1848 willfully and knowingly refused to comply with the screening
1849 requirement for direct service providers or has refused to
1850 terminate direct service providers found not to be in compliance
1851 with such ~~the~~ requirements ~~for good moral character~~.

1852 Section 23. Subsection (1) of section 393.0678, Florida
1853 Statutes, is amended to read:
1854 393.0678 Receivership proceedings.--
1855 (1) The agency may petition a court of competent
1856 jurisdiction for the appointment of a receiver for ~~an~~
1857 ~~intermediate care facility for the developmentally disabled,~~ a
1858 residential habilitation center~~,~~ or a group home facility owned
1859 and operated by a corporation or partnership when any of the
1860 following conditions exist:
1861 (a) Any person is operating a facility without a license
1862 and refuses to make application for a license as required by s.
1863 393.067 ~~or, in the case of an intermediate care facility for the~~
1864 ~~developmentally disabled, as required by ss. 393.067 and~~
1865 ~~400.062~~.
1866 (b) The licensee is closing the facility or has informed
1867 the department that it intends to close the facility; and
1868 adequate arrangements have not been made for relocation of the
1869 residents within 7 days, exclusive of weekends and holidays, of
1870 the closing of the facility.
1871 (c) The agency determines that conditions exist in the
1872 facility which present an imminent danger to the health, safety,
1873 or welfare of the residents of the facility or which present a
1874 substantial probability that death or serious physical harm
1875 would result therefrom. Whenever possible, the agency shall
1876 facilitate the continued operation of the program.
1877 (d) The licensee cannot meet its financial obligations to
1878 provide food, shelter, care, and utilities. Evidence such as the
1879 issuance of bad checks or the accumulation of delinquent bills

1880 for such items as personnel salaries, food, drugs, or utilities
1881 constitutes prima facie evidence that the ownership of the
1882 facility lacks the financial ability to operate the home in
1883 accordance with the requirements of this chapter and all rules
1884 promulgated thereunder.
1885 Section 24. Subsections (1), (2), (3), (5), and (7) of
1886 section 393.068, Florida Statutes, are amended to read:
1887 393.068 Family care program.--
1888 (1) The family care program is established for the purpose
1889 of providing services and support to families and individuals
1890 with developmental disabilities in order to maintain the
1891 individual in the home environment and avoid costly out-of-home
1892 residential placement. Services and support available to
1893 families and individuals with developmental disabilities shall
1894 emphasize community living <u>and self-determination</u> and enable
1895 individuals with developmental disabilities to enjoy typical
1896 lifestyles. One way to accomplish this is to recognize that
1897 families are the greatest resource available to individuals who
1898 have developmental disabilities and must be supported in their
1899 role as primary care givers.
1900 (2) Services and support authorized under <u>the family care</u>
1901 ~~this~~ program shall, to the extent of available resources,
1902 include the services listed under s. 393.066 and, in addition,
1903 shall include, but not be limited to:
1904 (a) Attendant care.
1905 (b) Barrier-free modifications to the home.
1906 (c) Home visitation by agency workers.
1907 (d) In-home subsidies.

1908 (e) Low-interest loans.
1909 (f) Modifications for vehicles used to transport the
1910 individual with a developmental disability.
1911 (g) Facilitated communication.
1912 (h) Family counseling.
1913 (i) Equipment and supplies.
1914 (j) Self-advocacy training.
1915 (k) Roommate services.
1916 (l) Integrated community activities.
1917 (m) Emergency services.
1918 (n) Support coordination.
1919 ~~(o) Supported employment.~~
1920 (o) ~~(p)~~ Other support services as identified by the family
1921 or individual.
1922 (3) When it is determined by the agency to be more cost-
1923 effective and in the best interest of the client to maintain
1924 such client in the home of a direct service provider, the parent
1925 or guardian of the client or, if competent, the client may
1926 enroll the client in the family care program. The direct service
1927 provider of a client enrolled in the family care program shall
1928 be reimbursed according to a rate schedule set by the agency,
1929 except that~~.~~ in-home subsidies ~~cited in paragraph (2)(d)~~ shall
1930 be provided in accordance with ~~according to~~ s. 393.0695 ~~and are~~
1931 ~~not subject to any other payment method or rate schedule~~
1932 ~~provided for in this section~~.
1933 (5) The agency may contract for the provision of any
1934 portion of the services required by the program, except for in-
1935 home subsidies ~~cited in paragraph (2)(d)~~, which shall be

1936 provided pursuant to s. 393.0695~~. Otherwise, purchase of service~~
1937 ~~contracts shall be used~~ whenever the services so provided are
1938 more cost-efficient than those provided by the agency.
1939 (7) To provide a range of personal care services for the
1940 client, the use of volunteers shall be maximized. The agency
1941 shall assure appropriate insurance coverage to protect
1942 volunteers from personal liability while acting within the scope
1943 of their volunteer assignments under the program.
1944 Section 25. Subsection (3) of section 393.0695, Florida
1945 Statutes, is amended, and subsection (5) is added to that
1946 section, to read:
1947 393.0695 Provision of in-home subsidies.--
1948 (3) In-home subsidies must be based on an individual
1949 determination of need and must not exceed maximum amounts set by
1950 the agency and reassessed by the agency quarterly ~~annually~~.
1951 (5) The agency shall adopt rules to administer this
1952 section, including standards and procedures governing
1953 eligibility for services, selection of housing, selection of
1954 providers, and planning for services, and requirements for
1955 ongoing monitoring.
1956 Section 26. Subsection (2) of section 393.075, Florida
1957 Statutes, is amended to read:
1958 393.075 General liability coverage.--
1959 (2) The Division of Risk Management of the Department of
1960 Financial Services shall provide coverage through the agency to
1961 any person who owns or operates a foster care facility or group
1962 home facility solely for the agency, who cares for children
1963 placed by ~~developmental services staff of~~ the agency, and who is

1964 licensed pursuant to s. 393.067 to provide such supervision and
1965 care in his or her place of residence. The coverage shall be
1966 provided from the general liability account of the State Risk
1967 Management Trust Fund. The coverage is limited to general
1968 liability claims arising from the provision of supervision and
1969 care of children in a foster care facility or group home
1970 facility pursuant to an agreement with the agency and pursuant
1971 to guidelines established through policy, rule, or statute.
1972 Coverage shall be subject to the limits provided in ss. 284.38
1973 and 284.385, and the exclusions set forth therein, together with
1974 other exclusions as may be set forth in the certificate of
1975 coverage issued by the trust fund. A person covered under the
1976 general liability account pursuant to this subsection shall
1977 immediately notify the Division of Risk Management of the
1978 Department of Financial Services of any potential or actual
1979 claim.
1980 Section 27. Section 393.11, Florida Statutes, is amended
1981 to read:
1982 393.11 Involuntary admission to residential services.--
1983 (1) JURISDICTION.--When a person who has been determined
1984 eligible for services for mental retardation under this chapter
1985 ~~is mentally retarded~~ and requires involuntary admission to
1986 residential services provided by the agency, the circuit court
1987 of the county in which the person resides shall have
1988 jurisdiction to conduct a hearing and enter an order
1989 involuntarily admitting the person in order that the person may
1990 receive the care, treatment, habilitation, and rehabilitation
1991 which the person needs. For the purpose of identifying mental

1992 retardation, diagnostic capability shall be established by the
1993 agency. The involuntary commitment of a person with mental
1994 retardation or autism who is charged with a felony offense shall
1995 be determined in accordance with s. 916.302. ~~Except as otherwise~~
1996 ~~specified, the proceedings under this section shall be governed~~
1997 ~~by the Florida Rules of Civil Procedure.~~
1998 (2) PETITION.--
1999 (a) A petition for involuntary admission to residential
2000 services may be executed by a petitioning commission. ~~For~~
2001 ~~proposed involuntary admission to residential services arising~~
2002 ~~out of chapter 916, the petition may be filed by a petitioning~~
2003 ~~commission, the agency, the state attorney of the circuit from~~
2004 ~~which the defendant was committed, or the defendant's attorney.~~
2005 (b) The petitioning commission shall consist of three
2006 persons. One of these persons shall be a physician licensed and
2007 practicing under chapter 458 or chapter 459.
2008 (c) The petition shall be verified and shall:
2009 1. State the name, age, and present address of the
2010 commissioners and their relationship to the person with mental
2011 retardation or autism;
2012 2. State the name, age, county of residence, and present
2013 address of the person with mental retardation or autism;
2014 3. Allege that the commission believes that the person
2015 needs involuntary residential services and specify the factual
2016 information on which the ~~such~~ belief is based;
2017 4. Allege that the person lacks sufficient capacity to
2018 give express and informed consent to a voluntary application for
2019 services and lacks the basic survival and self-care skills to

2020 provide for the person's well-being or is likely to physically
2021 injure others if allowed to remain at liberty; and
2022 5. State which residential setting is the least
2023 restrictive and most appropriate alternative and specify the
2024 factual information on which the ~~such~~ belief is based.
2025 (d) The petition shall be filed in the circuit court of
2026 the county in which the person with mental retardation or autism
2027 resides.
2028 (3) NOTICE.--
2029 (a) Notice of the filing of the petition shall be given to
2030 the individual and his or her legal guardian. The notice shall
2031 be given both verbally and in writing in the language of the
2032 client, or in other modes of communication of the client, and in
2033 English. Notice shall also be given to such other persons as the
2034 court may direct. The petition for involuntary admission to
2035 residential services shall be served with the notice.
2036 (b) Whenever a motion or petition has been filed pursuant
2037 to s. 916.303 to dismiss criminal charges against a defendant
2038 with retardation or autism, and a petition is filed to
2039 involuntarily admit the defendant to residential services under
2040 this section, the notice of the filing of the petition shall
2041 also be given to the defendant's attorney, ~~and to~~ the state
2042 attorney of the circuit from which the defendant was committed,
2043 and the agency.
2044 (c) The notice shall state that a hearing shall be set to
2045 inquire into the need of the person with mental retardation or
2046 autism for involuntary residential services. The notice shall
2047 also state the date of the hearing on the petition.

2048 (d) The notice shall state that the individual with mental
2049 retardation or autism has the right to be represented by counsel
2050 of his or her own choice and that, if the person cannot afford
2051 an attorney, the court shall appoint one.
2052 (4) AGENCY ~~DEVELOPMENTAL SERVICES~~ PARTICIPATION.--
2053 (a) Upon receiving the petition, the court shall
2054 immediately order the developmental services program of the
2055 agency to examine the person being considered for involuntary
2056 admission to residential services.
2057 (b) Following examination, the agency shall file ~~After the~~
2058 ~~developmental services program examines the person,~~ a written
2059 report ~~shall be filed~~ with the court not less than 10 working
2060 days before the date of the hearing. The report must ~~shall~~ be
2061 served on the petitioner, the person with mental retardation,
2062 and the person's attorney at the time the report is filed with
2063 the court.
2064 (c) The report must ~~shall~~ contain the findings of the
2065 agency's ~~developmental services program~~ evaluation, ~~and~~ any
2066 recommendations deemed appropriate, and a determination of
2067 whether the person is eligible for services under this chapter.
2068 (5) EXAMINING COMMITTEE.--
2069 (a) Upon receiving the petition, the court shall
2070 immediately appoint an examining committee to examine the person
2071 being considered for involuntary admission to residential
2072 services provided by ~~of the developmental services program of~~
2073 the agency.
2074 (b) The court shall appoint no fewer than three
2075 disinterested experts who have demonstrated to the court an

2076 expertise in the diagnosis, evaluation, and treatment of persons
2077 with mental retardation. The committee must ~~shall~~ include at
2078 least one licensed and qualified physician, one licensed and
2079 qualified psychologist, and one qualified professional with a
2080 minimum of a masters degree in social work, special education,
2081 or vocational rehabilitation counseling, to examine the person
2082 and to testify at the hearing on the involuntary admission to
2083 residential services.
2084 (c) Counsel for the person who is being considered for
2085 involuntary admission to residential services and counsel for
2086 the petition commission has ~~shall have~~ the right to challenge
2087 the qualifications of those appointed to the examining
2088 committee.
2089 (d) Members of the committee may ~~shall~~ not be employees of
2090 the agency or be associated with each other in practice or in
2091 employer-employee relationships. Members of the committee may
2092 ~~shall~~ not have served as members of the petitioning commission.
2093 Members of the committee may ~~shall~~ not be employees of the
2094 members of the petitioning commission or be associated in
2095 practice with members of the commission.
2096 (e) The committee shall prepare a written report for the
2097 court. The report must ~~shall~~ explicitly document the extent that
2098 the person meets the criteria for involuntary admission. The
2099 report, and expert testimony, must ~~shall~~ include, but not be
2100 limited to:
2101 1. The degree of the person's mental retardation and
2102 whether, using diagnostic capabilities established by the
2103 agency, the person is eligible for agency services;

2104 2. Whether, because of the person's degree of mental
2105 retardation, the person:
2106 a. Lacks sufficient capacity to give express and informed
2107 consent to a voluntary application for services pursuant to s.
2108 393.065;
2109 b. Lacks basic survival and self-care skills to such a
2110 degree that close supervision and habilitation in a residential
2111 setting is necessary and if not provided would result in a real
2112 and present threat of substantial harm to the person's well-
2113 being; or
2114 c. Is likely to physically injure others if allowed to
2115 remain at liberty.
2116 3. The purpose to be served by residential care;
2117 4. A recommendation on the type of residential placement
2118 which would be the most appropriate and least restrictive for
2119 the person; and
2120 5. The appropriate care, habilitation, and treatment.
2121 (f) The committee shall file the report with the court not
2122 less than 10 working days before the date of the hearing. The
2123 report shall be served on the petitioner, the person with mental
2124 retardation, ~~and~~ the person's attorney at the time the report is
2125 filed with the court, and the agency.
2126 (g) Members of the examining committee shall receive a
2127 reasonable fee to be determined by the court. The fees are to be
2128 paid from the general revenue fund of the county in which the
2129 person with mental retardation resided when the petition was
2130 filed.

2131 (h) The agency shall develop and prescribe by rule one or
2132 more standard forms to be used as a guide for members of the
2133 examining committee.
2134 (6) COUNSEL; GUARDIAN AD LITEM.--
2135 (a) The person with mental retardation shall be
2136 represented by counsel at all stages of the judicial proceeding.
2137 In the event the person is indigent and cannot afford counsel,
2138 the court shall appoint a public defender not less than 20
2139 working days before the scheduled hearing. The person's counsel
2140 shall have full access to the records of the service provider
2141 and the agency. In all cases, the attorney shall represent the
2142 rights and legal interests of the person with mental
2143 retardation, regardless of who may initiate the proceedings or
2144 pay the attorney's fee.
2145 (b) If the attorney, during the course of his or her
2146 representation, reasonably believes that the person with mental
2147 retardation cannot adequately act in his or her own interest,
2148 the attorney may seek the appointment of a guardian ad litem. A
2149 prior finding of incompetency is not required before a guardian
2150 ad litem is appointed pursuant to this section.
2151 (7) HEARING.--
2152 (a) The hearing for involuntary admission shall be
2153 conducted, and the order shall be entered, in the county in
2154 which the petition is filed ~~person is residing or be as~~
2155 ~~convenient to the person as may be consistent with orderly~~
2156 ~~procedure~~. The hearing shall be conducted in a physical setting
2157 not likely to be injurious to the person's condition.

2158 (b) A hearing on the petition must ~~shall~~ be held as soon
2159 as practicable after the petition is filed, but reasonable delay
2160 for the purpose of investigation, discovery, or procuring
2161 counsel or witnesses shall be granted.
2162 (c) The court may appoint a general or special magistrate
2163 to preside. Except as otherwise specified, the magistrate's
2164 proceeding shall be governed by the ~~rule 1.490,~~ Florida Rules of
2165 Civil Procedure.
2166 (d) The person with mental retardation shall be physically
2167 present throughout the entire proceeding. If the person's
2168 attorney believes that the person's presence at the hearing is
2169 not in the person's best interest, the person's presence may be
2170 waived once the court has seen the person and the hearing has
2171 commenced.
2172 (e) The person has ~~shall have~~ the right to present
2173 evidence and to cross-examine all witnesses and other evidence
2174 alleging the appropriateness of the person's admission to
2175 residential care. Other relevant and material evidence regarding
2176 the appropriateness of the person's admission to residential
2177 services; the most appropriate, least restrictive residential
2178 placement; and the appropriate care, treatment, and habilitation
2179 of the person, including written or oral reports, may be
2180 introduced at the hearing by any interested person.
2181 (f) The petitioning commission may be represented by
2182 counsel at the hearing. The petitioning commission shall have
2183 the right to call witnesses, present evidence, cross-examine
2184 witnesses, and present argument on behalf of the petitioning
2185 commission.

2186 (g) All evidence shall be presented according to chapter
2187 90. The burden of proof shall be on the party alleging the
2188 appropriateness of the person's admission to residential
2189 services. The burden of proof shall be by clear and convincing
2190 evidence.
2191 (h) All stages of each proceeding shall be
2192 stenographically reported.
2193 (8) ORDER.--
2194 (a) In all cases, the court shall issue written findings
2195 of fact and conclusions of law to support its decision. The
2196 order must ~~shall~~ state the basis for the ~~such~~ findings of fact.
2197 (b) An order of involuntary admission to residential
2198 services may ~~shall~~ not be entered unless the court finds that:
2199 1. The person is mentally retarded or autistic;
2200 2. Placement in a residential setting is the least
2201 restrictive and most appropriate alternative to meet the
2202 person's needs; and
2203 3. Because of the person's degree of mental retardation or
2204 autism, the person:
2205 a. Lacks sufficient capacity to give express and informed
2206 consent to a voluntary application for services pursuant to s.
2207 393.065 and lacks basic survival and self-care skills to such a
2208 degree that close supervision and habilitation in a residential
2209 setting is necessary and, if not provided, would result in a
2210 real and present threat of substantial harm to the person's
2211 well-being; or
2212 b. Is likely to physically injure others if allowed to
2213 remain at liberty.

2214 (c) If the evidence presented to the court is not
2215 sufficient to warrant involuntary admission to residential
2216 services, but the court feels that residential services would be
2217 beneficial, the court may recommend that the person seek
2218 voluntary admission.
2219 (d) If an order of involuntary admission to residential
2220 services provided by the ~~developmental services program of the~~
2221 agency is entered by the court, a copy of the written order
2222 shall be served upon the person, the person's counsel, the
2223 agency, and the state attorney and the person's defense counsel,
2224 if applicable. The order of involuntary admission sent to the
2225 agency shall also be accompanied by a copy of the examining
2226 committee's report and other reports contained in the court
2227 file.
2228 (e) Upon receiving the order, the agency shall, within 45
2229 days, provide the court with a copy of the person's family or
2230 individual support plan and copies of all examinations and
2231 evaluations, outlining the treatment and rehabilitative
2232 programs. The agency shall document that the person has been
2233 placed in the most appropriate, least restrictive and cost-
2234 beneficial residential setting ~~facility~~. A copy of the family or
2235 individual support plan and other examinations and evaluations
2236 shall be served upon the person and the person's counsel at the
2237 same time the documents are filed with the court.
2238 (9) EFFECT OF THE ORDER OF INVOLUNTARY ADMISSION TO
2239 RESIDENTIAL SERVICES.--
2240 (a) ~~In no case shall~~ An order authorizing an admission to
2241 residential care may not be considered an adjudication of mental

2242 incompetency. A ~~No~~ person is not ~~shall be~~ presumed incompetent
2243 solely by reason of the person's involuntary admission to
2244 residential services. A ~~No~~ person may not ~~shall~~ be denied the
2245 full exercise of all legal rights guaranteed to citizens of this
2246 state and of the United States.
2247 (b) Any minor involuntarily admitted to residential
2248 services shall, upon reaching majority, be given a hearing to
2249 determine the continued appropriateness of his or her
2250 involuntary admission.
2251 (10) COMPETENCY.--
2252 (a) The issue of competency shall be separate and distinct
2253 from a determination of the appropriateness of involuntary
2254 admission to residential services for a condition of mental
2255 retardation.
2256 (b) The issue of the competency of a person with mental
2257 retardation for purposes of assigning guardianship shall be
2258 determined in a separate proceeding according to the procedures
2259 and requirements of chapter 744 ~~and the Florida Probate Rules~~.
2260 The issue of the competency of a person with mental retardation
2261 or autism for purposes of determining whether the person is
2262 competent to proceed in a criminal trial shall be determined in
2263 accordance with chapter 916.
2264 (11) CONTINUING JURISDICTION.--The court which issues the
2265 initial order for involuntary admission to residential services
2266 under this section has ~~shall have~~ continuing jurisdiction to
2267 enter further orders to ensure that the person is receiving
2268 adequate care, treatment, habilitation, and rehabilitation,
2269 including psychotropic medication and behavioral programming.

2270 Upon request, the court may transfer the continuing jurisdiction
2271 to the court where a client resides if it is different from
2272 where the original involuntary admission order was issued. A ~~No~~
2273 person may not be released from an order for involuntary
2274 admission to residential services except by the order of the
2275 court.
2276 (12) APPEAL.--
2277 (a) Any party to the proceeding who is affected by an
2278 order of the court may appeal to the appropriate district court
2279 of appeal within the time and in the manner prescribed by the
2280 Florida Rules of Appellate Procedure.
2281 (b) The filing of an appeal by the person with mental
2282 retardation shall stay admission of the person into residential
2283 care. The stay shall remain in effect during the pendency of all
2284 review proceedings in Florida courts until a mandate issues.
2285 (13) HABEAS CORPUS.--At any time and without notice, any
2286 person involuntarily admitted into residential care ~~to the~~
2287 ~~developmental services program of the agency~~, or the person's
2288 parent or legal guardian in his or her behalf, is entitled to
2289 file a petition for a writ of habeas corpus to question the
2290 cause, legality, and appropriateness of the person's involuntary
2291 admission. Each person, or the person's parent or legal
2292 guardian, shall receive specific written notice of the right to
2293 petition for a writ of habeas corpus at the time of his or her
2294 involuntary placement.
2295 Section 28. Section 393.122, Florida Statutes, is amended
2296 to read:
2297 393.122 Applications for continued residential services.--

2298 (1) If a client is discharged from residential services
2299 under the provisions of s. 393.115 ~~this section~~, application for
2300 needed services shall be encouraged.
2301 (2) A ~~No~~ client receiving services from a state agency may
2302 not ~~the department as of July 1, 1977, shall~~ be denied continued
2303 services due to any change in eligibility requirements by
2304 chapter 77-335, Laws of Florida.
2305 Section 29. Section 393.13, Florida Statutes, is amended
2306 to read:
2307 393.13 ~~Personal~~ Treatment of persons with developmental
2308 disabilities ~~who are developmentally disabled~~.--
2309 (1) SHORT TITLE.--This section ~~act~~ shall be known as "The
2310 Bill of Rights of Persons with Developmental Disabilities ~~Who~~
2311 ~~are Developmentally Disabled~~."
2312 (2) LEGISLATIVE INTENT.--
2313 (a) The Legislature finds and declares that the system of
2314 care provided to individuals with developmental disabilities ~~who~~
2315 ~~are developmentally disabled~~ must be designed to meet the needs
2316 of the clients as well as protect the integrity of their legal
2317 and human rights.
2318 (b) The Legislature further finds and declares that the
2319 design and delivery of treatment and services to persons with
2320 developmental disabilities ~~who are developmentally disabled~~
2321 should be directed by the principles of self-determination
2322 ~~normalization~~ and therefore should:
2323 1. Abate the use of large institutions.
2324 2. Continue the development of community-based services
2325 that ~~which~~ provide reasonable alternatives to

2326 institutionalization in settings that are least restrictive to
2327 the client and that provide opportunities for inclusion in the
2328 community.
2329 3. Provide training and education that ~~to individuals who~~
2330 ~~are developmentally disabled which~~ will maximize their potential
2331 to lead independent and productive lives and that ~~which~~ will
2332 afford opportunities for outward mobility from institutions.
2333 4. Reduce the use of sheltered workshops and other
2334 noncompetitive employment day activities and promote
2335 opportunities for those ~~gainful employment for persons with~~
2336 ~~developmental disabilities~~ who choose to seek such employment.
2337 (c) It is the intent of the Legislature that duplicative
2338 and unnecessary administrative procedures and practices shall be
2339 eliminated, and areas of responsibility shall be clearly defined
2340 and consolidated in order to economically utilize present
2341 resources. Furthermore, personnel providing services should be
2342 sufficiently qualified and experienced to meet the needs of the
2343 clients, and they must be sufficient in number to provide
2344 treatment in a manner which is beneficial to the clients.
2345 (d) It is the intent of the Legislature:
2346 1. To articulate the existing legal and human rights of
2347 persons with developmental disabilities ~~who are developmentally~~
2348 ~~disabled~~ so that they may be exercised and protected. Persons
2349 with developmental disabilities shall have all the rights
2350 enjoyed by citizens of the state and the United States.
2351 2. To provide a mechanism for the identification,
2352 evaluation, and treatment of persons with developmental
2353 disabilities.

2354 3. To divert those individuals from institutional
2355 commitment who, by virtue of comprehensive assessment, can be
2356 placed in less costly, more effective community environments and
2357 programs.
2358 4. To fund improvements in the program in accordance with
2359 the availability of state resources and yearly priorities
2360 determined by the Legislature.
2361 5. To ensure that persons with developmental disabilities
2362 receive treatment and habilitation which fosters the
2363 developmental potential of the individual.
2364 6. To provide programs for the proper habilitation and
2365 treatment of persons with developmental disabilities which shall
2366 include, but not be limited to, comprehensive medical/dental
2367 care, education, recreation, specialized therapies, training,
2368 social services, transportation, guardianship, family care
2369 programs, day habilitation services, and habilitative and
2370 rehabilitative services suited to the needs of the individual
2371 regardless of age, degree of disability, or handicapping
2372 condition. It is the intent of the Legislature that no person
2373 with developmental disabilities shall be deprived of these
2374 enumerated services by reason of inability to pay.
2375 7. To fully effectuate the principles of self-
2376 determination ~~normalization principle~~ through the establishment
2377 of community services for persons with developmental
2378 disabilities as a viable and practical alternative to
2379 institutional care at each stage of individual life development
2380 and to promote opportunities for community inclusion. If care in

2381 a residential facility becomes necessary, it shall be in the
2382 least restrictive setting.
2383 8. To minimize and achieve an ongoing reduction in the use
2384 of restraint and seclusion in facilities and programs serving
2385 persons with developmental disabilities.
2386 (e) It is the clear, unequivocal intent of this act to
2387 guarantee individual dignity, liberty, pursuit of happiness, and
2388 protection of the civil and legal rights of persons with
2389 developmental disabilities.
2390 (3) RIGHTS OF ALL PERSONS WITH DEVELOPMENTAL
2391 DISABILITIES.--The rights described in this subsection shall
2392 apply to all persons with developmental disabilities, whether or
2393 not such persons are clients of the agency.
2394 (a) Persons with developmental disabilities shall have a
2395 right to dignity, privacy, and humane care, including the right
2396 to be free from sexual abuse in residential facilities.
2397 (b) Persons with developmental disabilities shall have the
2398 right to religious freedom and practice. Nothing shall restrict
2399 or infringe on a person's right to religious preference and
2400 practice.
2401 (c) Persons with developmental disabilities shall receive
2402 services, within available sources, which protect the personal
2403 liberty of the individual and which are provided in the least
2404 restrictive conditions necessary to achieve the purpose of
2405 treatment.
2406 (d) Persons with developmental disabilities ~~who are~~
2407 ~~developmentally disabled~~ shall have a right to participate in an
2408 appropriate program of quality education and training services,

2409 within available resources, regardless of chronological age or
2410 degree of disability. Such persons may be provided with
2411 instruction in sex education, marriage, and family planning.
2412 (e) Persons with developmental disabilities ~~who are~~
2413 ~~developmentally disabled~~ shall have a right to social
2414 interaction and to participate in community activities.
2415 (f) Persons with developmental disabilities ~~who are~~
2416 ~~developmentally disabled~~ shall have a right to physical exercise
2417 and recreational opportunities.
2418 (g) Persons with developmental disabilities ~~who are~~
2419 ~~developmentally disabled~~ shall have a right to be free from
2420 harm, including unnecessary physical, chemical, or mechanical
2421 restraint, isolation, excessive medication, abuse, or neglect.
2422 (h) Persons with developmental disabilities ~~who are~~
2423 ~~developmentally disabled~~ shall have a right to consent to or
2424 refuse treatment, subject to the provisions of s. 393.12(2)(a)
2425 or chapter 744.
2426 (i) No otherwise qualified person shall, by reason of
2427 having a developmental disability, be excluded from
2428 participation in, or be denied the benefits of, or be subject to
2429 discrimination under, any program or activity which receives
2430 public funds, and all prohibitions set forth under any other
2431 statute shall be actionable under this statute.
2432 (j) No otherwise qualified person shall, by reason of
2433 having a developmental disability, be denied the right to vote
2434 in public elections.
2435 (4) CLIENT RIGHTS.--For purposes of this subsection, the
2436 term "client," as defined in s. 393.063, shall also include any

2437 person served in a facility licensed under ~~pursuant to~~ s.
2438 393.067.
2439 (a) Clients shall have an unrestricted right to
2440 communication:
2441 1. Each client is ~~shall be~~ allowed to receive, send, and
2442 mail sealed, unopened correspondence. A ~~No~~ client's incoming or
2443 outgoing correspondence may not ~~shall~~ be opened, delayed, held,
2444 or censored by the facility unless there is reason to believe
2445 that it contains items or substances which may be harmful to the
2446 client or others, in which case the chief administrator of the
2447 facility may direct reasonable examination of such mail and
2448 regulate the disposition of such items or substances.
2449 2. Clients in residential facilities shall be afforded
2450 reasonable opportunities for telephone communication, to make
2451 and receive confidential calls, unless there is reason to
2452 believe that the content of the telephone communication may be
2453 harmful to the client or others, in which case the chief
2454 administrator of the facility may direct reasonable observation
2455 and monitoring to the telephone communication.
2456 3. Clients ~~shall~~ have an unrestricted right to visitation
2457 subject to reasonable rules of the facility. However, ~~nothing in~~
2458 this provision may not ~~shall~~ be construed to permit infringement
2459 upon other clients' rights to privacy.
2460 (b) Each client has the right to the possession and use of
2461 his or her own clothing and personal effects, except in those
2462 specific instances where the use of some of these items as
2463 reinforcers is essential for training the client as part of an
2464 appropriately approved behavioral program. The chief

2465 administrator of the facility may take temporary custody of such
2466 effects when it is essential to do so for medical or safety
2467 reasons. Custody of such personal effects shall be promptly
2468 recorded in the client's record, and a receipt for such effects
2469 shall be immediately given to the client, if competent, or the
2470 client's parent or legal guardian.
2471 1. All money belonging to a client held by the agency
2472 shall be held in compliance with s. 402.17(2).
2473 2. All interest on money received and held for the
2474 personal use and benefit of a client shall be the property of
2475 that client and may ~~shall~~ not accrue to the general welfare of
2476 all clients or be used to defray the cost of residential care.
2477 Interest so accrued shall be used or conserved for the personal
2478 use or benefit of the individual client as provided in s.
2479 402.17(2).
2480 3. Upon the discharge or death of a client, a final
2481 accounting shall be made of all personal effects and money
2482 belonging to the client held by the agency. All ~~such~~ personal
2483 effects and money, including interest, shall be promptly turned
2484 over to the client or his or her heirs.
2485 (c) Each client shall receive prompt and appropriate
2486 medical treatment and care for physical and mental ailments and
2487 for the prevention of any illness or disability. Medical
2488 treatment shall be consistent with the accepted standards of
2489 medical practice in the community.
2490 1. Medication shall be administered only at the written
2491 order of a physician. Medication shall not be used as
2492 punishment, for the convenience of staff, as a substitute for

2493 implementation of an individual or family support plan or
2494 behavior-analysis services ~~behavior modification programming~~, or
2495 in unnecessary or excessive quantities.
2496 2. Daily notation of medication received by each client in
2497 a residential facility shall be kept in the client's record.
2498 3. Periodically, but no less frequently than every 6
2499 months, the drug regimen of each client in a residential
2500 facility shall be reviewed by the attending physician or other
2501 appropriate monitoring body, consistent with appropriate
2502 standards of medical practice. All prescriptions shall have a
2503 termination date.
2504 4. When pharmacy services are provided at any residential
2505 facility, such services shall be directed or supervised by a
2506 professionally competent pharmacist licensed according to the
2507 provisions of chapter 465.
2508 5. Pharmacy services shall be delivered in accordance with
2509 the provisions of chapter 465.
2510 6. Prior to instituting a plan of experimental medical
2511 treatment or carrying out any necessary surgical procedure,
2512 express and informed consent shall be obtained from the client,
2513 if competent, or the client's parent or legal guardian.
2514 Information upon which the client shall make necessary treatment
2515 and surgery decisions shall include, but not be limited to:
2516 a. The nature and consequences of such procedures.
2517 b. The risks, benefits, and purposes of such procedures.
2518 c. Alternate procedures available.
2519 7. When the parent or legal guardian of the client is
2520 unknown or unlocatable and the physician is unwilling to perform

2521 surgery based solely on the client's consent, a court of
2522 competent jurisdiction shall hold a hearing to determine the
2523 appropriateness of the surgical procedure. The client shall be
2524 physically present, unless the client's medical condition
2525 precludes such presence, represented by counsel, and provided
2526 the right and opportunity to be confronted with, and to cross-
2527 examine, all witnesses alleging the appropriateness of such
2528 procedure. In such proceedings, the burden of proof by clear and
2529 convincing evidence shall be on the party alleging the
2530 appropriateness of such procedures. The express and informed
2531 consent of a person described in subparagraph 6. may be
2532 withdrawn at any time, with or without cause, prior to treatment
2533 or surgery.
2534 8. The absence of express and informed consent
2535 notwithstanding, a licensed and qualified physician may render
2536 emergency medical care or treatment to any client who has been
2537 injured or who is suffering from an acute illness, disease, or
2538 condition if, within a reasonable degree of medical certainty,
2539 delay in initiation of emergency medical care or treatment would
2540 endanger the health of the client.
2541 (d) Each client shall have access to individual storage
2542 space for his or her private use.
2543 (e) Each client shall be provided with appropriate
2544 physical exercise as prescribed in the client's individual or
2545 family support plan. Indoor and outdoor facilities and equipment
2546 for such physical exercise shall be provided.
2547 (f) Each client shall receive humane discipline.

2548 (g) A ~~No~~ client may not ~~shall~~ be subjected to a treatment
2549 program to eliminate problematic ~~bizarre~~ or unusual behaviors
2550 without first being examined by a physician who in his or her
2551 best judgment determines that such behaviors are not organically
2552 caused.
2553 1. Treatment programs involving the use of noxious or
2554 painful stimuli are ~~shall be~~ prohibited.
2555 2. All alleged violations of this paragraph shall be
2556 reported immediately to the chief administrator ~~administrative~~
2557 ~~officer~~ of the facility and ~~or the district administrator,~~ the
2558 agency ~~head, and the Florida local advocacy council~~. A thorough
2559 investigation of each incident shall be conducted and a written
2560 report of the finding and results of the ~~such~~ investigation
2561 shall be submitted to the chief administrator ~~administrative~~
2562 ~~officer~~ of the facility ~~or the district administrator~~ and ~~to~~ the
2563 agency ~~head~~ within 24 hours after ~~of~~ the occurrence or discovery
2564 of the incident.
2565 3. The agency shall adopt by rule a system for the
2566 oversight of behavioral programs. The ~~Such~~ system shall
2567 establish guidelines and procedures governing the design,
2568 approval, implementation, and monitoring of all behavioral
2569 programs involving clients. The system shall ensure statewide
2570 and local review by committees of professionals certified as
2571 behavior analysts pursuant to s. 393.17. No behavioral program
2572 shall be implemented unless reviewed according to the rules
2573 established by the agency under this section. ~~Nothing stated in~~
2574 ~~this section shall prohibit the review of programs by the~~
2575 ~~Florida statewide or local advocacy councils.~~

2576 ~~(h) Each client engaged in work programs which require~~
2577 ~~compliance with federal wage and hour laws shall be provided~~
2578 ~~with minimum wage protection and fair compensation for labor in~~
2579 ~~accordance with the federal wage per hour regulations.~~
2580 (h) ~~(i)~~ Clients shall have the right to be free from the
2581 unnecessary use of restraint or seclusion ~~physical, chemical, or~~
2582 ~~mechanical restraint~~. Restraints shall be employed only in
2583 emergencies or to protect the client or others from imminent
2584 injury ~~to himself or herself or others~~. Restraints may ~~shall~~ not
2585 be employed as punishment, for the convenience of staff, or as a
2586 substitute for a support ~~habilitative~~ plan. Restraints shall
2587 impose the least possible restrictions consistent with their
2588 purpose and shall be removed when the emergency ends. Restraints
2589 shall not cause physical injury to the client and shall be
2590 designed to allow the greatest possible comfort.
2591 ~~1. Mechanical supports used in normative situations to~~
2592 ~~achieve proper body position and balance shall not be considered~~
2593 ~~restraints, but shall be prescriptively designed and applied~~
2594 ~~under the supervision of a qualified professional with concern~~
2595 ~~for principles of good body alignment, circulation, and~~
2596 ~~allowance for change of position.~~
2597 ~~2. Totally enclosed cribs and barred enclosures shall be~~
2598 ~~considered restraints.~~
2599 1.~~3.~~ Daily reports on the employment of restraint or
2600 seclusion ~~physical, chemical, or mechanical restraints by those~~
2601 ~~specialists authorized in the use of such restraints~~ shall be
2602 made to the ~~appropriate chief~~ administrator of the facility or
2603 program licensed under this chapter, and a monthly compilation

2604 ~~summary~~ of such reports shall be relayed to the agency's local
2605 area office ~~district administrator and the Florida local~~
2606 ~~advocacy council~~. The monthly reports shall summarize all such
2607 cases of restraints, the type used, the duration of usage, and
2608 the reasons therefor. The area offices ~~Districts~~ shall submit
2609 monthly summaries of these ~~districtwide quarterly~~ reports ~~of~~
2610 ~~these summaries~~ to the agency's central office ~~state~~
2611 ~~Developmental Disabilities Program Office~~.
2612 2.~~4.~~ The agency shall adopt by rule standards and
2613 procedures relating to the use of restraint and seclusion ~~post a~~
2614 ~~copy of the rules adopted under this section in each living unit~~
2615 ~~of residential facilities~~. Such rules must be consistent with
2616 recognized best practices; prohibit inherently dangerous
2617 restraint or seclusion procedures; establish limitations on the
2618 use and duration of restraint and seclusion; establish measures
2619 to ensure the safety of clients and staff during an incident of
2620 restraint or seclusion; establish procedures for staff to follow
2621 before, during, and after incidents of restraint or seclusion,
2622 including individualized plans for the use of restraints or
2623 seclusion in emergency situations; establish professional
2624 qualifications of and training for staff who may order or be
2625 engaged in the use of restraint or seclusion; establish
2626 requirements for facility data collection and reporting relating
2627 to the use of restraint and seclusion; and establish procedures
2628 relating to the documentation of the use of restraint or
2629 seclusion in the client's facility or program record. A copy of
2630 the rules adopted under this subparagraph ~~section~~ shall be given
2631 to the client, parent, guardian or guardian advocate, and all

2632 staff members of ~~licensed~~ facilities and programs licensed under
2633 this chapter and made a part of all staff preservice and
2634 inservice training programs.
2635 (i) ~~(j)1.~~ Each client shall have a central record. The
2636 central record shall be established by the agency at the time
2637 that an individual is determined eligible for services, shall be
2638 maintained by the client's support coordinator, and must contain
2639 information ~~include data~~ pertaining to admission, diagnosis and
2640 treatment history, present condition, and such other information
2641 as may be required ~~under rules of the agency~~. The central record
2642 is the property of the agency.
2643 1. ~~2.~~ Unless waived by the client, if competent, or the
2644 client's parent or legal guardian if the client is incompetent,
2645 the client's central record shall be confidential and exempt
2646 from the provisions of s. 119.07(1), and no part of it shall be
2647 released except:
2648 a. The record may be released to physicians, attorneys,
2649 and government agencies having need of the record to aid the
2650 client, as designated by the client, if competent, or the
2651 client's parent or legal guardian, if the client is incompetent.
2652 b. The record shall be produced in response to a subpoena
2653 or released to persons authorized by order of court, excluding
2654 matters privileged by other provisions of law.
2655 c. The record or any part thereof may be disclosed to a
2656 qualified researcher, a staff member of the facility where the
2657 client resides, or an employee of the agency when the
2658 administrator of the facility or the director of the agency
2659 deems it necessary for the treatment of the client, maintenance

2660 of adequate records, compilation of treatment data, or
2661 evaluation of programs.
2662 d. Information from the records may be used for
2663 statistical and research purposes if the information is
2664 abstracted in such a way to protect the identity of individuals.
2665 ~~3. All central records for each client in residential~~
2666 ~~facilities shall be kept on uniform forms distributed by the~~
2667 ~~agency. The central record shall accurately summarize each~~
2668 ~~client's history and present condition.~~
2669 2.~~4.~~ The client, if competent, or the client's parent or
2670 legal guardian if the client is incompetent, shall be supplied
2671 with a copy of the client's central record upon request.
2672 (j)~~(k)~~ Each client residing in a residential facility who
2673 is eligible to vote in public elections according to the laws of
2674 the state has ~~shall have~~ the right to vote. Facilities operators
2675 shall arrange the means to exercise the client's right to vote.
2676 (5) LIABILITY FOR VIOLATIONS.--Any person who violates or
2677 abuses any rights or privileges of persons with developmental
2678 disabilities ~~who are developmentally disabled~~ provided by this
2679 chapter is ~~act shall be~~ liable for damages as determined by law.
2680 Any person who acts in good faith compliance with the provisions
2681 of this chapter is ~~act shall be~~ immune from civil or criminal
2682 liability for actions in connection with evaluation, admission,
2683 habilitative programming, education, treatment, or discharge of
2684 a client. However, this section does ~~shall~~ not relieve any
2685 person from liability if the ~~such~~ person is guilty of
2686 negligence, misfeasance, nonfeasance, or malfeasance.

2687 (6) NOTICE OF RIGHTS.--Each person with developmental
2688 disabilities, if competent, or parent or legal guardian of such
2689 person if the person is incompetent, shall promptly receive from
2690 the agency or the Department of Education a written copy of this
2691 act. Each person with developmental disabilities able to
2692 comprehend shall be promptly informed, in the language or other
2693 mode of communication which such person understands, of the
2694 above legal rights of persons with developmental disabilities.
2695 (7) RESIDENT GOVERNMENT.--Each residential facility
2696 providing services to clients who are desirous and capable of
2697 participating shall initiate and develop a program of resident
2698 government to hear the views and represent the interests of all
2699 clients served by the facility. The resident government shall be
2700 composed of residents elected by other residents, staff advisers
2701 skilled in the administration of community organizations, and,
2702 at the option of the resident government, representatives of
2703 advocacy groups for persons with developmental disabilities from
2704 the community ~~a representative of the Florida local advocacy~~
2705 ~~council~~. ~~The resident government shall work closely with the~~
2706 ~~Florida local advocacy council and the district administrator to~~
2707 ~~promote the interests and welfare of all residents in the~~
2708 ~~facility.~~
2709 Section 30. Subsections (1), (2), (3), (4), and (5) of
2710 section 393.135, Florida Statutes, are amended to read:
2711 393.135 Sexual misconduct prohibited; reporting required;
2712 penalties.--
2713 (1) As used in this section, the term:

2714 (a) "Covered person" ~~"Employee"~~ includes any employee,
2715 paid staff member, volunteer, or intern of the agency ~~or the~~
2716 ~~department~~; any person under contract with the agency ~~or the~~
2717 ~~department~~; and any person providing care or support to a client
2718 on behalf of the agency ~~department~~ or its providers.
2719 (b) "Sexual activity" means:
2720 1. Fondling the genital area, groin, inner thighs,
2721 buttocks, or breasts of a person.
2722 2. The oral, anal, or vaginal penetration by or union with
2723 the sexual organ of another or the anal or vaginal penetration
2724 of another by any other object.
2725 3. Intentionally touching in a lewd or lascivious manner
2726 the breasts, genitals, the genital area, or buttocks, or the
2727 clothing covering them, of a person, or forcing or enticing a
2728 person to touch the perpetrator.
2729 4. Intentionally masturbating in the presence of another
2730 person.
2731 5. Intentionally exposing the genitals in a lewd or
2732 lascivious manner in the presence of another person.
2733 6. Intentionally committing any other sexual act that does
2734 not involve actual physical or sexual contact with the victim,
2735 including, but not limited to, sadomasochistic abuse, sexual
2736 bestiality, or the simulation of any act involving sexual
2737 activity in the presence of a victim.
2738 (c) "Sexual misconduct" means any sexual activity between
2739 a covered person ~~an employee~~ and a client to whom a covered
2740 person renders services, care, or support on behalf of the
2741 agency or its providers, or between a covered person and another

2742 client who lives in the same home as the client to whom a
2743 covered person is rendering the services, care, or support,
2744 regardless of the consent of the client. The term does not
2745 include an act done for a bona fide medical purpose or an
2746 internal search conducted in the lawful performance of duty by a
2747 covered person ~~an employee~~.
2748 (2) A covered person ~~An employee~~ who engages in sexual
2749 misconduct with an individual with a developmental disability
2750 who:
2751 ~~(a) Is in the custody of the department;~~
2752 (a) ~~(b)~~ Resides in a residential facility, including any
2753 comprehensive transitional education program, developmental
2754 disabilities ~~services~~ institution, foster care facility, group
2755 home facility, intermediate care facility for the
2756 developmentally disabled, or residential habilitation center; or
2757 (b) ~~(c)~~ Is eligible to receive ~~Receives~~ services from the
2758 agency under this chapter ~~a family care program~~,
2759
2760 commits a felony of the second degree, punishable as provided in
2761 s. 775.082, s. 775.083, or s. 775.084. A covered person ~~An~~
2762 ~~employee~~ may be found guilty of violating this subsection
2763 without having committed the crime of sexual battery.
2764 (3) The consent of the client to sexual activity is not a
2765 defense to prosecution under this section.
2766 (4) This section does not apply to a covered person ~~an~~
2767 ~~employee~~ who~~:~~
2768 ~~(a)~~ is legally married to the client~~; or~~

2769 ~~(b) Has no reason to believe that the person with whom the~~
2770 ~~employee engaged in sexual misconduct is a client receiving~~
2771 ~~services as described in subsection (2)~~.
2772 (5) A covered person ~~An employee~~ who witnesses sexual
2773 misconduct, or who otherwise knows or has reasonable cause to
2774 suspect that a person has engaged in sexual misconduct, shall
2775 immediately report the incident to the ~~department's~~ central
2776 abuse hotline of the Department of Children and Family Services
2777 and to the appropriate local law enforcement agency. The covered
2778 person ~~Such employee~~ shall also prepare, date, and sign an
2779 independent report that specifically describes the nature of the
2780 sexual misconduct, the location and time of the incident, and
2781 the persons involved. The covered person ~~employee~~ shall deliver
2782 the report to the supervisor or program director, who is
2783 responsible for providing copies to the agency's local office
2784 and the agency's ~~department's~~ inspector general. ~~The inspector~~
2785 ~~general shall immediately conduct an appropriate administrative~~
2786 ~~investigation, and, if there is probable cause to believe that~~
2787 ~~sexual misconduct has occurred, the inspector general shall~~
2788 ~~notify the state attorney in the circuit in which the incident~~
2789 ~~occurred.~~
2790 Section 31. Section 393.15, Florida Statutes, is amended
2791 to read:
2792 393.15 Legislative intent; Community Resources Development
2793 Loan Program ~~Trust Fund~~.--
2794 (1) The Legislature finds and declares that the
2795 development of community-based treatment facilities for persons
2796 with developmental disabilities ~~who are developmentally disabled~~

2797 is desirable and recommended and should be encouraged and
2798 fostered by the state. The Legislature further recognizes that
2799 the development of such facilities is financially difficult for
2800 private individuals, due to initial expenditures required to
2801 adapt existing structures to the special needs of such persons
2802 ~~who are developmentally disabled~~ who may be served in community-
2803 based foster care, group home, ~~developmental training,~~ and
2804 supported employment programs. Therefore, ~~it is the intent of~~
2805 the Legislature intends that the agency ~~by this act to~~ develop
2806 and administer a loan program ~~trust fund~~ to provide support and
2807 encouragement in the establishment of community-based foster
2808 care, group home, ~~developmental training,~~ and supported
2809 employment programs for persons with developmental disabilities
2810 ~~who are developmentally disabled~~.
2811 ~~(2) As used in this section, a foster care, group home,~~
2812 ~~developmental training, or supported employment program may not~~
2813 ~~be a for-profit corporation, but may be a nonprofit corporation,~~
2814 ~~partnership, or sole proprietorship.~~
2815 (2) ~~(3)~~ There is created a Community Resources Development
2816 Loan Program in ~~Trust Fund in the State Treasury to be used by~~
2817 the agency for the purpose of granting loans to eligible
2818 programs for the initial costs of development of the programs.
2819 In order to be eligible for the program, a foster home, group
2820 home, or supported employment program must:
2821 (a) Serve persons with developmental disabilities;
2822 (b) Be a nonprofit corporation, partnership, or sole
2823 proprietorship; and

2824 (c) Be ~~Loans shall be made only to those facilities which~~
2825 ~~are~~ in compliance with the zoning regulations of the local
2826 community.
2827 (3) Loans may be made to pay for the costs of development
2828 and ~~may include~~ structural modification, the purchase of
2829 equipment and fire and safety devices, preoperational staff
2830 training, and the purchase of insurance. Such costs may ~~shall~~
2831 not include the actual construction of a facility and may not be
2832 in lieu of payment for maintenance, client services, or care
2833 provided.
2834 (4) The agency may grant to an eligible program a lump-sum
2835 loan in one payment not to exceed the cost ~~to the program~~ of
2836 providing 2 months' services, care, or maintenance to each
2837 person with developmental disabilities ~~who is developmentally~~
2838 ~~disabled~~ to be placed in the program by the agency, or the
2839 actual cost of firesafety renovations to a facility required by
2840 the state, whichever is greater. ~~Loans granted to programs shall~~
2841 ~~not be in lieu of payment for maintenance, services, or care~~
2842 ~~provided, but shall stand separate and distinct.~~
2843 (5) The agency shall adopt rules~~, as provided in chapter~~
2844 ~~120,~~ to determine the criteria ~~standards~~ under which a program
2845 shall be eligible to receive a loan ~~as provided in this section~~
2846 and the methodology ~~criteria~~ for the equitable allocation of
2847 loan ~~trust~~ funds when eligible applications exceed the funds
2848 available.
2849 (6) ~~(5)~~ Any loan granted by the agency under this section
2850 shall be repaid by the program within 5 years and the amount
2851 paid shall be deposited into the agency's Administrative Trust

2852 Fund. Moneys repaid shall be used to fund new loans. A program
2853 that operates as a nonprofit corporation meeting the
2854 requirements of s. 501(c)(3) of the Internal Revenue Code, and
2855 that seeks forgiveness of its loan shall submit to the agency an
2856 annual ~~a~~ statement setting forth the service it has provided
2857 during the year together with such other information as the
2858 agency by rule shall require, and, upon approval of each such
2859 annual statement, the agency may ~~shall~~ forgive up to 20 percent
2860 of the principal of any such loan granted ~~after June 30, 1975~~.
2861 (7) ~~(6)~~ If any program that has received a loan under this
2862 section ceases to accept, or provide care, services, or
2863 maintenance to persons placed in the program by the department,
2864 or if such program files papers of bankruptcy, at that point in
2865 time the loan shall become an interest-bearing loan at the rate
2866 of 5 percent per annum on the entire amount of the initial loan
2867 which shall be repaid within a 1-year period from the date on
2868 which the program ceases to provide care, services, or
2869 maintenance, or files papers in bankruptcy, and the amount of
2870 the loan due plus interest shall constitute a lien in favor of
2871 the state against all real and personal property of the program.
2872 The lien shall be perfected by the appropriate officer of the
2873 agency by executing and acknowledging a statement of the name of
2874 the program and the amount due on the loan and a copy of the
2875 promissory note, which shall be recorded by the agency with the
2876 clerk of the circuit court in the county wherein the program is
2877 located. If the program has filed a petition for bankruptcy, the
2878 agency shall file and enforce the lien in the bankruptcy
2879 proceedings. Otherwise, the lien shall be enforced in the manner

2880 provided in s. 85.011. All funds received by the agency from the
2881 enforcement of the lien shall be deposited in the agency's
2882 Administrative ~~Community Resources Development~~ Trust Fund and
2883 used to fund new loans.
2884 Section 32. Section 393.17, Florida Statutes, is amended
2885 to read:
2886 393.17 Behavioral programs; certification of behavior
2887 analysts.--
2888 (1) The agency may establish a certification process for
2889 behavior analysts in order to ensure that only qualified
2890 employees and service providers provide behavioral analysis
2891 services to clients. The procedures must be established by rule
2892 and must include criteria for scope of practice, qualifications
2893 for certification, including training and testing requirements,
2894 continuing education requirements for ongoing certification, and
2895 standards of performance. The procedures must also include
2896 decertification procedures that may be used to determine whether
2897 an individual continues to meet the qualifications for
2898 certification or the professional performance standards and, if
2899 not, the procedures necessary to decertify an employee or
2900 service provider.
2901 (2) The agency shall ~~may~~ recognize the certification of
2902 behavior analysts awarded by a nonprofit corporation that
2903 adheres to the national standards of boards that determine
2904 professional credentials and whose mission is to meet
2905 professional credentialing needs identified by behavior
2906 analysts, state governments, and consumers of behavior analysis
2907 services ~~and whose work has the support of the Association for~~

2908 ~~Behavior Analysis International~~. The certification procedure
2909 recognized by the agency must undergo regular psychometric
2910 review and validation, pursuant to a job analysis survey of the
2911 profession and standards established by content experts in the
2912 field.
2913 Section 33. Section 393.18, Florida Statutes, is created
2914 to read:
2915 393.18 Comprehensive transitional education program.--A
2916 comprehensive transition education program is a group of jointly
2917 operating centers or units, the collective purpose of which is
2918 to provide a sequential series of educational care, training,
2919 treatment, habilitation, and rehabilitation services to persons
2920 who have developmental disabilities and who have severe or
2921 moderate maladaptive behaviors. However, this section does not
2922 require such programs to provide services only to persons with
2923 developmental disabilities. All such services shall be temporary
2924 in nature and delivered in a structured residential setting,
2925 having the primary goal of incorporating the principle of self-
2926 determination in establishing permanent residence for persons
2927 with maladaptive behaviors in facilities that are not associated
2928 with the comprehensive transitional education program. The staff
2929 shall include behavior analysts and teachers, as appropriate,
2930 who shall be available to provide services in each component
2931 center or unit of the program. A behavior analyst must be
2932 certified pursuant to s. 393.17.
2933 (1) Comprehensive transitional education programs shall
2934 include a minimum of two component centers or units, one of
2935 which shall be an intensive treatment and educational center or

2936 a transitional training and educational center, which provides
2937 services to persons with maladaptive behaviors in the following
2938 sequential order:
2939 (a) Intensive treatment and educational center.--This
2940 component is a self-contained residential unit providing
2941 intensive behavioral and educational programming for persons
2942 with severe maladaptive behaviors whose behaviors preclude
2943 placement in a less-restrictive environment due to the threat of
2944 danger or injury to themselves or others. Continuous-shift staff
2945 shall be required for this component.
2946 (b) Transitional training and educational center.--This
2947 component is a residential unit for persons with moderate
2948 maladaptive behaviors providing concentrated psychological and
2949 educational programming that emphasizes a transition toward a
2950 less-restrictive environment. Continuous-shift staff shall be
2951 required for this component.
2952 (c) Community transition residence.--This component is a
2953 residential center providing educational programs and any
2954 support services, training, and care that are needed to assist
2955 persons with maladaptive behaviors to avoid regression to more
2956 restrictive environments while preparing them for more
2957 independent living. Continuous-shift staff shall be required for
2958 this component.
2959 (d) Alternative living center.--This component is a
2960 residential unit providing an educational and family living
2961 environment for persons with maladaptive behaviors in a
2962 moderately unrestricted setting. Residential staff shall be
2963 required for this component.

2964 (e) Independent living education center.--This component
2965 is a facility providing a family living environment for persons
2966 with maladaptive behaviors in a largely unrestricted setting and
2967 includes education and monitoring that is appropriate to support
2968 the development of independent living skills.
2969 (2) Components of a comprehensive transitional education
2970 program are subject to the license issued under s. 393.067 to a
2971 comprehensive transitional education program and may be located
2972 on a single site or multiple sites.
2973 (3) Comprehensive transitional education programs shall
2974 develop individual education plans for each person with
2975 maladaptive behaviors who receives services from the program.
2976 Each individual education plan shall be developed in accordance
2977 with the criteria specified in 20 U.S.C. ss. 401 et seq., and 34
2978 C.F.R. part 300.
2979 (4) The total number of persons with maladaptive behaviors
2980 who are being provided with services in a comprehensive
2981 transitional education program may not in any instance exceed
2982 120 residents.
2983 (5) This section shall authorize licensure for
2984 comprehensive transitional education programs which by July 1,
2985 1989:
2986 (a) Were in actual operation; or
2987 (b) Owned a fee simple interest in real property for which
2988 a county or city government has approved zoning allowing for the
2989 placement of the facilities described in this subsection, and
2990 have registered an intent with the agency to operate a
2991 comprehensive transitional education program. However, nothing

2992 shall prohibit the assignment by such a registrant to another
2993 entity at a different site within the state, so long as there is
2994 compliance with all criteria of this program and local zoning
2995 requirements and provided that each residential facility within
2996 the component centers or units of the program authorized under
2997 this subparagraph does not exceed a capacity of 15 persons.
2998 Section 34. Section 393.23, Florida Statutes, is created
2999 to read:
3000 393.23 Developmental disabilities institutions; trust
3001 accounts.--All receipts from the operation of canteens, vending
3002 machines, hobby shops, sheltered workshops, activity centers,
3003 farming projects, and other like activities operated in a
3004 developmental disabilities institution, and moneys donated to
3005 the institution, must be deposited in a trust account in any
3006 bank, credit union, or savings and loan association authorized
3007 by the State Treasury as a qualified depositor to do business in
3008 this state, if the moneys are available on demand.
3009 (1) Moneys in the trust account must be expended for the
3010 benefit, education, and welfare of clients. However, if
3011 specified, moneys that are donated to the institution must be
3012 expended in accordance with the intentions of the donor. Trust
3013 account money may not be used for the benefit of employees of
3014 the agency, or to pay the wages of such employees. The welfare
3015 of the clients includes the expenditure of funds for the
3016 purchase of items for resale at canteens or vending machines,
3017 and for the establishment of, maintenance of, and operation of
3018 canteens, hobby shops, recreational or entertainment facilities,
3019 sheltered workshops, activity centers, farming projects, or

3020 other like facilities or programs established at the
3021 institutions for the benefit of clients.
3022 (2) The institution may invest, in the manner authorized
3023 by law for fiduciaries, any money in a trust account which is
3024 not necessary for immediate use. The interest earned and other
3025 increments derived from the investments of the money must be
3026 deposited into the trust account for the benefit of clients.
3027 (3) The accounting system of an institution must account
3028 separately for revenues and expenses for each activity. The
3029 institution shall reconcile the trust account to the
3030 institution's accounting system and check registers and to the
3031 accounting system of the Chief Financial Officer.
3032 (4) All sales taxes collected by the institution as a
3033 result of sales shall be deposited into the trust account and
3034 remitted to the Department of Revenue.
3035 (5) Funds shall be expended in accordance with
3036 requirements and guidelines established by the Chief Financial
3037 Officer.
3038 Section 35. Section 393.501, Florida Statutes, is amended
3039 to read:
3040 393.501 Rulemaking.--
3041 (1) The agency may ~~shall~~ adopt rules pursuant to ss.
3042 120.536(1) and 120.54 to carry out its statutory duties ~~the~~
3043 ~~provisions of this chapter~~.
3044 (2) Such rules shall address the number of facilities on a
3045 single lot ~~parcel~~ or on adjacent lots ~~parcels of land, and in~~
3046 ~~addition, for ICF/MR, the rate and location of facility~~
3047 ~~development and level of care~~. In adopting rules, an alternative

3048 living center and an independent living education center, as
3049 described in s. 393.18, shall be subject to the provisions of s.
3050 419.001, except that such centers shall be exempt from the
3051 1,000-foot-radius requirement of s. 419.001(2) if:
3052 (a) The centers are located on a site zoned in a manner
3053 that permits all the components of a comprehensive transition
3054 education center to be located on the site; or
3055 (b) There are no more than three such centers within a
3056 radius of 1,000 feet.
3057 Section 36. Section 394.453, Florida Statutes, is amended
3058 to read:
3059 394.453 Legislative intent.--It is the intent of the
3060 Legislature to authorize and direct the Department of Children
3061 and Family Services to evaluate, research, plan, and recommend
3062 to the Governor and the Legislature programs designed to reduce
3063 the occurrence, severity, duration, and disabling aspects of
3064 mental, emotional, and behavioral disorders. It is the intent of
3065 the Legislature that treatment programs for such disorders shall
3066 include, but not be limited to, comprehensive health, social,
3067 educational, and rehabilitative services to persons requiring
3068 intensive short-term and continued treatment in order to
3069 encourage them to assume responsibility for their treatment and
3070 recovery. It is intended that such persons be provided with
3071 emergency service and temporary detention for evaluation when
3072 required; that they be admitted to treatment facilities on a
3073 voluntary basis when extended or continuing care is needed and
3074 unavailable in the community; that involuntary placement be
3075 provided only when expert evaluation determines that it is

3076 necessary; that any involuntary treatment or examination be
3077 accomplished in a setting which is clinically appropriate and
3078 most likely to facilitate the person's return to the community
3079 as soon as possible; and that individual dignity and human
3080 rights be guaranteed to all persons who are admitted to mental
3081 health facilities or who are being held under s. 394.463. It is
3082 the further intent of the Legislature that the least restrictive
3083 means of intervention be employed based on the individual needs
3084 of each person, within the scope of available services. It is
3085 the policy of this state that the use of restraint and seclusion
3086 on clients is justified only as an emergency safety measure to
3087 be used in response to imminent danger to the client or others.
3088 It is, therefore, the intent of the Legislature to achieve an
3089 ongoing reduction in the use of restraint and seclusion in
3090 programs and facilities serving persons with mental illness.
3091 Section 37. Present subsections (28) through (33) of
3092 section 394.455, Florida Statutes, are redesignated as
3093 subsections (30) through (35), respectively, and new subsections
3094 (28) and (29) are added to that section, to read:
3095 394.455 Definitions.--As used in this part, unless the
3096 context clearly requires otherwise, the term:
3097 (28)(a) "Restraint" means a physical device, method, or
3098 drug used to control behavior. A physical restraint is any
3099 manual method or physical or mechanical device, material, or
3100 equipment attached or adjacent to the individual's body so that
3101 he or she cannot easily remove the restraint and which restricts
3102 freedom of movement or normal access to one's body.

3103 (b) A drug used as a restraint is a medication used to
3104 control the person's behavior or to restrict his or her freedom
3105 of movement. Physically holding a person during a procedure to
3106 forcibly administer psychotropic medication is a physical
3107 restraint.
3108 (c) Restraint does not include physical devices, such as
3109 orthopedically prescribed appliances, surgical dressings and
3110 bandages, supportive body bands, or other physical holding when
3111 necessary for routine physical examinations and tests; or for
3112 purposes of orthopedic, surgical, or other similar medical
3113 treatment; when used to provide support for the achievement of
3114 functional body position or proper balance; or when used to
3115 protect a person from falling out of bed.
3116 (29) "Seclusion" means the physical segregation of a
3117 person in any fashion or involuntary isolation of a person in a
3118 room or area from which the person is prevented from leaving.
3119 The prevention may be by physical barrier or by a staff member
3120 who is acting in a manner, or who is physically situated, so as
3121 to prevent the person from leaving the room or area. For
3122 purposes of this chapter, the term does not mean isolation due
3123 to a person's medical condition or symptoms.
3124 Section 38. Paragraph (b) of subsection (5) of section
3125 394.457, Florida Statutes, is amended to read:
3126 394.457 Operation and administration.--
3127 (5) RULES.--
3128 (b) The department shall adopt rules necessary for the
3129 implementation and administration of the provisions of this
3130 part, and a program subject to the provisions of this part shall

3131 not be permitted to operate unless rules designed to ensure the
3132 protection of the health, safety, and welfare of the patients
3133 treated through such program have been adopted. Rules adopted
3134 under this subsection must include provisions governing the use
3135 of restraint and seclusion which are consistent with recognized
3136 best practices and professional judgment; prohibit inherently
3137 dangerous restraint or seclusion procedures; establish
3138 limitations on the use and duration of restraint and seclusion;
3139 establish measures to ensure the safety of program participants
3140 and staff during an incident of restraint or seclusion;
3141 establish procedures for staff to follow before, during, and
3142 after incidents of restraint or seclusion; establish
3143 professional qualifications of and training for staff who may
3144 order or be engaged in the use of restraint or seclusion; and
3145 establish mandatory reporting, data collection, and data
3146 dissemination procedures and requirements. Rules adopted under
3147 this subsection must require that each instance of the use of
3148 restraint or seclusion be documented in the record of the
3149 patient.
3150 Section 39. Paragraph (g) is added to subsection (1) of
3151 section 394.879, Florida Statutes, to read:
3152 394.879 Rules; enforcement.--
3153 (1) The department, in consultation with the agency, shall
3154 adopt rules pursuant to ss. 120.536(1) and 120.54 to implement
3155 the provisions of this chapter, including, at a minimum, rules
3156 providing standards to ensure that:
3157 (g) The use of restraint and seclusion is consistent with
3158 recognized best practices and professional judgment; that

3159 inherently dangerous restraint or seclusion procedures are
3160 prohibited; that limitations are established on the use and
3161 duration of restraint and seclusion; that measures are
3162 established to ensure the safety of program participants and
3163 staff during an incident of restraint or seclusion; that
3164 procedures are created for staff to follow before, during, and
3165 after incidents of restraint or seclusion; that professional
3166 qualifications and training are established for staff who may
3167 order or be engaged in the use of restraint or seclusion; and
3168 that mandatory reporting, data collection, and data
3169 dissemination procedures and requirements are instituted. Rules
3170 adopted under this section must require that any instance of the
3171 use of restraint or seclusion shall be documented in the record
3172 of the client.
3173 Section 40. Subsection (9) of section 397.405, Florida
3174 Statutes, is amended to read:
3175 397.405 Exemptions from licensure.--The following are
3176 exempt from the licensing provisions of this chapter:
3177 (9) Facilities licensed under chapter 393 which ~~s. 393.063~~
3178 ~~that~~, in addition to providing services to persons with
3179 developmental disabilities ~~who are developmentally disabled as~~
3180 ~~defined therein~~, also provide services to persons
3181 developmentally at risk as a consequence of exposure to alcohol
3182 or other legal or illegal drugs while in utero.
3183
3184 The exemptions from licensure in this section do not apply to
3185 any service provider that receives an appropriation, grant, or
3186 contract from the state to operate as a service provider as

3187 defined in this chapter or to any substance abuse program
3188 regulated pursuant to s. 397.406. Furthermore, this chapter may
3189 not be construed to limit the practice of a physician licensed
3190 under chapter 458 or chapter 459, a psychologist licensed under
3191 chapter 490, or a psychotherapist licensed under chapter 491 who
3192 provides substance abuse treatment, so long as the physician,
3193 psychologist, or psychotherapist does not represent to the
3194 public that he or she is a licensed service provider and does
3195 not provide services to clients pursuant to part V of this
3196 chapter. Failure to comply with any requirement necessary to
3197 maintain an exempt status under this section is a misdemeanor of
3198 the first degree, punishable as provided in s. 775.082 or s.
3199 775.083.
3200 Section 41. Subsection (13) of section 400.419, Florida
3201 Statutes, is amended to read:
3202 400.419 Violations; imposition of administrative fines;
3203 grounds.--
3204 (13) The agency shall develop and disseminate an annual
3205 list of all facilities sanctioned or fined $5,000 or more for
3206 violations of state standards, the number and class of
3207 violations involved, the penalties imposed, and the current
3208 status of cases. The list shall be disseminated, at no charge,
3209 to the Department of Elderly Affairs, the Department of Health,
3210 the Department of Children and Family Services, <u>the Agency for</u>
3211 <u>Persons with Disabilities,</u> the area agencies on aging, the
3212 Florida Statewide Advocacy Council, and the state and local
3213 ombudsman councils. The Department of Children and Family
3214 Services shall disseminate the list to service providers under

3215 contract to the department who are responsible for referring
3216 persons to a facility for residency. The agency may charge a fee
3217 commensurate with the cost of printing and postage to other
3218 interested parties requesting a copy of this list.
3219 Section 42. Section 400.960, Florida Statutes, is amended
3220 to read:
3221 400.960 Definitions.--As used in this part, the term:
3222 (1) "Active treatment" means the provision of services by
3223 an interdisciplinary team which are necessary to maximize a
3224 client's individual independence or prevent regression or loss
3225 of functional status.
3226 (2) "Agency" means the Agency for Health Care
3227 Administration.
3228 (3) "Autism" has the same meaning as in s. 393.063. ~~means~~
3229 ~~a pervasive, neurologically based developmental disability of~~
3230 ~~extended duration which causes severe learning, communication,~~
3231 ~~and behavior disorders with age of onset during infancy or~~
3232 ~~childhood. Individuals with autism exhibit impairment in~~
3233 ~~reciprocal social interaction, impairment in verbal and~~
3234 ~~nonverbal communication and imaginative ability, and a markedly~~
3235 ~~restricted repertoire of activities and interests.~~
3236 (4) "Cerebral palsy" has the same meaning as in s.
3237 393.063. ~~means a group of disabling symptoms of extended~~
3238 ~~duration which results from damage to the developing brain~~
3239 ~~occurring before, during, or after birth and resulting in the~~
3240 ~~loss or impairment of control over voluntary muscles. The term~~
3241 ~~does not include those symptoms or impairments resulting solely~~
3242 ~~from a stroke.~~

3243 (5) "Client" means any person determined by the Agency for
3244 Persons with Disabilities ~~department~~ to be eligible for
3245 developmental services.
3246 ~~(6) "Client advocate" means a friend or relative of the~~
3247 ~~client, or of the client's immediate family, who advocates for~~
3248 ~~the best interests of the client in any proceedings under this~~
3249 ~~part in which the client or his or her family has the right or~~
3250 ~~duty to participate.~~
3251 ~~(7) "Department" means the Department of Children and~~
3252 ~~Family Services.~~
3253 (6) ~~(8)~~ "Developmental disability" has the same meaning as
3254 in s. 393.063 ~~means a disorder or syndrome that is attributable~~
3255 ~~to retardation, cerebral palsy, autism, spina bifida, or Prader-~~
3256 ~~Willi syndrome and that constitutes a substantial handicap that~~
3257 ~~can reasonably be expected to continue indefinitely~~.
3258 (7) ~~(9)~~ "Direct service provider" means a person 18 years
3259 of age or older who has direct contact with individuals with
3260 developmental disabilities and who is unrelated to the
3261 individuals with developmental disabilities.
3262 ~~(10) "Epilepsy" means a chronic brain disorder of various~~
3263 ~~causes which is characterized by recurrent seizures due to~~
3264 ~~excessive discharge of cerebral neurons. When found concurrently~~
3265 ~~with retardation, autism, or cerebral palsy, epilepsy is~~
3266 ~~considered a secondary disability for which the client is~~
3267 ~~eligible to receive services to ameliorate this condition~~
3268 ~~according to the provisions of this part.~~
3269 ~~(11) "Guardian advocate" means a person appointed by the~~
3270 ~~circuit court to represent a person with developmental~~

3271 ~~disabilities in any proceedings brought pursuant to s. 393.12,~~
3272 ~~and is distinct from a guardian advocate for mentally ill~~
3273 ~~persons under chapter 394.~~
3274 (8) ~~(12)~~ "Intermediate care facility for the
3275 developmentally disabled" means a residential facility licensed
3276 and certified in accordance with state law, and certified by the
3277 Federal Government, pursuant to the Social Security Act, as a
3278 provider of Medicaid services to persons with developmental
3279 disabilities ~~who are developmentally disabled~~.
3280 (9) ~~(13)~~ "Prader-Willi syndrome" has the same meaning as in
3281 s. 393.063. ~~means an inherited condition typified by neonatal~~
3282 ~~hypotonia with failure to thrive, hyperphagia, or an excessive~~
3283 ~~drive to eat which leads to obesity, usually at 18 to 36 months~~
3284 ~~of age, mild to moderate retardation, hypogonadism, short~~
3285 ~~stature, mild facial dysmorphism, and a characteristic~~
3286 ~~neurobehavior.~~
3287 (10)(a) "Restraint" means a physical device, method, or
3288 drug used to control behavior. A physical restraint is any
3289 manual method or physical or mechanical device, material, or
3290 equipment attached or adjacent to the individual's body so that
3291 he or she cannot easily remove the restraint and which restricts
3292 freedom of movement or normal access to one's body.
3293 (b) A drug used as a restraint is a medication used to
3294 control the person's behavior or to restrict his or her freedom
3295 of movement. Physically holding a person during a procedure to
3296 forcibly administer psychotropic medication is a physical
3297 restraint.

3298 (c) Restraint does not include physical devices, such as
3299 orthopedically prescribed appliances, surgical dressings and
3300 bandages, supportive body bands, or other physical holding when
3301 necessary for routine physical examinations and tests; for
3302 purposes of orthopedic, surgical, or other similar medical
3303 treatment; when used to provide support for the achievement of
3304 functional body position or proper balance; or when used to
3305 protect a person from falling out of bed.
3306 (11) ~~(14)~~ "Retardation" has the same meaning as in s.
3307 393.063. ~~means significantly subaverage general intellectual~~
3308 ~~functioning existing concurrently with deficits in adaptive~~
3309 ~~behavior and manifested during the period from conception to age~~
3310 ~~18. "Significantly subaverage general intellectual functioning,"~~
3311 ~~for the purpose of this definition, means performance that is~~
3312 ~~two or more standard deviations from the mean score on a~~
3313 ~~standardized intelligence test specified in rules of the~~
3314 ~~department. "Deficits in adaptive behavior," for the purpose of~~
3315 ~~this definition, means deficits in the effectiveness or degree~~
3316 ~~with which an individual meets the standards of personal~~
3317 ~~independence and social responsibility expected of his or her~~
3318 ~~age, cultural group, and community.~~
3319 (12) "Seclusion" means the physical segregation of a
3320 person in any fashion or the involuntary isolation of a person
3321 in a room or area from which the person is prevented from
3322 leaving. The prevention may be by physical barrier or by a staff
3323 member who is acting in a manner, or who is physically situated,
3324 so as to prevent the person from leaving the room or area. For

3325 purposes of this part, the term does not mean isolation due to a
3326 person's medical condition or symptoms.
3327 (13) ~~(15)~~ "Spina bifida" has the same meaning as in s.
3328 393.063 ~~means a medical diagnosis of spina bifida cystica or~~
3329 ~~myelomeningocele~~.
3330 Section 43. Subsection (12) is added to section 400.962,
3331 Florida Statutes, to read:
3332 400.962 License required; license application.--
3333 (12) The applicant must agree to provide or arrange for
3334 active treatment services by an interdisciplinary team to
3335 maximize individual independence or prevent regression or loss
3336 of functional status. Standards for active treatment shall be
3337 adopted by the Agency for Health Care Administration by rule
3338 pursuant to ss. 120.536(1) and 120.54. Active treatment services
3339 shall be provided in accordance with the individual support plan
3340 and shall be reimbursed as part of the per diem rate as paid
3341 under the Medicaid program.
3342 Section 44. Subsection (2) of section 400.967, Florida
3343 Statutes, is amended to read:
3344 400.967 Rules and classification of deficiencies.--
3345 (2) Pursuant to the intention of the Legislature, the
3346 agency, in consultation with the Agency for Persons with
3347 Disabilities ~~Department of Children and Family Services~~ and the
3348 Department of Elderly Affairs, shall adopt and enforce rules to
3349 administer this part, which shall include reasonable and fair
3350 criteria governing:
3351 (a) The location and construction of the facility;
3352 including fire and life safety, plumbing, heating, cooling,

3353 lighting, ventilation, and other housing conditions that will
3354 ensure the health, safety, and comfort of residents. The agency
3355 shall establish standards for facilities and equipment to
3356 increase the extent to which new facilities and a new wing or
3357 floor added to an existing facility after July 1, 2000, are
3358 structurally capable of serving as shelters only for residents,
3359 staff, and families of residents and staff, and equipped to be
3360 self-supporting during and immediately following disasters. The
3361 Agency for Health Care Administration shall work with facilities
3362 licensed under this part and report to the Governor and the
3363 Legislature by April 1, 2000, its recommendations for cost-
3364 effective renovation standards to be applied to existing
3365 facilities. In making such rules, the agency shall be guided by
3366 criteria recommended by nationally recognized, reputable
3367 professional groups and associations having knowledge concerning
3368 such subject matters. The agency shall update or revise such
3369 criteria as the need arises. All facilities must comply with
3370 those lifesafety code requirements and building code standards
3371 applicable at the time of approval of their construction plans.
3372 The agency may require alterations to a building if it
3373 determines that an existing condition constitutes a distinct
3374 hazard to life, health, or safety. The agency shall adopt fair
3375 and reasonable rules setting forth conditions under which
3376 existing facilities undergoing additions, alterations,
3377 conversions, renovations, or repairs are required to comply with
3378 the most recent updated or revised standards.
3379 (b) The number and qualifications of all personnel,
3380 including management, medical nursing, and other personnel,

3381 having responsibility for any part of the care given to
3382 residents.
3383 (c) All sanitary conditions within the facility and its
3384 surroundings, including water supply, sewage disposal, food
3385 handling, and general hygiene, which will ensure the health and
3386 comfort of residents.
3387 (d) The equipment essential to the health and welfare of
3388 the residents.
3389 (e) A uniform accounting system.
3390 (f) The care, treatment, and maintenance of residents and
3391 measurement of the quality and adequacy thereof.
3392 (g) The preparation and annual update of a comprehensive
3393 emergency management plan. The agency shall adopt rules
3394 establishing minimum criteria for the plan after consultation
3395 with the Department of Community Affairs. At a minimum, the
3396 rules must provide for plan components that address emergency
3397 evacuation transportation; adequate sheltering arrangements;
3398 postdisaster activities, including emergency power, food, and
3399 water; postdisaster transportation; supplies; staffing;
3400 emergency equipment; individual identification of residents and
3401 transfer of records; and responding to family inquiries. The
3402 comprehensive emergency management plan is subject to review and
3403 approval by the local emergency management agency. During its
3404 review, the local emergency management agency shall ensure that
3405 the following agencies, at a minimum, are given the opportunity
3406 to review the plan: the Department of Elderly Affairs, the
3407 Agency for Persons with Disabilities ~~Department of Children and~~
3408 ~~Family Services~~, the Agency for Health Care Administration, and

3409 the Department of Community Affairs. Also, appropriate volunteer
3410 organizations must be given the opportunity to review the plan.
3411 The local emergency management agency shall complete its review
3412 within 60 days and either approve the plan or advise the
3413 facility of necessary revisions.
3414 (h) The posting of licenses. Each licensee shall post its
3415 license in a prominent place that is in clear and unobstructed
3416 public view at or near the place where residents are being
3417 admitted to the facility.
3418 (i) The use of restraint and seclusion. Such rules must be
3419 consistent with recognized best practices; prohibit inherently
3420 dangerous restraint or seclusion procedures; establish
3421 limitations on the use and duration of restraint and seclusion;
3422 establish measures to ensure the safety of clients and staff
3423 during an incident of restraint or seclusion; establish
3424 procedures for staff to follow before, during, and after
3425 incidents of restraint or seclusion, including individualized
3426 plans for the use of restraints or seclusion in emergency
3427 situations; establish professional qualifications of and
3428 training for staff who may order or be engaged in the use of
3429 restraint or seclusion; establish requirements for facility data
3430 collection and reporting relating to the use of restraint and
3431 seclusion; and establish procedures relating to the
3432 documentation of the use of restraint or seclusion in the
3433 client's facility or program record.
3434 Section 45. Section 402.115, Florida Statutes, is amended
3435 to read:

3436 402.115 Sharing confidential or exempt
3437 information.--Notwithstanding any other provision of law to the
3438 contrary, the Department of Health, ~~and~~ the Department of
3439 Children and Family Services, and the Agency for Persons with
3440 Disabilities may share confidential information or information
3441 exempt from disclosure under chapter 119 on any individual who
3442 is or has been the subject of a program within the jurisdiction
3443 of each agency. Information so exchanged remains confidential or
3444 exempt as provided by law.
3445 Section 46. Section 402.17, Florida Statutes, is amended
3446 to read:
3447 402.17 Claims for care and maintenance; trust
3448 property.--The Department of Children and Family Services and
3449 the Agency for Persons with Disabilities shall protect the
3450 financial interest of the state with respect to claims that
3451 ~~which~~ the state may have for the care and maintenance of clients
3452 of the department or agency. The department or agency shall, as
3453 trustee, hold in trust and administer money ~~of clients~~ and
3454 property designated for the personal benefit of clients. The
3455 department or agency shall act as trustee of clients' money and
3456 property entrusted to it in accordance with the usual fiduciary
3457 standards applicable generally to trustees, and shall act to
3458 protect both the short-term and long-term interests of the
3459 clients for whose benefit it is holding such money and property.
3460 (1) CLAIMS FOR CARE AND MAINTENANCE.--
3461 (a) The department or agency shall perform the following
3462 acts:

3463 1. Receive and supervise the collection of sums due the
3464 state.
3465 2. Bring any court action necessary to collect any claim
3466 the state may have against any client, former client, guardian
3467 of any client or former client, executor or administrator of the
3468 client's estate, or any person against whom any client or former
3469 client may have a claim.
3470 3. Obtain a copy of any inventory or appraisal of the
3471 client's property filed with any court.
3472 4. Obtain from the department's Economic Self-Sufficiency
3473 Services Program Office a financial status report on any client
3474 or former client, including the ability of third parties
3475 responsible for such client to pay all or part of the cost of
3476 the client's care and maintenance.
3477 5. Petition the court for appointment of a guardian or
3478 administrator for an otherwise unrepresented client or former
3479 client should the financial status report or other information
3480 indicate the need for such action. The cost of any such action
3481 shall be charged against the assets or estate of the client.
3482 6. Represent the interest of the state in any litigation
3483 in which a client or former client is a party.
3484 7. File claims with any person, firm, or corporation or
3485 with any federal, state, county, district, or municipal agency
3486 on behalf of an unrepresented client.
3487 8. Represent the state in the settlement of the estates of
3488 deceased clients or in the settlement of estates in which a
3489 client or a former client against whom the state may have a
3490 claim has a financial interest.

3491 9. Establish procedures by rule for the use of amounts
3492 held in trust for the client to pay for the cost of care and
3493 maintenance, if such amounts would otherwise cause the client to
3494 become ineligible for services which are in the client's best
3495 interests.
3496 (b) The department or agency ~~of Children and Family~~
3497 ~~Services~~ may charge off accounts if it certifies that the
3498 accounts are uncollectible after diligent efforts have been made
3499 to collect them. If the department certifies an account to the
3500 Department of Financial Services, setting forth the
3501 circumstances upon which it predicates the uncollectibility, and
3502 if, pursuant to s. 17.04, the Department of Financial Services
3503 concurs, the account shall be charged off.
3504 (2) MONEY OR OTHER PROPERTY RECEIVED FOR PERSONAL USE OR
3505 BENEFIT OF ANY CLIENT.--The department or agency shall perform
3506 the following acts:
3507 (a) Accept and administer in trust, as a trustee having a
3508 fiduciary responsibility to a client ~~of the department~~, any
3509 money or other property received for personal use or benefit of
3510 that client. In the case of children in the legal custody of the
3511 department, following the termination of the parental rights ~~as~~
3512 ~~to that client~~, until the child ~~such client~~ leaves the legal
3513 custody of the department due to ~~the client's~~ adoption or
3514 attaining ~~because the client attains~~ the age of 18 or, in the
3515 case of children who are otherwise in the custody of the
3516 department, the court having jurisdiction over such child ~~client~~
3517 shall have jurisdiction, upon application of the department or
3518 other interested party, to review or approve any extraordinary

3519 action of the department acting as trustee as to the child's
3520 ~~client's~~ money or other property. When directed by a court of
3521 competent jurisdiction, the department may further hold money or
3522 property of a child ~~person under the age of 18~~ who has been in
3523 the care, custody, or control of the department and who is the
3524 subject of a court proceeding during the pendency of that
3525 proceeding.
3526 (b) Deposit the money in banks qualified as state
3527 depositories, or in any bank, credit union, or savings and loan
3528 association authorized to do business in this state, provided
3529 moneys so deposited or held by such institutions are fully
3530 insured by a federal depository or share insurance program, or
3531 an approved state depository or share insurance program, and are
3532 available on demand.
3533 (c) Withdraw the money and use it to meet current needs of
3534 clients. For purposes of this paragraph, "current needs"
3535 includes payment of fees assessed under s. 402.33. The amount of
3536 money withdrawn ~~by the department to meet current needs of a~~
3537 ~~client~~ shall take into account the need of the department or
3538 agency, as the trustee of a client's money and property, to
3539 provide for the long-term needs of a client, including, but not
3540 limited to, ensuring that ~~to provide for the need of~~ a client
3541 under the age of 18 will ~~to~~ have sufficient financial resources
3542 available to be able to function as an adult upon reaching the
3543 age of 18, meeting ~~or to meet~~ the special needs of a client who
3544 has a disability and whose special needs cannot otherwise be met
3545 by any form of public assistance or family resources, or
3546 maintaining ~~to maintain~~ the client's eligibility for public

3547 assistance, including medical assistance, under state or federal
3548 law.
3549 (d) As trustee, invest in the manner authorized by law for
3550 fiduciaries money not used for current needs of clients. Such
3551 investments may include, but shall not be limited to,
3552 investments in savings share accounts of any credit union
3553 chartered under the laws of the United States and doing business
3554 in this state, and savings share accounts of any credit union
3555 chartered under the laws of this state, provided the credit
3556 union is insured under the federal share insurance program or an
3557 approved state share insurance program.
3558 (3) DEPOSIT OF FUNDS RECEIVED.--Funds received by the
3559 Department of Children and Family Services in accordance with s.
3560 402.33 shall be deposited into a trust fund for the operation of
3561 the department.
3562 (4) DISPOSITION OF UNCLAIMED TRUST FUNDS.--Upon the death
3563 of any client affected by the provisions of this section, any
3564 unclaimed money held in trust by the department, the agency, or
3565 by the Chief Financial Officer for the child ~~him or her~~ shall be
3566 applied first to the payment of any unpaid claim of the state
3567 against the client, and any balance remaining unclaimed for a
3568 period of 1 year shall escheat to the state as unclaimed funds
3569 held by fiduciaries.
3570 (5) LEGAL REPRESENTATION.--To the extent that the budget
3571 will permit, the Department of Legal Affairs shall furnish the
3572 legal services to carry out the provisions of this section. Upon
3573 the request of the department or agency ~~of Children and Family~~
3574 ~~Services~~, the various state and county attorneys shall assist in

3575 litigation within their jurisdiction. The ~~Such~~ department or
3576 agency may retain legal counsel for necessary legal services
3577 which cannot be furnished by the Department of Legal Affairs and
3578 the various state and county attorneys.
3579 (6) DEPOSIT OR INVESTMENT OF FUNDS OF CLIENTS.--
3580 (a) The department or agency ~~of Children and Family~~
3581 ~~Services~~ may deposit any funds of clients in its possession in
3582 any bank in the state or may invest or reinvest such funds in
3583 bonds or obligations of the United States for the payment of
3584 which the full faith and credit of the United States is pledged.
3585 For purposes of deposit only, the funds of any client may be
3586 mingled with the funds of any other clients.
3587 (b) The interest or increment accruing on such funds shall
3588 be the property of the clients and shall be used or conserved
3589 for the personal use or benefit of the ~~individual~~ client, in
3590 accordance with the department's or agency's fiduciary
3591 responsibility as a trustee for the money and property of the
3592 client ~~held by the department~~. Such interest shall not accrue to
3593 the general welfare of all clients. Whenever any proposed action
3594 of the department or agency, acting in its own interest, may
3595 conflict with the department's or agency's ~~obligation as a~~
3596 ~~trustee with a~~ fiduciary responsibility to the client, the
3597 department or agency shall promptly present the matter to a
3598 court of competent jurisdiction for the court's determination as
3599 to what action the department or agency may take. The department
3600 or agency shall establish ~~rules governing~~ reasonable fees by
3601 rule for the cost of administering such accounts and for
3602 establishing the minimum balance eligible to earn interest.

3603 (7) DISPOSITION OF MONEY AND PROPERTY OF CLIENTS UPON
3604 ATTAINING AGE 18 OR DISCHARGE FROM CARE, CUSTODY, CONTROL, OR
3605 SERVICES OF THE DEPARTMENT.--
3606 (a) Whenever a client of the department for whom the
3607 department is holding money or property as a trustee attains the
3608 age of 18, and thereby will no longer be in the legal custody of
3609 the department, the department shall promptly disburse such
3610 money and property ~~of the client the department has held as a~~
3611 ~~trustee~~ to that client, or as that client directs, as soon as
3612 practicable ~~once the client attains the age of 18~~.
3613 (b) Whenever a client of the department over the age of 18
3614 for whom the department is holding money or property as a
3615 trustee no longer requires the care, custody, control, or
3616 services of the department, the department shall promptly
3617 disburse such money and property ~~of the client the department~~
3618 ~~has held as a trustee~~ to that client, or as that client or a
3619 court directs, as soon as practicable.
3620 (c) When a client under the age of 18 who has been in the
3621 legal custody, care, or control of the department and for whom
3622 the department is holding money or property as a trustee attains
3623 the age of 18 and has a physical or mental disability, or is
3624 otherwise incapacitated or incompetent to handle that client's
3625 own financial affairs, the department shall apply for a court
3626 order from a court of competent jurisdiction to establish a
3627 trust on behalf of that client. Where there is no willing
3628 relative of the client acceptable to the court available to
3629 serve as trustee of such proposed trust, the court may enter an
3630 order authorizing the department to serve as trustee of a

3631 separate trust under such terms and conditions as the court
3632 determines appropriate to the circumstances.
3633 (d) When a client under the age of 18 who has been in the
3634 legal custody, care, or control of the department and for whom
3635 the department is holding money or property as a trustee leaves
3636 the care, custody, and control of the department due to adoption
3637 or placement of the client with a relative, or as otherwise
3638 directed by a court of competent jurisdiction, the department
3639 shall notify that court of the existence of the money and
3640 property ~~in the possession of the department~~ either prior to, or
3641 promptly after, receiving knowledge of the change of custody,
3642 care, or control. The department shall apply for an order from
3643 the court exercising jurisdiction over the client to direct the
3644 disposition of the money and property belonging to that client.
3645 The court order may establish a trust in which the money and
3646 property of the client will be deposited, appoint a guardian of
3647 a property as to the money or property of the client, or direct
3648 the creation of a Uniform Transfers ~~Gifts~~ to Minors Act account
3649 on behalf of that client, ~~as the court finds appropriate and~~
3650 under the terms and conditions the court determines appropriate
3651 to the circumstances.
3652 Section 47. Section 402.181, Florida Statutes, is amended
3653 to read:
3654 402.181 State Institutions Claims Program.--
3655 (1) There is created a State Institutions Claims Program,
3656 for the purpose of making restitution for property damages and
3657 direct medical expenses for injuries caused by shelter children
3658 or foster children, or escapees, inmates, or patients of state

3659 institutions under the Department of Children and Family
3660 Services, the Department of Health, the Department of Juvenile
3661 Justice, ~~or~~ the Department of Corrections, or the Agency for
3662 Persons with Disabilities.
3663 (2) Claims for restitution may be filed with the
3664 Department of Legal Affairs at its office in accordance with
3665 regulations prescribed by the Department of Legal Affairs. The
3666 Department of Legal Affairs shall have full power and authority
3667 to hear, investigate, and determine all questions in respect to
3668 such claims and is authorized, within the limits of current
3669 appropriations, to pay individual claims up to $1,000 or, with
3670 respect to children in foster care and their families,
3671 individual claims up to $1,500. Claims in excess of these
3672 amounts shall continue to require legislative approval.
3673 (3)(a) The Department of Legal Affairs shall make or cause
3674 to be made such investigations as it considers necessary in
3675 respect to such claims. Hearings shall be held in accordance
3676 with chapter 120.
3677 (b) The Department of Legal Affairs shall work with the
3678 Department of Children and Family Services, the Department of
3679 Health, the Department of Juvenile Justice, ~~and~~ the Department
3680 of Corrections, and the Agency for Persons with Disabilities to
3681 streamline the process of investigations, hearings, and
3682 determinations with respect to claims under this section, to
3683 ensure that eligible claimants receive restitution within a
3684 reasonable time.
3685 Section 48. Section 402.20, Florida Statutes, is amended
3686 to read:

3687 402.20 County contracts authorized for services and
3688 facilities for ~~in~~ mental health and developmental disabilities
3689 ~~retardation areas~~.--The boards of county commissioners are
3690 authorized to provide monetary grants and facilities, and to
3691 enter into renewable contracts, for services and facilities, for
3692 a period not to exceed 2 years, with public and private
3693 hospitals, clinics, and laboratories; other state agencies,
3694 departments, or divisions; the state colleges and universities;
3695 the community colleges; private colleges and universities;
3696 counties; municipalities; towns; townships; and any other
3697 governmental unit or nonprofit organization which provides
3698 needed facilities for persons with mental illness or
3699 developmental disabilities ~~the mentally ill or retarded~~. These
3700 services are hereby declared to be for a public and county
3701 purpose. The county commissioners may make periodic inspections
3702 to assure that the services or facilities provided under this
3703 chapter meet the standards of the Department of Children and
3704 Family Services and the Agency for Persons with Disabilities.
3705 Section 49. Section 402.22, Florida Statutes, is amended
3706 to read:
3707 402.22 Education program for students who reside in
3708 residential care facilities operated by the Department of
3709 Children and Family Services or the Agency for Persons with
3710 Disabilities.--
3711 (1)(a) The Legislature recognizes that the Department of
3712 Children and Family Services and the Agency for Persons with
3713 Disabilities have under their ~~has under its~~ residential care
3714 students with critical problems of physical impairment,

3715 emotional disturbance, mental impairment, and learning
3716 impairment.
3717 (b) The Legislature recognizes the vital role of education
3718 in the rehabilitation of such students. It is the intent of the
3719 Legislature that all such students benefit from educational
3720 services and receive such services.
3721 (c) It is the intent of the Legislature that educational
3722 services be coordinated with appropriate and existing diagnostic
3723 and evaluative, social, followup, and other therapeutic services
3724 of the department and agency ~~of Children and Family Services~~ so
3725 that the effect of the total rehabilitation process is
3726 maximized.
3727 (d) It is the intent of the Legislature that, as
3728 educational programs for students in residential care facilities
3729 are implemented by the district school board, educational
3730 personnel in the ~~Department of Children and Family Services~~
3731 residential care facilities who meet the qualifications for
3732 employees of the district school board be employed by the
3733 district school board.
3734 (2) District school boards shall establish educational
3735 programs for all students ages 5 through 18 under the
3736 residential care of the Department of Children and Family
3737 Services and the Agency for Persons with Disabilities, and may
3738 provide for students below age 3 as provided for in s.
3739 1003.21(1)(e). Funding of such programs shall be pursuant to s.
3740 1011.62.
3741 (3) Notwithstanding any provisions of chapters 39, 393,
3742 394, and 397 to the contrary, the services of the Department of

3743 Children and Family Services and the Agency for Persons with
3744 Disabilities and those of the Department of Education and
3745 district school boards shall be mutually supportive and
3746 complementary of each other. The education programs provided by
3747 the district school board shall meet the standards prescribed by
3748 the State Board of Education and the district school board.
3749 Decisions regarding the design and delivery of department or
3750 agency ~~of Children and Family Services~~ treatment or habilitative
3751 services shall be made by interdisciplinary teams of
3752 professional and paraprofessional staff of which appropriate
3753 district school system administrative and instructional
3754 personnel shall be invited to be participating members. The
3755 requirements for maintenance of confidentiality as prescribed in
3756 chapters 39, 393, 394, and 397 shall be applied to information
3757 used by such interdisciplinary teams, and such information shall
3758 be exempt from the provisions of ss. 119.07(1) and 286.011.
3759 (4) Students age 18 and under who are under the
3760 residential care of the Department of Children and Family
3761 Services or the Agency for Persons with Disabilities and who
3762 receive an education program shall be calculated as full-time
3763 equivalent student membership in the appropriate cost factor as
3764 provided for in s. 1011.62(1)(c). Residential care facilities ~~of~~
3765 ~~the Department of Children and Family Services~~ shall include,
3766 but not be limited to, developmental disabilities ~~services~~
3767 institutions and state mental health facilities. All students
3768 shall receive their education program from the district school
3769 system, and funding shall be allocated through the Florida
3770 Education Finance Program for the district school system.

3771 (5) Instructional and special educational services that
3772 ~~which~~ are provided to ~~mental health and retardation~~ clients with
3773 mental illness or developmental disabilities of the department's
3774 or agency's ~~in the Department of Children and Family Services~~
3775 residential care facilities by local school districts shall not
3776 be less than 180 days or 900 hours; however, the 900 hours may
3777 be distributed over a 12-month period, unless otherwise stated
3778 in rules developed by the State Board of Education, with the
3779 concurrence of the department or agency and adopted ~~of Children~~
3780 ~~and Family Services promulgated~~ pursuant to subsection (6).
3781 (6) The State Board of Education, ~~and~~ the Department of
3782 Children and Family Services, and the Agency for Persons with
3783 Disabilities may adopt ~~shall have the authority to promulgate~~
3784 rules to ~~which shall~~ assist in the orderly transfer of the
3785 instruction of students from department or agency ~~Department of~~
3786 ~~Children and Family Services~~ residential care facilities to the
3787 district school system or to the public education agency and
3788 which shall assist in implementing the specific intent as stated
3789 in this act.
3790 (7) Notwithstanding the provisions of s. 1001.42(4)(n),
3791 the educational program at the Marianna Sunland Center in
3792 Jackson County shall be operated by the Department of Education,
3793 either directly or through grants or contractual agreements with
3794 other public educational agencies. The annual state allocation
3795 to any such agency shall be computed pursuant to s. 1011.62(1),
3796 (2), and (5) and allocated in the amount that would have been
3797 provided the local school district in which the residential
3798 facility is located.

3799 Section 50. Paragraph (c) of subsection (1) and subsection
3800 (2) of section 402.33, Florida Statutes, are amended to read:
3801 402.33 Department authority to charge fees for services
3802 provided.--
3803 (1) As used in this section, the term:
3804 (c) "Department" means the Department of Children and
3805 Family Services, ~~and~~ the Department of Health, and the Agency
3806 for Persons with Disabilities.
3807 (2) The department, in accordance with rules established
3808 by it, shall either charge, assess, or collect, or cause to be
3809 charged, assessed, or collected, fees for any service it
3810 provides to its clients either directly or through its agencies
3811 or contractors, except for:
3812 (a) Diagnosis and evaluation procedures necessary to
3813 determine the client's eligibility and need for services
3814 provided by the department;
3815 (b) Customary and routine information and referral
3816 services;
3817 (c) Educational services provided in lieu of public
3818 education;
3819 (d) Specific services exempted by law from fee assessment;
3820 (e) Emergency shelter or emergency detention care and
3821 custody prior to a detention hearing under chapter 39;
3822 (f) Specific classes or types of services provided in
3823 programs funded by grants, donations, or contracts that prohibit
3824 charging fees;
3825 (g) Developmental disability services provided under
3826 chapter 393 to any person who is determined to be eligible for

3827 such services ~~by the department~~ and whose earned income falls
3828 below the federal Health and Human Services Poverty Guidelines,
3829 unless such fees are collected from third-party benefits and
3830 benefit payments; or
3831 (h) Any type of service for which the department
3832 determines that the net estimated revenue from such fees after
3833 deducting any loss of funds from federal grants occasioned by
3834 such fees will be less than the estimated cost to charge and
3835 collect such fees.
3836
3837 Fees, other than third-party benefits and benefit payments, may
3838 not be charged for services provided to indigents whose only
3839 sources of income are from state and federal aid. In addition,
3840 fees may not be charged parents of a minor client for services
3841 requested by the minor without parental consent or for services
3842 provided a minor client who has been permanently committed to
3843 the care and custody of the department with parental rights
3844 permanently severed. However, lack of parental consent does not
3845 preclude the charging of fees established under chapter 39. ~~The~~
3846 ~~department may not require~~ A client who is receiving wages <u>that</u>
3847 ~~which~~ are below the minimum wage under the federal Fair Labor
3848 Standards Act <u>may not be required</u> to pay fees from such wages.
3849 Voluntary payments for services must be encouraged.
3850 Section 51. Paragraphs (r) and (s) of subsection (3) of
3851 section 408.036, Florida Statutes, are amended to read:
3852 408.036 Projects subject to review; exemptions.--
3853 (3) EXEMPTIONS.--Upon request, the following projects are
3854 subject to exemption from the provisions of subsection (1):

3855 (r) For beds in state mental health treatment facilities
3856 operated under s. 394.455(32) ~~(30)~~ and state mental health
3857 forensic facilities operated under s. 916.106(8).
3858 (s) For beds in state developmental disabilities ~~services~~
3859 institutions as defined in s. 393.063.
3860 Section 52. Paragraphs (a), (j), and (k) of subsection (4)
3861 of section 409.221, Florida Statutes, are amended to read:
3862 409.221 Consumer-directed care program.--
3863 (4) CONSUMER-DIRECTED CARE.--
3864 (a) Program established.--The Agency for Health Care
3865 Administration shall establish the consumer-directed care
3866 program which shall be based on the principles of consumer
3867 choice and control. The agency shall implement the program upon
3868 federal approval. The agency shall establish interagency
3869 cooperative agreements with and shall work with the Departments
3870 of Elderly Affairs, Health, and Children and Family Services and
3871 the Agency for Persons with Disabilities to implement and
3872 administer the program. The program shall allow enrolled persons
3873 to choose the providers of services and to direct the delivery
3874 of services, to best meet their long-term care needs. The
3875 program must operate within the funds appropriated by the
3876 Legislature.
3877 (j) Rules; federal waivers.--In order to implement this
3878 section:
3879 1. The agency and the Departments of Elderly Affairs,
3880 Health, and Children and Family Services and the Agency for
3881 Persons with Disabilities are authorized to adopt and enforce
3882 rules.

3883 2. The agency shall take all necessary action to ensure
3884 state compliance with federal regulations. The agency shall
3885 apply for any necessary federal waivers or waiver amendments
3886 needed to implement the program.
3887 (k) Reviews and reports.--The agency and the Departments
3888 of Elderly Affairs, Health, and Children and Family Services and
3889 the Agency for Persons with Disabilities shall each, on an
3890 ongoing basis, review and assess the implementation of the
3891 consumer-directed care program. By January 15 of each year, the
3892 agency shall submit a written report to the Legislature that
3893 includes each department's review of the program and contains
3894 recommendations for improvements to the program.
3895 Section 53. Paragraph (a) of subsection (2) and subsection
3896 (8) of section 409.908, Florida Statutes, are amended to read:
3897 409.908 Reimbursement of Medicaid providers.--Subject to
3898 specific appropriations, the agency shall reimburse Medicaid
3899 providers, in accordance with state and federal law, according
3900 to methodologies set forth in the rules of the agency and in
3901 policy manuals and handbooks incorporated by reference therein.
3902 These methodologies may include fee schedules, reimbursement
3903 methods based on cost reporting, negotiated fees, competitive
3904 bidding pursuant to s. 287.057, and other mechanisms the agency
3905 considers efficient and effective for purchasing services or
3906 goods on behalf of recipients. If a provider is reimbursed based
3907 on cost reporting and submits a cost report late and that cost
3908 report would have been used to set a lower reimbursement rate
3909 for a rate semester, then the provider's rate for that semester
3910 shall be retroactively calculated using the new cost report, and

3911 full payment at the recalculated rate shall be effected
3912 retroactively. Medicare-granted extensions for filing cost
3913 reports, if applicable, shall also apply to Medicaid cost
3914 reports. Payment for Medicaid compensable services made on
3915 behalf of Medicaid eligible persons is subject to the
3916 availability of moneys and any limitations or directions
3917 provided for in the General Appropriations Act or chapter 216.
3918 Further, nothing in this section shall be construed to prevent
3919 or limit the agency from adjusting fees, reimbursement rates,
3920 lengths of stay, number of visits, or number of services, or
3921 making any other adjustments necessary to comply with the
3922 availability of moneys and any limitations or directions
3923 provided for in the General Appropriations Act, provided the
3924 adjustment is consistent with legislative intent.
3925 (2)(a)1. Reimbursement to nursing homes licensed under
3926 part II of chapter 400 and state-owned-and-operated intermediate
3927 care facilities for the developmentally disabled licensed under
3928 part XI of chapter 400 ~~chapter 393~~ must be made prospectively.
3929 2. Unless otherwise limited or directed in the General
3930 Appropriations Act, reimbursement to hospitals licensed under
3931 part I of chapter 395 for the provision of swing-bed nursing
3932 home services must be made on the basis of the average statewide
3933 nursing home payment, and reimbursement to a hospital licensed
3934 under part I of chapter 395 for the provision of skilled nursing
3935 services must be made on the basis of the average nursing home
3936 payment for those services in the county in which the hospital
3937 is located. When a hospital is located in a county that does not
3938 have any community nursing homes, reimbursement shall ~~must~~ be

3939 determined by averaging the nursing home payments~~,~~ in counties
3940 that surround the county in which the hospital is located.
3941 Reimbursement to hospitals, including Medicaid payment of
3942 Medicare copayments, for skilled nursing services shall be
3943 limited to 30 days, unless a prior authorization has been
3944 obtained from the agency. Medicaid reimbursement may be extended
3945 by the agency beyond 30 days, and approval must be based upon
3946 verification by the patient's physician that the patient
3947 requires short-term rehabilitative and recuperative services
3948 only, in which case an extension of no more than 15 days may be
3949 approved. Reimbursement to a hospital licensed under part I of
3950 chapter 395 for the temporary provision of skilled nursing
3951 services to nursing home residents who have been displaced as
3952 the result of a natural disaster or other emergency may not
3953 exceed the average county nursing home payment for those
3954 services in the county in which the hospital is located and is
3955 limited to the period of time which the agency considers
3956 necessary for continued placement of the nursing home residents
3957 in the hospital.
3958 (8) A provider of home-based or community-based services
3959 rendered pursuant to a federally approved waiver shall be
3960 reimbursed based on an established or negotiated rate for each
3961 service. These rates shall be established according to an
3962 analysis of the expenditure history and prospective budget
3963 developed by each contract provider participating in the waiver
3964 program, or under any other methodology adopted by the agency
3965 and approved by the Federal Government in accordance with the
3966 waiver. ~~Effective July 1, 1996,~~ Privately owned and operated

3967 community-based residential facilities which meet agency
3968 requirements and which formerly received Medicaid reimbursement
3969 for the optional intermediate care facility for the mentally
3970 retarded service may participate in the developmental services
3971 waiver as part of a home-and-community-based continuum of care
3972 for Medicaid recipients who receive waiver services.
3973 Section 54. Subsection (3) of section 409.9127, Florida
3974 Statutes, is amended to read:
3975 409.9127 Preauthorization and concurrent utilization
3976 review; conflict-of-interest standards.--
3977 (3) The agency shall help the Agency for Persons with
3978 Disabilities ~~Department of Children and Family Services~~ meet the
3979 requirements of s. 393.065(4). Only admissions approved pursuant
3980 to such assessments are eligible for reimbursement under this
3981 chapter.
3982 Section 55. Paragraph (c) of subsection (2) and subsection
3983 (5) of section 411.224, Florida Statutes, are amended to read:
3984 411.224 Family support planning process.--The Legislature
3985 establishes a family support planning process to be used by the
3986 Department of Children and Family Services as the service
3987 planning process for targeted individuals, children, and
3988 families under its purview.
3989 (2) To the extent possible within existing resources, the
3990 following populations must be included in the family support
3991 planning process:
3992 (c) Children from age 3 ~~birth~~ through age 5 who are served
3993 by the Agency for Persons with Disabilities ~~Developmental~~

3994 ~~Disabilities Program Office of the Department of Children and~~
3995 ~~Family Services~~.
3996 (5) There must be only a single-family support plan to
3997 address the problems of the various family members unless the
3998 family requests that an individual family support plan be
3999 developed for different members of that family. The family
4000 support plan must replace individual habilitation plans for
4001 children from 3 ~~birth~~ through 5 years old who are served by the
4002 Agency for Persons with Disabilities ~~Developmental Disabilities~~
4003 ~~Program Office of the Department of Children and Family~~
4004 ~~Services~~. ~~To the extent possible, the family support plan must~~
4005 ~~replace other case planning forms used by the Department of~~
4006 ~~Children and Family Services.~~
4007 Section 56. Subsection (4) of section 411.232, Florida
4008 Statutes, is amended to read:
4009 411.232 Children's Early Investment Program.--
4010 (4) RULES FOR IMPLEMENTATION.--The Department of Health
4011 ~~and Rehabilitative Services~~ shall adopt rules necessary to
4012 implement this section.
4013 Section 57. Subsection (8) of section 415.102, Florida
4014 Statutes, is amended to read:
4015 415.102 Definitions of terms used in ss. 415.101-
4016 415.113.--As used in ss. 415.101-415.113, the term:
4017 (8) "Facility" means any location providing day or
4018 residential care or treatment for vulnerable adults. The term
4019 "facility" may include, but is not limited to, any hospital,
4020 state institution, nursing home, assisted living facility, adult
4021 family-care home, adult day care center, residential facility

4022 licensed under chapter 393, adult day training center, ~~group~~
4023 ~~home~~, or mental health treatment center.
4024 Section 58. Section 415.1035, Florida Statutes, is amended
4025 to read:
4026 415.1035 Facility's duty to inform residents of their
4027 right to report abusive, neglectful, or exploitive
4028 practices.--The department shall work cooperatively with the
4029 Agency for Health Care Administration, the Agency for Persons
4030 with Disabilities, and the Department of Elderly Affairs to
4031 ensure that every facility that serves vulnerable adults informs
4032 residents of their right to report abusive, neglectful, or
4033 exploitive practices. Each facility must establish appropriate
4034 policies and procedures to facilitate such reporting.
4035 Section 59. Subsections (1) and (10) of section 415.1055,
4036 Florida Statutes, are amended to read:
4037 415.1055 Notification to administrative entities.--
4038 (1) Upon receipt of a report that alleges that an employee
4039 or agent of the department, the Agency for Persons with
4040 Disabilities, or the Department of Elderly Affairs, acting in an
4041 official capacity, has committed an act of abuse, neglect, or
4042 exploitation, the department shall notify the state attorney in
4043 whose circuit the abuse, neglect, or exploitation occurred. This
4044 notification may be oral or written.
4045 (10) When a report has been received and the department
4046 has reason to believe that a vulnerable adult resident of a
4047 facility licensed by the Agency for Health Care Administration
4048 or the Agency for Persons with Disabilities has been the victim
4049 of abuse, neglect, or exploitation, the department shall provide

4050 a copy of its investigation to the appropriate agency. If the
4051 investigation determines that a health professional licensed or
4052 certified under the Department of Health may have abused,
4053 neglected, or exploited a vulnerable adult, the department shall
4054 also provide a copy to the Department of Health.
4055 Section 60. Paragraphs (a) and (h) of subsection (3) of
4056 section 415.107, Florida Statutes, are amended to read:
4057 415.107 Confidentiality of reports and records.--
4058 (3) Access to all records, excluding the name of the
4059 reporter which shall be released only as provided in subsection
4060 (6), shall be granted only to the following persons, officials,
4061 and agencies:
4062 (a) Employees or agents of the department, the Agency for
4063 Persons with Disabilities, ~~of~~ the Agency for Health Care
4064 Administration, or ~~of~~ the Department of Elderly Affairs who are
4065 responsible for carrying out protective investigations, ongoing
4066 protective services, or licensure or approval of nursing homes,
4067 assisted living facilities, adult day care centers, adult
4068 family-care homes, home care for the elderly, hospices,
4069 residential facilities licensed under chapter 393, or other
4070 facilities used for the placement of vulnerable adults.
4071 (h) Any appropriate official of the department, the Agency
4072 for Persons with Disabilities, ~~of~~ the Agency for Health Care
4073 Administration, or ~~of~~ the Department of Elderly Affairs who is
4074 responsible for:
4075 1. Administration or supervision of the programs for the
4076 prevention, investigation, or treatment of abuse, neglect, or

4077 exploitation of vulnerable adults when carrying out an official
4078 function; or
4079 2. Taking appropriate administrative action concerning an
4080 employee alleged to have perpetrated abuse, neglect, or
4081 exploitation of a vulnerable adult in an institution.
4082 Section 61. Paragraph (a) of subsection (3) of section
4083 435.03, Florida Statutes, is amended to read:
4084 435.03 Level 1 screening standards.--
4085 (3) Standards must also ensure that the person:
4086 (a) For employees and employers licensed or registered
4087 pursuant to chapter 400, and for employees and employers of
4088 developmental disabilities ~~services~~ institutions as defined in
4089 s. 393.063, intermediate care facilities for the developmentally
4090 disabled as defined in s. 400.960 ~~s. 393.063~~, and mental health
4091 treatment facilities as defined in s. 394.455, meets the
4092 requirements of this chapter.
4093 Section 62. Paragraph (a) of subsection (2) of section
4094 490.014, Florida Statutes, is amended to read:
4095 490.014 Exemptions.--
4096 (2) No person shall be required to be licensed or
4097 provisionally licensed under this chapter who:
4098 (a) Is a salaried employee of a government agency;
4099 developmental disability facility or ~~services~~ program, mental
4100 health, alcohol, or drug abuse facility operating under ~~pursuant~~
4101 ~~to~~ chapter 393, chapter 394, or chapter 397; subsidized child
4102 care program, subsidized child care case management program, or
4103 child care resource and referral program operating pursuant to
4104 chapter 402; child-placing or child-caring agency licensed

4105 pursuant to chapter 409; domestic violence center certified
4106 pursuant to chapter 39; accredited academic institution; or
4107 research institution, if such employee is performing duties for
4108 which he or she was trained and hired solely within the confines
4109 of such agency, facility, or institution, so long as the
4110 employee is not held out to the public as a psychologist
4111 pursuant to s. 490.012(1)(a).
4112 Section 63. Paragraph (a) of subsection (4) of section
4113 491.014, Florida Statutes, is amended to read:
4114 491.014 Exemptions.--
4115 (4) No person shall be required to be licensed,
4116 provisionally licensed, registered, or certified under this
4117 chapter who:
4118 (a) Is a salaried employee of a government agency;
4119 developmental disability facility or ~~services~~ program, mental
4120 health, alcohol, or drug abuse facility operating under ~~pursuant~~
4121 ~~to~~ chapter 393, chapter 394, or chapter 397; subsidized child
4122 care program, subsidized child care case management program, or
4123 child care resource and referral program operating pursuant to
4124 chapter 402; child-placing or child-caring agency licensed
4125 pursuant to chapter 409; domestic violence center certified
4126 pursuant to chapter 39; accredited academic institution; or
4127 research institution, if such employee is performing duties for
4128 which he or she was trained and hired solely within the confines
4129 of such agency, facility, or institution, so long as the
4130 employee is not held out to the public as a clinical social
4131 worker, mental health counselor, or marriage and family
4132 therapist.

4133 Section 64. Section 944.602, Florida Statutes, is amended
4134 to read:
4135 944.602 Agency notification ~~of Department of Children and~~
4136 ~~Family Services~~ before release of mentally retarded
4137 inmates.--Before the release by parole, release by reason of
4138 gain-time allowances provided for in s. 944.291, or expiration
4139 of sentence of any inmate who has been diagnosed as mentally
4140 retarded as defined in s. 393.063, the Department of Corrections
4141 shall notify the Agency for Persons with Disabilities ~~Department~~
4142 ~~of Children and Family Services~~ in order that sufficient time be
4143 allowed to notify the inmate or the inmate's representative, in
4144 writing, at least 7 days prior to the inmate's release, of
4145 available community services.
4146 Section 65. Subsections (2) and (3) of section 945.025,
4147 Florida Statutes, are amended to read:
4148 945.025 Jurisdiction of department.--
4149 (2) In establishing, operating, and utilizing these
4150 facilities, the department shall attempt, whenever possible, to
4151 avoid the placement of nondangerous offenders who have potential
4152 for rehabilitation with repeat offenders or dangerous offenders.
4153 Medical, mental, and psychological problems shall be diagnosed
4154 and treated whenever possible. The Department of Children and
4155 Family Services and the Agency for Persons with Disabilities
4156 shall cooperate to ensure the delivery of services to persons
4157 under the custody or supervision of the department. When it is
4158 the intent of the department to transfer a mentally ill or
4159 retarded prisoner to the Department of Children and Family
4160 Services or the Agency for Persons with Disabilities, an

4161 involuntary commitment hearing shall be held according to the
4162 provisions of chapter 393 or chapter 394.
4163 (3) There shall be other correctional facilities,
4164 including detention facilities of varying levels of security,
4165 work-release facilities, and community correctional facilities,
4166 halfway houses, and other approved community residential and
4167 nonresidential facilities and programs; however, no adult
4168 correctional facility may be established by changing the use and
4169 purpose of any mental health facility or mental health
4170 institution under the jurisdiction of any state agency or
4171 department without authorization in the General Appropriation
4172 Act or other approval by the Legislature. ~~Any facility the~~
4173 ~~purpose and use of which was changed subsequent to January 1,~~
4174 ~~1975, shall be returned to its original use and purpose by July~~
4175 ~~1, 1977. However, the G. Pierce Wood Memorial Hospital located~~
4176 ~~at Arcadia, DeSoto County, may not be converted into a~~
4177 ~~correctional facility as long as such hospital is in use as a~~
4178 ~~state mental health hospital.~~ Any community residential facility
4179 may be deemed a part of the state correctional system for
4180 purposes of maintaining custody of offenders, and for this
4181 purpose the department may contract for and purchase the
4182 services of such facilities.
4183 Section 66. Section 947.185, Florida Statutes, is amended
4184 to read:
4185 947.185 Application for mental retardation services as
4186 condition of parole.--The Parole Commission may require as a
4187 condition of parole that any inmate who has been diagnosed as
4188 mentally retarded as defined in s. 393.063 shall, upon release,

4189 apply for ~~retardation~~ services from the Agency for Persons with
4190 Disabilities ~~Department of Children and Family Services~~.
4191 Section 67. Subsection (1) of section 985.224, Florida
4192 Statutes, is amended to read:
4193 985.224 Medical, psychiatric, psychological, substance
4194 abuse, and educational examination and treatment.--
4195 (1) After a detention petition or a petition for
4196 delinquency has been filed, the court may order the child named
4197 in the petition to be examined by a physician. The court may
4198 also order the child to be evaluated by a psychiatrist or a
4199 psychologist, by a district school board educational needs
4200 assessment team, or, if a developmental disability is suspected
4201 or alleged, by a ~~the~~ developmental disabilities diagnostic and
4202 evaluation team with ~~of~~ the Agency for Persons with Disabilities
4203 ~~Department of Children and Family Services~~. If it is necessary
4204 to place a child in a residential facility for such evaluation,
4205 the criteria and procedures established in chapter 393, chapter
4206 394, or chapter 397, whichever is applicable, shall be used.
4207 Section 68. Section 1003.58, Florida Statutes, is amended
4208 to read:
4209 1003.58 Students in residential care facilities.--Each
4210 district school board shall provide educational programs
4211 according to rules of the State Board of Education to students
4212 who reside in residential care facilities operated by the
4213 Department of Children and Family Services or the Agency for
4214 Persons with Disabilities.
4215 (1) The district school board shall not be charged any
4216 rent, maintenance, utilities, or overhead on such facilities.

4217 Maintenance, repairs, and remodeling of existing facilities
4218 shall be provided by the Department of Children and Family
4219 Services or the Agency for Persons with Disabilities, as
4220 appropriate.
4221 (2) If additional facilities are required, the district
4222 school board and the Department of Children and Family Services
4223 or the Agency for Persons with Disabilities, as appropriate,
4224 shall agree on the appropriate site based on the instructional
4225 needs of the students. When the most appropriate site for
4226 instruction is on district school board property, a special
4227 capital outlay request shall be made by the commissioner in
4228 accordance with s. 1013.60. When the most appropriate site is on
4229 state property, state capital outlay funds shall be requested by
4230 the department or agency in accordance with chapter 216 ~~of~~
4231 ~~Children and Family Services as provided by s. 216.043 and shall~~
4232 ~~be submitted as specified by s. 216.023~~. Any instructional
4233 facility to be built on state property shall have educational
4234 specifications jointly developed by the school district and the
4235 department or agency ~~of Children and Family Services~~ and
4236 approved by the Department of Education. The size of space and
4237 occupant design capacity criteria as provided by state board
4238 rules shall be used for remodeling or new construction whether
4239 facilities are provided on state property or district school
4240 board property. The planning of such additional facilities shall
4241 incorporate current state ~~Department of Children and Family~~
4242 ~~Services~~ deinstitutionalization goals and plans.
4243 (3) The district school board shall have full and complete
4244 authority in the matter of the assignment and placement of such

4245 students in educational programs. The parent of an exceptional
4246 student shall have the same due process rights as are provided
4247 under s. 1003.57(5).
4248 (4) The district school board shall have a written
4249 agreement with the Department of Children and Family Services
4250 and the Agency for Persons with Disabilities outlining the
4251 respective duties and responsibilities of each party.
4252
4253 Notwithstanding the provisions herein, the educational program
4254 at the Marianna Sunland Center in Jackson County shall be
4255 operated by the Department of Education, either directly or
4256 through grants or contractual agreements with other public or
4257 duly accredited educational agencies approved by the Department
4258 of Education.
4259 Section 69. Paragraph (c) of subsection (3) of section
4260 17.61, Florida Statutes, is amended to read:
4261 17.61 Chief Financial Officer; powers and duties in the
4262 investment of certain funds.--
4263 (3)
4264 (c) Except as provided in this paragraph and except for
4265 moneys described in paragraph (d), the following agencies shall
4266 not invest trust fund moneys as provided in this section, but
4267 shall retain such moneys in their respective trust funds for
4268 investment, with interest appropriated to the General Revenue
4269 Fund, pursuant to s. 17.57:
4270 1. The Agency for Health Care Administration, except for
4271 the Tobacco Settlement Trust Fund.
4272 2. The Agency for Persons with Disabilities, except for:

4273 a. The Federal Grants Trust Fund.
4274 b. The Tobacco Settlement Trust Fund.
4275 3.~~2.~~ The Department of Children and Family Services,
4276 except for:
4277 a. The Alcohol, Drug Abuse, and Mental Health Trust Fund.
4278 b. The Community Resources Development Trust Fund.
4279 c. The Refugee Assistance Trust Fund.
4280 d. The Social Services Block Grant Trust Fund.
4281 e. The Tobacco Settlement Trust Fund.
4282 f. The Working Capital Trust Fund.
4283 4.~~3.~~ The Department of Community Affairs, only for the
4284 Operating Trust Fund.
4285 5.~~4.~~ The Department of Corrections.
4286 6.~~5.~~ The Department of Elderly Affairs, except for:
4287 a. The Federal Grants Trust Fund.
4288 b. The Tobacco Settlement Trust Fund.
4289 7.~~6.~~ The Department of Health, except for:
4290 a. The Federal Grants Trust Fund.
4291 b. The Grants and Donations Trust Fund.
4292 c. The Maternal and Child Health Block Grant Trust Fund.
4293 d. The Tobacco Settlement Trust Fund.
4294 8.~~7.~~ The Department of Highway Safety and Motor Vehicles,
4295 only for:
4296 a. The DUI Programs Coordination Trust Fund.
4297 b. The Security Deposits Trust Fund.
4298 9.~~8.~~ The Department of Juvenile Justice.
4299 10.~~9.~~ The Department of Law Enforcement.
4300 11.~~10.~~ The Department of Legal Affairs.

4301 12.~~11.~~ The Department of State, only for:
4302 a. The Grants and Donations Trust Fund.
4303 b. The Records Management Trust Fund.
4304 13.~~12.~~ The Executive Office of the Governor, only for:
4305 a. The Economic Development Transportation Trust Fund.
4306 b. The Economic Development Trust Fund.
4307 14.~~13.~~ The Florida Public Service Commission, only for the
4308 Florida Public Service Regulatory Trust Fund.
4309 15.~~14.~~ The Justice Administrative Commission.
4310 16.~~15.~~ The state courts system.
4311 Section 70. Paragraph (b) of subsection (5) of section
4312 400.464, Florida Statutes, is amended to read:
4313 400.464 Home health agencies to be licensed; expiration of
4314 license; exemptions; unlawful acts; penalties.--
4315 (5) The following are exempt from the licensure
4316 requirements of this part:
4317 (b) Home health services provided by a state agency,
4318 either directly or through a contractor with:
4319 1. The Department of Elderly Affairs.
4320 2. The Department of Health, a community health center, or
4321 a rural health network that furnishes home visits for the
4322 purpose of providing environmental assessments, case management,
4323 health education, personal care services, family planning, or
4324 followup treatment, or for the purpose of monitoring and
4325 tracking disease.
4326 3. Services provided to persons with ~~who have~~
4327 developmental disabilities, as defined in s. 393.063.

4328 4. Companion and sitter organizations that were registered
4329 under s. 400.509(1) on January 1, 1999, and were authorized to
4330 provide personal services ~~under s. 393.063(33)~~ under a
4331 developmental services provider certificate on January 1, 1999,
4332 may continue to provide such services to past, present, and
4333 future clients of the organization who need such services,
4334 notwithstanding the provisions of this act.
4335 5. The Department of Children and Family Services.
4336 Section 71. Subsection (7) of section 744.704, Florida
4337 Statutes, is amended to read:
4338 744.704 Powers and duties.--
4339 (7) A public guardian shall not commit a ward to a mental
4340 health treatment facility, as defined in s. 394.455(32) ~~(30)~~,
4341 without an involuntary placement proceeding as provided by law.
4342 Section 72. Subsection (4) of section 984.22, Florida
4343 Statutes, is amended to read:
4344 984.22 Powers of disposition.--
4345 (4) All payments of fees made to the department under
4346 ~~pursuant to~~ this chapter, or child support payments made to the
4347 department pursuant to subsection (3), shall be deposited in the
4348 General Revenue Fund. ~~In cases in which the child is placed in~~
4349 ~~foster care with the Department of Children and Family Services,~~
4350 ~~such child support payments shall be deposited in the Community~~
4351 ~~Resources Development Trust Fund.~~
4352 Section 73. This act shall take effect July 1, 2006.

Amendment to HB 1503 CS by Rep. Llorente

Amendment #1 to HB 1503 CS proposes an unnumbered statute section relating to accessible electronic and information technology for use by individuals with disabilities, and specifically:

- supplies a legislative finding citing the importance of ensuring that individuals with disabilities have access to electronic and information technology maintained by the state;
- provides that state employees with disabilities shall have access to, and use of, information and data that is comparable to the access and use of information and data provided to state employees who are not disabled;
- provides that members of the public who are individuals with disabilities and are seeking information or services from a state agency shall have access to, and use of, information and data that is comparable to the access and use of information and data provided to members of the public who are not disabled;
- requires state agencies procuring electronic and information technology resources after July 1, 2006 to procure products that comply with certain accessibility standards adopted by the Department of Management Services (DMS), in partnership with the Florida Alliance for Assistive Services and Technology;
- requires state agencies procuring electronic and information technology to include language in its solicitations and contracts requiring vendors to provide products that comply with these accessibility standards; and
- requires DMS, in partnership with the Florida Alliance for Assistive Services and Technology, to adopt rules addressing certain accessibility standards, review procedures, training and technical assistance, and complaint procedures.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **1503**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Health & Families Council
2 Representative(s) Llorente offered the following:
3
4 **Amendment (with title amendment)**
5 Between line(s) 4351 and 4352, insert:
6 Section 73. Accessible electronic and information
7 technology.--
8 (1) The Legislature recognizes the importance of ensuring
9 that persons with disabilities have access to electronic and
10 information technology maintained by the state.
11 (2) State employees with disabilities shall have access to
12 and use of information and data that is comparable to the access
13 to and use of information and data provided to state employees
14 who are not individuals with disabilities, unless an undue
15 burden would be imposed on the agency.
16 (3) Individuals with disabilities who are members of the
17 public seeking information or services from a state agency as
18 identified and covered by this section shall have access to and
19 use of information and data that is comparable to the access to
20 and use of information and data provided to members of the

21 public who are not individuals with disabilities unless an undue
22 burden would be imposed on the state entity.
23 (4) When procuring electronic and information technology
24 resources after July 1, 2006, a state agency as defined in s.
25 216.011(1)(qq), Florida Statutes, shall procure those products
26 that comply with the accessibility standards provided in this
27 section when such products are available in the commercial
28 marketplace or are developed in response to a competitive
29 solicitation. If products are commercially available that meet
30 some but not all of the accessibility standards, the state
31 agency may procure the product that best meets such
32 accessibility standards.
33 (5) A state agency procuring electronic and information
34 technology shall include language in its solicitations and
35 contracts requiring vendors to provide such products as
36 electronic and information technology resources that comply with
37 the accessibility standards provided in this section.
38 (6) When compliance with the provisions of this section
39 imposes an undue burden, a state agency shall comply with all
40 applicable state and federal civil rights statutes, including,
41 but not limited to, the Americans with Disabilities Act and s.
42 504 of the Rehabilitation Act of 1973, as amended, and provide
43 individuals with disabilities with the information and data
44 involved by an alternative method of access that allows the
45 individual to use the information and data.
46 (7) This section does not require the installation of
47 specific accessibility-related software or the attachment of an
48 assistive technology device at the workstation of a state
49 employee who is not an individual with a disability.

50 (8) This section does not require a state agency providing
51 access to information or data to the public through electronic
52 and information technology to make products owned by the agency
53 available for access and use by individuals with disabilities at
54 a location other than where the electronic and information
55 technology is provided to the public or to purchase products for
56 access and use by individuals with disabilities at a location
57 other than where the electronic and information technology is
58 provided to the public.
59 (9) The Department of Management Services, in partnership
60 with the Florida Alliance for Assistive Services and Technology,
61 shall adopt rules pursuant to ss. 120.536(1) and 120.54, Florida
62 Statutes, that address the following provisions:
63 (a) Development of accessibility standards to be used by
64 each state agency in the procurement of electronic and
65 information technology and in the development and implementation
66 of custom-designed information technology systems, web sites,
67 and other emerging information technology systems.
68 (b) Establishment and implementation of a review procedure
69 to be used to evaluate the accessibility of custom-designed
70 information technology systems proposed by a state agency prior
71 to expenditure of state funds.
72 (c) Development of a procedure for reviewing and
73 evaluating the accessibility of electronic and information
74 technology commonly purchased by state agencies and for
75 providing accessibility reports on these products to those
76 responsible for purchasing decisions.
77 (d) Development and delivery of training and technical
78 assistance for state agencies to ensure procurement of

79 electronic and information technology that meets adopted
80 accessibility standards.
81 (e) Involvement of individuals with disabilities in
82 accessibility reviews of electronic and information technology
83 and in the delivery of training and technical assistance.
84 (f) Establishment of complaint procedures to be used by an
85 individual with a disability who alleges that a state agency has
86 failed to comply with the provisions of this section.
87
88 ========== T I T L E A M E N D M E N T ==========
89 Remove line(s) 225 and insert:
90 Trust Fund; providing for access to and use of electronic and
91 information technology by state employees and members of the
92 public with disabilities; requiring state agencies to procure
93 certain technology resources and to make such resources
94 available to certain individuals; providing exceptions from
95 compliance requirements; requiring the Department of Management
96 Service to adopt rules; providing an effective date.

Amendment to HB 1503 CS by Rep. Sobel

Amendment #2 to HB 1503 CS restores s. 39.407(5), F.S., to current law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

Bill No. **1503 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED ___ (Y/N)

ADOPTED AS AMENDED ___ (Y/N)

ADOPTED W/O OBJECTION ___ (Y/N)

FAILED TO ADOPT ___ (Y/N)

WITHDRAWN ___ (Y/N)

OTHER _____

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1 Council/Committee hearing bill: Health & Families Council
2 Representative(s) Sobel offered the following:
3
4 **Amendment (with directory and title amendments)**
5 Remove line(s) 455 - 472
6
7 ========== T I T L E A M E N D M E N T ==========
8 Remove line(s) 23 - 26 and insert:
9
10 neglect for specified purposes; amending s. 287.155, F.S.;
11 authorizing the
12

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HB 7053

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7053 PCB ELT 06-02 Nursing Home Consumer Information
SPONSOR(S): Elder & Long-Term Care Committee, Gibson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1284

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Elder & Long-Term Care Committee	6 Y, 0 N	DePalma	Walsh
2) Health Care Appropriations Committee	15 Y, 0 N	Speir	Massengale
3) Health & Families Council		DePalma	Moore
4)			
5)			

SUMMARY ANALYSIS

House Bill 7053 requires the Agency for Health Care Administration to publish the Nursing Home Guide Watch List within the Nursing Home Guide—quarterly in electronic form and annually in hard copy. It also requires that AHCA report certain information, and that each nursing home post information about itself within its facility.

The agency reports a future potential decrease in the costs associated with printing and distribution of the Nursing Home Guide and Nursing Home Guide Watch List through consolidation of the two previously distinct documents.

The bill has an effective date of October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower Families— The bill incorporates, within the Nursing Home Guide published by the Agency for Health Care Administration, a Nursing Home Guide Watch List. This effectively consolidates the previously distinct documents and aligns the information therein, providing families seeking nursing home care for their loved ones more easily-accessible information.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Consumers seeking information about nursing homes have many different tools available to review both cumulative and individualized sources of information about such facilities. However, numerous statutory requirements and regulatory policies have resulted in varied presentation formats for this information, and consumers are frequently exposed to uncoordinated accounts of the performance of the state's nursing home facilities.

The Nursing Home Inspection Process

At least annually, the Agency for Health Care Administration (AHCA or the agency) inspects all licensed nursing homes. Inspections are unannounced, typically last between three and four days, and include a facility tour; interviews with residents, families, staff, visitors and volunteers; assessments of resident rights, protections and activities; and medical record reviews. If serious concerns or complaints warrant, the agency frequently conducts additional inspections.

Each deficiency that is observed and cited by the agency is ultimately classified as a Class I, II, III or IV deficiency, as described below:

- A **class I deficiency** is a deficiency that the agency determines presents a situation in which immediate corrective action is necessary because the facility's noncompliance has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in a facility.
- A **class II deficiency** is a deficiency that the agency determines has compromised the resident's ability to maintain or reach his or her highest practicable physical, mental, and psychological well-being, as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.
- A **class III deficiency** is a deficiency that the agency determines will result in no more than minimal physical, mental, or psychological discomfort to the resident or has the potential to compromise the resident's ability to maintain or reach his or her highest practical physical, mental, or psychological well-being, as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.
- A **class IV deficiency** is a deficiency that the agency determines has the potential for causing no more than a minor negative impact on the resident.

Within ten days of an inspection, nursing homes are required to submit a written Plan of Correction detailing how all deficiencies listed will be corrected, and state inspectors then conduct follow-up visits to monitor a facility's progress. Given the complexity of the survey process, even the highest quality facilities may have several minor deficiencies. Severe deficiencies frequently result in fines, restrictions to patient admissions, change of ownership, or facility closure.

Following this inspection process, nursing homes are then provided with either a "standard" or "conditional" license. A standard license indicates a facility is fully compliant with certain minimum standards, while a conditional license indicates that a particular facility did not meet, or subsequently correct upon follow up, such minimum standards at the time of an annual or complaint inspection. Immediate action is required for deficiencies that pose a threat to resident health or safety.

The agency supplies paper copies of all nursing home inspection reports to the local long-term care ombudsman council, the agency's local offices and the public library or county seat for the county in which the nursing facility is located.

Florida's Nursing Home Guide

Annually, the agency publishes the Nursing Home Guide (the guide), a publication compiling a 45-month review of regulatory compliance and demographic information for each nursing home licensed in the state. The guide ranks the performance of the state's nursing homes based on inspection results, quality of care, quality of life and administrative performance, and allows consumers to search for nursing homes in the state by geographic region, or by characteristics of the various facilities. Information contained in the guide is also quarterly updated by the agency on an Internet website.

General data provided in the guide includes the following:[1]

- General guidance about when a nursing home is the appropriate choice of care.
- General guidance about selecting a nursing home.
- Contact information, such as phone numbers and websites, where questions can be answered, and further information obtained.
- A listing of all nursing home facilities in the state of Florida, including hospital-based skilled nursing units.
- The name, address, phone numbers and websites for each licensed facility.
- An indication of whether the facility has been awarded a Gold Seal.
- Details regarding each facility's current licensee, including the year of licensure and whether such licensee is a for-profit or non-profit entity, and whether or not the facility is part of a retirement community.
- A facility's corporate or religious affiliations.
- The number of private, semi-private, and total beds at a facility.
- The lowest daily charge for a semi-private room.
- The payment forms accepted by a facility.
- Any special services or amenities, or recreational programs provided by a facility.
- Non-English languages spoken by the administrator or staff of a facility.
- A summary of the deficiencies found at the facility over a 45 month period prior to the publication of the guide.

Within the guide, AHCA also ranks nursing homes by region, using a five-star "performance measure" system.[2] Furthermore, the agency calculates certain "inspection measures" to assess nursing homes' compliance with the various federal laws governing nursing homes accepting Medicare or Medicaid payments.[3] Although such measures assess compliance with federal regulations, the State of Florida

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[1] Rule 59A-4.165, F.A.C.

[2] AHCA notes that such performance measures represent a nursing home's ranking within its own geographic region. Potentially, all of the nursing homes in a particular region could perform better or worse than the statewide average. Therefore, a low rank does not necessarily indicate a "low quality" facility, and a high rank does not necessarily indicate a "high quality" facility.

[3] For the ten nursing homes that accept neither Medicare nor Medicaid, such federal laws are inapplicable; these facilities are inspected for compliance with state laws only.

conducts the actual inspections as a subcontractor of the federal Centers for Medicare and Medicaid Services (CMS).

Following an inspection, a list of citations is provided to the facility, and AHCA computes a score indicating the number of facility citations observed, as well as their severity and scope. In total, there are 255 possible citations a facility may receive, grouped and ranked in three separate categories: "quality of care", "quality of life" and "administration."

Florida's Nursing Home Guide Watch List

Pursuant to statutory direction contained in section 400.191(3)(a), F.S., AHCA quarterly publishes (in printed form and on an Internet website) a Nursing Home Guide Watch List (the watch list) to assist consumers in evaluating the quality of nursing home care in Florida. A copy of the watch list is mailed to each nursing home facility, and each facility is responsible for posting the most recent version of the watch list "in a sufficient number of prominent positions in the nursing home so as to be accessible to all residents and to the general public."

The primary function of the watch list is to identify each facility that met the criteria for a "conditional" licensure status, and any facility that was operating under bankruptcy protection, on any day within the quarter covered by the list. For these facilities, the watch list must include, but is not limited to the following:

- The facility's name, address and ownership.
- The county in which the facility operates.
- The facility's license expiration date.
- The number of licensed beds in the facility.
- A description of the deficiency causing the facility to be placed on the list, as well as a description of any corrective action taken in the interim.
- The cumulative number of times the facility has been placed on the watch list.

The watch list also must include a brief description regarding how to choose a nursing home, the categories of facility licensure, an explanation of AHCA's inspection process and the terms used in the watch list, and the address and phone numbers of AHCA's managed care and health quality area offices.

Because a conditional license status can be used to classify both those facilities responsible for serious deficiencies, as well as facilities failing to correct relatively minor deficiencies, a nursing home can appear on the watch list while simultaneously maintaining a high ranking in the guide. Potentially, this creates a confusing divergence for consumers attempting to use the documents prior to selecting a nursing facility.

EFFECT OF PROPOSED CHANGES

House Bill 7053 amends s. 400.191, F.S., in several ways. The bill provides that AHCA may grant electronic access to its inspection reports as a substitute for sending copies, within 60 days of an annual inspection visit or 30 days of an interim visit, to the local long-term care ombudsman council, the agency's local office and a public library or the county seat for the county in which the facility is located.

The bill also explicitly requires AHCA to publish the Nursing Home Guide annually in consumer-friendly printed form, and quarterly in electronic form.

Furthermore, the legislation requires AHCA to list all prior names by which a nursing facility was known during the previous 24 months, the facility's occupancy levels and all federal and state recertification, licensure, revisit and complaint survey information on an Internet site. Additionally, all references to the Online Survey Certification and Reporting (OSCAR) system maintained by the federal Health Care

Financing Administration are deleted from the section, and the amount of time survey and deficiency information shall remain available in printed form, and posted by AHCA on an Internet site is reduced from 45 to 30 months. This reduction in the amount of time certain regulatory history is to remain available in various forms conforms to the timeframes common for various programs such as the Governor's Gold Seal Program[4] for nursing facilities demonstrating excellence in long-term care over a sustained period.

The bill requires AHCA to publish, within its Nursing Home Guide, a Nursing Home Guide Watch List. This effectively merges the two previously distinct documents. The watch list is intended to assist consumers in evaluating the quality of nursing home care in the state by identifying each facility that either met the criteria for a conditional licensure status or is presently operating under bankruptcy protection. Additionally, the bill requires itemization within the watch list of the cumulative number of days, and the percentage of days, that a facility had a conditional license during the 30 months preceding publication.

Upon publication of its Nursing Home Guide, the bill requires AHCA to post a copy of the guide on its website by the 15th calendar day of the second month following the end of the calendar quarter, and each nursing home licensee is then required to retrieve the most recent version of the Guide from AHCA's website.

The bill requires electronic submission, when available, of records determined by AHCA to be necessary and essential to establish lawful compliance with any rules or standards. Facilities are also required to post, in a sufficient number of prominent positions in the nursing home so as to be accessible to all residents and to the general public, a copy of all pages in the most recent Nursing Home Guide listing the facility.

The bill has an effective date of October 1, 2006.

C. SECTION DIRECTORY:

Section 1. Amends s. 400.191, F.S.; providing electronic access to inspection reports; requiring publication of the Nursing Home Guide, annually in printed form, and quarterly in electronic form; requiring AHCA to list prior names by which a facility was known during the previous 24 months, the facility's occupancy levels and all federal and state recertification, licensure, revisit and complaint survey information on an Internet site; deleting references to survey and deficiency information contained on the Online Survey Certification and Reporting (OSCAR) system, and reducing the time such survey and deficiency information shall remain available in printed form, and posted on an Internet site; providing publication of a "Nursing Home Guide Watch List" within the Nursing Home Guide; providing identification in the Nursing Home Guide Watch List of each facility meeting the criteria for a conditional licensure status and each facility operating under bankruptcy protection; providing inclusion on the Nursing Home Guide Watch List of the cumulative number of days and percentage of days a facility had a conditional license during the preceding 30 months; requiring AHCA to post a copy of the Nursing Home Guide on its website by the 15th calendar day of the second month following the end of the calendar quarter; requiring each nursing home licensee to retrieve the most recent version of the Nursing Home Guide from AHCA's website; requiring electronic submission, when available, of records determined by AHCA to be necessary and essential to establish lawful compliance with any rules or standards; requiring facilities to post, in a sufficient number of prominent positions throughout the facility, a copy of all pages from the most recent version of the Nursing Home Guide which list the facility.

Section 2. Provides an effective date of October 1, 2006.

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[4] Per s. 400.235, F.S., one of the requirements for Gold Seal certification is that a facility has had no class I or II deficiencies within the 30 months preceding application for the program.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None immediately, although AHCA reports a potential decrease in the costs associated with printing and distribution of the Nursing Home Guide and Nursing Home Guide Watch List through consolidation of the two previously distinct documents.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Counties and municipalities are unaffected by this legislation.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to nursing home consumer information;
3 amending s. 400.191, F.S.; authorizing the Agency for
4 Health Care Administration to provide electronic access to
5 nursing home inspection reports; requiring the agency to
6 publish the Nursing Home Guide in printed and electronic
7 format at certain times and specifying information to be
8 included therein; requiring the agency to provide certain
9 consumer information in the Nursing Home Guide; deleting
10 reference to an obsolete reporting system; requiring each
11 nursing home facility to submit certain information
12 electronically when electronic transmission to the agency
13 is available; providing an effective date.
14
15 Be It Enacted by the Legislature of the State of Florida:
16
17 Section 1. Section 400.191, Florida Statutes, is amended
18 to read:
19 400.191 Availability, distribution, and posting of reports
20 and records.--
21 (1) The agency shall provide information to the public
22 about all of the licensed nursing home facilities operating in
23 the state. The agency shall, within 60 days after an annual
24 inspection visit or within 30 days after any interim visit to a
25 facility, send copies of the inspection reports to the local
26 long-term care ombudsman council, the agency's local office, and
27 a public library or the county seat for the county in which the
28 facility is located. <u>The agency may provide electronic access to</u>

29 inspection reports as a substitute for sending copies.
30 (2) The agency shall publish the Nursing Home Guide
31 annually ~~provide additional information~~ in consumer-friendly
32 printed form and quarterly in electronic form ~~formats~~ to assist
33 consumers and their families in comparing and evaluating nursing
34 home facilities.
35 (a) The agency shall provide an Internet site which shall
36 include at least the following information either directly or
37 indirectly through a link to another established site or sites
38 of the agency's choosing:
39 1. A list by name and address of all nursing home
40 facilities in this state, including any prior name by which a
41 facility was known during the previous 24-month period.
42 2. Whether such nursing home facilities are proprietary or
43 nonproprietary.
44 3. The current owner of the facility's license and the
45 year that that entity became the owner of the license.
46 4. The name of the owner or owners of each facility and
47 whether the facility is affiliated with a company or other
48 organization owning or managing more than one nursing facility
49 in this state.
50 5. The total number of beds in each facility and the most
51 recently available occupancy levels.
52 6. The number of private and semiprivate rooms in each
53 facility.
54 7. The religious affiliation, if any, of each facility.
55 8. The languages spoken by the administrator and staff of
56 each facility.

57 9. Whether or not each facility accepts Medicare or
58 Medicaid recipients or insurance, health maintenance
59 organization, Veterans Administration, CHAMPUS program, or
60 workers' compensation coverage.
61 10. Recreational and other programs available at each
62 facility.
63 11. Special care units or programs offered at each
64 facility.
65 12. Whether the facility is a part of a retirement
66 community that offers other services pursuant to part III, part
67 IV, or part V.
68 13. Survey and deficiency information ~~contained on the~~
69 ~~Online Survey Certification and Reporting (OSCAR) system of the~~
70 ~~federal Health Care Financing Administration~~, including all
71 federal and state recertification, licensure ~~annual survey~~,
72 revisit, and complaint survey information, for each facility for
73 the past 30 ~~45~~ months. For noncertified nursing homes, state
74 survey and deficiency information, including licensure ~~annual~~
75 ~~survey~~, revisit, and complaint survey information for the past
76 30 ~~45~~ months shall be provided.
77 14. A summary of the deficiency ~~Online Survey~~
78 ~~Certification and Reporting (OSCAR)~~ data for each facility over
79 the past 30 ~~45~~ months. Such summary may include a score, rating,
80 or comparison ranking with respect to other facilities based on
81 the number of citations received by the facility on
82 recertification, licensure ~~of annual~~, revisit, and complaint
83 surveys; the severity and scope of the citations; and the number
84 of ~~annual~~ recertification surveys the facility has had during

85 the past 30 ~~45~~ months. The score, rating, or comparison ranking
86 may be presented in either numeric or symbolic form for the
87 intended consumer audience.
88 (b) The agency shall provide the following information in
89 printed form:
90 1. A list by name and address of all nursing home
91 facilities in this state.
92 2. Whether such nursing home facilities are proprietary or
93 nonproprietary.
94 3. The current owner or owners of the facility's license
95 and the year that entity became the owner of the license.
96 4. The total number of beds, and of private and
97 semiprivate rooms, in each facility.
98 5. The religious affiliation, if any, of each facility.
99 6. The name of the owner of each facility and whether the
100 facility is affiliated with a company or other organization
101 owning or managing more than one nursing facility in this state.
102 7. The languages spoken by the administrator and staff of
103 each facility.
104 8. Whether or not each facility accepts Medicare or
105 Medicaid recipients or insurance, health maintenance
106 organization, Veterans Administration, CHAMPUS program, or
107 workers' compensation coverage.
108 9. Recreational programs, special care units, and other
109 programs available at each facility.
110 10. The Internet address for the site where more detailed
111 information can be seen.
112 11. A statement advising consumers that each facility will

113 have its own policies and procedures related to protecting
114 resident property.
115 12. A summary of the deficiency ~~Online Survey~~
116 ~~Certification and Reporting (OSCAR)~~ data for each facility over
117 the past 30 ~~45~~ months. Such summary may include a score, rating,
118 or comparison ranking with respect to other facilities based on
119 the number of citations received by the facility on
120 recertification, licensure ~~annual~~, revisit, and complaint
121 surveys; the severity and scope of the citations; the number of
122 citations; and the number of ~~annual~~ recertification surveys the
123 facility has had during the past 30 ~~45~~ months. The score,
124 rating, or comparison ranking may be presented in either numeric
125 or symbolic form for the intended consumer audience.
126 ~~(c) For purposes of this subsection, references to the~~
127 ~~Online Survey Certification and Reporting (OSCAR) system shall~~
128 ~~refer to any future system that the Health Care Financing~~
129 ~~Administration develops to replace the current OSCAR system.~~
130 (c) ~~(d)~~ The agency may provide the following additional
131 information on an Internet site or in printed form as the
132 information becomes available:
133 1. The licensure status history of each facility.
134 2. The rating history of each facility.
135 3. The regulatory history of each facility, which may
136 include federal sanctions, state sanctions, federal fines, state
137 fines, and other actions.
138 4. Whether the facility currently possesses the Gold Seal
139 designation awarded pursuant to s. 400.235.
140 5. Internet links to the Internet sites of the facilities

141 or their affiliates.
142 (3) Each nursing home facility licensee shall maintain as
143 public information, available upon request, records of all cost
144 and inspection reports pertaining to that facility that have
145 been filed with, or issued by, any governmental agency. Copies
146 of the ~~such~~ reports shall be retained in the ~~such~~ records for
147 not less than 5 years following ~~from~~ the date the reports are
148 filed or issued.
149 (a) The agency shall ~~quarterly~~ publish in the Nursing Home
150 Guide a "Nursing Home Guide Watch List" to assist consumers in
151 evaluating the quality of nursing home care in Florida. The
152 watch list must identify each facility that met the criteria for
153 a conditional licensure status to be noticed as specified in
154 this section ~~on any day within the quarter covered by the list~~
155 and each facility that is ~~was~~ operating under bankruptcy
156 protection ~~on any day within the quarter~~. The watch list must
157 include, but is not limited to, the facility's name, address,
158 and ownership; the county in which the facility operates; the
159 license expiration date; the number of licensed beds; a
160 description of the deficiency causing the facility to be placed
161 on the list; any corrective action taken; and the cumulative
162 number of days and percentage of days ~~times~~ the facility had a
163 conditional license during the past 30 months ~~has been on a~~
164 ~~watch list~~. The watch list must include a brief description
165 regarding how to choose a nursing home, the categories of
166 licensure, the agency's inspection process, an explanation of
167 terms used in the watch list, and the addresses and phone
168 numbers of the agency's ~~managed care and~~ health quality

169 assurance field ~~area~~ offices.
170 (b) Upon publication of each Nursing Home Guide ~~quarterly~~
171 ~~watch list~~, the agency must post ~~transmit~~ a copy on its Internet
172 website by the 15th calendar day of the second month following
173 the end of the calendar quarter. Each nursing home licensee must
174 retrieve the most recent version of the Nursing Home Guide from
175 ~~of the watch list to each nursing home facility by mail and must~~
176 ~~make the watch list available on~~ the agency's Internet website.
177 (4) Any records of a nursing home facility determined by
178 the agency to be necessary and essential to establish lawful
179 compliance with any rules or standards shall be made available
180 to the agency on the premises of the facility and submitted to
181 the agency. Each facility must submit this information
182 electronically when electronic transmission to the agency is
183 available.
184 (5) Every nursing home facility licensee shall:
185 (a) Post, in a sufficient number of prominent positions in
186 the nursing home so as to be accessible to all residents and to
187 the general public:
188 1. A concise summary of the last inspection report
189 pertaining to the nursing home and issued by the agency, with
190 references to the page numbers of the full reports, noting any
191 deficiencies found by the agency and the actions taken by the
192 licensee to rectify the ~~such~~ deficiencies and indicating in the
193 ~~such~~ summaries where the full reports may be inspected in the
194 nursing home.
195 2. A copy of all pages listing the facility from the most
196 recent version of the Florida Nursing Home Guide ~~Watch List~~.

197 (b) Upon request, provide to any person who has completed
198 a written application with an intent to be admitted to, or to
199 any resident of, such nursing home, or to any relative, spouse,
200 or guardian of such person, a copy of the last inspection report
201 pertaining to the nursing home and issued by the agency,
202 provided the person requesting the report agrees to pay a
203 reasonable charge to cover copying costs.
204 (6) The agency may adopt rules as necessary to administer
205 this section.
206 Section 2. This act shall take effect October 1, 2006.

Amendment to HB 7053 by Elder & Long-Term Care Committee

Amendment #1 to HB 7053 requires the Nursing Home Guide published by the Agency for Health Care Administration to prominently display information relating to alternatives to nursing home care.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **HB 7053**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Health and Families Council
2 Representative(s) Gibson offered the following:
3
4 **Amendment**
5 Remove line(s) 34 and insert:
6 home facilities. The Nursing Home Guide shall prominently
7 display information about available alternatives to nursing
8 homes and how to obtain additional information regarding these
9 alternatives.
10
11

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7065 CS PCB HCR 06-03 Clandestine Laboratory Contamination
SPONSOR(S): Health Care Regulation Committee, Garcia
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Health Care Regulation Committee	9 Y, 0 N	Hamrick	Mitchell
1) Criminal Justice Committee	6 Y, 0 N, w/CS	Kramer	Kramer
2) Health Care Appropriations Committee	14 Y, 0 N	Money	Massengale
3) Health & Families Council		Hamrick	Moore
4)			
5)			

SUMMARY ANALYSIS

Families with children have been harmed by unknowingly renting or buying a house that was used as a methamphetamine laboratory because of the absence of decontamination requirements. The bill addresses this issue by providing protections to the public from unsafe conditions that may be found in a house where methamphetamine was manufactured. The residual chemicals and waste products from such production pose a threat to the health, safety, and welfare of the public. Currently, methamphetamine laboratories are seized by the Drug Enforcement Agency and/or the Florida Department of Law Enforcement and all hazardous ingredients and lab equipment are removed from the premises, but nothing is done to decontaminate the property. In Florida, there is no mechanism to determine whether a house (or residential property) was once a clandestine laboratory; no remediation is required to be done on the residential property; and there is no way to notify subsequent occupants of any health risks.

House Bill 7065 CS provides a mechanism intended to prevent a person from unknowingly living in a former illegal clandestine laboratory that has not been decontaminated. The bill provides that a residential property must be quarantined by the Department of Health if the residential property was used as a clandestine laboratory. The bill requires an owner to use a "contamination assessment specialist", authorized by the department to determine if a home is contaminated and a "decontamination specialist" authorized by the department to perform cleanup, treatment, repair, and removal of contaminated materials. The property will remain quarantined until the department receives documentation that the property was decontaminated or demolished or a court order is presented requiring the quarantine to be lifted. The bill prohibits a person from inhabiting the quarantined property or from offering the property to the public for habitation.

The bill is expected to have an insignificant fiscal impact on the Department of Health. Property owners will be responsible to pay for the testing and cleanup of their own property. Costs will vary depending upon the size of the lab, duration, frequency, and types of chemicals used in the manufacturing process. It is estimated that decontamination costs average $6,500 per 1,200 square feet.

The bill will take effect on July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—The bill provides a mechanism that will prevent a person from unknowingly living in a former clandestine laboratory that has not been decontaminated. The bill will prohibit a person from inhabiting a property that is quarantined because of contamination.

Promote personal responsibility—The bill may encourage landlords to thoroughly screen potential renters or applicants and encourage them to look for signs of illegal drug activity.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Currently, methamphetamine laboratories are seized by the Drug Enforcement Agency (DEA) and/or the Florida Department of Law Enforcement (FDLE) and all hazardous ingredients and equipment are removed from the premises but nothing is done with the property or remaining contaminated materials. Families with children have been harmed by unknowingly renting or buying a house that was used as a methamphetamine lab because of the absence of decontamination requirements.[1] In 2004, 61 children were found at seized methamphetamine labs in Florida.[2] Currently in Florida, there is no mechanism to determine whether a house (or residential property) was once a clandestine laboratory; no remediation is required to be done on the residential property; and there is no way to notify subsequent occupants of any health risks. Law enforcement and/or special contract vendors simply remove all hazardous chemicals and lab items from a clandestine laboratory.

FEDERAL INITIATIVES

COPS Program Provides Federal Funding to States and Local Governments

In 1998, the Office of Community Oriented Policing Services (COPS) began the Methamphetamine Initiative program that provided $4.5 million to six U.S. cities to implement anti-methamphetamine projects. In 2005, Florida received $832,116 from the COPS program to remove hazardous materials from 388 seized clandestine labs.

Removal and cleanup of hazardous materials seized at clandestine labs must meet the requirements of the Occupational Safety and Health Administration (OSHA), and the Environmental Protection Agency's Resource Conservation and Recovery Act regulations pertaining to the generation, storage, transport, and disposal of hazardous wastes in addition to any state or local requirements.[3] COPS funding does not extend to any level of cleanup relating to decontamination other than removal of remaining hazardous materials and manufacturing equipment.

According to the U.S. Department of Justice, the removal of hazardous materials from a seized clandestine lab is the responsibility of the state or local law enforcement agency that discovers the materials.[4] The state or local law enforcement agency may use the COPS funding to perform the removal themselves using qualified law enforcement or other qualified government personnel, Drug

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[1] Jerome, Richard. PEOPLE. "Home Toxic Home?" (August 8, 2005).
[2] Tseng, Nin-Hai. Orlando Sentinel. "Children fall by the wayside in meth-addicted homes." (September 11, 2005).
[3] See 29 CFR Part 1910.120, and Part 1200; 40 CRR Part 260.
[4] US Department of Justice, Office of Community Oriented Policing Services. Methamphetamine Initiative: Final Environmental Assessment. May 13, 2003.

Enforcement Administration hazardous waste management contractors, or other qualified contractors. State and local law enforcement agencies may only use COPS grant funding to pay for hazardous waste removal, transportation, storage, and payment of hazardous waste disposal fees.[5]

COPS Program and El Paso Intelligence Center (EPIC)

To receive COPS funding for handling hazardous lab materials, a DEA Form 612 also called "EPIC form" must be completed and forwarded to the El Paso Intelligence Center, which is the national repository of data concerning clandestine laboratory seizures. The data collected includes the location of the lab, estimated lab capacity, manufacturing process used, lab equipment found on the scene, name of chemist and clean-up personnel, weapons and/or explosives seized, quantity of drugs seized, and precursor agents/catalysts/solvents/reagents seized.[6]

Environmental Protection Agency Funding to State and Local Governments

The Environmental Protection Agency (EPA) makes funding available to state and local governments for the assessment and cleanup of meth lab sites through the Office of Brownfields Cleanup and Redevelopment via grants of up to $200,000 per site.[7] State and local governments may receive grants up to $1 million to be used for the capitalization of revolving loan funds; they may then make loans and sub-grants for the cleanup of methamphetamine lab sites.

FLORIDA INITATIVES

In 2003, the Office of Drug Control, the Florida Department of Law Enforcement, and the federal Drug Enforcement Administration signed a resolution to jointly implement a statewide strategy to deal with clandestine methamphetamine laboratories in Florida. The purpose of the strategy is to combine efforts to combat the manufacturing and distribution of methamphetamines in Florida and improve the overall effectiveness and efficiency of law enforcement's response and investigations.

In 2005, the Florida Department of Children and Families (DCF) established the Northwest Florida Drug Endangered Children Work Group. Subsequently, they published the Northwest Florida Drug Endangered Children Multidisciplinary Protocol to provide law enforcement, DCF, social services, fire and medical services, and prosecutors a basis for the development of community specific procedures handling children where there has been drug production, trafficking, and abuse. DCF is required to remove children from homes in which they have suffered from neglect, abuse, and exposure to toxic and volatile environments.

In 2005, the Legislature passed House Bill 1347 that placed quantity and point of sale restrictions on over-the-counter cold medicines that contain ephedrine, pseudoephedrine or phenylpropanolamine. The bill also increased several penalty provisions and made it a first degree felony to manufacture methamphetamine while a child less than 16 years of age is present.

In 2005, the Florida Office of Drug Control brought together a multi-agency group of experts in handling methamphetamine issues. The workgroup is in the process of creating a single source document called the Florida Statewide Methamphetamine Protocol that will assist federal, state, and local agencies in handling the criminal, environmental, sociological and economic issues that are characteristic of clandestine methamphetamine laboratories.

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[5] Ibid.
[6] See DEA Form 612 Instructions (Rev. 04/03)
[7] U.S. Congress. House Committee on Energy and Commerce, Subcommittee on Energy and Hazardous Materials. 2005. "Testimony of Peter Murtha, Director Office of Criminal Enforcement, Forensics and Training Office of Enforcement and Compliance Assurance U.S. Environmental Protection Agency." 109th Congress.

The Attorney General's Office in partnership with the Department of Health, the Department of Children and Families, the Office of Drug Control, the Florida Department of Law Enforcement, and the Drug Enforcement Agency recently unveiled the Florida Alliance for Drug Endangered Children website (www.floridadec.org).

AUTHORITY TO QUARANTINE

Current Statutory Provisions for Quarantines

According to s. 381.0011, F.S., it is the duty of the Department of Health to:

- Administer and enforce laws and rules relating to sanitation, control of communicable diseases, illnesses and hazards to health among humans and from animals to humans, and the general health of the people of the state.
- Cooperate with and accept assistance from federal, state, and local officials for the prevention and suppression of communicable and other diseases, illnesses, injuries, and hazards to human health.
- Declare, enforce, modify, and abolish quarantine of persons, animals, and premises as the circumstances indicate for controlling communicable diseases or providing protection from unsafe conditions that pose a threat to public health, except as provided in ss. 384.28 and 392.545-392.60, F.S.

Current Statutory Authority for the Enforcement of a Quarantine by Law Enforcement

Section 381.0012(5), F.S., provides that it is the duty of every state and county attorney, sheriff, police officer, and other appropriate city and county officials upon request to assist the department or any of its agents in enforcing the state health laws and the rules adopted in chapter 381, F.S. The department may also commence and maintain all proper and necessary actions and proceedings to compel the performance of any act specifically required of any person, officer, or board by any law of this state relating to public health.

WHAT IS METHAMPHETAMINE?

Methamphetamine is a central nervous system stimulant commonly referred to as "meth." Its street names are numerous and include such terms as crank, speed, ice or crystal.[8] Meth is a derivative of amphetamine that dates back to the early 1900s. The drug became more widely used during World War II and eventually became widely available in tablet form.[9] Meth can be found and used in numerous forms, that is, injected, smoked, inhaled, or taken orally. The 1970 Controlled Substances Act, made the production of injectable meth illegal. According to the Oregon Department of Human Services, methamphetamine is currently the illicit "drug of choice" because of its ease of manufacture, comparatively low cost, 12-hour half-life, and the euphoria, energy, and feelings of power, and sexual arousal that it produces.[10] A key ingredient of methamphetamine production is pseudoephedrine/ephedrine, which is commonly found in cold medicine.

According to a report by the State of North Carolina, clandestine[11] methamphetamine laboratories

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[8] US Department of Justice, Office of Community Policing Services. Methamphetamine Fact Sheet. http://www.cops.usdoj.gov/mime/open.pdf?Item=1356 (February 3, 2006).
[9] US Department of Justice, Office of Community Policing Services. An Evaluation of the COPS Office Methamphetamine Initiative. http://www.cops.usdoj.gov/mime/open.pdf?Item=608 (February 3, 2006).
[10] An Epidemiology Publication of the Oregon Department of Human Services. Children in Methamphetamine 'Labs' in Oregon. Vol. 52, No. 16. August 12, 2003.
[11] Clandestine drug laboratories are used in the illicit production of illegal drugs.

account for more than 90 percent of all U.S. illegal drug seizures in recent years.[12] In 2000, the Drug abuse Warning Network, indicated that among club drugs, meth accounted for the largest share of emergency department mentions, and was especially problematic in the metropolitan areas of the western United States. The DEA has estimated that the manufacturing or "cooking" of methamphetamine leaves behind 5 to 7 pounds of chemical waste for each pound of meth that is made.[13]

HEALTH RISKS ASSOCIATED WITH METHAMPHETAMINE MANUFACTURING

Toxic substances from the cooking process can permeate walls, floorboards, and carpeting. The resulting contaminations can last for years without extensive remediation. Homes may be filled with residue from acetone, red phosphorus, and other toxic agents. Waste may consist of corrosives and flammables that have been dumped down sinks, toilets, tubs, and in the environment.

Threat to Children, Medical Concerns and Long-term Effects

According to a program coordinator with the National Jewish Medical and Research Center, a leading researcher on the impact of methamphetamine production, long-term health risks could include damage to the lungs, liver, kidneys, and cancer. Individuals with existing medical conditions and young children are at higher risk.[14]

In Oregon, one-third to one-half of the children found in meth labs have tested positive for methamphetamine, via urinalysis testing, due to accidental ingestion or passive inhalation of the drug.[15] Pediatric patients with methamphetamine poisoning may experience tachycardia, agitation, inconsolable crying, irritability, and vomiting.[16] The most common complication of meth poisoning is rhabdomyolyis, which is the breakdown of muscle fibers that are then released in to the blood and may result in kidney damage.[17]

Reasons there is Limited Data on the Long-term Health Effects

There is limited data available on the long-term health effects caused by exposure to the chemicals used in methamphetamine manufacturing. Knowledge in this area is limited because of the following reasons:[18]

- Clandestine laboratories have only occurred in the last 10 years and their health effects have been studied for an even shorter period of time.
- Restrictions on tracking health records of minor children.
- It is difficult to determine the magnitude of the exposure to children in a home not only during, but after manufacturing has occurred. To date, contamination studies of controlled manufacturing have only occurred in buildings slated for demolition.[19]

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[12] State of North Carolina. Department of Health and Human Services. Illegal Methamphetamine Laboratory Decontamination and Reoccupancy Guidelines. April 2005. http://www.epi.state.mn.us/epi/oii/methguidelines.pdf
[13] Minnesota Department of Health. Lab Cleanup. http://www.health.state.mn.us/divs/eh/meth/lab/labcleanup.html (February 11, 2006).
[14] Jerome, Richard. PEOPLE. "Home Toxic Home?" (August 8, 2005).
[15] An Epidemiology Publication of the Oregon Department of Human Services. Children in Methamphetamine "Labs" in Oregon. Vol. 52, No. 16. August 12, 2003.
[16] Ibid.
[17] Ibid.
[18] U.S. Congress. House Committee on Science. 2005. "Congressional Testimony by John Martyny." 109th Congress. http://www.house.gov/science/hearings/full05/mar3/Martyny.pdf (February 7, 2006).
[19] Researchers have requested federal dollars to conduct long-term research at a secure location such as Los Alamos, New Mexico.

MANUFACTURING OF METHAMPHETAMINE

There are different levels of clandestine laboratories, that is, "superlabs" and "mom and pop" labs. Large-scale production by "superlabs" is predominantly done in Mexico, a major producer or transshipment point for much of the methamphetamine entering America.[20]

The production of methamphetamine is a relatively simple process and can be carried out by individuals without special knowledge or expertise in chemistry. Recipes number in the hundreds and are constantly evolving. There are well over 300 substances that can be used to produce meth. However, there are two primary methods for manufacturing methamphetamine.

Red Phosphorus

The red phosphorous method of manufacturing methamphetamine involves the use of a number of readily obtained materials, including solvents, iodine, hydrogen chloride gas (which can be made by combining sulfuric acid and rock salt), sodium hydroxide, and red phosphorus.[21] Red Phosphorus, for example, can be obtained from match stick heads and flares.

Red Phosphorus labs have the following dangers: phosphine gas production, acid gas generation, acutely corrosive and toxic atmospheres, flammable and explosive atmospheres and oxygen deficient atmospheres. A study[22] on controlled cooks revealed significant exposure to solvents, phosphine,[23] iodine, hydrogen chloride, and methamphetamine aerosol.[24] Because of the spread of methamphetamine during this cooking process, virtually all items within the house as well as all people, pets and toys become contaminated with methamphetamine.[25] Levels of exposure are exceptionally high for children and infants, who because of their developing physiology and their inquisitive oral habits, are exposed to high levels of hazardous chemicals.[26]

Birch Reduction

This method is also referred as the "Nazi" or "Ammonia" method. This method uses lithium metal from batteries and anhydrous ammonia from fertilizer and refrigeration "chillers" in the reduction of ephedrine/pseudoephedrine.

Birch Reduction labs have the following dangers: electroplating sodium metal from sodium hydroxide; sodium hydroxide which may cause skin or lung irritation; a flammability and irritant toxicity hazard from concentrated ammonia atmospheres; the violent reaction of water with sodium or lithium metals; a flammable, explosive atmosphere; an acutely corrosive atmosphere because of the acutely reactive metals used. Phosphine and aerosol iodine are not produced in this method. The levels of anhydrous ammonia produced during these cooks are significantly high. The National Institute of Occupational

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[20] U.S. Congress. House Committee on Government Reform, Subcommittee on Criminal Justice. 2005. "Statement by Scott Burns, Deputy Director for State and Local Affairs, Office of National Drug Control Policy." 109th Congress.
[21] U.S. Congress. House Committee on Science. 2005. "Congressional Testimony by John Martyny." 109th Congress. http://www.house.gov/science/hearings/full05/mar3/Martyny.pdf (February 7, 2006).
[22] The study was conducted by John Martyny, Ph.D., C.I.H., with the Department of Preventative Medicine at the University of Colorado and the National Jewish Medical Research Center in Denver, Colorado.
[23] Phosphine is a gas produced when the solution of iodine, water, ephedrine, and red phosphorous is heated. This is a gas that may cause severe pulmonary irritation resulting in pulmonary edema and death. At lower levels may cause nausea, vomiting, headache, and chest tightness, which are symptoms frequently reported by exposed law enforcement personnel at the time of seizure.
[24] U.S. Congress. House Committee on Science Committee Testimony. 2005. "Congressional Testimony by John Martyny." 109th Congress. http://www.house.gov/science/hearings/full05/mar3/Martyny.pdf (February 7, 2006).
[25] Ibid.
[26] Ibid.

Safety and Health currently recommends that ammonia exposure not exceed 300 parts per million (ppm). However, a meth cook can easily reach 500 ppm of ammonia or more.[27]

Examples of Common Names/Uses for Chemicals in Methamphetamine Laboratories[28]	
Chemical	**Common Name or Product Used**
Acetone	Fingernail polish remover, solvents
Acetic Acid	Vinegar
Alcohol, isopropyl	Rubbing Alcohol
Ammonia (anhydrous)	Fertilizer, used in chillers
Ethyl ether	Computer dust-off
Freon	Refrigerant, propellants
Hydrochloric acid/muriatic acid	Iron ore processing, mining, concrete cleaner
Iodine (crystals)	Antiseptic, catalyst
Lithium metal	Batteries
Methylene chloride	Paint remover, solvent
Phosphoric acid	Fertilizer
Red phosphorus	Match striker plates, road flares
Sulfuric acid	Battery acid, drain cleaner
Toluene	Brake cleaner fluid

LAW ENFORCMENT RESPONSE

How Does a Typical Clandestine Laboratory Seizure Occur?

Typically, law enforcement gets a call or report of a potential clandestine laboratory. Depending on the validity of the information a response team (which may be a combination of local, state or federal officers) is dispatched, or a first responder (city police department or county sheriff) goes to the location, to verify if there is a potential clandestine lab. Once confirmed, the location is evacuated and a clandestine laboratory response team responds to begin the investigation. Once all the appropriate photos, evidence sampling, and other investigative issues are taken care of, a contract vendor (as part of the federal COPS program) responds to the scene to remove all chemicals, glassware, equipment, etc.

All law enforcement personnel who investigate and dismantle labs must be clandestine laboratory certified, which requires attending specialized training that is sanctioned by the Drug Enforcement Administration (DEA) and the Occupational Safety and Health Administration (OSHA). Because of the hazards of entering a clandestine lab all personnel who investigate and dismantle labs are required to wear personal protective equipment. Below is the basic list of the equipment that must be used and the associate costs. The (*) denotes equipment that has to be discarded after each laboratory investigation due to contamination.

No remediation is done to the structure or the property, simply the removal of all chemicals and lab items. If there are containers of chemicals outside the premises that pose a threat to the environment, or any other indicators, the Department of Environmental Protection is called to handle soil and/or water sampling and cleanup. If children are present, the Department of Children and Families is called to the scene. Nothing may be removed from the house and taken with the children or any arrestees because of contamination.

[27] Ibid.
[28] State of North Carolina. Department of Health and Human Services. Illegal Methamphetamine Laboratory Decontamination and Reoccupancy Guidelines. April 2005. http://www.epi.state.nc.us/epi/oii/methguidelines.pdf

2006 Clandestine Laboratory Investigators Personal Protective Equipment (PPE) List	
Description	**Total Cost**
Self Contained Breathing Apparatus 30-Minute Cylinder	$2,134.00
Clan Lab Monitor Field and Investigators Detector Kit	2,905.00
Ballistic Helmet and Vest	1,055.45
SWAT Coverall, Hood, Gloves, Respirator w/filter, gloves and other equipment*	486.70
TOTAL	$6,581.15

REMEDIATION STANDARDS

National Guidelines for the Cleanup of Clandestine Laboratories and Determining Cleanliness

The Office of National Drug Control Policy is in the process of revising the Guidelines for the Cleanup of Clandestine Drug Laboratories. The so-called "Red Book" includes voluntary standards, lessons learned, and best practices for methamphetamine laboratory cleanup and the removal of hazardous materials found at seized clandestine laboratories for federal, state, and local law enforcement and environmental officials.[29]

A problem with remediation of a clandestine laboratory is determining an acceptable level of "cleanliness" to assure the public that there are not any potential health risks. Currently, there are no national standards for remediated labs, and a baseline definition of "clean" is not available.[30] Fundamental research describing standards for "clean" still needs to occur.[31]

There is an ongoing debate about the effectiveness of using a feasibility-based standard rather than a long-term clinical standard. Because research into the long-term health effects associated with clandestine laboratories has just recently begun, health or risk based standards have not yet been determined.[32]

Remediation Standards in Other States

According to the National Alliance for Model State Drug Laws,[33] several states currently regulate the cleanup and remediation of clandestine laboratories, but state statutes specifically relating to the cleanup and remediation of clandestine laboratories vary from state to state.[34]

Given the growing concern regarding cleanup and remediation issues, the variety of approaches among states, the increasing number of states dealing with former meth labs, and the changing nature of labs, the Alliance has convened a national working group to address these issues.[35] The alliance is drafting a model act or model guidelines for the cleanup and remediation of methamphetamine laboratories that should be released next year.[36]

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[29] U.S. Congress. House Committee on Government Reform, Subcommittee on Criminal Justice. 2005. "Statement by Scott Burns, Deputy Director for State and Local Affairs, Office of National Drug Control Policy." 109th Congress.
[30] U.S. Congress. House Committee on Science. 2005. "Testimony of Robert Bell, Ph.D., President, Tennessee Technological University." 109th Congress.
[31] Ibid.
[32] Ibid.
[33] The National Alliance for Model State Drug Laws is a nonprofit bipartisan organization that resulted from the President's Commission on Model State Drug Laws. It was created to be a resource to assist states in assessing needs, strategizing, and implementing laws and policies to address alcohol and other drug problems.
[34] U.S. Congress. House Committee on Science. 2005. "Statement of Sherry Green, Esq., Executive Director of the National Alliance for Model State Drug Laws." 109th Congress.
[35] Ibid.
[36] Ibid.

The two most commonly used feasibility-based decontamination standards for methamphetamine is 0.1 micrograms per 100 square centimeters and 0.5 micrograms per square foot.[37] A microgram is one millionth of gram and there are 28.3 grams in an ounce. One hundred square centimeters is equivalent to the area about the size of a 3X5 index card. Arizona, North Carolina, Tennessee and Washington are among several states that require an indoor air quality standard of 0.1 micrograms per 100 square centimeters for methamphetamine. Several other states such as Tennessee, Washington, and California also regulate the level of lead, mercury and volatile organic compounds.

Several states have implemented policy standards to establish guidelines in rule. This allows for changes in indoor air quality standard values as research on levels of health risk improve. Oregon has set a policy standard of 0.5 micrograms per square foot; for methamphetamine; 10 micrograms per square foot for lead; and 0.05 micrograms per square foot for mercury. The bill allows the Department of Health the ability to adopt indoor air quality standards by rule.

DECONTAMINATION PROCESS AND DEMOLITION

The cleanup of residual substances that may persist on surfaces and furnishings may involve: removal of surface material layers; use of encapsulants and fixative sealers; neutralization of corrosives; steam cleaning; use of industrial steam and pressure washers; use of detergent washers; use of chemical neutralizers/cover-ups and "bake-out" of a property."[38] In rare cases of severe contamination, effective cleanup may only be accomplished by demolition of the contaminated structure.[39]

Based on the known physical properties of the chemicals associated with methamphetamine production, there is no current scientific evidence to suggest a continuing human health risk after a thorough decontamination.[40]

EFFECT OF HB 7065 CS

The bill provides a mechanism intended to prevent a person from unknowingly living in a former illegal clandestine laboratory that has not been decontaminated. The bill provides that a residential property must be quarantined by the Department of Health (DOH) if the residential property was used as a clandestine laboratory. A clandestine laboratory is defined as any location or area that is used or contaminated as a result of the manufacturing, processing, cooking, disposing, or storing of any illegal drug or substance. The residential property will remain quarantined until the Department of Health receives a certificate of fitness documenting that the property was properly decontaminated or demolished or a court order is presented requiring the quarantine to be lifted. No person may inhabit a quarantined residential property or remove the notice of a quarantine. A person who violates the provisions of a quarantine commits a second degree misdemeanor.

The bill does not create a new penalty, but cross-references existing authority under the quarantine provision already granted to the Department of Health in s. 381, F.S.. Under s. 381.0011, F.S., DOH has the authority to declare, enforce, modify, or abolish a quarantine placed on persons and premises as the circumstances indicate in order to protect the public from unsafe conditions that pose a threat to public health. Section 381.0012(5), F.S., also provides that it is the duty of every state and county attorney, sheriff, police officer, and other appropriate city and county officials to assist the department in enforcing the state health laws.

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[37] Ibid.
[38] Chesley, Michelle R., M.D., Department of Emergency Medicine, Howard University Hospital. 1999. Methamphetamines: an epidemic of clandestine labs and health risk. http://www.health.state.mn.us/divs/eh/meth/lab/mchesley.pdf (February 11, 2006).
[39] Colorado Department of Public Health and Environment. Cleanup of Clandestine Methamphetamine Labs Guidance Document. 2003. http://www.cdphe.state.co.us./hm/methlab.pdf (February 11, 2006.)
[40] Oregon Department of Human Services, Drug Lab Clean-up Program. "Chemicals used in Methamphetamine Manufacture, http://www.oregon.gov/DHS/ph/druglab/chemicals.shtml (February 11, 2006).

The bill provides the following:

- Creates definitions in chapter 893, F.S., for "clandestine laboratory," "contaminated," "contamination assessment specialist," "decontamination," "decontamination specialist," and residential property."
- Requires law enforcement personnel to enforce a quarantine on a clandestine laboratory if the lab is located in a residential property. Enforcement occurs at the time law enforcement secures and removes evidence from the property.
- Requires law enforcement to post a notice on the residential property at the time they are collecting and removing evidence.
    - The notice must state: The property is quarantined and a clandestine lab was found on the residential property; the date of quarantine; the name of agency posting the quarantine; a statement specifying the hazards that may remain and that exposure to the substances may be harmful and may pose a threat to public health and the environment; that it is unlawful for unauthorized persons to enter the contaminated property; a statement explaining how to have the quarantine lifted; and that it is a second degree misdemeanor to remove the notice.
- Requires local law enforcement to immediately notify the local health officer and the Department of Health, Division of Environmental Health. Law enforcement must provide the department contacts with the name of the property owner or property manager and address of the property.
- DOH is responsible for contacting the property owner or manager, within 5 days by mailing them a letter of notification of the quarantine, a list of contamination assessment specialists, a list of decontamination specialists, and any other information the department deems appropriate.
- Allows property owners to petition a court to have a court order issued to lift the quarantine in the event they believe their property was wrongfully quarantined or has been decontaminated or demolished, but DOH refuses or fails to lift the quarantine.
- Provides residential property owners the option to demolish a home in lieu of decontamination, with certain requirements.
- Provides immunity from liability to property owners from health-based civil actions, with certain restrictions, if the residential property owner meets the decontamination standards or opts to demolish the residential property. The property owner or manager must have been issued a certificate of fitness by a contamination assessment specialist and a letter of reoccupancy issued by the Department of Health.
- Requires the department to compile and maintain a list on the internet of "contamination assessment specialists" and "decontamination specialists." The department must also denote on the list if a contactor is bonded and insured. The list will also be mailed to the residential property owner or property manager.
- Allows contamination assessment specialists or decontamination specialists the ability to request copies of any available law enforcement reports or information relating to the clandestine laboratory activities, to assist them in determining the levels of contamination in a quarantined residential property.
- Provides the Department of Health the authority to promulgate rules for the following:
    - Create a uniform notice and letter.
    - Establish standards for indoor air quality regarding contaminants produced by clandestine laboratory activities. The standards must include values for methamphetamine, lead, mercury, and volatile organic compounds and be consistent with values adopted by other states or they must comply with national standards.
    - Establish standards for the cleanup and testing of clandestine laboratories.
    - Establish the requirements for persons authorized to perform contamination assessments and decontamination.
    - Establish a "certificate of fitness" that will be issued by a contamination assessment specialist to function as documentation signifying that a home has been properly decontaminated.
    - Establish a letter of reoccupancy that will notify the residential property owner that the quarantine is lifted and that the property may be reoccupied.

C. SECTION DIRECTORY:

Section 1. Amends s. 893.02, F.S., providing definitions for clandestine laboratory, contaminated, contamination assessment specialist, decontamination, decontamination specialist, and residential property.

Section 2. Creates s. 893.121, F.S., providing for a quarantine of any residential property where clandestine laboratory activities occur; establishing a uniform notice and letter of notification; providing that a notice is posted at the site of a quarantine; providing requirements that a letter be sent to a residential property owner or property manager; providing an alternative to residential property owners to have a quarantine lifted; and providing limitations and enforcement provisions for habitation of quarantined residential property.

Section 3. Creates s. 893.122, F.S., providing the option of demolition of contaminated residential property under certain conditions; providing immunity from health-based civil actions for residential property owners who have met certain criteria; and providing an exception from the immunity clause for individuals convicted of operating the clandestine laboratory.

Section 4. Creates s. 893.123, F.S., providing rulemaking to adopt clandestine laboratory decontamination standards; providing guidelines for issuance of a certificate of fitness to indicate that decontamination is complete; providing guidelines for issuance of a letter of reoccupancy; and providing requirements for lifting a quarantine of a demolished property.

Section 5. Creates s. 893.124, F.S., requiring the department to compile and maintain a list of persons authorized to perform contamination assessments and decontamination; requiring the department to specify qualifications for persons authorized to perform contamination assessments and decontamination; providing responsibilities for decontamination specialists; providing authority for contamination assessment specialist or decontamination specialist to request certain documents from law enforcement; and providing for issuance of a certificate of fitness by a contamination assessment specialist.

Sections 6 through 12 amend s. 465.016, 465.023, 856.015, 893.135, 944.47, 951.22, and 985.4046, F.S., correcting cross-references.

Section 13. Provides that the bill will take effect on July 1, 2006

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   No dedicated source of revenue.

2. Expenditures:

   Insignificant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will prohibit an owner from inhabiting a quarantined residential property or offering the property to the public for habitation. The owner will be required to meet the decontamination standards established by the Department of Health and will be required to pay for the costs of assessment and cleanup. Costs for clandestine laboratory cleanup will vary depending upon the nature and extent of the cleanup needed. The size, duration, frequency, and types of chemicals used are all variables that impact the degree of contamination. According to the Washington State Department of Health, decontamination costs average $6,500 per 1,200 square-feet.[41] According to an Arkansas news article, clean-up costs generally range from $2,000 to $10,000; depending on the size of the lab.[42]

D. FISCAL COMMENTS:

The analysis by DOH assumes that 338 clandestine drug laboratories will be seized per year—the number that was seized in 2005. The fiscal impact is insignificant.

In 2005, the Legislature passed a bill placing quantity and point of sale restrictions on over-the-counter cold medicines that contain ephedrine, pseudoephedrine or phenylpropanolamine. States that have placed similar restrictions on the sale of ephedrine, pseudoephedrine or phenylpropanolamine have seen a dramatic decrease in the incidence of clandestine laboratories.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Several constitutional issues have been mentioned as potential items of concern, in particular, the immunity from health-based civil action and the quarantine of personal property. As currently provided in the bill, the immunity from health-based civil action provision encourages property owners to decontaminate their property. Authority to quarantine a property that may pose a health hazard is well established for instances where a quarantine is meant to protect the public from harm. Each issue is discussed in detail below.

Access to Courts

This bill provides that a residential property owner who has met the decontamination standards, or has demolished the residential property "shall have immunity from health-based civil actions brought by any future owner, renter, or other person who occupies the residential property, or a neighbor of such residential property, in which the alleged cause of the injury or loss is the existence of the clandestine laboratory". This provision in the bill could possibly be an unconstitutional violation of Article I, s. 21, of the Florida Constitution.

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[41] Washington State Department of Health, Division of Environmental Health, Office of Environmental Health and Safety. Information for Landlords and Property Owners. http://www.doh.wa.gov/ehp/ts/CDL/landlordtips.htm (February 11, 2006).
[42] Bradford, Michelle. 2000. U.S. Denies funds for State Meth Cleanup; Officials Mull Options. http://www.kci.org/meth_info/sites/ark_drug%20cleanup.htm (February 12, 2006).

Article I, section 21,. provides the following:

SECTION 21. Access to courts.--The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

The right to go to court to resolve disputes is a fundamental right.[43] To make a claim of denial of access to courts, an aggrieved party must demonstrate that the Legislature has abolished a common-law right previously enjoyed by the people of Florida.[44] A person's guaranteed access to the courts should not be unduly or unreasonably burdened or restricted.[45] If the Legislature asserts a valid public purpose, it can restrict access to the courts as long as it provides a reasonable alternative to litigation. It may be possible that this bill could be found to be an unreasonable burden to an individual's right of access to courts. This bill is taking away a previously available cause of action to any person who is injured by the negligent use of a person's property simply because the property owner has followed the decontamination or demolition procedures of the bill. The Florida Supreme Court, in the case Kluger v. White, 281 So.2d 1 (Fla. 1973), held that, "where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of Florida, or where such right has become a part of the common law of the State, the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown".[46]

Taking of Property

Article X, s. 6, Fla. Stat. provides the following:

SECTION 6. Eminent domain.--

(a) No private property shall be taken except for a public purpose and with full compensation therefore paid to each owner or secured by deposit in the registry of the court and available to the owner.
(b) Provision may be made by law for the taking of easements, by like proceedings, for the drainage of the land of one person over or through the land of another.

Takings issues could arise based on the fact that this bill allows a government entity to force a person from their property and restricts any devise of the property until the residential property is decontaminated or demolished. A state law quarantining property pursuant to this bill probably would not be considered a taking. However, although the state may validly exercise its police power in conformance with applicable statutes and rules when it destroys property, its exercise of the police powers can still result in a taking.[47] Full and just compensation is required when the state, pursuant to its police power, destroys healthy but suspect citrus trees to prevent the spread of citrus canker.[48] There is no settled formula for determining when the valid exercise of police power stops and an impermissible encroachment on private property rights begins, but some of the factors which have been considered are:[49]

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[43] *DR Lakes Inc. v. Brandsmart U.S.A. of West Palm Beach*, 819 So. 2d 971 (Fla. Dist. Ct. App. 4th Dist. 2002).
[44] *Yachting Promotions, Inc. v. Broward Yachts, Inc.*, 792 So. 2d 660 (Fla. Dist. Ct. App. 4th Dist. 2001); *Strohm v. Hertz Corporation/Hertz Claim Management*, 685 So. 2d 37 (Fla. Dist. Ct. App. 1st Dist. 1996).
[45] *Preferred Medical Plan, Inc. v. Ramos*, 742 So. 2d 322 (Fla. Dist. Ct. App. 3d Dist. 1999); *Swain v. Curry*, 595 So. 2d 168 (Fla. Dist. Ct. App. 1st Dist. 1992).
[46] *Id.* at 4.
[47] *Albrecht v. State*, 444 So. 2d 8 (Fla. 1984); *Conner v. Reed Bros., Inc.*, 567 So. 2d 515 (Fla. Dist. Ct. App. 2d Dist. 1990).
[48] *Department of Agriculture and Consumer Services v. Mid-Florida Growers, Inc.*, 521 So. 2d 101 (Fla. 1988).
[49] *Graham v. Estuary Properties, Inc.*, 399 So. 2d 1374 (Fla. 1981).

- Whether there is a physical invasion of the property.
- The degree to which there is a diminution in value of the property or whether the regulation precludes all economically reasonable use of the property.
- Whether the regulation confers a public benefit or prevents a public harm.
- Whether the regulation promotes the health, safety, welfare, or morals of the public.
- Whether the regulation is arbitrarily and capriciously applied.
- The extent to which the regulation curtails investment-backed expectations.

Where a regulation creates a public benefit, it is more likely an exercise of eminent domain, and where a public harm is prevented it is more likely an exercise of the police power.[50] Reasonable regulations pursuant to the police power of the state, intended to promote public health, safety, or general public welfare, may be adopted and enforced without violating the constitutional rights of property owners.

B. RULE-MAKING AUTHORITY:

The bill provides the Department of Health rule-making authority to promulgate rules to:

- Establish a 'certificate of fitness' that acts as documentation signifying that a home has been properly decontaminated.
- Establish a letter of reoccupancy that will notify the residential property owner that the quarantine is lifted and that the property may be reoccupied.
- Establish indoor air quality standards.
- Establish the standards for cleanup and testing of clandestine laboratories.
- Establish the requirements for persons authorized to perform contamination assessments and decontamination.
- Create a uniform notice and letter.
- Specify the requirements of persons authorized to perform clandestine laboratory cleanup.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 22, 2006, the Health Care Regulation Committee adopted a strike-all amendment offered by Chairman Garcia. The strike-all amendment significantly reduced the fiscal impact to the Department of Health by transferring the contamination assessment and decontamination to qualified independent contractors in the private sector; streamlined several requirements and processes required in the bill to clarify the roles of law enforcement and the Department of Health; and addressed concerns brought to the attention of staff by the Florida Department of Law Enforcement, Florida Sheriff's Association, and the Department of Health.

The PCB, as amended, was reported favorably by the Health Care Regulation Committee.

On April 4, 2006, the Criminal Justice Committee adopted an amendment that clarified that the department has the obligation to notify a residential property owner that the property has been quarantined.

The analysis is drafted to the committee substitute.

[50] *Graham v. Estuary Properties, Inc.*, 399 So. 2d 1374 (Fla. 1981); *State Plant Bd. v. Smith*, 110 So. 2d 401 (Fla. 1959).

CHAMBER ACTION

The Criminal Justice Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to clandestine laboratory contamination; amending s. 893.02, F.S.; providing definitions; creating s. 893.121, F.S.; providing for quarantine of any residential property where illegal clandestine laboratory activities occurred; providing for establishment of a uniform notice and a uniform letter of notification; providing for posting of specified notice at the site of a quarantine; providing requirements for the sending of a specified letter of notification to a residential property owner or manager; providing for petitions by certain persons in circuit court to lift such quarantines under certain conditions; prohibiting specified violations relating to such quarantines; creating s. 893.122, F.S.; permitting demolition of quarantined residential property under certain conditions; providing immunity from health-based civil actions for residential property owners who have met specified clandestine laboratory decontamination standards as evidenced by specified documentation;

24 providing an exception to such immunity for persons
25 convicted of manufacturing controlled substances at the
26 site; creating s. 893.123, F.S.; providing for rulemaking
27 to adopt clandestine laboratory decontamination standards;
28 providing for certificates of fitness to indicate that
29 decontamination has been completed; providing requirements
30 for the lifting of a quarantine upon demolition of the
31 property; creating s. 893.124, F.S.; requiring the
32 Department of Health to specify requirements for persons
33 authorized to perform decontamination and contamination
34 assessments; requiring the department to compile and
35 maintain lists of decontamination and contamination
36 assessment specialists; providing responsibilities for
37 decontamination specialists; permitting decontamination
38 and contamination assessment specialists to request
39 specified documents; providing for the issuance of
40 certificates of fitness by contamination assessment
41 specialists; amending ss. 465.016, 465.023, 856.015,
42 893.135, 944.47, 951.22, and 985.4046, F.S.; conforming
43 cross-references; providing an effective date.
44
45 WHEREAS, methamphetamine use and production is increasing
46 throughout the state, and
47 WHEREAS, in places where methamphetamine production has
48 occurred, significant levels of chemical contamination may be
49 found, especially in residential properties when the
50 contamination is not decontaminated, and

51 WHEREAS, children are susceptible to environmental
52 toxicants via the skin, and the ingestion of residual
53 methamphetamine is considered to be a result of hand-to-mouth
54 activities, and
55 WHEREAS, studies on methamphetamine use during pregnancy
56 showed an increased incidence of intrauterine growth
57 retardation, prematurity, and perinatal complications, and
58 WHEREAS, once clandestine laboratories have been seized,
59 the public may continue to be harmed by the illegal dumping of
60 chemical byproducts and the chemical residues that remain on the
61 residential property, and
62 WHEREAS, there are no statewide standards for determining
63 when a site of a seized clandestine laboratory has been
64 successfully decontaminated, and
65 WHEREAS, the Legislature finds that this act is necessary
66 for the immediate preservation of the public health, safety, and
67 welfare and fulfills an important state interest, NOW,
68 THEREFORE,
69
70 Be It Enacted by the Legislature of the State of Florida:
71
72 Section 1. Section 893.02, Florida Statutes, is amended to
73 read:
74 893.02 Definitions.--The following words and phrases as
75 used in this chapter shall have the following meanings, unless
76 the context otherwise requires:
77 (1) "Administer" means the direct application of a
78 controlled substance, whether by injection, inhalation,

79 ingestion, or any other means, to the body of a person or
80 animal.
81 (2) "Analog" or "chemical analog" means a structural
82 derivative of a parent compound that is a controlled substance.
83 (3) "Cannabis" means all parts of any plant of the genus
84 Cannabis, whether growing or not; the seeds thereof; the resin
85 extracted from any part of the plant; and every compound,
86 manufacture, salt, derivative, mixture, or preparation of the
87 plant or its seeds or resin.
88 (4) "Clandestine laboratory" means any location and
89 proximate areas set aside or used that are likely to be
90 contaminated as a result of manufacturing, processing, cooking,
91 disposing, or storing, either temporarily or permanently, any
92 substances in violation of this chapter, except as such
93 activities are authorized in chapter 499.
94 (5) "Contaminated" or "contamination" means containing
95 levels of chemicals at or above the levels defined by the
96 department pursuant to s. 893.123(1) as a result of clandestine
97 laboratory activity.
98 (6) "Contamination assessment specialist" or
99 "contamination assessor" means a person responsible for
100 assessing the extent of contamination and decontamination by
101 determining the indoor air quality in a residential property
102 based on the standards defined by the department. Upon the
103 conclusion of decontamination, a residential property must
104 successfully test less than or equal to the values defined by
105 the department. The person must have specialized training that
106 provides him or her with the knowledge, skills, and abilities to

107 use quantitative measurement techniques in collecting and
108 assessing specified contamination levels that have the ability
109 to impair human health and well-being.
110 (7) ~~(4)~~ "Controlled substance" means any substance named or
111 described in Schedules I-V of s. 893.03. Laws controlling the
112 manufacture, distribution, preparation, dispensing, or
113 administration of such substances are drug abuse laws.
114 (8) "Decontamination" means the process of reducing the
115 levels of contaminants to the levels defined by the department
116 pursuant to s. 893.123(1) that allow human reoccupancy using
117 currently available methods and processes.
118 (9) "Decontamination specialist" means a person
119 responsible for the cleanup, treatment, repair, removal, and
120 decontamination of contaminated materials located in a
121 residential property where clandestine laboratory activities
122 occurred. The person must have the knowledge, skills, and
123 ability to prescribe methods to eliminate, control, or reduce
124 contamination; and must have been trained in the removal,
125 storage, transport, and disposal of hazardous chemicals or
126 chemical residues commonly associated with clandestine
127 laboratory activities.
128 (10) ~~(5)~~ "Deliver" or "delivery" means the actual,
129 constructive, or attempted transfer from one person to another
130 of a controlled substance, whether or not there is an agency
131 relationship.
132 (11) ~~(9)~~ "Department" means the Department of Health.
133 (12) ~~(6)~~ "Dispense" means the transfer of possession of one
134 or more doses of a medicinal drug by a pharmacist or other

135 licensed practitioner to the ultimate consumer thereof or to one
136 who represents that it is his or her intention not to consume or
137 use the same but to transfer the same to the ultimate consumer
138 or user for consumption by the ultimate consumer or user.
139 (13) ~~(7)~~ "Distribute" means to deliver, other than by
140 administering or dispensing, a controlled substance.
141 (14) ~~(8)~~ "Distributor" means a person who distributes.
142 (15) ~~(10)~~ "Hospital" means an institution for the care and
143 treatment of the sick and injured, licensed pursuant to the
144 provisions of chapter 395 or owned or operated by the state or
145 Federal Government.
146 (16) ~~(11)~~ "Laboratory" means a laboratory approved by the
147 Drug Enforcement Administration as proper to be entrusted with
148 the custody of controlled substances for scientific, medical, or
149 instructional purposes or to aid law enforcement officers and
150 prosecuting attorneys in the enforcement of this chapter.
151 (17) ~~(12)~~ "Listed chemical" means any precursor chemical or
152 essential chemical named or described in s. 893.033.
153 (18) ~~(13)~~ (a) "Manufacture" means the production,
154 preparation, propagation, compounding, cultivating, growing,
155 conversion, or processing of a controlled substance, either
156 directly or indirectly, by extraction from substances of natural
157 origin, or independently by means of chemical synthesis, or by a
158 combination of extraction and chemical synthesis, and includes
159 any packaging of the substance or labeling or relabeling of its
160 container, except that this term does not include the
161 preparation, compounding, packaging, or labeling of a controlled
162 substance by:

163 1. A practitioner or pharmacist as an incident to his or
164 her administering or delivering of a controlled substance in the
165 course of his or her professional practice.
166 2. A practitioner, or by his or her authorized agent under
167 the practitioner's supervision, for the purpose of, or as an
168 incident to, research, teaching, or chemical analysis, and not
169 for sale.
170 (b) "Manufacturer" means and includes every person who
171 prepares, derives, produces, compounds, or repackages any drug
172 as defined by the Florida Drug and Cosmetic Act. However, this
173 definition does not apply to manufacturers of patent or
174 proprietary preparations as defined in the Florida Pharmacy Act.
175 Pharmacies, and pharmacists employed thereby, are specifically
176 excluded from this definition.
177 (19) ~~(14)~~ "Mixture" means any physical combination of two
178 or more substances.
179 (20) ~~(15)~~ "Patient" means an individual to whom a
180 controlled substance is lawfully dispensed or administered
181 pursuant to the provisions of this chapter.
182 (21) ~~(16)~~ "Pharmacist" means a person who is licensed
183 pursuant to chapter 465 to practice the profession of pharmacy
184 in this state.
185 (22) ~~(17)~~ "Possession" includes temporary possession for
186 the purpose of verification or testing, irrespective of dominion
187 or control.
188 (23) ~~(18)~~ "Potential for abuse" means that a substance has
189 properties of a central nervous system stimulant or depressant

190 or an hallucinogen that create a substantial likelihood of its
191 being:
192 (a) Used in amounts that create a hazard to the user's
193 health or the safety of the community;
194 (b) Diverted from legal channels and distributed through
195 illegal channels; or
196 (c) Taken on the user's own initiative rather than on the
197 basis of professional medical advice.
198
199 Proof of potential for abuse can be based upon a showing that
200 these activities are already taking place, or upon a showing
201 that the nature and properties of the substance make it
202 reasonable to assume that there is a substantial likelihood that
203 such activities will take place, in other than isolated or
204 occasional instances.
205 (24) ~~(19)~~ "Practitioner" means a physician licensed
206 pursuant to chapter 458, a dentist licensed pursuant to chapter
207 466, a veterinarian licensed pursuant to chapter 474, an
208 osteopathic physician licensed pursuant to chapter 459, a
209 naturopath licensed pursuant to chapter 462, or a podiatric
210 physician licensed pursuant to chapter 461, provided such
211 practitioner holds a valid federal controlled substance registry
212 number.
213 (25) ~~(20)~~ "Prescription" means and includes an order for
214 drugs or medicinal supplies written, signed, or transmitted by
215 word of mouth, telephone, telegram, or other means of
216 communication by a duly licensed practitioner licensed by the
217 laws of the state to prescribe such drugs or medicinal supplies,

218 issued in good faith and in the course of professional practice,
219 intended to be filled, compounded, or dispensed by another
220 person licensed by the laws of the state to do so, and meeting
221 the requirements of s. 893.04. The term also includes an order
222 for drugs or medicinal supplies so transmitted or written by a
223 physician, dentist, veterinarian, or other practitioner licensed
224 to practice in a state other than Florida, but only if the
225 pharmacist called upon to fill such an order determines, in the
226 exercise of his or her professional judgment, that the order was
227 issued pursuant to a valid patient-physician relationship, that
228 it is authentic, and that the drugs or medicinal supplies so
229 ordered are considered necessary for the continuation of
230 treatment of a chronic or recurrent illness. However, if the
231 physician writing the prescription is not known to the
232 pharmacist, the pharmacist shall obtain proof to a reasonable
233 certainty of the validity of said prescription. A prescription
234 order for a controlled substance shall not be issued on the same
235 prescription blank with another prescription order for a
236 controlled substance which is named or described in a different
237 schedule, nor shall any prescription order for a controlled
238 substance be issued on the same prescription blank as a
239 prescription order for a medicinal drug, as defined in s.
240 465.031(5), which does not fall within the definition of a
241 controlled substance as defined in this act.
242 (26) "Residential property" means a dwelling unit used, or
243 intended for use, by an individual or individuals as a permanent
244 residence. The term includes improved real property of between
245 one and four dwellings; a condominium unit, as defined in s.

246 718.103(27); a cooperative unit, as defined in s. 719.103(24);
247 or a mobile home or manufactured home, as defined in s.
248 320.01(2). The term does not include a hotel, motel, campground,
249 marina, or timeshare unit.
250 (27) ~~(21)~~ "Wholesaler" means any person who acts as a
251 jobber, wholesale merchant, or broker, or an agent thereof, who
252 sells or distributes for resale any drug as defined by the
253 Florida Drug and Cosmetic Act. However, this definition does not
254 apply to persons who sell only patent or proprietary
255 preparations as defined in the Florida Pharmacy Act. Pharmacies,
256 and pharmacists employed thereby, are specifically excluded from
257 this definition.
258 Section 2. Section 893.121, Florida Statutes, is created
259 to read:
260 893.121 Quarantine of a clandestine laboratory.--
261 (1) The purpose of the quarantine provided for in this
262 section is to prevent exposure of any person to the hazards
263 associated with clandestine laboratory activities and provide
264 protection from unsafe conditions that pose a threat to the
265 public health, safety, and welfare. The department has the
266 authority to quarantine residential property under s. 381.0011.
267 (2) Whenever a sheriff, police officer, or other law
268 enforcement entity secures evidence from a residential property
269 in which illegal clandestine laboratory activities occurred, the
270 department must quarantine the property. The local law
271 enforcement entity securing evidence shall enforce a quarantine
272 on the residential property as part of its duty to assist the
273 department under s. 381.0012(5). Enforcement does not require

274 the 24-hour posting of law enforcement personnel. The
275 residential property shall remain quarantined until the
276 department receives a certificate of fitness documenting that
277 the property was decontaminated as defined by the department
278 pursuant to s. 893.123 or demolished in accordance with s.
279 893.122(1), or a court order is presented requiring the
280 quarantine to be lifted.
281 (3) The department shall adopt rules pursuant to ss.
282 120.536(1) and 120.54 to establish a uniform notice to post at
283 the site of a quarantined clandestine laboratory and a uniform
284 letter of notification of the quarantine to be sent to the
285 residential property owner or manager. It is the responsibility
286 of local law enforcement to post the notice of a quarantine on
287 the residential property, and it is the responsibility of the
288 department to mail the letter of notification. The material in
289 the letter and notice shall include, but not be limited to:
290 (a) That the residential property has been quarantined and
291 a clandestine laboratory was seized on or inside the residential
292 property.
293 (b) The date of the quarantine.
294 (c) The name and contact telephone number of the law
295 enforcement entity posting the quarantine.
296 (d) A statement specifying that hazardous substances,
297 toxic chemicals, or other hazardous waste products may have been
298 present and may remain on or inside the residential property and
299 that exposure to the substances may be harmful and may pose a
300 threat to public health and the environment.

301 (e) A statement that it is unlawful for an unauthorized
302 person to enter the contaminated residential property and that
303 the removal of any notice of the quarantine is a second degree
304 misdemeanor under s. 381.0025(1).
305 (f) A statement, in the notification letter, explaining
306 how to have the quarantine lifted.
307 (4) Upon securing evidence from a residential property in
308 which illegal clandestine laboratory activities occurred, the
309 local law enforcement entity shall immediately notify the local
310 health officer and the department's Division of Environmental
311 Health that a residential property is quarantined and shall
312 provide the name and contact information of the law enforcement
313 entity, the name of the residential property owner or
314 residential property manager, and the address of the property.
315 (5) To the extent possible, the department shall mail the
316 letter of notification to the residential property owner or the
317 manager of the residential property within 5 working days from
318 the date of quarantine notifying the owner or manager that a
319 clandestine laboratory was found on the property and that the
320 property has been quarantined. The department shall also include
321 a list of contamination assessment specialists and
322 decontamination specialists and any other information deemed
323 appropriate by the department to the residential property owner
324 or manager.
325 (6) Any person who has an interest in a residential
326 property that is quarantined pursuant to this section may file a
327 petition in the circuit court in which the residential property

328 is located to request a court order that the quarantine of the
329 residential property be lifted for one of the following reasons:
330 (a) The residential property was wrongfully quarantined;
331 or
332 (b) The residential property has been properly
333 decontaminated as defined by the department pursuant to s.
334 893.123 or demolished pursuant to s. 893.122(1) and may be
335 reoccupied for habitation, but the department refuses or fails
336 to lift the quarantine.
337 (7) No person shall inhabit a quarantined residential
338 property, offer the residential property to the public for
339 temporary or indefinite habitation, or remove any notice of the
340 quarantine. Any person who willfully violates a provision of
341 this subsection commits a second degree misdemeanor under s.
342 381.0025(1).
343 Section 3. Section 893.122, Florida Statutes, is created
344 to read:
345 893.122 Option of demolition; immunity from liability from
346 health-based civil actions.--
347 (1) A residential property owner shall, upon notification
348 from the department that clandestine laboratory activities have
349 occurred in a property owned by that owner and that the property
350 is quarantined, meet the decontamination standards as defined by
351 the department pursuant to s. 893.123 unless the property owner,
352 at the owner's discretion, elects to demolish the contaminated
353 residential property. The demolition and removal of materials
354 must meet the requirements of the Occupational Safety and Health
355 Administration and the United States Environmental Protection

356 Agency regulations pertaining to the generation, storage,
357 transport, and disposal of hazardous wastes and any state or
358 local requirements.
359 (2) A residential property owner who has met the
360 decontamination standards, as evidenced by a certificate of
361 fitness and a letter of reoccupancy pursuant to s.893.123, or
362 has demolished the residential property in compliance with
363 subsection (1), shall have immunity from health-based civil
364 actions brought by any future owner, renter, or other person who
365 occupies such residential property, or a neighbor of such
366 residential property, in which the alleged cause of the injury
367 or loss is the existence of the clandestine laboratory. However,
368 a person with a conviction, as defined in s. 944.607, for the
369 manufacture of any substance regulated under this chapter on the
370 residential property where clandestine laboratory activities
371 occurred shall not have the immunity provided in this
372 subsection.
373 Section 4. Section 893.123, Florida Statutes, is created
374 to read:
375 893.123 Clandestine laboratory decontamination standards,
376 certificate of fitness, and letter of reoccupancy.--
377 (1) The department shall adopt rules pursuant to ss.
378 120.536(1) and 120.54 that establish:
379 (a) Standards for indoor air quality regarding levels of
380 contaminants produced by clandestine laboratory activities to
381 include methamphetamine, lead, mercury, and volatile organic
382 compounds. These standards must be consistent with values
383 commonly used by other states or comply with national standards.

384 (b) Standards for the cleanup and testing of clandestine
385 laboratories.
386 (c) A certificate of fitness that shall act as appropriate
387 documentation that a residential property has been
388 decontaminated in accordance with specified standards. The
389 certificate of fitness shall be submitted to the department by a
390 contamination assessment specialist. The certificate of fitness
391 shall include, but is not limited to:
392 1. The name of the residential property owner, the mailing
393 and street address of the residential property owner, and, if
394 applicable, the parcel identification of the residential
395 property.
396 2. The dates the residential property was quarantined and
397 cleanup was completed.
398 3. A summary of the indoor air quality test results,
399 findings, and conclusions as determined by a contamination
400 assessment specialist.
401 4. The name and address of the contamination assessment
402 specialist.
403 5. The name and address of the decontamination specialist.
404 6. The method of repair, replacement, or decontamination
405 of the residential property.
406 (d) A letter of reoccupancy that will notify the
407 residential property owner that the property may be reoccupied
408 for habitation.
409 (2) Upon receipt of the certificate of fitness, the
410 department shall send a letter of reoccupancy to the residential
411 property owner or manager and to the local law enforcement

412 entity that enforced the quarantine and posted the notice. The
413 letter of reoccupancy must include the address of the
414 residential property, a statement that the quarantine is lifted,
415 and a statement that the residential property may be reoccupied
416 for habitation.
417 (3) In the case of demolition, the department shall lift
418 the quarantine on a residential property upon receipt of a
419 letter presented by a demolition company stating that the
420 quarantined property was demolished. The letter must include the
421 address of the residential property and a statement that the
422 demolition was performed in accordance to the requirements in s.
423 893.122(1).
424 Section 5. Section 893.124, Florida Statutes, is created
425 to read:
426 893.124 Decontamination and contamination assessment
427 specialists.--
428 (1)(a) The department shall compile and maintain lists of
429 decontamination and contamination assessment specialists. The
430 lists shall be posted on the department's Internet website. The
431 department shall indicate on the website whether the specialists
432 are bonded and insured.
433 (b) Persons authorized to perform decontamination or
434 contamination assessments must have knowledge and skill in the
435 handling of toxic substances. The department shall adopt rules
436 pursuant to ss. 120.536(1) and 120.54 specifying the
437 requirements for persons authorized to perform decontamination
438 and contamination assessments. Decontamination specialists shall
439 be responsible for ensuring that all hazardous substances, toxic

440 chemicals, or other hazardous waste products that may have been
441 present are removed from the residential property and disposed
442 of in accordance with federal, state, and local laws and
443 regulations.
444 (2) In determining the level of contamination in a
445 clandestine laboratory, the decontamination or contamination
446 assessment specialist may request copies of any available law
447 enforcement reports or information relating to the following:
448 (a) The length of time the residential property was used
449 as a clandestine laboratory.
450 (b) The extent to which the residential property was
451 exposed to chemicals used in clandestine laboratory activities.
452 (c) The chemical processes that were involved in the
453 clandestine laboratory activities.
454 (d) The chemicals that were removed from the residential
455 property.
456 (e) The location of the clandestine laboratory activities
457 in relation to the habitable areas of the residential property.
458 (3) If the contamination assessment specialist determines
459 that the residential property is not contaminated, the
460 contamination assessment specialist shall prepare a certificate
461 of fitness and submit the certificate to the department.
462 Section 6. Paragraph (s) of subsection (1) of section
463 465.016, Florida Statutes, is amended to read:
464 465.016 Disciplinary actions.--
465 (1) The following acts constitute grounds for denial of a
466 license or disciplinary action, as specified in s. 456.072(2):

467 (s) Dispensing any medicinal drug based upon a
468 communication that purports to be a prescription as defined by
469 s. 465.003(14) or s. 893.02~~(20)~~ when the pharmacist knows or has
470 reason to believe that the purported prescription is not based
471 upon a valid practitioner-patient relationship.
472 Section 7. Paragraph (e) of subsection (1) of section
473 465.023, Florida Statutes, is amended to read:
474 465.023 Pharmacy permittee; disciplinary action.--
475 (1) The department or the board may revoke or suspend the
476 permit of any pharmacy permittee, and may fine, place on
477 probation, or otherwise discipline any pharmacy permittee who
478 has:
479 (e) Dispensed any medicinal drug based upon a
480 communication that purports to be a prescription as defined by
481 s. 465.003(14) or s. 893.02~~(20)~~ when the pharmacist knows or has
482 reason to believe that the purported prescription is not based
483 upon a valid practitioner-patient relationship that includes a
484 documented patient evaluation, including history and a physical
485 examination adequate to establish the diagnosis for which any
486 drug is prescribed and any other requirement established by
487 board rule under chapter 458, chapter 459, chapter 461, chapter
488 463, chapter 464, or chapter 466.
489 Section 8. Paragraph (c) of subsection (1) of section
490 856.015, Florida Statutes, is amended to read:
491 856.015 Open house parties.--
492 (1) Definitions.--As used in this section:
493 (c) "Drug" means a controlled substance, as that term is
494 defined in ss. 893.02~~(4)~~ and 893.03.

495 Section 9. Subsection (6) of section 893.135, Florida
496 Statutes, is amended to read:
497 893.135 Trafficking; mandatory sentences; suspension or
498 reduction of sentences; conspiracy to engage in trafficking.--
499 (6) A mixture, as defined in s. 893.02~~(14)~~, containing any
500 controlled substance described in this section includes, but is
501 not limited to, a solution or a dosage unit, including but not
502 limited to, a pill or tablet, containing a controlled substance.
503 For the purpose of clarifying legislative intent regarding the
504 weighing of a mixture containing a controlled substance
505 described in this section, the weight of the controlled
506 substance is the total weight of the mixture, including the
507 controlled substance and any other substance in the mixture. If
508 there is more than one mixture containing the same controlled
509 substance, the weight of the controlled substance is calculated
510 by aggregating the total weight of each mixture.
511 Section 10. Paragraph (a) of subsection (1) of section
512 944.47, Florida Statutes, is amended to read:
513 944.47 Introduction, removal, or possession of certain
514 articles unlawful; penalty.--
515 (1)(a) Except through regular channels as authorized by
516 the officer in charge of the correctional institution, it is
517 unlawful to introduce into or upon the grounds of any state
518 correctional institution, or to take or attempt to take or send
519 or attempt to send therefrom, any of the following articles
520 which are hereby declared to be contraband for the purposes of
521 this section, to wit:

522 1. Any written or recorded communication or any currency
523 or coin given or transmitted, or intended to be given or
524 transmitted, to any inmate of any state correctional
525 institution.
526 2. Any article of food or clothing given or transmitted,
527 or intended to be given or transmitted, to any inmate of any
528 state correctional institution.
529 3. Any intoxicating beverage or beverage which causes or
530 may cause an intoxicating effect.
531 4. Any controlled substance as defined in s. 893.02~~(4)~~ or
532 any prescription or nonprescription drug having a hypnotic,
533 stimulating, or depressing effect.
534 5. Any firearm or weapon of any kind or any explosive
535 substance.
536 Section 11. Subsection (1) of section 951.22, Florida
537 Statutes, is amended to read:
538 951.22 County detention facilities; contraband articles.--
539 (1) It is unlawful, except through regular channels as
540 duly authorized by the sheriff or officer in charge, to
541 introduce into or possess upon the grounds of any county
542 detention facility as defined in s. 951.23 or to give to or
543 receive from any inmate of any such facility wherever said
544 inmate is located at the time or to take or to attempt to take
545 or send therefrom any of the following articles which are hereby
546 declared to be contraband for the purposes of this act, to wit:
547 Any written or recorded communication; any currency or coin; any
548 article of food or clothing; any tobacco products as defined in
549 s. 210.25(11); any cigarette as defined in s. 210.01(1); any

550 cigar; any intoxicating beverage or beverage which causes or may
551 cause an intoxicating effect; any narcotic, hypnotic, or
552 excitative drug or drug of any kind or nature, including nasal
553 inhalators, sleeping pills, barbiturates, and controlled
554 substances as defined in s. 893.02~~(4)~~; any firearm or any
555 instrumentality customarily used or which is intended to be used
556 as a dangerous weapon; and any instrumentality of any nature
557 that may be or is intended to be used as an aid in effecting or
558 attempting to effect an escape from a county facility.
559 Section 12. Paragraph (a) of subsection (1) of section
560 985.4046, Florida Statutes, is amended to read:
561 985.4046 Introduction, removal, or possession of certain
562 articles unlawful; penalty.--
563 (1)(a) Except as authorized through program policy or
564 operating procedure or as authorized by the facility
565 superintendent, program director, or manager, a person may not
566 introduce into or upon the grounds of a juvenile detention
567 facility or commitment program, or take or send, or attempt to
568 take or send, from a juvenile detention facility or commitment
569 program, any of the following articles, which are declared to be
570 contraband under this section:
571 1. Any unauthorized article of food or clothing.
572 2. Any intoxicating beverage or any beverage that causes
573 or may cause an intoxicating effect.
574 3. Any controlled substance, as defined in s. 893.02~~(4)~~,
575 or any prescription or nonprescription drug that has a hypnotic,
576 stimulating, or depressing effect.

577 4. Any firearm or weapon of any kind or any explosive
578 substance.
579 Section 13. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7073 PCB HCR 06-01 Coordinated Health Care Information
SPONSOR(S): Health Care Regulation Committee, Garcia
TIED BILLS: **IDEN./SIM. BILLS:** 1332

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Health Care Regulation Committee	9 Y, 0 N	Bell	Mitchell
1) Health Care Appropriations Committee	14 Y, 0 N	Speir	Massengale
2) Health & Families Council		Bell AJB	Moore MM
3)			
4)			
5)			

SUMMARY ANALYSIS

House Bill 7073 on Health Care Information creates the "Coordinated Health Care Information and Transparency Act of 2006." The act changes a number of provisions in current statute to better coordinate health information for purposes of public health, policy analysis, and transparency for health care consumers.

The bill renames the Center for Health Statistics in the Agency for Health Care Administration (AHCA) to the Florida Center for Health Information and Policy Analysis. The bill specifies that the Center's role is to identify the best available data sources and coordinate the compilation of health-related data and statistics.

The bill renames the State Comprehensive Health Information System Advisory Council to the State Consumer Health Information and Policy Advisory Council. The bill specifies the Council's duties and responsibilities, which include the following:

- Develop a mission statement, goals, and plan of action for the identification, collection, standardization, sharing, and coordination of health-related data across federal, state, and local government and private sector entities.
- Develop a review process to ensure cooperative planning among agencies that collect or maintain health-related data.
- Create ad hoc issue-oriented technical workgroups, on an as needed basis, to make recommendations to the Council.

The bill also authorizes AHCA to manage and monitor grants to advance a health information network, requires AHCA to oversee and manage health care data from other state agencies, and requires AHCA to collect data on retail prices charged by pharmacies for 100, rather than 50 of the most frequently prescribed medications. AHCA is required to post the prices for these prescriptions online no later than October 1, 2006.

According to AHCA, there is no fiscal impact to implement the provisions in this bill.

The effective date of the bill is upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower Families - Expands the duties of the State Center for Health Statistics to provide more transparency in prescription drug prices by expanding the list of available online prescription drug prices from 50 to 100 drugs and provides consumers additional access to information on health care providers.

B. EFFECT OF PROPOSED CHANGES:

Public Reporting

House Bill 7073 on Health Care Information changes the terminology used to describe the type of measures the Agency for Health Care Administration (AHCA) publicly reports from performance outcomes to healthcare quality measures and defines those measures to include but not be limited to:

- Process measures.
- Patient safety indicators.
- Inpatient quality indicators.
- Performance measures.

The current requirements for public reporting in ss. 408.05 (3)(l) & 408.062(1)(j), F.S., use the terms "performance outcome data" or "performance outcome indicators." There are specific references to the publication of mortality rates, complication rates and infection rates in s. 408.05 (3) (l), F.S. According to AHCA, the change in terminology and specification of various types of performance measures reflect the variety of types of measures available for public reporting and the development of new measures.

The bill includes the Centers for Disease Control and Prevention as a resource for potential standards to measure health care providers' performance. This change adds a resource for data standards regarding hospital infections and other standards related to the performance of health care providers.

State Comprehensive Health Information System Advisory Council

The bill changes the name of the State Comprehensive Health Information System Advisory Council to the State Consumer Health Information and Policy Advisory Council and specifies certain responsibilities of the council in its advisory role regarding the development of the comprehensive health information system. According to AHCA, the change in council name will increase awareness among consumers and other interested parties regarding the council's mission to advise AHCA regarding consumer health information.

The bill specifies that the council will advise AHCA regarding the identification, collection, standardization, sharing, and coordination of health-related data, including fraud and abuse data, and professional and facility licensing data among federal, state, local and private entities. The council will also advise AHCA regarding improvements to the comprehensive health information system for purposes of public health, policy analysis, and transparency of consumer health care information.

The bill specifies that the council's duties and responsibilities will include developing a plan for the coordination of health-related data across federal, state, and local government and private-sector entities and a review process to ensure cooperative planning among agencies that collect or maintain health-related data. The specification of Council duties clarifies the council's role and creates

consistency with the current responsibilities of AHCA and new responsibilities related to a health information network.

In s. 408.05 (3)(l), F.S., AHCA is directed to develop, in conjunction with the council, a long-range plan for public reporting to allow consumers to compare health care services, beginning with the release of patient charges, infection rates, mortality rates, complication rates and data on health plans by the dates specified. The council's role is to advise AHCA on the method and format for public disclosure.

The bill also changes council member terms from 4 years to 2 years. However, council members may be reappointed.

Health Information Network

The bill authorizes AHCA and the State Center for Health Statistics to support the development of a health information network. These support activities include developing a network in incremental steps through the initiation of pilot projects, integrating health data collected and maintained by state agencies, and providing technical assistance to pilot projects and other stakeholders participating in the development of a health information network.

The bill codifies the activities related to the grant funding of an information network. It adds responsibilities related to the integration and transfer of state data sets to a health information network.

Policy Analysis

The bill changes the name of the State Center for Health Statistics to the Florida Center for Health Information and Policy Analysis (center). The bill provides that the center shall include health-related data and statistics in the development of the comprehensive health information system and shall produce health information and statistics for the development of policy recommendations.

According to AHCA, the bill changes the title and description of responsibilities to direct the Center to perform policy analysis and develop policy recommendations. It broadens the purpose of the comprehensive health information system to include the development of public policy and expands the mission of the Center.

CURRENT SITUATION

Public Reporting

The Agency for Health Care Administration (AHCA) currently publishes data for public use on its consumer websites. In addition to the AHCA's central website (www.ahca@myflorida.com), AHCA publishes data on www.FloridaHealthStat.com, www.FloridaCompareCare.gov and www.MyFloridaRx.com.

The data made available on these consumer websites includes volume of cases, length-of-stay, and charges at each health care facility for groups of related diagnoses and procedures. The published data is adjusted for severity of illness or condition. Data for calendar year 2004 is currently available in an interactive format where the user selects the type of data to be viewed based on a menu of options (www.ahca@myflorida.com/ www.floridahealthstat.com).

As of November 2005, AHCA has released, via website, the hospital readmission rates, complication rates, mortality rates, and infection rates (www.CompareCare.gov). In coordination with the Attorney General's Office, retail prices for select prescription drugs have been published since June 2005 through a searchable consumer website (www.MyFloridaRx.com).

AHCA uses the methodology developed by the Federal Agency for Healthcare Research and Quality to produce comparative consumer indicators. Licensed hospitals and ambulatory surgical centers report patient data that is used to develop the indicators.[1]

Pursuant to 59E-7, F.A.C., beginning in 2007 AHCA will require hospitals to report whether any secondary diagnosis contained in the records submitted to AHCA was present at admission. The additional admission data will enable the AHCA to expand and enhance reportable information on infection rates and complication rates.

The current requirements for public reporting in ss. 408.05 (3)(l) & 408.062(1)(j), F.S., use the terms "performance outcome data" or "performance outcome indicators." There are specific references to the publication of mortality rates, complication rates and infection rates in s. 408.05 (3)(l), F.S.

State Comprehensive Health Information System Advisory Council

The State Comprehensive Health Information System Advisory Council was established by s. 408.05 (8), F.S. to advise AHCA regarding the collection and dissemination of health information and make recommendations for improvements. The council consists of 13 members with 10 members appointed by the Secretary of Health Care Administration, one member appointed by the Governor, one member appointed by the Chief Financial Officer, and one member appointed by the Commissioner of Education. Members are appointed for a term of four years.

Current section 408.05 (3)(l), F.S., directs AHCA to develop, in conjunction with the council, a long-range plan for public reporting to allow consumers to compare health care services, beginning with the release of patient charges, infection rates, mortality rates, complications rates and information on health plans by the dates specified. The council advises AHCA on the method and format for public disclosure.

Health Information Network

Existing section 408.062(5), F.S., requires AHCA to develop a strategic plan for the adoption and use of electronic health records. AHCA is authorized to develop rules to facilitate the functionality and protect the confidentiality of electronic health records.

AHCA provides staff support to the Governor's Health Information Infrastructure Advisory Board which was established by Executive Order 04-93 in May of 2004. The Advisory Board advises and supports AHCA as it develops and implements a strategy for the adoption and use of electronic health records and creates a plan to promote the development and implementation of a health information infrastructure. Under current law, the board may continue to operate until June of 2007.

AHCA received a non-recurring appropriation of $1.5 million in fiscal year 2005-2006 to provide grants that would help develop a Florida health information network.

Policy Analysis

Currently, the State Center for Health Statistics is authorized to produce publications on topical health policy issues in s. 408.05 (5)(a), F.S., although there is no specific requirement that AHCA perform public policy analysis or develop policy recommendations in this section. AHCA is required to report certain research studies in s. 408.062, F.S., including a report on health expenditures and a study of emergency department utilization and costs.

[1] Data reported to AHCA is specified in 59B-9.010 through 59B-9.023, F.A.C. and 59E-7.011 through 59E-7.016, F.A.C. as authorized in s. 408.061, F.S.

C. SECTION DIRECTORY:

Section 1. Provides for a name citation as the, "Coordinated Health Care Information and Transparency Act of 2006."

Section 2. Provides the purpose of the act is to provide for better coordination of health information for purposes of public health, policy analysis, and transparency of consumer health information.

Section 3. Amends s. 408.05, F.S., to change the title of the State Center for Health Statistics to Florida Center for Health Information and Policy Analysis. The act changes a number of provisions in current statute to better coordinate health information. Some of the changes made include:

- Specifies that the State Center for Health Statistics's role is to identify the best available data sources and coordinate the compilation of health-related data and statistics;
- Renames the State Comprehensive Health Information System Advisory Council to the State Consumer Health Information and Policy Advisory Council;
- Specifies duties and responsibility of the Council;
- Authorizes the Agency for Health Care Administration (AHCA) to manage and monitor grants to advance a health information network; and
- Requires AHCA to oversee and manage data received from other state agencies.

Section 4. Amends s. 408.061, F.S., to specify that data submitted by health care providers pursuant to the section may include their associations with professional organizations and their specialty board affiliations.

Section 5. Amends s. 408.062, F.S., to increase the number of frequently prescribed medicines that will be posted on AHCA's website October 1, 2006 from 50 medicines to 100 medicines; require that performance indicators will be made available on AHCA's website, and that AHCA will submit an annual report on healthcare quality measures; and to provide that the required cesarean section report will be published periodically instead of annually on AHCA's website.

Section 6. Amends s. 20.42, F.S., to change the name of the State Center for Health Statistics to the Florida Center for Health Information and Policy Analysis.

Section 7 through section 16. Amends ss. 381.001, 395.602, 395.6025, 408.07, & 408.18, 381.026, 395.301, 465.0244, 627.6499, and 641.54, F.S., to provide cross references.

Section 17. Provides that the bill will take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill requires the agency to administer, manage, and monitor grants. Nonrecurring funds however, were used in the current fiscal year for this purpose. The proposed House General Appropriations Act provides $1.3 million in recurring funds for this purpose.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The AHCA has sufficient rulemaking authority to implement the provisions in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 22, 2006 the Health Care Regulation Committee adopted 5 amendments to the bill.

Amendment 1: Clarified that some health information is not to be disclosed publicly.
Amendment 2: Clarified that the Florida Center for Health Information and Policy Analysis can provide technical assistance relating to the development of a health information network and electronic medical records.
Amendment 3: Restored some original statutory language that protects health care providers from disclosing extra information outside of the information that is required to be reported by law.
Amendment 4: Clarified that members of the State Consumer Health Information and Policy Advisory Council may be reappointed.
Amendment 5: Authorized the AHCA to develop an electronic health information network for the sharing of electronic health records among health care facilities, health care providers, and health insurers.

The analysis is drafted to the committee substitute.

1 A bill to be entitled
2 An act relating to health care information; providing a
3 short title; providing purpose; amending s. 408.05, F.S.;
4 renaming the State Center for Health Statistics; revising
5 criteria for collection and use of certain health-related
6 data; providing responsibilities of the Agency for Health
7 Care Administration; providing for agency consultation
8 with the State Consumer Health Information and Policy
9 Advisory Council for the dissemination of certain consumer
10 information; requiring the Florida Center for Health
11 Information and Policy Analysis to provide certain
12 technical assistance services; authorizing the agency to
13 monitor certain grants; removing a provision that
14 establishes the Comprehensive Health Information System
15 Trust Fund as the repository of certain funds; renaming
16 the State Comprehensive Health Information System Advisory
17 Council; providing for duties and responsibilities of the
18 State Consumer Health Information and Policy Advisory
19 Council; providing for membership, terms, officers, and
20 meetings; amending s. 408.061, F.S.; providing for health
21 care providers to submit additional data to the agency;
22 correcting a reference; amending s. 408.062, F.S.;
23 revising provisions relating to availability of specified
24 information on the agency's Internet website; requiring a
25 report; removing an obsolete provision; authorizing the
26 agency to develop an electronic health information
27 network; amending ss. 20.42, 381.001, 395.602, 395.6025,
28 408.07, and 408.18, F.S.; conforming references to changes

29 made by the act; amending ss. 381.026, 395.301, 465.0244,
30 627.6499, and 641.54, F.S.; conforming a cross-reference;
31 providing an effective date.
32
33 Be It Enacted by the Legislature of the State of Florida:
34
35 Section 1. This act may be cited as the "Coordinated
36 Health Care Information and Transparency Act of 2006."
37 Section 2. The purpose of this act is to provide better
38 coordination of health information for purposes of public
39 health, policy analysis, and transparency of consumer health
40 care information.
41 Section 3. Section 408.05, Florida Statutes, is amended to
42 read:
43 408.05 Florida ~~State~~ Center for Health Information and
44 Policy Analysis ~~Statistics~~.--
45 (1) ESTABLISHMENT.--The agency shall establish a Florida
46 ~~State~~ Center for Health Information and Policy Analysis
47 ~~Statistics~~. The center shall establish a comprehensive health
48 information system to provide for the collection, compilation,
49 coordination, analysis, indexing, dissemination, and utilization
50 of both purposefully collected and extant health-related data
51 and statistics. The center shall be staffed with public health
52 experts, biostatisticians, information system analysts, health
53 policy experts, economists, and other staff necessary to carry
54 out its functions.
55 (2) HEALTH-RELATED DATA ~~STATISTICS~~.--The comprehensive
56 health information system operated by the Florida ~~State~~ Center

57 for Health Information and Policy Analysis ~~Statistics~~ shall
58 identify the best available data sources and coordinate the
59 compilation of extant health-related data and statistics and
60 purposefully collect data on:
61 (a) The extent and nature of illness and disability of the
62 state population, including life expectancy, the incidence of
63 various acute and chronic illnesses, and infant and maternal
64 morbidity and mortality.
65 (b) The impact of illness and disability of the state
66 population on the state economy and on other aspects of the
67 well-being of the people in this state.
68 (c) Environmental, social, and other health hazards.
69 (d) Health knowledge and practices of the people in this
70 state and determinants of health and nutritional practices and
71 status.
72 (e) Health resources, including physicians, dentists,
73 nurses, and other health professionals, by specialty and type of
74 practice and acute, long-term care and other institutional care
75 facility supplies and specific services provided by hospitals,
76 nursing homes, home health agencies, and other health care
77 facilities.
78 (f) Utilization of health care by type of provider.
79 (g) Health care costs and financing, including trends in
80 health care prices and costs, the sources of payment for health
81 care services, and federal, state, and local expenditures for
82 health care.
83 (h) Family formation, growth, and dissolution.

84 (i) The extent of public and private health insurance
85 coverage in this state.
86 (j) The quality of care provided by various health care
87 providers.
88 (3) COMPREHENSIVE HEALTH INFORMATION SYSTEM.--In order to
89 produce comparable and uniform health information and statistics
90 for the development of policy recommendations, the agency shall
91 perform the following functions:
92 (a) Coordinate the activities of state agencies involved
93 in the design and implementation of the comprehensive health
94 information system.
95 (b) Undertake research, development, and evaluation
96 respecting the comprehensive health information system.
97 (c) Review the statistical activities of state agencies to
98 ensure ~~the Department of Health to assure~~ that they are
99 consistent with the comprehensive health information system.
100 (d) Develop written agreements with local, state, and
101 federal agencies for the sharing of health-care-related data or
102 using the facilities and services of such agencies. State
103 agencies, local health councils, and other agencies under state
104 contract ~~with the Department of Health~~ shall assist the center
105 in obtaining, compiling, and transferring health-care-related
106 data maintained by state and local agencies. Written agreements
107 must specify the types, methods, and periodicity of data
108 exchanges and specify the types of data that will be transferred
109 to the center.
110 (e) ~~The agency shall~~ Establish by rule the types of data
111 collected, compiled, processed, used, or shared. Decisions

112 regarding center data sets should be made based on consultation
113 with the State Consumer ~~Comprehensive~~ Health Information and
114 Policy ~~System~~ Advisory Council and other public and private
115 users regarding the types of data which should be collected and
116 their uses.
117 ~~(f)~~ The center shall establish standardized means for
118 collecting health information and statistics under laws and
119 rules administered by the agency.
120 (f) ~~(g)~~ Establish minimum health-care-related data sets
121 which are necessary on a continuing basis to fulfill the
122 collection requirements of the center and which shall be used by
123 state agencies in collecting and compiling health-care-related
124 data. The agency shall periodically review ongoing health care
125 data collections of the Department of Health and other state
126 agencies to determine if the collections are being conducted in
127 accordance with the established minimum sets of data.
128 (g) ~~(h)~~ Establish advisory standards to ensure ~~assure~~ the
129 quality of health statistical and epidemiological data
130 collection, processing, and analysis by local, state, and
131 private organizations.
132 (h) ~~(i)~~ Prescribe standards for the publication of health-
133 care-related data reported pursuant to this section which ensure
134 the reporting of accurate, valid, reliable, complete, and
135 comparable data. Such standards should include advisory warnings
136 to users of the data regarding the status and quality of any
137 data reported by or available from the center.
138 (i) ~~(j)~~ Prescribe standards for the maintenance and
139 preservation of the center's data. This should include methods

140 for archiving data, retrieval of archived data, and data editing
141 and verification.
142 (j) ~~(k)~~ Ensure that strict quality control measures are
143 maintained for the dissemination of data through publications,
144 studies, or user requests.
145 (k) ~~(l)~~ Develop, in conjunction with the State Consumer
146 ~~Comprehensive~~ Health Information and Policy ~~System~~ Advisory
147 Council, and implement a long-range plan for making available
148 health care quality measures ~~performance outcome~~ and financial
149 data that will allow consumers to compare health care services.
150 The health care quality measures ~~performance outcomes~~ and
151 financial data the agency must make available shall include, but
152 is not limited to, pharmaceuticals, physicians, health care
153 facilities, and health plans and managed care entities. The
154 agency shall submit the initial plan to the Governor, the
155 President of the Senate, and the Speaker of the House of
156 Representatives by January 1, 2006, and shall update the plan
157 and report on the status of its implementation annually
158 thereafter. The agency shall also make the plan and status
159 report available to the public on its Internet website. As part
160 of the plan, the agency shall identify the process and
161 timeframes for implementation, any barriers to implementation,
162 and recommendations of changes in the law that may be enacted by
163 the Legislature to eliminate the barriers. As preliminary
164 elements of the plan, the agency shall:
165 1. Make available health care quality measures that
166 include, but are not limited to, process measures, patient
167 safety measures, inpatient quality indicators, performance

168 measures, ~~outcome~~ and patient charge data collected from health
169 care facilities pursuant to s. 408.061(1)(a) and (2). The agency
170 shall determine which conditions, ~~and~~ procedures, health care
171 quality measures ~~performance outcomes~~, and patient charge data
172 to disclose based upon input from the council. When determining
173 which conditions and procedures are to be disclosed, the council
174 and the agency shall consider variation in costs, variation in
175 outcomes, and magnitude of variations and other relevant
176 information. When determining which health care quality measures
177 ~~performance outcomes~~ to disclose, the agency:
178 a. Shall consider such factors as volume of cases; average
179 patient charges; average length of stay; complication rates;
180 mortality rates; and infection rates, among others, which shall
181 be adjusted for case mix and severity, if applicable.
182 b. May consider such additional measures that are adopted
183 by the Centers for Medicare and Medicaid Studies, National
184 Quality Forum, the Joint Commission on Accreditation of
185 Healthcare Organizations, the Agency for Healthcare Research and
186 Quality, Centers for Disease Control and Prevention, or a
187 similar national entity that establishes standards to measure
188 the performance of health care providers, or by other states.
189
190 When determining which patient charge data to disclose, the
191 agency shall consider such measures as average charge, average
192 net revenue per adjusted patient day, average cost per adjusted
193 patient day, and average cost per admission, among others.
194 2. Make available performance measures, benefit design,
195 and premium cost data from health plans licensed pursuant to

196 chapter 627 or chapter 641. The agency shall determine which
197 health care quality measures ~~performance outcome~~ and member and
198 subscriber cost data to disclose, based upon input from the
199 council. When determining which data to disclose, the agency
200 shall consider information that may be required by either
201 individual or group purchasers to assess the value of the
202 product, which may include membership satisfaction, quality of
203 care, current enrollment or membership, coverage areas,
204 accreditation status, premium costs, plan costs, premium
205 increases, range of benefits, copayments and deductibles,
206 accuracy and speed of claims payment, credentials of physicians,
207 number of providers, names of network providers, and hospitals
208 in the network. Health plans shall make available to the agency
209 any such data or information that is not currently reported to
210 the agency or the office.
211 3. Determine the method and format for public disclosure
212 of data reported pursuant to this paragraph. The agency shall
213 make its determination based upon input from the State Consumer
214 ~~Comprehensive~~ Health Information and Policy ~~System~~ Advisory
215 Council. At a minimum, the data shall be made available on the
216 agency's Internet website in a manner that allows consumers to
217 conduct an interactive search that allows them to view and
218 compare the information for specific providers. The website must
219 include such additional information as is determined necessary
220 to ensure that the website enhances informed decisionmaking
221 among consumers and health care purchasers, which shall include,
222 at a minimum, appropriate guidance on how to use the data and an
223 explanation of why the data may vary from provider to provider.

224 The data specified in subparagraph 1. shall be released no later
225 than January 1, 2006, for the reporting of infection rates, and
226 no later than October 1, 2005, for mortality rates and
227 complication rates. The data specified in subparagraph 2. shall
228 be released no later than October 1, 2006.
229 (4) TECHNICAL ASSISTANCE.--
230 (a) The center shall provide technical assistance to
231 persons or organizations engaged in health planning activities
232 in the effective use of statistics collected and compiled by the
233 center. The center shall also provide the following additional
234 technical assistance services:
235 1. ~~(a)~~ Establish procedures identifying the circumstances
236 under which, the places at which, the persons from whom, and the
237 methods by which a person may secure data from the center,
238 including procedures governing requests, the ordering of
239 requests, timeframes for handling requests, and other procedures
240 necessary to facilitate the use of the center's data. To the
241 extent possible, the center should provide current data timely
242 in response to requests from public or private agencies.
243 2. ~~(b)~~ Provide assistance to data sources and users in the
244 areas of database design, survey design, sampling procedures,
245 statistical interpretation, and data access to promote improved
246 health-care-related data sets.
247 3. ~~(c)~~ Identify health care data gaps and provide technical
248 assistance to ~~seek cooperative agreements with~~ other public or
249 private organizations for meeting documented health care data
250 needs.

251 4. ~~(d)~~ Assist other organizations in developing statistical
252 abstracts of their data sets that could be used by the center.
253 5. ~~(e)~~ Provide statistical support to state agencies with
254 regard to the use of databases maintained by the center.
255 6. ~~(f)~~ To the extent possible, respond to multiple requests
256 for information not currently collected by the center or
257 available from other sources by initiating data collection.
258 7. ~~(g)~~ Maintain detailed information on data maintained by
259 other local, state, federal, and private agencies in order to
260 advise those who use the center of potential sources of data
261 which are requested but which are not available from the center.
262 8. ~~(h)~~ Respond to requests for data which are not available
263 in published form by initiating special computer runs on data
264 sets available to the center.
265 9. Monitor innovations in health information technology,
266 informatics, and the exchange of health information and maintain
267 a repository of technical resources to support the development
268 of a health information network.
269 (b) The agency shall administer, manage, and monitor
270 grants to not-for-profit organizations, regional health
271 information organizations, public health departments, or state
272 agencies that submit proposals for planning, implementation, or
273 training projects to advance the development of a health
274 information network. Any grant contract shall be evaluated to
275 ensure the effective outcome of the health information project.
276 (c) The agency shall initiate, oversee, manage, and
277 evaluate the integration of health care data from each state
278 agency that collects, stores, and reports on health care issues

279 and make that data available to any health care practitioner
280 through a state health information network.
281 (5) PUBLICATIONS; REPORTS; SPECIAL STUDIES.--The center
282 shall provide for the widespread dissemination of data which it
283 collects and analyzes. The center shall have the following
284 publication, reporting, and special study functions:
285 (a) The center shall publish and make available
286 periodically to agencies and individuals health statistics
287 publications of general interest, including health plan consumer
288 reports and health maintenance organization member satisfaction
289 surveys ~~HMO report cards~~; publications providing health
290 statistics on topical health policy issues; publications that
291 provide health status profiles of the people in this state; and
292 other topical health statistics publications.
293 (b) The center shall publish, make available, and
294 disseminate, promptly and as widely as practicable, the results
295 of special health surveys, health care research, and health care
296 evaluations conducted or supported under this section. Any
297 publication by the center must include a statement of the
298 limitations on the quality, accuracy, and completeness of the
299 data.
300 (c) The center shall provide indexing, abstracting,
301 translation, publication, and other services leading to a more
302 effective and timely dissemination of health care statistics.
303 (d) The center shall be responsible for publishing and
304 disseminating an annual report on the center's activities.
305 (e) The center shall be responsible, to the extent
306 resources are available, for conducting a variety of special

307 studies and surveys to expand the health care information and
308 statistics available for health policy analyses, particularly
309 for the review of public policy issues. The center shall develop
310 a process by which users of the center's data are periodically
311 surveyed regarding critical data needs and the results of the
312 survey considered in determining which special surveys or
313 studies will be conducted. The center shall select problems in
314 health care for research, policy analyses, or special data
315 collections on the basis of their local, regional, or state
316 importance; the unique potential for definitive research on the
317 problem; and opportunities for application of the study
318 findings.
319 (6) PROVIDER DATA REPORTING.--This section does not confer
320 on the agency the power to demand or require that a health care
321 provider or professional furnish information, records of
322 interviews, written reports, statements, notes, memoranda, or
323 data other than as expressly required by law.
324 (7) BUDGET; FEES~~; TRUST FUND~~.--
325 (a) The Legislature intends that funding for the Florida
326 ~~State~~ Center for Health Information and Policy Analysis
327 ~~Statistics~~ be appropriated from the General Revenue Fund.
328 (b) The Florida ~~State~~ Center for Health Information and
329 Policy Analysis ~~Statistics~~ may apply for and receive and accept
330 grants, gifts, and other payments, including property and
331 services, from any governmental or other public or private
332 entity or person and make arrangements as to the use of same,
333 including the undertaking of special studies and other projects
334 relating to health-care-related topics. Funds obtained pursuant

335 to this paragraph may not be used to offset annual
336 appropriations from the General Revenue Fund.
337 (c) The center may charge such reasonable fees for
338 services as the agency prescribes by rule. The established fees
339 may not exceed the reasonable cost for such services. Fees
340 collected may not be used to offset annual appropriations from
341 the General Revenue Fund.
342 ~~(d) The agency shall establish a Comprehensive Health~~
343 ~~Information System Trust Fund as the repository of all funds~~
344 ~~appropriated to, and fees and grants collected for, services of~~
345 ~~the State Center for Health Statistics. Any funds, other than~~
346 ~~funds appropriated to the center from the General Revenue Fund,~~
347 ~~which are raised or collected by the agency for the operation of~~
348 ~~the center and which are not needed to meet the expenses of the~~
349 ~~center for its current fiscal year shall be available to the~~
350 ~~agency in succeeding years.~~
351 (8) STATE CONSUMER ~~COMPREHENSIVE~~ HEALTH INFORMATION AND
352 POLICY ~~SYSTEM~~ ADVISORY COUNCIL.--
353 (a) There is established in the agency the State Consumer
354 ~~Comprehensive~~ Health Information and Policy ~~System~~ Advisory
355 Council to assist the center in reviewing the comprehensive
356 health information system, including the identification,
357 collection, standardization, sharing, and coordination of
358 health-related data, fraud and abuse data, and professional and
359 facility licensing data among federal, state, local, and private
360 entities and to recommend improvements for purposes of public
361 health, policy analysis, and transparency of consumer health

362 care information ~~such system~~. The council shall consist of the
363 following members:
364 1. An employee of the Executive Office of the Governor, to
365 be appointed by the Governor.
366 2. An employee of the Office of Insurance Regulation, to
367 be appointed by the director of the office.
368 3. An employee of the Department of Education, to be
369 appointed by the Commissioner of Education.
370 4. Ten persons, to be appointed by the Secretary of Health
371 Care Administration, representing other state and local
372 agencies, state universities, business and health ~~the Florida~~
373 ~~Association of Business/Health~~ coalitions, local health
374 councils, professional health-care-related associations,
375 consumers, and purchasers.
376 (b) Each member of the council shall be appointed to serve
377 for a term of 2 ~~4~~ years following ~~from~~ the date of appointment,
378 except the term of appointment shall end 3 years following the
379 date of appointment for members appointed in 2003, 2004, and
380 2005. ~~that~~ A vacancy shall be filled by appointment for the
381 remainder of the term, and each appointing authority retains the
382 right to reappoint members whose terms of appointment have
383 expired. ~~and except that:~~
384 ~~1. Three of the members initially appointed by the~~
385 ~~Director of Health Care Administration shall each be appointed~~
386 ~~for a term of 3 years.~~
387 ~~2. Two of the members initially appointed by the Director~~
388 ~~of Health Care Administration shall each be appointed for a term~~
389 ~~of 2 years.~~

390 ~~3. Two of the members initially appointed by the Director~~
391 ~~of Health Care Administration shall each be appointed for a term~~
392 ~~of 1 year.~~
393 (c) The council may meet at the call of its chair, at the
394 request of the agency ~~department~~, or at the request of a
395 majority of its membership, but the council must meet at least
396 quarterly.
397 (d) Members shall elect a chair and vice chair annually.
398 (e) A majority of the members constitutes a quorum, and
399 the affirmative vote of a majority of a quorum is necessary to
400 take action.
401 (f) The council shall maintain minutes of each meeting and
402 shall make such minutes available to any person.
403 (g) Members of the council shall serve without
404 compensation but shall be entitled to receive reimbursement for
405 per diem and travel expenses as provided in s. 112.061.
406 (h) The council's duties and responsibilities include, but
407 are not limited to, the following:
408 1. To develop a mission statement, goals, and a plan of
409 action based on the guiding principles specified in s. 282.3032
410 for the identification, collection, standardization, sharing,
411 and coordination of health-related data across federal, state,
412 and local government and private-sector entities.
413 2. To develop a review process to ensure cooperative
414 planning among agencies that collect or maintain health-related
415 data.
416 3. To create ad hoc issue-oriented technical workgroups on
417 an as-needed basis to make recommendations to the council.

418 (9) APPLICATION TO OTHER AGENCIES.--Nothing in this
419 section shall limit, restrict, affect, or control the
420 collection, analysis, release, or publication of data by any
421 state agency pursuant to its statutory authority, duties, or
422 responsibilities.
423 Section 4. Paragraph (b) of subsection (1) and subsection
424 (10) of section 408.061, Florida Statutes, are amended to read:
425 408.061 Data collection; uniform systems of financial
426 reporting; information relating to physician charges;
427 confidential information; immunity.--
428 (1) The agency shall require the submission by health care
429 facilities, health care providers, and health insurers of data
430 necessary to carry out the agency's duties. Specifications for
431 data to be collected under this section shall be developed by
432 the agency with the assistance of technical advisory panels
433 including representatives of affected entities, consumers,
434 purchasers, and such other interested parties as may be
435 determined by the agency.
436 (b) Data to be submitted by health care providers may
437 include, but are not limited to: professional organization and
438 specialty board affiliations, Medicare and Medicaid
439 participation, types of services offered to patients, amount of
440 revenue and expenses of the health care provider, and such other
441 data which are reasonably necessary to study utilization
442 patterns. Data submitted shall be certified by the appropriate
443 duly authorized representative or employee of the health care
444 provider that the information submitted is true and accurate.

445 (10) The agency shall be the primary source for collection
446 and dissemination of health care data. No other agency of state
447 government may gather data from a health care provider licensed
448 or regulated under this chapter without first determining if the
449 data is currently being collected by the agency and
450 affirmatively demonstrating that it would be more cost-effective
451 for an agency of state government other than the agency to
452 gather the health care data. The secretary ~~director~~ shall ensure
453 that health care data collected by the divisions within the
454 agency is coordinated. It is the express intent of the
455 Legislature that all health care data be collected by a single
456 source within the agency and that other divisions within the
457 agency, and all other agencies of state government, obtain data
458 for analysis, regulation, and public dissemination purposes from
459 that single source. Confidential information may be released to
460 other governmental entities or to parties contracting with the
461 agency to perform agency duties or functions as needed in
462 connection with the performance of the duties of the receiving
463 entity. The receiving entity or party shall retain the
464 confidentiality of such information as provided for herein.
465 Section 5. Paragraphs (h) and (j) of subsection (1) and
466 subsections (2) and (5) of section 408.062, Florida Statutes,
467 are amended to read:
468 408.062 Research, analyses, studies, and reports.--
469 (1) The agency shall conduct research, analyses, and
470 studies relating to health care costs and access to and quality
471 of health care services as access and quality are affected by

472 changes in health care costs. Such research, analyses, and
473 studies shall include, but not be limited to:
474 (h) The collection of a statistically valid sample of data
475 on the retail prices charged by pharmacies for the 100 ~~50~~ most
476 frequently prescribed medicines from any pharmacy licensed by
477 this state as a special study authorized by the Legislature to
478 be performed by the agency quarterly. If the drug is available
479 generically, price data shall be reported for the generic drug
480 and price data of a brand-named drug for which the generic drug
481 is the equivalent shall be reported. The agency shall make
482 available on its Internet website for each pharmacy, no later
483 than October 1, 2006 ~~2005~~, drug prices for a 30-day supply at a
484 standard dose. The data collected shall be reported for each
485 drug by pharmacy and by metropolitan statistical area or region
486 and updated quarterly.
487 (j) The making available on its Internet website beginning
488 no later than October 1, 2004, and in a hard-copy format upon
489 request, of patient charge, volumes, length of stay, and
490 performance ~~outcome~~ indicators collected from health care
491 facilities pursuant to s. 408.061(1)(a) for specific medical
492 conditions, surgeries, and procedures provided in inpatient and
493 outpatient facilities as determined by the agency. In making the
494 determination of specific medical conditions, surgeries, and
495 procedures to include, the agency shall consider such factors as
496 volume, severity of the illness, urgency of admission,
497 individual and societal costs, and whether the condition is
498 acute or chronic. Performance ~~outcome~~ indicators shall be risk
499 adjusted or severity adjusted, as applicable, using nationally

500 recognized risk adjustment methodologies or software consistent
501 with the standards of the Agency for Healthcare Research and
502 Quality and as selected by the agency. The website shall also
503 provide an interactive search that allows consumers to view and
504 compare the information for specific facilities, a map that
505 allows consumers to select a county or region, definitions of
506 all of the data, descriptions of each procedure, and an
507 explanation about why the data may differ from facility to
508 facility. Such public data shall be updated quarterly. The
509 agency shall submit an annual status report on the collection of
510 data and publication of health care quality measures ~~performance~~
511 ~~outcome indicators~~ to the Governor, the Speaker of the House of
512 Representatives, the President of the Senate, and the
513 substantive legislative committees with the first status report
514 due January 1, 2005.
515 (2) The agency may assess annually the caesarean section
516 rate in Florida hospitals using the analysis methodology that
517 the agency determines most appropriate. The data from this
518 assessment shall be published periodically on the agency's
519 Internet website. ~~To assist the agency in determining the impact~~
520 ~~of this chapter on Florida hospitals' caesarean section rates,~~
521 ~~each provider hospital, as defined in s. 383.336, shall notify~~
522 ~~the agency of the date of implementation of the practice~~
523 ~~parameters and the date of the first meeting of the hospital~~
524 ~~peer review board created pursuant to this chapter. The agency~~
525 ~~shall use these dates in monitoring any change in provider~~
526 ~~hospital caesarean section rates. An annual report based on this~~
527 ~~monitoring and assessment shall be submitted to the Governor,~~

528 ~~the Speaker of the House of Representatives, and the President~~
529 ~~of the Senate by the agency, with the first annual report due~~
530 ~~January 1, 1993.~~
531 (5) The agency shall develop and implement a strategy for
532 the adoption and use of electronic health records, including the
533 development of an electronic health information network for the
534 sharing of electronic health records among health care
535 facilities, health care providers, and health insurers. The
536 agency may develop rules to facilitate the functionality and
537 protect the confidentiality of electronic health records. The
538 agency shall report to the Governor, the Speaker of the House of
539 Representatives, and the President of the Senate on legislative
540 recommendations to protect the confidentiality of electronic
541 health records.
542 Section 6. Subsection (3) of section 20.42, Florida
543 Statutes, is amended to read:
544 20.42 Agency for Health Care Administration.--
545 (3) The department shall be the chief health policy and
546 planning entity for the state. The department is responsible for
547 health facility licensure, inspection, and regulatory
548 enforcement; investigation of consumer complaints related to
549 health care facilities and managed care plans; the
550 implementation of the certificate of need program; the operation
551 of the Florida ~~State~~ Center for Health Information and Policy
552 Analysis ~~Statistics~~; the administration of the Medicaid program;
553 the administration of the contracts with the Florida Healthy
554 Kids Corporation; the certification of health maintenance
555 organizations and prepaid health clinics as set forth in part

556 III of chapter 641; and any other duties prescribed by statute
557 or agreement.
558 Section 7. Subsection (3) of section 381.001, Florida
559 Statutes, is amended to read:
560 381.001 Legislative intent; public health system.--
561 (3) It is, furthermore, the intent of the Legislature that
562 the public health system include comprehensive planning, data
563 collection, technical support, and health resource development
564 functions. These functions include, but are not limited to,
565 state laboratory and pharmacy services, the state vital
566 statistics system, the Florida ~~State~~ Center for Health
567 Information and Policy Analysis ~~Statistics~~, emergency medical
568 services coordination and support, and recruitment, retention,
569 and development of preventive and primary health care
570 professionals and managers.
571 Section 8. Paragraph (e) of subsection (2) of section
572 395.602, Florida Statutes, is amended to read:
573 395.602 Rural hospitals.--
574 (2) DEFINITIONS.--As used in this part:
575 (e) "Rural hospital" means an acute care hospital licensed
576 under this chapter, having 100 or fewer licensed beds and an
577 emergency room, which is:
578 1. The sole provider within a county with a population
579 density of no greater than 100 persons per square mile;
580 2. An acute care hospital, in a county with a population
581 density of no greater than 100 persons per square mile, which is
582 at least 30 minutes of travel time, on normally traveled roads

583 under normal traffic conditions, from any other acute care
584 hospital within the same county;
585 3. A hospital supported by a tax district or subdistrict
586 whose boundaries encompass a population of 100 persons or fewer
587 per square mile;
588 4. A hospital in a constitutional charter county with a
589 population of over 1 million persons that has imposed a local
590 option health service tax pursuant to law and in an area that
591 was directly impacted by a catastrophic event on August 24,
592 1992, for which the Governor of Florida declared a state of
593 emergency pursuant to chapter 125, and has 120 beds or less that
594 serves an agricultural community with an emergency room
595 utilization of no less than 20,000 visits and a Medicaid
596 inpatient utilization rate greater than 15 percent;
597 5. A hospital with a service area that has a population of
598 100 persons or fewer per square mile. As used in this
599 subparagraph, the term "service area" means the fewest number of
600 zip codes that account for 75 percent of the hospital's
601 discharges for the most recent 5-year period, based on
602 information available from the hospital inpatient discharge
603 database in the Florida ~~State~~ Center for Health Information and
604 Policy Analysis ~~Statistics~~ at the Agency for Health Care
605 Administration; or
606 6. A hospital designated as a critical access hospital, as
607 defined in s. 408.07(15).
608
609 Population densities used in this paragraph must be based upon
610 the most recently completed United States census. A hospital

611 that received funds under s. 409.9116 for a quarter beginning no
612 later than July 1, 2002, is deemed to have been and shall
613 continue to be a rural hospital from that date through June 30,
614 2012, if the hospital continues to have 100 or fewer licensed
615 beds and an emergency room, or meets the criteria of
616 subparagraph 4. An acute care hospital that has not previously
617 been designated as a rural hospital and that meets the criteria
618 of this paragraph shall be granted such designation upon
619 application, including supporting documentation to the Agency
620 for Health Care Administration.
621 Section 9. Section 395.6025, Florida Statutes, is amended
622 to read:
623 395.6025 Rural hospital replacement
624 facilities.--Notwithstanding the provisions of s. 408.036, a
625 hospital defined as a statutory rural hospital in accordance
626 with s. 395.602, or a not-for-profit operator of rural
627 hospitals, is not required to obtain a certificate of need for
628 the construction of a new hospital located in a county with a
629 population of at least 15,000 but no more than 18,000 and a
630 density of less than 30 persons per square mile, or a
631 replacement facility, provided that the replacement, or new,
632 facility is located within 10 miles of the site of the currently
633 licensed rural hospital and within the current primary service
634 area. As used in this section, the term "service area" means the
635 fewest number of zip codes that account for 75 percent of the
636 hospital's discharges for the most recent 5-year period, based
637 on information available from the hospital inpatient discharge
638 database in the Florida ~~State~~ Center for Health Information and

639 Policy Analysis ~~Statistics~~ at the Agency for Health Care
640 Administration.
641 Section 10. Paragraph (d) of subsection (43) of section
642 408.07, Florida Statutes, is amended to read:
643 408.07 Definitions.--As used in this chapter, with the
644 exception of ss. 408.031-408.045, the term:
645 (43) "Rural hospital" means an acute care hospital
646 licensed under chapter 395, having 100 or fewer licensed beds
647 and an emergency room, and which is:
648 (d) A hospital with a service area that has a population
649 of 100 persons or fewer per square mile. As used in this
650 paragraph, the term "service area" means the fewest number of
651 zip codes that account for 75 percent of the hospital's
652 discharges for the most recent 5-year period, based on
653 information available from the hospital inpatient discharge
654 database in the Florida ~~State~~ Center for Health Information and
655 Policy Analysis ~~Statistics~~ at the Agency for Health Care
656 Administration; or
657
658 Population densities used in this subsection must be based upon
659 the most recently completed United States census. A hospital
660 that received funds under s. 409.9116 for a quarter beginning no
661 later than July 1, 2002, is deemed to have been and shall
662 continue to be a rural hospital from that date through June 30,
663 2012, if the hospital continues to have 100 or fewer licensed
664 beds and an emergency room, or meets the criteria of s.
665 395.602(2)(e)4. An acute care hospital that has not previously
666 been designated as a rural hospital and that meets the criteria

667 of this subsection shall be granted such designation upon
668 application, including supporting documentation, to the Agency
669 for Health Care Administration.
670 Section 11. Paragraph (a) of subsection (4) of section
671 408.18, Florida Statutes, is amended to read:
672 408.18 Health Care Community Antitrust Guidance Act;
673 antitrust no-action letter; market-information collection and
674 education.--
675 (4)(a) Members of the health care community who seek
676 antitrust guidance may request a review of their proposed
677 business activity by the Attorney General's office. In
678 conducting its review, the Attorney General's office may seek
679 whatever documentation, data, or other material it deems
680 necessary from the Agency for Health Care Administration, the
681 Florida ~~State~~ Center for Health Information and Policy Analysis
682 ~~Statistics~~, and the Office of Insurance Regulation of the
683 Financial Services Commission.
684 Section 12. Paragraph (c) of subsection (4) of section
685 381.026, Florida Statutes, is amended to read:
686 381.026 Florida Patient's Bill of Rights and
687 Responsibilities.--
688 (4) RIGHTS OF PATIENTS.--Each health care facility or
689 provider shall observe the following standards:
690 (c) Financial information and disclosure.--
691 1. A patient has the right to be given, upon request, by
692 the responsible provider, his or her designee, or a
693 representative of the health care facility full information and

694 necessary counseling on the availability of known financial
695 resources for the patient's health care.
696 2. A health care provider or a health care facility shall,
697 upon request, disclose to each patient who is eligible for
698 Medicare, in advance of treatment, whether the health care
699 provider or the health care facility in which the patient is
700 receiving medical services accepts assignment under Medicare
701 reimbursement as payment in full for medical services and
702 treatment rendered in the health care provider's office or
703 health care facility.
704 3. A health care provider or a health care facility shall,
705 upon request, furnish a person, prior to provision of medical
706 services, a reasonable estimate of charges for such services.
707 Such reasonable estimate shall not preclude the health care
708 provider or health care facility from exceeding the estimate or
709 making additional charges based on changes in the patient's
710 condition or treatment needs.
711 4. Each licensed facility not operated by the state shall
712 make available to the public on its Internet website or by other
713 electronic means a description of and a link to the performance
714 outcome and financial data that is published by the agency
715 pursuant to s. 408.05(3)(k)~~(1)~~. The facility shall place a
716 notice in the reception area that such information is available
717 electronically and the website address. The licensed facility
718 may indicate that the pricing information is based on a
719 compilation of charges for the average patient and that each
720 patient's bill may vary from the average depending upon the
721 severity of illness and individual resources consumed. The

722 licensed facility may also indicate that the price of service is
723 negotiable for eligible patients based upon the patient's
724 ability to pay.
725 5. A patient has the right to receive a copy of an
726 itemized bill upon request. A patient has a right to be given an
727 explanation of charges upon request.
728 Section 13. Subsection (10) of section 395.301, Florida
729 Statutes, is amended to read:
730 395.301 Itemized patient bill; form and content prescribed
731 by the agency.--
732 (10) Each licensed facility shall make available on its
733 Internet website a link to the performance outcome and financial
734 data that is published by the Agency for Health Care
735 Administration pursuant to s. 408.05(3)(k)~~(1)~~. The facility
736 shall place a notice in the reception area that the information
737 is available electronically and the facility's Internet website
738 address.
739 Section 14. Section 465.0244, Florida Statutes, is amended
740 to read:
741 465.0244 Information disclosure.--Every pharmacy shall
742 make available on its Internet website a link to the performance
743 outcome and financial data that is published by the Agency for
744 Health Care Administration pursuant to s. 408.05(3)(k)~~(1)~~ and
745 shall place in the area where customers receive filled
746 prescriptions notice that such information is available
747 electronically and the address of its Internet website.
748 Section 15. Subsection (2) of section 627.6499, Florida
749 Statutes, is amended to read:

750 627.6499 Reporting by insurers and third-party
751 administrators.--
752 (2) Each health insurance issuer shall make available on
753 its Internet website a link to the performance outcome and
754 financial data that is published by the Agency for Health Care
755 Administration pursuant to s. 408.05(3)(k) ~~(l)~~ and shall include
756 in every policy delivered or issued for delivery to any person
757 in the state or any materials provided as required by s.
758 627.64725 notice that such information is available
759 electronically and the address of its Internet website.
760 Section 16. Subsection (7) of section 641.54, Florida
761 Statutes, is amended to read:
762 641.54 Information disclosure.--
763 (7) Each health maintenance organization shall make
764 available on its Internet website a link to the performance
765 outcome and financial data that is published by the Agency for
766 Health Care Administration pursuant to s. 408.05(3)(k) ~~(l)~~ and
767 shall include in every policy delivered or issued for delivery
768 to any person in the state or any materials provided as required
769 by s. 627.64725 notice that such information is available
770 electronically and the address of its Internet website.
771 Section 17. This act shall take effect upon becoming a
772 law.

Amendment to HB 7073 by Rep. Garcia

The amendment clarifies that "patient-safety indicators" and "inpatient quality indicators" will be defined by:

- The Center for Medicare and Medicaid Studies;
- National Quality Forum;
- The Joint Commission on Accreditation of Healthcare Organizations;
- The Agency for Healthcare Research and Quality;
- The Centers for Disease Control and Prevention; or
- A similar national entity that establishes standards to measure the performance of health care providers, or by other states.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **HB 7073**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Health & Families Council
2 Representative(s) Garcia offered the following:
3
4 **Amendment (with directory and title amendments)**
5 Remove line(s) 165-169 and insert:
6
7 1. Make available patient-safety indicators, inpatient
8 quality indicators, performance outcome and patient charge data
9 collected from health care facilities pursuant to s.
10 408.061(1)(a) and (2). "Patient-safety indicators" and
11 "inpatient quality indicators" shall be defined by the Centers
12 for Medicare and Medicaid Studies, National Quality Forum, the
13 Joint Commission on Accreditation of Healthcare Organizations,
14 the Agency for Healthcare Research and Quality, the Centers for
15 Disease Control and Prevention, or a similar national entity
16 that establishes standards to measure the performance of health
17 care providers, or by other states. The agency

HB 7083

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7083 (PCB FFF 06-04) Department of Children & Family Services
SPONSOR(S): Future of Florida's Families Committee and Rep. Galvano
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 1034 and SB 1850

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Future of Florida's Families Committee	7 Y, 0 N	Davis	Collins
1) Health Care Appropriations Committee	14 Y, 0 N	Ekholm	Massengale
2) Health & Families Council		Davis	Moore
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill amends s. 397.451, F.S., requiring substance abuse service provider personnel who request an exemption from disqualification to submit the request within a certain time frame after notification of the disqualification. The bill deletes a provision requiring immediate dismissal of the service provider personnel upon disapproval of a request for an exemption. Further, the bill creates language that prohibits the Department of Children and Family Services (DCF) from issuing a regular license to a service provider who fails to provide proof that the background screening information has been submitted.

The bill repeals section 3 of Chapter 2003-279, Laws of Florida. This section deletes provisions relating to the expiration date for the appointment of certain mental health and substance abuse positions to include the Assistant Secretary of Substance Abuse and Mental Health, the Director of Substance Abuse and the Director of Mental Health. Further, the bill deletes provisions relating to the expiration date for the establishment of a Substance Abuse Program Office and a Mental Health Program Office.

Finally, the bill amends Chapter 394, F.S., pertaining to Marriage and Family Therapists. It defines and adds "Marriage and Family Therapists" to those professionals permitted to initiate involuntary examinations under the provisions of the Baker Act. They may also deem services in a treatment plan to be clinically appropriate for involuntary outpatient placement.

This bill does not appear to have a fiscal impact on state or local government.

Except as otherwise provided, the bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty—This bill provides for new government involvement pertaining to substance abuse service provider personnel. The Department of Children and Family Services (DCF) may not issue a regular license to any service provider who fails to provide proof that background screening information has been submitted.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Background Screening

Service provider personnel who have been found to have a disqualifying offense (i.e., are found to be in noncompliance with the minimum standards for good moral character), are immediately terminated from employment or placed in positions for which background screening is not required, as per s. 435.06(2), F.S. Specifically, s. 397.451(1)(f), F.S., permits service provider personnel to continue working in positions of trust and responsibility pending disposition of the request for exemption, rather than mandating immediate dismissal, or placement in a position for which background screening is not required.

It is the duty of the Department of Children and Family Services, as delineated in s. 397.321(13), F.S., to ensure that service provider personnel have background checks and meet the minimum standards for employment in statute. However, historically, the department did not have the regulatory authority to withhold the issuance of a regular substance abuse license should the service provider fail to produce proof that background screening information had been submitted.

Mental Health and Substance Abuse

In 2003, legislation was enacted that approved the appointment of an Assistant Secretary for Substance Abuse and Mental Health, who would serve at the pleasure of the Secretary of the Department of Children and Family Services. Further, the legislation permitted the Secretary to appoint a Program Director for Substance Abuse and a Program Director for Mental Health, who would have subsequent line authority over all district substance abuse and mental health program management staff. The legislation directed that mental health institution management staff were to report directly to the Program Director for Mental Health. The legislation described the roles and responsibilities of the affected staff and directed the Assistant Secretary for Substance Abuse and Mental Health to develop a memorandum of agreement with each district and region administrator, which served to further describe the working relationships within each geographic area. Additionally, the legislation established the creation of a separate Mental Health Program Office and a Substance Abuse Program Office. The legislation was enacted with an expiration date of October 1, 2006, for ss. 20.19(2)(c) and (4)(b)6. and 8., F.S., unless it was reviewed and reenacted by the Legislature before that date.

Marriage and Family Therapists (Baker Act)

Currently, the only professionals who may execute a certificate for an involuntary examination are a physician, clinical psychologist, psychiatric nurse, mental health counselor, or clinical social worker. These professionals are permitted to determine whether services in a treatment plan are clinically appropriate for involuntary outpatient placement.

DCF has historically opposed adding professionals to those already permitted to initiate involuntary examinations under the provisions of the Baker Act. This opposition was based on the premise that it would increase the number and cost of involuntary examinations and result in the public crisis stabilization units having to operate over licensed capacity. However, SB 700 (Chapter 2004-385, Laws of Florida) added mental health counselors to the Baker Act involuntary examination process and authorized a pilot project to review the impact of this change. That law required a study of the pilot project to determine the fiscal impact of including additional professionals in the process, and the results of that study did not substantiate the department's position regarding additional costs.

Effects of the Changes

Background Screening

This bill provides the department with the regulatory authority to withhold the issuance of a regular substance abuse license from service providers who fail to provide proof that background screening information has been submitted for processing. Consequently, this portion of the bill will help to ensure that individuals providing services to children will meet the statutory standards of individuals with good moral character, and will afford the department with the opportunity and authority to provide close scrutiny of providers to ensure compliance with background screening requirements.

Mental Health and Substance Abuse

The bill abrogates the repeal language in ss. 20.19(2)(c) and (4)(b) 6. and 8., F.S., relating to the appointment of certain mental health and substance abuse positions and the establishment of program offices for mental health and substance abuse which expires on October 1, 2006, unless reviewed and reenacted by the Legislature before that date. Repealing this language would permit the continued functioning of the affected positions and program offices.

Marriage and Family Therapists (Baker Act)

This bill allows for Marriage and Family Therapists to be included in the law that provides legal authorization to first line professionals, enabling them to initiate involuntary evaluation proceedings for clients presenting a danger to self and others. As one of three clinical provider groups identified in chapter 491, F.S., Marriage and Family Therapists are the only clinical providers not authorized to initiate the Baker Act.

Marriage and Family Therapists are essentially treating the same clinical populations as Clinical Social Workers and Mental Health Counselors. However, they must take extra steps to ensure the safety of their clients and the community when initiating an involuntary evaluation. The Florida Association of Marriage and Family Therapy has expressed concern that the lag time that accompanies this process may present disadvantages to their clients and continues to add needless duplication of resources to Florida's communities.

C. SECTION DIRECTORY:

Section 1. Amends s. 397.451, F.S., requiring service provider personnel who request an exemption from disqualification to submit the request within a certain time frame after notification of the disqualification.

Section 2. Repeals section 3 of Chapter 2003-279, Laws of Florida, relating to program offices and appointments.

Section 3. Effective July 1, 2006, amends s. 394.455, F.S., providing for a definition of "service providers" and "Marriage and Family Therapist."

Sections 4-6. Effective July 1, 2006, amends ss. 394.463, 394.4655, and 394.467, F.S., providing for Marriage and Family Therapists to be included as first line professionals, enabling them to initiate involuntary evaluation proceedings for clients presenting a danger to self and others.

Section 7. Except as otherwise provided, provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The recent study required in SB 700 (Chapter 2004-385, Laws of Florida), which was initiated to review the fiscal impact of including additional mental health professionals in the involuntary examination process in Baker Act evaluations, has shown that there was no increase in activity or financial burden to the community that was studied.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Sufficient rulemaking authority exists in present law to authorize implementation of this act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to programs of the Department of Children
3 and Family Services; amending s. 397.451, F.S.; requiring
4 service provider personnel who request an exemption from
5 disqualification to submit the request within a certain
6 time after notification of the disqualification; requiring
7 a service provider to comply with the provisions of s.
8 435.06, F.S.; deleting a provision requiring immediate
9 dismissal of service provider personnel upon disapproval
10 of a request for an exemption; prohibiting the department
11 from issuing a regular license to a service provider that
12 fails to provide proof that background screening
13 information has been submitted; repealing s. 3, ch. 2003-
14 279, Laws of Florida; abrogating the repeal of s.
15 20.19(2)(c) and (4)(b)6. and 8., F.S., relating to the
16 appointment of certain mental health and substance abuse
17 positions and the establishment of program offices for
18 mental health and substance abuse; amending s. 394.455,
19 F.S.; revising the definition of the term "service
20 provider" and providing a definition of the term "marriage
21 and family therapist"; amending s. 394.463, F.S.;
22 providing that a marriage and family therapist may execute
23 a certificate for involuntary examination; amending s.
24 394.4655, F.S.; providing that a marriage and family
25 therapist may deem a services treatment plan clinically
26 appropriate for an involuntary outpatient placement;
27 amending s. 394.467, F.S.; requiring that documentation of
28 any evaluation performed by a marriage and family

29 therapist be provided when a patient is ordered for
30 involuntary inpatient placement; providing effective
31 dates.
32
33 Be It Enacted by the Legislature of the State of Florida:
34
35 Section 1. Paragraph (f) of subsection (1) of section
36 397.451, Florida Statutes, is amended, and paragraph (g) is
37 added to that subsection, to read:
38 397.451 Background checks of service provider personnel.--
39 (1) PERSONNEL BACKGROUND CHECKS; REQUIREMENTS AND
40 EXCEPTIONS.--
41 (f) Service provider personnel who request an exemption
42 from disqualification must submit the request within 30 days
43 after being notified of the ~~a pending~~ disqualification. Upon
44 notification of the disqualification, the service provider shall
45 comply with the requirements regarding exclusions from
46 employment under s. 435.06. ~~The employment of service provider~~
47 ~~personnel shall not be adversely affected pending disposition of~~
48 ~~the request for an exemption. Disapproval of a request for an~~
49 ~~exemption shall result in the immediate dismissal of the service~~
50 ~~provider personnel from employment with the provider.~~
51 (g) The department may not issue a regular license to any
52 service provider that fails to provide proof that background
53 screening information has been submitted in accordance with
54 chapter 435.
55 Section 2. Section 3 of chapter 2003-279, Laws of Florida,
56 is repealed.

57 Section 3. Effective July 1, 2006, subsection (31) of
58 section 394.455, Florida Statutes, is amended, and subsection
59 (34) is added to that section, to read:
60 394.455 Definitions.--As used in this part, unless the
61 context clearly requires otherwise, the term:
62 (31) "Service provider" means any public or private
63 receiving facility, an entity under contract with the Department
64 of Children and Family Services to provide mental health
65 services, a clinical psychologist, a clinical social worker, a
66 marriage and family therapist, a physician, a psychiatric nurse
67 as defined in subsection (23), or a community mental health
68 center or clinic as defined in this part.
69 (34) "Marriage and family therapist" means a person
70 licensed as a marriage and family therapist under chapter 491.
71 Section 4. Effective July 1, 2006, paragraph (a) of
72 subsection (2) of section 394.463, Florida Statutes, is amended
73 to read:
74 394.463 Involuntary examination.--
75 (2) INVOLUNTARY EXAMINATION.--
76 (a) An involuntary examination may be initiated by any one
77 of the following means:
78 1. A court may enter an ex parte order stating that a
79 person appears to meet the criteria for involuntary examination,
80 giving the findings on which that conclusion is based. The ex
81 parte order for involuntary examination must be based on sworn
82 testimony, written or oral. If other less restrictive means are
83 not available, such as voluntary appearance for outpatient
84 evaluation, a law enforcement officer, or other designated agent

85 of the court, shall take the person into custody and deliver him
86 or her to the nearest receiving facility for involuntary
87 examination. The order of the court shall be made a part of the
88 patient's clinical record. No fee shall be charged for the
89 filing of an order under this subsection. Any receiving facility
90 accepting the patient based on this order must send a copy of
91 the order to the Agency for Health Care Administration on the
92 next working day. The order shall be valid only until executed
93 or, if not executed, for the period specified in the order
94 itself. If no time limit is specified in the order, the order
95 shall be valid for 7 days after the date that the order was
96 signed.
97 2. A law enforcement officer shall take a person who
98 appears to meet the criteria for involuntary examination into
99 custody and deliver the person or have him or her delivered to
100 the nearest receiving facility for examination. The officer
101 shall execute a written report detailing the circumstances under
102 which the person was taken into custody, and the report shall be
103 made a part of the patient's clinical record. Any receiving
104 facility accepting the patient based on this report must send a
105 copy of the report to the Agency for Health Care Administration
106 on the next working day.
107 3. A physician, clinical psychologist, psychiatric nurse,
108 mental health counselor, marriage and family therapist, or
109 clinical social worker may execute a certificate stating that he
110 or she has examined a person within the preceding 48 hours and
111 finds that the person appears to meet the criteria for
112 involuntary examination and stating the observations upon which

113 that conclusion is based. If other less restrictive means are
114 not available, such as voluntary appearance for outpatient
115 evaluation, a law enforcement officer shall take the person
116 named in the certificate into custody and deliver him or her to
117 the nearest receiving facility for involuntary examination. The
118 law enforcement officer shall execute a written report detailing
119 the circumstances under which the person was taken into custody.
120 The report and certificate shall be made a part of the patient's
121 clinical record. Any receiving facility accepting the patient
122 based on this certificate must send a copy of the certificate to
123 the Agency for Health Care Administration on the next working
124 day.
125 Section 5. Effective July 1, 2006, paragraphs (a) and (c)
126 of subsection (2) of section 394.4655, Florida Statutes, are
127 amended to read:
128 394.4655 Involuntary outpatient placement.--
129 (2) INVOLUNTARY OUTPATIENT PLACEMENT.--
130 (a)1. A patient may be retained by a receiving facility
131 upon the recommendation of the administrator of a receiving
132 facility where the patient has been examined and after adherence
133 to the notice of hearing procedures provided in s. 394.4599. The
134 recommendation must be supported by the opinion of a
135 psychiatrist and the second opinion of a clinical psychologist
136 or another psychiatrist, both of whom have personally examined
137 the patient within the preceding 72 hours, that the criteria for
138 involuntary outpatient placement are met. However, in a county
139 having a population of fewer than 50,000, if the administrator
140 certifies that no psychiatrist or clinical psychologist is

141 available to provide the second opinion, the second opinion may
142 be provided by a licensed physician who has postgraduate
143 training and experience in diagnosis and treatment of mental and
144 nervous disorders or by a psychiatric nurse as defined in this
145 chapter. Such a recommendation must be entered on an involuntary
146 outpatient placement certificate, which certificate must
147 authorize the receiving facility to retain the patient pending
148 completion of a hearing. The certificate shall be made a part of
149 the patient's clinical record.
150 2. If the patient has been stabilized and no longer meets
151 the criteria for involuntary examination pursuant to s.
152 394.463(1), the patient must be released from the receiving
153 facility while awaiting the hearing for involuntary outpatient
154 placement. Prior to filing a petition for involuntary outpatient
155 treatment, the administrator of a receiving facility or a
156 designated department representative shall identify the service
157 provider that will have primary responsibility for service
158 provision under an order for involuntary outpatient placement,
159 unless the person is otherwise participating in outpatient
160 psychiatric treatment and is not in need of public financing for
161 that treatment, in which case the individual, if eligible, may
162 be ordered to involuntary treatment pursuant to the existing
163 psychiatric treatment relationship.
164 3. The service provider shall prepare a written proposed
165 treatment plan in consultation with the patient or the patient's
166 guardian advocate, if appointed, for the court's consideration
167 for inclusion in the involuntary outpatient placement order. The
168 service provider shall also provide a copy of the proposed

169 treatment plan to the patient and the administrator of the
170 receiving facility. The treatment plan must specify the nature
171 and extent of the patient's mental illness. The treatment plan
172 must address the reduction of symptoms that necessitate
173 involuntary outpatient placement and include measurable goals
174 and objectives for the services and treatment that are provided
175 to treat the person's mental illness and to assist the person in
176 living and functioning in the community or to attempt to prevent
177 a relapse or deterioration. Service providers may select and
178 provide supervision to other individuals to implement specific
179 aspects of the treatment plan. The services in the treatment
180 plan must be deemed to be clinically appropriate by a physician,
181 clinical psychologist, psychiatric nurse, <u>marriage and family</u>
182 <u>therapist,</u> or clinical social worker, as defined in this
183 chapter, who consults with, or is employed or contracted by, the
184 service provider. The service provider must certify to the court
185 in the proposed treatment plan whether sufficient services for
186 improvement and stabilization are currently available and
187 whether the service provider agrees to provide those services.
188 If the service provider certifies that the services in the
189 proposed treatment plan are not available, the petitioner may
190 not file the petition.
191 (c)1. The administrator of the treatment facility shall
192 provide a copy of the involuntary outpatient placement
193 certificate and a copy of the state mental health discharge form
194 to a department representative in the county where the patient
195 will be residing. For persons who are leaving a state mental
196 health treatment facility, the petition for involuntary

197 outpatient placement must be filed in the county where the
198 patient will be residing.
199 2. The service provider that will have primary
200 responsibility for service provision shall be identified by the
201 designated department representative prior to the order for
202 involuntary outpatient placement and must, prior to filing a
203 petition for involuntary outpatient placement, certify to the
204 court whether the services recommended in the patient's
205 discharge plan are available in the local community and whether
206 the service provider agrees to provide those services. The
207 service provider must develop with the patient, or the patient's
208 guardian advocate, if appointed, a treatment or service plan
209 that addresses the needs identified in the discharge plan. The
210 plan must be deemed to be clinically appropriate by a physician,
211 clinical psychologist, psychiatric nurse, <u>marriage and family</u>
212 <u>therapist,</u> or clinical social worker, as defined in this
213 chapter, who consults with, or is employed or contracted by, the
214 service provider.
215 3. If the service provider certifies that the services in
216 the proposed treatment or service plan are not available, the
217 petitioner may not file the petition.
218 Section 6. Effective July 1, 2006, paragraph (e) of
219 subsection (6) of section 394.467, Florida Statutes, is amended
220 to read:
221 394.467 Involuntary inpatient placement.--
222 (6) HEARING ON INVOLUNTARY INPATIENT PLACEMENT.--
223 (e) The administrator of the receiving facility shall
224 provide a copy of the court order and adequate documentation of

225 a patient's mental illness to the administrator of a treatment
226 facility whenever a patient is ordered for involuntary inpatient
227 placement, whether by civil or criminal court. The ~~Such~~
228 documentation shall include any advance directives made by the
229 patient, a psychiatric evaluation of the patient, and any
230 evaluations of the patient performed by a clinical psychologist,
231 a marriage and family therapist, or a clinical social worker.
232 The administrator of a treatment facility may refuse admission
233 to any patient directed to its facilities on an involuntary
234 basis, whether by civil or criminal court order, who is not
235 accompanied at the same time by adequate orders and
236 documentation.
237 Section 7. Except as otherwise expressly provided in this
238 act, this act shall take effect upon becoming a law.

Strike all Amendment to HB 7083 By Rep. Galvano

- Conforms to CS/SB 1850.

- Deletes a provision that repeals the Commission on Marriage and Family Support Initiatives on June 20, 2008; and directs the Department of Children and Family Services to advise the Legislature when the commission ceases to be essential.

- Defines Mental Health Counselor and includes Mental Health Counselor and Marriage and Family Therapist in the definition of service provider for outpatient treatment services; authorizes Mental Health counselors to determine if services recommended for an outpatient treatment plan are clinically appropriate; and requires that any evaluations performed by a Mental Health Counselor be included in any documentation provided to a treatment facility director when an individual is ordered to involuntary inpatient placement.

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Health and Families Council
2 Representative(s) Galvano offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Subsection (6) of section 383.0115, Florida
7 Statutes, is amended to read:
8 383.0115 The Commission on Marriage and Family Support
9 Initiatives.--
10 (6) Pursuant to the requirements in s. 20.052(2), the
11 department shall advise the Legislature when the commission
12 ceases to be essential to the furtherance of a public purpose.
13 ~~This section is repealed on June 30, 2008, unless reviewed and~~
14 ~~saved from repeal through reenactment by the Legislature.~~
15 Section 2. Paragraph (f) of subsection (1) of section
16 397.451, Florida Statutes, is amended, and paragraph (g) is
17 added to that subsection, to read:
18 397.451 Background checks of service provider personnel.--
19 (1) PERSONNEL BACKGROUND CHECKS; REQUIREMENTS AND
20 EXCEPTIONS.--

21 (f) Service provider personnel who request an exemption
22 from disqualification must submit the request within 30 days
23 after being notified of the ~~a pending~~ disqualification. Upon
24 notification of the disqualification, the service provider shall
25 comply with the requirements regarding exclusion from employment
26 under s. 435.06. ~~The employment of service provider personnel~~
27 ~~shall not be adversely affected pending disposition of the~~
28 ~~request for an exemption. Disapproval of a request for an~~
29 ~~exemption shall result in the immediate dismissal of the service~~
30 ~~provider personnel from employment with the provider.~~
31 (g) The department may not issue a regular license to any
32 service provider that fails to provide proof that background
33 screening information has been submitted in accordance with
34 chapter 435.
35 Section 3. Section 3 of chapter 2003-279, Laws of Florida,
36 is repealed.
37 Section 4. Effective July 1, 2006, subsection (31) of
38 section 394.455, Florida Statutes, is amended, and subsections
39 (34) and (35)are added to that section, to read:
40 394.455 Definitions.--As used in this part, unless the
41 context clearly requires otherwise, the term:
42 (31) "Service provider" means any public or private
43 receiving facility, an entity under contract with the Department
44 of Children and Family Services to provide mental health
45 services, a clinical psychologist, a clinical social worker, a
46 marriage and family therapist, a mental health counselor, a
47 physician, a psychiatric nurse as defined in subsection (23), or
48 a community mental health center or clinic as defined in this
49 part.

50 (34) "Marriage and family therapist" means a person
51 licensed as a marriage and family therapist under chapter 491.
52 (35) "Mental health counselor" means a person licensed as
53 a mental health counselor under chapter 491.
54 Section 5. Effective July 1, 2006, paragraph (a) of
55 subsection (2) of section 394.463, Florida Statutes, is amended
56 to read:
57 394.463 Involuntary examination.--
58 (2) INVOLUNTARY EXAMINATION.--
59 (a) An involuntary examination may be initiated by any one
60 of the following means:
61 1. A court may enter an ex parte order stating that a
62 person appears to meet the criteria for involuntary examination,
63 giving the findings on which that conclusion is based. The ex
64 parte order for involuntary examination must be based on sworn
65 testimony, written or oral. If other less restrictive means are
66 not available, such as voluntary appearance for outpatient
67 evaluation, a law enforcement officer, or other designated agent
68 of the court, shall take the person into custody and deliver him
69 or her to the nearest receiving facility for involuntary
70 examination. The order of the court shall be made a part of the
71 patient's clinical record. No fee shall be charged for the
72 filing of an order under this subsection. Any receiving facility
73 accepting the patient based on this order must send a copy of
74 the order to the Agency for Health Care Administration on the
75 next working day. The order shall be valid only until executed
76 or, if not executed, for the period specified in the order
77 itself. If no time limit is specified in the order, the order
78 shall be valid for 7 days after the date that the order was
79 signed.

80 2. A law enforcement officer shall take a person who
81 appears to meet the criteria for involuntary examination into
82 custody and deliver the person or have him or her delivered to
83 the nearest receiving facility for examination. The officer
84 shall execute a written report detailing the circumstances under
85 which the person was taken into custody, and the report shall be
86 made a part of the patient's clinical record. Any receiving
87 facility accepting the patient based on this report must send a
88 copy of the report to the Agency for Health Care Administration
89 on the next working day.
90 3. A physician, clinical psychologist, psychiatric nurse,
91 mental health counselor, marriage and family therapist, or
92 clinical social worker may execute a certificate stating that he
93 or she has examined a person within the preceding 48 hours and
94 finds that the person appears to meet the criteria for
95 involuntary examination and stating the observations upon which
96 that conclusion is based. If other less restrictive means are
97 not available, such as voluntary appearance for outpatient
98 evaluation, a law enforcement officer shall take the person
99 named in the certificate into custody and deliver him or her to
100 the nearest receiving facility for involuntary examination. The
101 law enforcement officer shall execute a written report detailing
102 the circumstances under which the person was taken into custody.
103 The report and certificate shall be made a part of the patient's
104 clinical record. Any receiving facility accepting the patient
105 based on this certificate must send a copy of the certificate to
106 the Agency for Health Care Administration on the next working
107 day.

108 Section 6. Effective July 1, 2006, paragraphs (a) and (c)
109 of subsection (2) of section 394.4655, Florida Statutes, are
110 amended to read:
111 394.4655 Involuntary outpatient placement.--
112 (2) INVOLUNTARY OUTPATIENT PLACEMENT.--
113 (a)1. A patient may be retained by a receiving facility
114 upon the recommendation of the administrator of a receiving
115 facility where the patient has been examined and after adherence
116 to the notice of hearing procedures provided in s. 394.4599. The
117 recommendation must be supported by the opinion of a
118 psychiatrist and the second opinion of a clinical psychologist
119 or another psychiatrist, both of whom have personally examined
120 the patient within the preceding 72 hours, that the criteria for
121 involuntary outpatient placement are met. However, in a county
122 having a population of fewer than 50,000, if the administrator
123 certifies that no psychiatrist or clinical psychologist is
124 available to provide the second opinion, the second opinion may
125 be provided by a licensed physician who has postgraduate
126 training and experience in diagnosis and treatment of mental and
127 nervous disorders or by a psychiatric nurse as defined in this
128 chapter. Such a recommendation must be entered on an involuntary
129 outpatient placement certificate, which certificate must
130 authorize the receiving facility to retain the patient pending
131 completion of a hearing. The certificate shall be made a part of
132 the patient's clinical record.
133 2. If the patient has been stabilized and no longer meets
134 the criteria for involuntary examination pursuant to s.
135 394.463(1), the patient must be released from the receiving
136 facility while awaiting the hearing for involuntary outpatient
137 placement. Prior to filing a petition for involuntary outpatient

138 treatment, the administrator of a receiving facility or a
139 designated department representative shall identify the service
140 provider that will have primary responsibility for service
141 provision under an order for involuntary outpatient placement,
142 unless the person is otherwise participating in outpatient
143 psychiatric treatment and is not in need of public financing for
144 that treatment, in which case the individual, if eligible, may
145 be ordered to involuntary treatment pursuant to the existing
146 psychiatric treatment relationship.
147 3. The service provider shall prepare a written proposed
148 treatment plan in consultation with the patient or the patient's
149 guardian advocate, if appointed, for the court's consideration
150 for inclusion in the involuntary outpatient placement order. The
151 service provider shall also provide a copy of the proposed
152 treatment plan to the patient and the administrator of the
153 receiving facility. The treatment plan must specify the nature
154 and extent of the patient's mental illness. The treatment plan
155 must address the reduction of symptoms that necessitate
156 involuntary outpatient placement and include measurable goals
157 and objectives for the services and treatment that are provided
158 to treat the person's mental illness and to assist the person in
159 living and functioning in the community or to attempt to prevent
160 a relapse or deterioration. Service providers may select and
161 provide supervision to other individuals to implement specific
162 aspects of the treatment plan. The services in the treatment
163 plan must be deemed to be clinically appropriate by a physician,
164 clinical psychologist, psychiatric nurse, <u>mental health</u>
165 <u>counselor, marriage and family therapist,</u> or clinical social
166 worker, as defined in this chapter, who consults with, or is
167 employed or contracted by, the service provider. The service

168 provider must certify to the court in the proposed treatment
169 plan whether sufficient services for improvement and
170 stabilization are currently available and whether the service
171 provider agrees to provide those services. If the service
172 provider certifies that the services in the proposed treatment
173 plan are not available, the petitioner may not file the
174 petition.
175 (c)1. The administrator of the treatment facility shall
176 provide a copy of the involuntary outpatient placement
177 certificate and a copy of the state mental health discharge form
178 to a department representative in the county where the patient
179 will be residing. For persons who are leaving a state mental
180 health treatment facility, the petition for involuntary
181 outpatient placement must be filed in the county where the
182 patient will be residing.
183 2. The service provider that will have primary
184 responsibility for service provision shall be identified by the
185 designated department representative prior to the order for
186 involuntary outpatient placement and must, prior to filing a
187 petition for involuntary outpatient placement, certify to the
188 court whether the services recommended in the patient's
189 discharge plan are available in the local community and whether
190 the service provider agrees to provide those services. The
191 service provider must develop with the patient, or the patient's
192 guardian advocate, if appointed, a treatment or service plan
193 that addresses the needs identified in the discharge plan. The
194 plan must be deemed to be clinically appropriate by a physician,
195 clinical psychologist, psychiatric nurse, <u>mental health</u>
196 <u>counselor, marriage and family therapist,</u> or clinical social

197 worker, as defined in this chapter, who consults with, or is
198 employed or contracted by, the service provider.
199 3. If the service provider certifies that the services in
200 the proposed treatment or service plan are not available, the
201 petitioner may not file the petition.
202 Section 7. Effective July 1, 2006, paragraph (e) of
203 subsection (6) of section 394.467, Florida Statutes, is amended
204 to read:
205 394.467 Involuntary inpatient placement.--
206 (6) HEARING ON INVOLUNTARY INPATIENT PLACEMENT.--
207 (e) The administrator of the receiving facility shall
208 provide a copy of the court order and adequate documentation of
209 a patient's mental illness to the administrator of a treatment
210 facility whenever a patient is ordered for involuntary inpatient
211 placement, whether by civil or criminal court. The ~~Such~~
212 documentation shall include any advance directives made by the
213 patient, a psychiatric evaluation of the patient, and any
214 evaluations of the patient performed by a clinical psychologist,
215 a marriage and family therapist, a mental health counselor, or a
216 clinical social worker. The administrator of a treatment
217 facility may refuse admission to any patient directed to its
218 facilities on an involuntary basis, whether by civil or criminal
219 court order, who is not accompanied at the same time by adequate
220 orders and documentation.
221 Section 8. Except as otherwise expressly provided in this
222 act, this act shall take effect upon becoming a law.
223
224
225 ========== T I T L E A M E N D M E N T ==========
226 Remove the entire title and insert:

227 A bill to be entitled

228 An act relating to programs of the Department of Children
229 and Family Services; amending s. 383.0115, F.S.; deleting
230 a provision that repeals the Commission on Marriage and
231 Family Support Initiatives; directing the Department of
232 Children and Family Services to advise the legislature
233 when the commission ceases to be essential; amending s.
234 397.451, F.S.; requiring service provider personnel who
235 request an exemption from disqualification to submit the
236 request within a certain time after notification of the
237 disqualification; requiring a service provider to comply
238 with the provisions of s. 435.06, F.S.; deleting a
239 provision requiring immediate dismissal of service
240 provider personnel upon disapproval of a request for an
241 exemption; prohibiting the department from issuing a
242 regular license to a service provider that fails to
243 provide proof that background screening information has
244 been submitted; repealing s. 3, ch. 2003-279, Laws of
245 Florida; abrogating the repeal of s. 20.19(2)(c) and
246 (4)(b)6. and 8., F.S., relating to the appointment of
247 certain mental health and substance abuse positions and
248 the establishment of program offices for mental health and
249 substance abuse; amending s. 394.455, F.S.; revising and
250 providing definitions; amending s. 394.463, F.S.;
251 providing that a marriage and family therapist may execute
252 a certificate for involuntary examination; amending s.
253 394.4655, F.S.; providing that a marriage and family
254 therapist or mental health counselor may deem a services
255 treatment plan clinically appropriate for an involuntary
256 outpatient placement; amending s. 394.467, F.S.; requiring

257 that documentation of any evaluation performed by a
258 marriage and family therapist or mental health counselor
259 be provided when a patient is ordered for involuntary
260 inpatient placement; providing effective dates.
261
262

HB 7123

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7123 PCB FFF 06-03 Child Protective Services
SPONSOR(S): Future of Florida's Families Committee; Galvano
TIED BILLS: None. **IDEN./SIM. BILLS:** CS/CS/SB 1080

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Future of Florida's Families Committee	6 Y, 0 N	Preston	Collins
1) Civil Justice Committee	7 Y, 0 N	Shaddock	Bond
2) Health & Families Council		Preston	Moore
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill amends the statutes relating to child protection, to conform to those provisions of the federal Adoption and Safe Families Act (ASFA) in three major areas. These areas are reasonable efforts, case planning, and permanency. These changes are to ensure that Florida continues to receive federal funds under the ASFA.

Concerning reasonable efforts, the bill amends current law to describe when reasonable efforts are required, and provide the nature of reasonable efforts required regarding both parental and relative placements at each stage of dependency proceedings.

With regard to case planning, the bill amends current law to:

- Provide that agreeing to a case plan does not constitute an admission of wrongdoing or consent to a finding of dependency;
- Recognize the role of mediation and family conferencing in the development of case plans;
- Define "concurrent case planning" and provide direction for its use;
- Replace language relating to "extending the case plan" with clear direction as to the time frames and requirements for permanency hearings;
- Provide options available to the court when it is clear that a case plan cannot be completed within the first 12 months that a child is in care;
- Provide new emphasis on current language that "time is of the essence" in case planning; and
- Provide the considerations and the process to be used in amending a case plan.

Finally, with regard to permanency, the bill amends current law to define "permanency hearings," "permanency plan," and "permanency goal;" and conform the permanency options to those contained in federal law.

The Department of Children and Family Services' fiscal analysis suggests the passage of this bill will save Florida just under $1 million in penalties from the federal government for lack of consistency with federal laws and regulations. This bill does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The Department of Children and Family Services is required to adopt rules to:

- Make available to all physical custodians and family services counselors the information required by s. 39.6012(2), F.S. and for ensuring that this information follows the child until permanency has been achieved; and
- Ensure that provisions of the federal Indian Child Welfare Act and the Multi-Ethnic Placement Act of 1994 are implemented.

Empower families – The bill will reduce delays in achieving permanency for children and includes families to a greater degree in the case planning process.

B. EFFECT OF PROPOSED CHANGES:

Background

Florida laws relating to child welfare issues were enacted long before federal intervention. The responsibility and authority to intervene in situations where a child is or appears to be in need of protection as a result of child abuse or neglect has traditionally been at the state rather than federal level.[1] However, beginning with the passage of the Child Abuse Prevention and Treatment Act (CAPTA) in 1974, Congress has enacted a number of laws having a significant effect on state child protection and child welfare services.[2]

The major federal laws impacting Florida's child protection system, listed in order of original enactment, are: CAPTA,[3] the Indian Child Welfare Act (ICWA),[4] the Adoption Assistance and Child Welfare Act,[5] the Family Preservation and Family Support Services Program (established as part of the Omnibus Reconciliation Act of 1993),[6] the Multi-Ethnic Placement Act (MEPA),[7] the Adoption and Safe Families Act (ASFA),[8] the Foster Care Independence Act,[9] the Child Abuse Prevention and Enforcement Act,[10] the Intercountry Adoption Act,[11] the Promoting Safe and Stable Families Amendments,[12] and the Keeping Children and Families Safe Act.[13]

The ASFA of 1997, which amends the 1980 Child Welfare Act, was signed into law on November 19, 1997. This law provides that the health and safety of children served by child welfare agencies must be the paramount concern of those agencies. It emphasizes moving children in foster care more quickly into permanent homes.[14] Its implementing regulations[15] became effective on March 27, 2000. These

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[1] National Clearinghouse on Child Abuse and Neglect Information, http://nccanch.acf.hhs.gov (August 1, 2005).
[2] *Id.*
[3] P.L. 93-247, amended P.L. 95-266, 98-257, 100-294, 102-295, 104-235.
[4] P.L. 95-608.
[5] P.L. 98-272.
[6] P.L. 103-66.
[7] P.L. 103-382, amended P.L. 104-188.
[8] P.L. 105-89.
[9] P.L. 106-169.
[10] P.L. 106-177.
[11] P.L. 106-279.
[12] P.L. 107-133.
[13] P.L. 108-36.
[14] *Adoption and Safe Families Act of 1997 (H.R. 867)* National Association of Social Workers (December 1997), found at

regulations incorporate provisions of ASFA and MEPA and amend pre-existing regulations by adding new requirements for state compliance with Titles IV-B and IV-E of the Social Security Act.[16]

State and local child protection agencies that accept federal funds pursuant to Titles IV-B and IV-E of the Social Security Act are required to follow ASFA and its regulations. In FY 2004-2005, the last year for which figures are available, Florida received $29,873,959 in federal funds pursuant to Title IV-B and $190,309,299 in federal funds pursuant to Title IV-E of the Social Security Act. In that year, these sums amounted to 23.61 percent of the total budget for Florida's child welfare programs, a percentage which remains fairly consistent.[17]

As a prerequisite to accepting federal funding through Titles IV-B and IV-E of the Social Security Act, states were required to amend state legislation to bring it into compliance with ASFA. However, the short deadlines for compliance[18] required states to draft legislation quickly, increasing the likelihood that inconsistencies would remain between state law and ASFA requirements. Further, since the required date for drafting statutory changes was earlier than the date of the issuance of the final ASFA regulations (January 25, 2000), the likelihood of inconsistencies between state and federal law was even further increased.

During the 1998 session, the Florida Legislature enacted significant changes to Florida's child protection statute, in part with the goal of bringing state law into compliance with ASFA.[19] The ASFA-related changes included:

- Recognizing the parents' right to counsel at the shelter and subsequent hearings and the right, if indigent, to appointed counsel;
- Providing for access by the Department of Children and Family Services ("DCFS" or the "department") to federal and state parent locator services for diligent search activities;
- Increasing requirements for documentation in cases where the case plan goal is not reunification;
- Reducing the time period from 18 to 12 months for judicial review of permanency options for a child;
- Requiring judicial reviews for all children in out-of-home care every six months; and
- Authorizing but not requiring the use of concurrent case planning. Concurrent case planning is the practice of establishing a permanency goal in a case plan which uses reasonable efforts to reunify the child with the parent, while at the same time establishing an alternative or back-up permanency plan to be implemented if children cannot safely return to their biological parents.[20] If concurrent case planning is not used, the alternative goal is explored only after the court determines that reunification is no longer a viable permanency option for the child, a process that almost inevitably significantly delays permanence for the child.

The remaining major provisions of ASFA which have not been addressed in state law may be described as:

- "Reasonable efforts" – ASFA redefines "reasonable efforts" to emphasize children's health and safety. It describes at least three circumstances when "reasonable efforts"

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http://www.naswdc.org/archives/advocacy/updates/1997/safeadop.htm.

[15] 45 CFR ss. 1355, 1356, 1357; see also the introductory materials and comments, found at 65 FR 4020-4075.

[16] *Making Sense of the ASFA Regulations*, Baker, Debra Ratterman et al, American Bar Association (2001), p. 4.

[17] Information obtained from O. Roy Hutcheson, Jr., Chief, Federal Program Eligibility-Revenue Maximization Unit, Child Welfare/CBC Program Office, DCF, August 15, 2005.

[18] P.L. 105-89, s. 103(a)(3).

[19] Ch. 98-403, L.O.F.

[20] *Tools for Permanency: Tool #1: Concurrent Permanency Planning*, National Resource Center for Foster Care and Permanency Planning, Hunter College School of Social Work of the City University of New York, found at www.hunter.curry.edu/socwork/nrcfcpp (July 2005).

are required by the state agency in child welfare cases: to prevent foster care placement, to finalize a permanency plan for each child, and to reunify families if such placement has occurred. It also describes situations when reasonable efforts to preserve families are not required;
- Case plan and review requirements – ASFA requires that the case plan and associated reviews specifically address child safety and permanency; and
- Increased emphasis on timely permanency decision making, including shorter time periods (shortened from 18 months to 12 months) to finalize a permanency plan, a new requirement for permanency hearings, and a limitation on the time period for reunification services to families.[21]

These three major provisions of ASFA were, for the most part, not addressed in the 1998 legislation. Consequently, Florida law on these issues contains pre-ASFA provisions which are not consistent with current federal law.

Occurring simultaneously with the implementation of the ASFA-related changes, Florida's child welfare system has undertaken the transition from a traditional agency-driven structure to one in which child welfare services are delivered by community-based care lead agencies. These community-based care lead agencies are independent, non-profit organizations under contract with DCF to provide child welfare services. There are currently 22 lead agencies, each with several subcontracting agencies. This decentralization of service delivery has created additional opportunity for confusion as to the requirements of federal and state law in this area.

When state and federal law are not consistent, the Supremacy Clause of the U.S. Constitution requires state courts to apply federal law.[22] However, most practitioners and decision makers in the Florida child welfare system are more familiar with Florida law than with federal law. The inconsistencies may not be recognized at the court or agency level and may result in failures to comply with federal law which are detected when state practices are reviewed as part of the federal Child and Family Services Review (CFSR) process. Such a failure may lead to the loss of significant federal financial support for Florida's child welfare program.

Effect of Bill

HB 7123 does the following:

- Creates new definitions of the terms "concurrent planning," "family team conference," "permanency goal," "permanency plan," "permanent guardian," and "permanent guardianship of a dependent child." Current definitions are also amended or deleted to reflect provisions of the bill.

- Removes current provisions relating to time limitations in dependency cases and creates a new section that provides for added emphasis on the fact that time is of the essence for establishing permanency for a child in the dependency system and outlines the time limitations applicable to dependency cases.

- Clarifies that the provisions of chapter 39, F.S., do not supersede the requirements of the federal Indian Child Welfare Act, the Multi-Ethnic Placement Act of 1994, or their implementing regulations and encourages DCF to enter into agreements with recognized American Indian tribes.

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[21] See *Congress Passes Major new Adoption/Foster Care Reform Law*, ABA Center on Children and the Law, found at http://www.abanet.org/child/adofost.html.
[22] *Hilton v. South Carolina Public Railways Comm'n,* 502 U.S. 197 (1991); *Mississippi Power & Light Co. v. Mississippi,* 487 U.S. 354 (1988); *Kalb v. Feuerstein,* 308 U.S. 433 (1940).

- Provides background screening requirements for the out-of-home placement of children and the process for seeking an exemption from disqualification for placement.

- Clarifies the duty to report to the central abuse hotline the reasonable suspicion that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care and clarifies the authority of the hotline to accept such reports. Adds a child who is known or suspected to be a victim of human trafficking to the list of offenses defined as "criminal conduct."

- Allows previous reports of child abuse, neglect, or abandonment to be considered in determining whether a child is safe as well as the existing risk to a child at any stage of a child protection proceeding; requires parents or legal custodians to notify the protective investigator of any change in the location or residence of a child while an investigation is open and clarifies that this notification can serve as the basis for a missing child report to law enforcement.

- Authorizes child protection teams within the Department of Health to provide assessment and support in any report alleging sexual abuse of a child.

- Requires that the order at the shelter hearing include a description of the specific services which could prevent or eliminate the need for the removal of a child and the date the services are expected to become available or an explanation of why the services are not available. The bill requires that the order contain a notice to all parties of the date, time, and place of the case plan conference, family team conference, or mediation that will be used to develop the case plan. It also requires the court to inquire, and the parents to provide, the names and location information of all relatives whom they wish to be considered for placement of the child. It requires the court to advise the parents that their parental rights may be terminated if the child is not returned to their custody within 12 months.

- Clarifies that children who are in a permanent guardianship with a relative are eligible for the relative caregiver program.

- Requires that the court consider the continuity of the child's placement in the same out-of-home residence as a factor in determining the best interests of a child when a petition is filed to change the custody of a child in an out-of-home placement.

- Creates new sections of chapter 39, F.S., describing the procedural and other requirements for developing a case plan, describing the tasks and services that must be addressed in a case plan, and describing the process and grounds for case plan amendments.

- Clarifies that time is of the essence for permanency of children in the dependency system and provides direction to the court in conducting permanency hearings for children.

- Specifies provisions for the permanency options of permanent guardianship of a dependent child, permanent placement with a fit and willing relative, and another planned permanent living arrangement, which conforms the permanency options for dependent children with the options described in federal law.

- Requires that judicial review social studies reports provided periodically to the court include copies of the child's current health and education records as identified in s. 39.6012, F.S., requires that the child's permanency goal be reviewed at the judicial review held no later than six months after the child is placed in shelter care, and requires an evaluation at that time of the need for concurrent planning for the child.

- Clarifies the circumstances under which DCF is required to file or be excused from filing a termination of parental rights petition at the time of the 12-month judicial review and provides authority for any party to seek judicial review of DCF's decision not to file this petition based on the enumerated grounds.

- Clarifies that a material breach of the case plan is grounds for filing a termination of parental rights petition before the expiration of the time period for compliance with the case plan if the court finds by clear and convincing evidence that the parent is unlikely or unable to substantially comply with the case plan before the time expires to comply with it.

- Provides that, in determining the manifest best interests of a child in the context of a termination of parental rights proceeding, the availability of a non-adoptive relative placement may not be considered as a factor weighing against the termination of parental rights and that, if a child has been in a stable or pre-adoptive placement for not less than six months, the availability of a different placement, including a placement with relative, may not be considered as a ground to deny the petition for termination of parental rights.

- Repeals sections 39.601, 39.622, 39.623, 39.624, and 435.045, Florida Statutes. These sections are related to case planning when parents do not participate and the child is in out-of-home care, long-term custody, long-term licensed custody, independent living, and employment screening requirements for placement of dependent children, respectively.

C. SECTION DIRECTORY:

Section 1. Amends s. 39.01, F.S., relating to definitions.

Section 2. Amends s. 39.0121, F.S., relating to rulemaking authority.

Section 3. Amends s. 39.013, F.S., relating to procedures and right to counsel for parents in dependency proceedings.

Section 4. Creates s. 39.0136, F.S., relating to time limitations and continuances.

Section 5. Creates s. 39.0137, F.S., relating to federal law and rulemaking authority.

Section 6. Creates s. 39.0138, F.S., relating to requirements for placement of children and exemptions from disqualification.

Section 7. Amends s. 39.201, F.S., relating to the central abuse hotline and mandatory reports of abuse, neglect, abandonment, and death.

Section 8. Amends s. 39.301, F.S., relating to child protective investigations.

Section 9. Amends s. 39.303, F.S., relating to child protection teams.

Section 10. Amends s. 39.402, F.S., relating to placement in a shelter.

Section 11. Amends s. 39.507, F.S., relating to adjudicatory hearings and orders of adjudication.

Section 12. Amends s. 39.5085, F.S., relating to the Relative Caregiver Program.

Section 13. Amends s. 39.521, F.S., relating to disposition hearings and powers of disposition.

Section 14. Amends s. 39.522, F.S., relating to postdisposition change of custody.

Section 15. Creates s. 39.6011, F.S., relating to case plan development.

Section 16. Creates s. 39.6012, F.S., relating to case plan tasks and services to be provided.

Section 17. Creates s. 39.6013, F.S., relating to amendments to a case plan.

Section 18. Amends s. 39.603, F.S., relating to court approval of case planning.

Section 19. Amends s. 39.621, F.S., relating to permanency determinations by the court.

Section 20. Creates s. 39.6221, F.S., relating to the permanent guardianship of a child.

Section 21. Creates s. 39.6231, F.S., relating to permanent placement of a child with a fit and willing relative.

Section 22. Creates s. 39.6241, F.S., relating to another planned permanent living arrangement.

Section 23. Amends s. 39.701, F.S., relating to judicial review.

Section 24. Amends s. 39.703, F.S., relating to the initiation of termination of parental rights proceedings and judicial review.

Section 25. Amends s. 39.806, F.S., relating to grounds for termination of parental rights.

Section 26. Amends s. 39.810, F.S., relating to manifest best interest of the child.

Section 27. Amends s. 39.811, F.S., relating to powers and orders of disposition.

Section 28. Amends s. 39.0015, F.S., relating to child abuse prevention training in the district school system.

Section 29. Amends 39.205, F.S., relating to penalties relating to the reporting of abuse, abandonment, or neglect.

Section 30. Amends s. 39.302, F.S., relating to protective investigations of institutional child abuse, abandonment, or neglect.

Section 31. Amends s. 39.802, F.S., relating to petitions for termination of parental rights.

Section 32. Amends s. 39.828, relating to the appointment of a guardian advocate for drug dependent newborns.

Section 33. Amends s. 63.092, F.S., relating to reports to the court of intended placement by an adoption entity, at-risk placements, and preliminary studies.

Section 34. Amends s. 409.165, F.S., relating to alternative care for children.

Section 35. Amends s. 419.001, F.S., relating to site selection of community residential homes.

Section 36. Repeals ss. 39.601, 39.622, 39.623, 39.624, and 435.045, F.S.

Section 37. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Unknown.

2. Expenditures:

   Unknown.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of Children and Family Services' fiscal analysis suggests the passage of this bill will save Florida just under $1 million in penalties from the federal government for lack of consistency with federal laws and regulations. However, the department does not anticipate any fiscal impact associated with the implementation of this bill.

The bill removes areas of confusion that have led to delay in permanency for children. As a result, more children should achieve permanency at an earlier time, reducing the need for foster care services.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The Department of Children and Family Services is required to adopt rules to:

- Make available to all physical custodians and family services counselors the information required by s. 39.6012(2), F.S. and for ensuring that this information follows the child until permanency has been achieved; and

- Ensure that the federal Indian Child Welfare Act and the Multi-Ethnic Placement Act of 1994 are implemented.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The provisions in this bill regarding criminal history screening of prospective placements appear confusing; lines 1104-1148. For instance, the provisions refer to physical assault which is not an offense, and to sexual assault which is properly defined as sexual battery under s. 794.011, F.S. The provisions also imply, but do not specifically provide, that DCFS may waive prior convictions in certain circumstances.

The bill attempts to bring Florida law into compliance with federal laws and regulations. Nevertheless, not all of the provisions of the Code of Federal Regulations pertaining to Title IV-E foster care programs have been implemented in the bill. Specifically, the bill does not include the provision requiring the state to file a petition to terminate the parental rights of a foster child who has been the responsibility of the state for 15 of the last 22 months, 45 C.F.R. s. 1356.21(i)(1)(i), and the provision requiring the state to file a petition to terminate the parental rights of a parent who has been convicted of an enumerated felony, 45 C.F.R. s. 1356.21(i)(1)(iii).

There appear to be grammar and usage or consistency issues in the following lines: 645-653; 1169; 1526; 1606-1608; 2002-2003; 2136-2138; 2145-2148; and 2086.

It appears that the permanency goals outlined in the bill, on lines 688 and 1891, are in order of preference. If this is the case, that order should be specifically stated.

It is unclear why the portion of the bill, beginning on line 2066, providing that placement of a child in a permanent guardianship does not terminate the parent-child relationship is not applicable to all three forms of permanent placement.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to child protective services; amending s.
3 39.01, F.S.; revising definitions relating to child
4 protective services; amending s. 39.0121, F.S.; providing
5 rulemaking authority to the Department of Children and
6 Family Services to provide certain information in a
7 child's case plan to physical custodians and family
8 services counselors under certain circumstances; amending
9 s. 39.013, F.S.; removing provisions relating to
10 continuances; creating s. 39.0136, F.S.; providing for
11 time limitations and circumstances under which a
12 continuance may be granted in child protective cases;
13 providing exceptions; creating s. 39.0137, F.S.; providing
14 that state laws do not supersede certain federal laws;
15 requiring the Department of Children and Family Services
16 to adopt rules; creating s. 39.0138, F.S.; authorizing the
17 department to conduct criminal records checks of persons
18 being considered as prospective foster parents; providing
19 that a court may review the granting or denial of an
20 exemption from disqualification to care for a dependent
21 child; providing that a person seeking placement of a
22 child who is disqualified bears the burden of providing
23 evidence of rehabilitation; amending s. 39.201, F.S.;
24 requiring that any person who knows or suspects that a
25 child is in need of supervision and care and has no
26 parent, legal custodian, or responsible adult relative
27 immediately known and available to provide supervision and
28 care must report this information to the central abuse

29 hotline of the Department of Children and Family Services;
30 amending s. 39.301, F.S.; redefining the term "criminal
31 conduct" to include a child who is known or suspected to
32 be a victim of human trafficking; requiring each child
33 protective investigator to inform the person who is the
34 subject of a child protective investigation that he or she
35 has a duty to report any change in the residence or
36 location of the child to the investigator and that the
37 duty to report continues until the investigation is
38 closed; providing that the department may rely upon a
39 previous report to indicate that child abuse has occurred;
40 providing that if the child has moved to a different
41 residence or location, a report may be filed with a law
42 enforcement agency under certain circumstances; amending
43 39.303, F.S.; conforming provisions to changes made by the
44 act; amending s. 39.402, F.S.; requiring that a shelter
45 hearing order contain specified information relating to
46 the availability of services to prevent removal from the
47 home; requiring notification of certain parties regarding
48 case plan or family team conferences or mediation;
49 providing a timeframe for the conference or mediation;
50 requiring a parent to provide certain information
51 regarding relatives with whom a child may be placed under
52 certain circumstances; providing circumstances under which
53 parental rights may be terminated and the child's out-of-
54 home placement may become permanent; amending s. 39.507,
55 F.S.; requiring the court to inquire of the parents
56 whether the parents have relatives who might be considered

57 as a placement for the child; directing the court to
58 advise the parents that, if the child is not returned to
59 their custody within 12 months, their parental rights may
60 be terminated and the child's out-of-home placement may
61 become permanent; amending s. 39.5085, F.S.; conforming
62 provisions to changes made by the act; correcting cross-
63 references; amending s. 39.521, F.S.; revising the content
64 of an order of disposition issued by the court; amending
65 s. 39.522, F.S.; requiring the court to consider the
66 continuity of the child's placement in the same out-of-
67 home residence as a factor when determining the best
68 interest of the child in a postdisposition proceeding to
69 modify custody; creating s. 39.6011, F.S.; providing
70 procedures for drafting and implementing a case plan;
71 requiring certain face-to-face meetings; specifying
72 contents of a case plan; requiring the department to
73 prepare a case plan for each child receiving services from
74 the department; requiring all parties, except the child
75 under certain circumstances, to sign the case plan;
76 requiring the case plan to provide certain documentation
77 when the permanency goal for the child is adoption;
78 requiring the department to follow certain procedures;
79 requiring the case plan to be filed with the court and
80 copies to be provided to all parties; requiring certain
81 information to follow a child until permanency is
82 achieved; creating s. 39.6012, F.S.; providing for case
83 plan tasks and services; requiring a parent to complete
84 certain tasks in order to receive certain services;

85 providing for the content of case plans; creating s.
86 39.6013, F.S.; providing for amendments to a case plan;
87 describing the circumstances under which a case plan may
88 be modified; requiring certain information to be included
89 in amendments to a case plan; requiring copies to be
90 distributed to specified parties; amending s. 39.603,
91 F.S.; requiring that case plans and amendments be approved
92 by the court and that copies of the amended plan be
93 provided to certain parties; amending s. 39.621, F.S.;
94 providing a legislative finding; requiring a permanency
95 hearing to be held within a specified timeframe;
96 specifying permanency goals; providing prehearing
97 procedures; directing the court to make certain findings
98 at the permanency hearing; requiring certain factors to be
99 considered by the court in determining the permanency goal
100 for the child; permitting parents to make a motion for
101 reunification or increased contact under certain
102 circumstances; creating s. 39.6221, F.S.; providing for
103 the permanent guardianship for a dependent child;
104 authorizing the court to consider a permanent guardian as
105 a long-term option for a dependent child; requiring a
106 written order; providing for the contents of the permanent
107 guardianship order; exempting the permanent guardianship
108 of a child from the requirements of ch. 744, F.S., under
109 certain circumstances; providing for the court to retain
110 jurisdiction; providing that placement in permanent
111 guardianship does not terminate the relationship between
112 the parent and the child; creating s. 39.6231, F.S.;

113 providing circumstances for placement of a child with a
114 fit and willing relative; requiring the court to specify
115 the reasons to place a child with a relative; requiring
116 the court to establish the relative's authority to care
117 for the child; providing for the department to supervise
118 the placement for a specified time period; requiring the
119 court to continue to conduct permanency hearings; creating
120 s. 39.6241, F.S.; authorizing the court to place a child
121 in another planned permanent living arrangement under
122 certain circumstances; requiring the department and
123 guardian ad litem to provide the court with certain
124 information regarding the needs of the child; amending s.
125 39.701, F.S.; requiring that a child's current health,
126 mental health, and education records be included in the
127 documentation for the judicial review report; authorizing
128 the court and citizen review panel to make certain
129 determinations; providing for amendments to a case plan;
130 removing a provision relating to the extension of a time
131 limitation or the modification of terms of a case plan;
132 requiring the court to conduct a judicial review 6 months
133 after the child is placed in shelter care; amending s.
134 39.703, F.S.; providing when the department may file a
135 petition for termination of parental rights; providing
136 circumstances under which the department may choose not to
137 file a petition; providing for court review of a
138 determination by the department not to file a petition;
139 amending s. 39.806, F.S.; authorizing a material breach of
140 the case plan as a ground to terminate parental rights;

141 requiring that the department show, and the court find,
142 the material breach by clear and convincing evidence;
143 amending s. 39.810, F.S.; providing certain factors for
144 the court to consider for the best interest of the child;
145 amending ss. 39.811 and 409.165, F.S.; conforming
146 provisions to changes made by the act; amending ss.
147 39.0015, 39.205, 39.302, 39.828, 63.092, and 419.001,
148 F.S.; correcting cross-references; reenacting s.
149 39.802(5), F.S., relating to the filing of a petition to
150 terminate parental rights, to incorporate the amendments
151 made to s. 39.806, F.S., in a reference thereto; repealing
152 ss. 39.601, 39.622, 39.623, 39.624, and 435.045, F.S.,
153 relating to case plan requirements, long-term custody of a
154 dependent child, long-term licensed custody of a dependent
155 child, independent living, and background screening of
156 certain persons before a dependent child is placed in
157 their home; providing an effective date.
158
159 Be It Enacted by the Legislature of the State of Florida:
160
161 Section 1. Section 39.01, Florida Statutes, is amended to
162 read:
163 39.01 Definitions.--When used in this chapter, unless the
164 context otherwise requires:
165 (1) "Abandoned" means a situation in which the parent or
166 legal custodian of a child or, in the absence of a parent or
167 legal custodian, the caregiver responsible for the child's
168 welfare, while being able, makes no provision for the child's

169 support and makes no effort to communicate with the child, which
170 situation is sufficient to evince a willful rejection of
171 parental obligations. If the efforts of the ~~such~~ parent or legal
172 custodian, or caregiver primarily responsible for the child's
173 welfare, to support and communicate with the child are, in the
174 opinion of the court, only marginal efforts that do not evince a
175 settled purpose to assume all parental duties, the court may
176 declare the child to be abandoned. The term "abandoned" does not
177 include an abandoned newborn infant as described in s. 383.50, a
178 "child in need of services" as defined in chapter 984, or a
179 "family in need of services" as defined in chapter 984. The
180 incarceration of a parent, legal custodian, or caregiver
181 responsible for a child's welfare may support a finding of
182 abandonment.
183 (2) "Abuse" means any willful act or threatened act that
184 results in any physical, mental, or sexual injury or harm that
185 causes or is likely to cause the child's physical, mental, or
186 emotional health to be significantly impaired. Abuse of a child
187 includes acts or omissions. Corporal discipline of a child by a
188 parent or legal custodian for disciplinary purposes does not in
189 itself constitute abuse when it does not result in harm to the
190 child.
191 (3) "Addictions receiving facility" means a substance
192 abuse service provider as defined in chapter 397.
193 (4) "Adjudicatory hearing" means a hearing for the court
194 to determine whether or not the facts support the allegations
195 stated in the petition in dependency cases or in termination of
196 parental rights cases.

197 (5) "Adult" means any natural person other than a child.
198 (6) "Adoption" means the act of creating the legal
199 relationship between parent and child where it did not exist,
200 thereby declaring the child to be legally the child of the
201 adoptive parents and their heir at law, and entitled to all the
202 rights and privileges and subject to all the obligations of a
203 child born to the ~~such~~ adoptive parents in lawful wedlock.
204 (7) "Alleged juvenile sexual offender" means:
205 (a) A child 12 years of age or younger who is alleged to
206 have committed a violation of chapter 794, chapter 796, chapter
207 800, s. 827.071, or s. 847.0133; or
208 (b) A child who is alleged to have committed any violation
209 of law or delinquent act involving juvenile sexual abuse.
210 "Juvenile sexual abuse" means any sexual behavior which occurs
211 without consent, without equality, or as a result of coercion.
212 For purposes of this paragraph, the following definitions apply:
213 1. "Coercion" means the exploitation of authority or the
214 use of bribes, threats of force, or intimidation to gain
215 cooperation or compliance.
216 2. "Equality" means two participants operating with the
217 same level of power in a relationship, neither being controlled
218 nor coerced by the other.
219 3. "Consent" means an agreement, including all of the
220 following:
221 a. Understanding what is proposed based on age, maturity,
222 developmental level, functioning, and experience.
223 b. Knowledge of societal standards for what is being
224 proposed.

225 c. Awareness of potential consequences and alternatives.
226 d. Assumption that agreement or disagreement will be
227 accepted equally.
228 e. Voluntary decision.
229 f. Mental competence.
230
231 Juvenile sexual offender behavior ranges from noncontact sexual
232 behavior such as making obscene phone calls, exhibitionism,
233 voyeurism, and the showing or taking of lewd photographs to
234 varying degrees of direct sexual contact, such as frottage,
235 fondling, digital penetration, rape, fellatio, sodomy, and
236 various other sexually aggressive acts.
237 (8) "Arbitration" means a process whereby a neutral third
238 person or panel, called an arbitrator or an arbitration panel,
239 considers the facts and arguments presented by the parties and
240 renders a decision which may be binding or nonbinding.
241 (9) "Authorized agent" or "designee" of the department
242 means an employee, volunteer, or other person or agency
243 determined by the state to be eligible for state-funded risk
244 management coverage, which ~~that~~ is assigned or designated by the
245 department to perform duties or exercise powers under ~~pursuant~~
246 ~~to~~ this chapter.
247 (10) "Caregiver" means the parent, legal custodian,
248 permanent guardian, adult household member, or other person
249 responsible for a child's welfare as defined in subsection (46)
250 ~~(47)~~.
251 (11) "Case plan" ~~or "plan"~~ means a document, as described
252 in s. 39.6011 ~~s. 39.601~~, prepared by the department with input

253 from all parties. The case plan follows the child from the
254 provision of voluntary services through any dependency, foster
255 care, or termination of parental rights proceeding or related
256 activity or process.
257 (12) "Child" or "youth" means any unmarried person under
258 the age of 18 years who has not been emancipated by order of the
259 court.
260 (13) "Child protection team" means a team of professionals
261 established by the Department of Health to receive referrals
262 from the protective investigators and protective supervision
263 staff of the department and to provide specialized and
264 supportive services to the program in processing child abuse,
265 abandonment, or neglect cases. A child protection team shall
266 provide consultation to other programs of the department and
267 other persons regarding child abuse, abandonment, or neglect
268 cases.
269 (14) "Child who is found to be dependent" means a child
270 who, pursuant to this chapter, is found by the court:
271 (a) To have been abandoned, abused, or neglected by the
272 child's parent or parents or legal custodians;
273 (b) To have been surrendered to the department, the former
274 Department of Health and Rehabilitative Services, or a licensed
275 child-placing agency for purpose of adoption;
276 (c) To have been voluntarily placed with a licensed child-
277 caring agency, a licensed child-placing agency, an adult
278 relative, the department, or the former Department of Health and
279 Rehabilitative Services, after which placement, under the
280 requirements of this chapter, a case plan has expired and the

281 parent or parents or legal custodians have failed to
282 substantially comply with the requirements of the plan;
283 (d) To have been voluntarily placed with a licensed child-
284 placing agency for the purposes of subsequent adoption, and a
285 parent or parents have signed a consent pursuant to the Florida
286 Rules of Juvenile Procedure;
287 (e) To have no parent or legal custodians capable of
288 providing supervision and care; or
289 (f) To be at substantial risk of imminent abuse,
290 abandonment, or neglect by the parent or parents or legal
291 custodians.
292 (15) "Child support" means a court-ordered obligation,
293 enforced under chapter 61 and ss. 409.2551-409.2597, for
294 monetary support for the care, maintenance, training, and
295 education of a child.
296 (16) "Circuit" means any of the 20 judicial circuits as
297 set forth in s. 26.021.
298 (17) "Comprehensive assessment" or "assessment" means the
299 gathering of information for the evaluation of a child's and
300 caregiver's physical, psychiatric, psychological or mental
301 health, educational, vocational, and social condition and family
302 environment as they relate to the child's and caregiver's need
303 for rehabilitative and treatment services, including substance
304 abuse treatment services, mental health services, developmental
305 services, literacy services, medical services, family services,
306 and other specialized services, as appropriate.
307 (18) "Concurrent planning" means establishing a permanency
308 goal in a case plan that uses reasonable efforts to reunify the

309 child with the parent, while at the same time establishing
310 another goal that must be one of the following options:
311 (a) Adoption when a petition for termination of parental
312 rights has been filed or will be filed;
313 (b) Permanent guardianship of a dependent child under s.
314 39.6221;
315 (c) Permanent placement with a fit and willing relative
316 under s. 39.6231; or
317 (d) Placement in another planned permanent living
318 arrangement under s. 39.6241.
319 (19) ~~(18)~~ "Court," unless otherwise expressly stated, means
320 the circuit court assigned to exercise jurisdiction under this
321 chapter.
322 (20) ~~(19)~~ "Department" means the Department of Children and
323 Family Services.
324 (21) ~~(20)~~ "Diligent efforts by a parent" means a course of
325 conduct which results in a reduction in risk to the child in the
326 child's home that would allow the child to be safely placed
327 permanently back in the home as set forth in the case plan.
328 (22) ~~(21)~~ "Diligent efforts of social service agency" means
329 reasonable efforts to provide social services or reunification
330 services made by any social service agency that is a party to a
331 case plan.
332 (23) ~~(22)~~ "Diligent search" means the efforts of a social
333 service agency to locate a parent or prospective parent whose
334 identity or location is unknown, initiated as soon as the social
335 service agency is made aware of the existence of such parent,
336 with the search progress reported at each court hearing until

337 the parent is either identified and located or the court excuses
338 further search.
339 (24) ~~(23)~~ "Disposition hearing" means a hearing in which
340 the court determines the most appropriate protections, services,
341 and placement for the child in dependency cases.
342 (25) ~~(24)~~ "District" means any one of the 15 service
343 districts of the department established pursuant to s. 20.19.
344 (26) ~~(25)~~ "District administrator" means the chief
345 operating officer of each service district of the department as
346 defined in s. 20.19(5) and, where appropriate, includes any
347 district administrator whose service district falls within the
348 boundaries of a judicial circuit.
349 (27) ~~(26)~~ "Expedited termination of parental rights" means
350 proceedings wherein a case plan with the goal of reunification
351 is not being offered.
352 (28) ~~(27)~~ "False report" means a report of abuse, neglect,
353 or abandonment of a child to the central abuse hotline, which
354 report is maliciously made for the purpose of:
355 (a) Harassing, embarrassing, or harming another person;
356 (b) Personal financial gain for the reporting person;
357 (c) Acquiring custody of a child; or
358 (d) Personal benefit for the reporting person in any other
359 private dispute involving a child.
360
361 The term "false report" does not include a report of abuse,
362 neglect, or abandonment of a child made in good faith to the
363 central abuse hotline.
364 (29) ~~(28)~~ "Family" means a collective body of persons,

365 consisting of a child and a parent, legal custodian, or adult
366 relative, in which:
367 (a) The persons reside in the same house or living unit;
368 or
369 (b) The parent, legal custodian, or adult relative has a
370 legal responsibility by blood, marriage, or court order to
371 support or care for the child.
372 (30) "Family team conference" means a process for family-
373 focused intervention facilitated by professional staff which is
374 designed to develop a plan for the care, safety, and well-being
375 of a child and the child's family.
376 (31) ~~(29)~~ "Foster care" means care provided a child in a
377 foster family or boarding home, group home, agency boarding
378 home, child care institution, or any combination thereof.
379 (32) ~~(30)~~ "Harm" to a child's health or welfare can occur
380 when any person:
381 (a) Inflicts or allows to be inflicted upon the child
382 physical, mental, or emotional injury. In determining whether
383 harm has occurred, the following factors must be considered in
384 evaluating any physical, mental, or emotional injury to a child:
385 the age of the child; any prior history of injuries to the
386 child; the location of the injury on the body of the child; the
387 multiplicity of the injury; and the type of trauma inflicted.
388 Such injury includes, but is not limited to:
389 1. Willful acts that produce the following specific
390 injuries:
391 a. Sprains, dislocations, or cartilage damage.
392 b. Bone or skull fractures.

393 c. Brain or spinal cord damage.
394 d. Intracranial hemorrhage or injury to other internal
395 organs.
396 e. Asphyxiation, suffocation, or drowning.
397 f. Injury resulting from the use of a deadly weapon.
398 g. Burns or scalding.
399 h. Cuts, lacerations, punctures, or bites.
400 i. Permanent or temporary disfigurement.
401 j. Permanent or temporary loss or impairment of a body
402 part or function.
403
404 As used in this subparagraph, the term "willful" refers to the
405 intent to perform an action, not to the intent to achieve a
406 result or to cause an injury.
407 2. Purposely giving a child poison, alcohol, drugs, or
408 other substances that substantially affect the child's behavior,
409 motor coordination, or judgment or that result in sickness or
410 internal injury. For the purposes of this subparagraph, the term
411 "drugs" means prescription drugs not prescribed for the child or
412 not administered as prescribed, and controlled substances as
413 outlined in Schedule I or Schedule II of s. 893.03.
414 3. Leaving a child without adult supervision or
415 arrangement appropriate for the child's age or mental or
416 physical condition, so that the child is unable to care for the
417 child's own needs or another's basic needs or is unable to
418 exercise good judgment in responding to any kind of physical or
419 emotional crisis.
420 4. Inappropriate or excessively harsh disciplinary action

421 that is likely to result in physical injury, mental injury as
422 defined in this section, or emotional injury. The significance
423 of any injury must be evaluated in light of the following
424 factors: the age of the child; any prior history of injuries to
425 the child; the location of the injury on the body of the child;
426 the multiplicity of the injury; and the type of trauma
427 inflicted. Corporal discipline may be considered excessive or
428 abusive when it results in any of the following or other similar
429 injuries:
430 a. Sprains, dislocations, or cartilage damage.
431 b. Bone or skull fractures.
432 c. Brain or spinal cord damage.
433 d. Intracranial hemorrhage or injury to other internal
434 organs.
435 e. Asphyxiation, suffocation, or drowning.
436 f. Injury resulting from the use of a deadly weapon.
437 g. Burns or scalding.
438 h. Cuts, lacerations, punctures, or bites.
439 i. Permanent or temporary disfigurement.
440 j. Permanent or temporary loss or impairment of a body
441 part or function.
442 k. Significant bruises or welts.
443 (b) Commits, or allows to be committed, sexual battery, as
444 defined in chapter 794, or lewd or lascivious acts, as defined
445 in chapter 800, against the child.
446 (c) Allows, encourages, or forces the sexual exploitation
447 of a child, which includes allowing, encouraging, or forcing a
448 child to:

449 1. Solicit for or engage in prostitution; or
450 2. Engage in a sexual performance, as defined by chapter
451 827.
452 (d) Exploits a child, or allows a child to be exploited,
453 as provided in s. 450.151.
454 (e) Abandons the child. Within the context of the
455 definition of "harm," the term "abandons the child" means that
456 the parent or legal custodian of a child or, in the absence of a
457 parent or legal custodian, the person responsible for the
458 child's welfare, while being able, makes no provision for the
459 child's support and makes no effort to communicate with the
460 child, which situation is sufficient to evince a willful
461 rejection of parental obligation. If the efforts of the ~~such a~~
462 parent or legal custodian or person primarily responsible for
463 the child's welfare to support and communicate with the child
464 are only marginal efforts that do not evince a settled purpose
465 to assume all parental duties, the child may be determined to
466 have been abandoned. The term "abandoned" does not include an
467 abandoned newborn infant as described in s. 383.50.
468 (f) Neglects the child. Within the context of the
469 definition of "harm," the term "neglects the child" means that
470 the parent or other person responsible for the child's welfare
471 fails to supply the child with adequate food, clothing, shelter,
472 or health care, although financially able to do so or although
473 offered financial or other means to do so. However, a parent or
474 legal custodian who, by reason of the legitimate practice of
475 religious beliefs, does not provide specified medical treatment
476 for a child may not be considered abusive or neglectful for that

477 reason alone, but such an exception does not:
478 1. Eliminate the requirement that such a case be reported
479 to the department;
480 2. Prevent the department from investigating such a case;
481 or
482 3. Preclude a court from ordering, when the health of the
483 child requires it, the provision of medical services by a
484 physician, as defined in this section, or treatment by a duly
485 accredited practitioner who relies solely on spiritual means for
486 healing in accordance with the tenets and practices of a well-
487 recognized church or religious organization.
488 (g) Exposes a child to a controlled substance or alcohol.
489 Exposure to a controlled substance or alcohol is established by:
490 1. Use by the mother of a controlled substance or alcohol
491 during pregnancy when the child, at birth, is demonstrably
492 adversely affected by such usage; or
493 2. Continued chronic and severe use of a controlled
494 substance or alcohol by a parent when the child is demonstrably
495 adversely affected by such usage.
496
497 As used in this paragraph, the term "controlled substance" means
498 prescription drugs not prescribed for the parent or not
499 administered as prescribed and controlled substances as outlined
500 in Schedule I or Schedule II of s. 893.03.
501 (h) Uses mechanical devices, unreasonable restraints, or
502 extended periods of isolation to control a child.
503 (i) Engages in violent behavior that demonstrates a wanton
504 disregard for the presence of a child and could reasonably

505 result in serious injury to the child.
506 (j) Negligently fails to protect a child in his or her
507 care from inflicted physical, mental, or sexual injury caused by
508 the acts of another.
509 (k) Has allowed a child's sibling to die as a result of
510 abuse, abandonment, or neglect.
511 (l) Makes the child unavailable for the purpose of
512 impeding or avoiding a protective investigation unless the court
513 determines that the parent, legal custodian, or caregiver was
514 fleeing from a situation involving domestic violence.
515 (33) ~~(31)~~ "Institutional child abuse or neglect" means
516 situations of known or suspected child abuse or neglect in which
517 the person allegedly perpetrating the child abuse or neglect is
518 an employee of a private school, public or private day care
519 center, residential home, institution, facility, or agency or
520 any other person at such institution responsible for the child's
521 care.
522 (34) ~~(32)~~ "Judge" means the circuit judge exercising
523 jurisdiction pursuant to this chapter.
524 (35) ~~(33)~~ "Legal custody" means a legal status created by a
525 court ~~order or letter of guardianship~~ which vests in a custodian
526 of the person or guardian, whether an agency or an individual,
527 the right to have physical custody of the child and the right
528 and duty to protect, nurture, guide ~~train~~, and discipline the
529 child and to provide him or her with food, shelter, education,
530 and ordinary medical, dental, psychiatric, and psychological
531 care. ~~The legal custodian is the person or entity in whom the~~
532 ~~legal right to custody is vested. For purposes of this chapter~~

533 ~~only, when the phrase "parent or legal custodian" is used, it~~
534 ~~refers to rights or responsibilities of the parent and, only if~~
535 ~~there is no living parent with intact parental rights, to the~~
536 ~~rights or responsibilities of the legal custodian who has~~
537 ~~assumed the role of the parent.~~
538 ~~(34) "Legal guardianship" means a judicially created~~
539 ~~relationship between the child and caregiver which is intended~~
540 ~~to be permanent and self-sustaining and is provided pursuant to~~
541 ~~the procedures in chapter 744.~~
542 (36) ~~(35)~~ "Licensed child-caring agency" means a person,
543 society, association, or agency licensed by the department to
544 care for, receive, and board children.
545 (37) ~~(36)~~ "Licensed child-placing agency" means a person,
546 society, association, or institution licensed by the department
547 to care for, receive, or board children and to place children in
548 a licensed child-caring institution or a foster or adoptive
549 home.
550 (38) ~~(37)~~ "Licensed health care professional" means a
551 physician licensed under chapter 458, an osteopathic physician
552 licensed under chapter 459, a nurse licensed under part I of
553 chapter 464, a physician assistant licensed under chapter 458 or
554 chapter 459, or a dentist licensed under chapter 466.
555 (39) ~~(38)~~ "Likely to injure oneself" means that, as
556 evidenced by violent or other actively self-destructive
557 behavior, it is more likely than not that within a 24-hour
558 period the child will attempt to commit suicide or inflict
559 serious bodily harm on himself or herself.
560 (40) ~~(39)~~ "Likely to injure others" means that it is more

561 likely than not that within a 24-hour period the child will
562 inflict serious and unjustified bodily harm on another person.
563 ~~(40) "Long-term relative custodian" means an adult~~
564 ~~relative who is a party to a long-term custodial relationship~~
565 ~~created by a court order pursuant to this chapter.~~
566 ~~(41) "Long-term custody" or "long-term custodial~~
567 ~~relationship" means the relationship that a juvenile court order~~
568 ~~creates between a child and an adult relative of the child or~~
569 ~~other legal custodian approved by the court when the child~~
570 ~~cannot be placed in the custody of a parent and adoption is not~~
571 ~~deemed to be in the best interest of the child. Long-term~~
572 ~~custody confers upon the relative or other legal custodian,~~
573 ~~other than the department, the right to physical custody of the~~
574 ~~child, a right which will not be disturbed by the court except~~
575 ~~upon request of the legal custodian or upon a showing that the~~
576 ~~best interest of the child necessitates a change of custody for~~
577 ~~the child. A relative or other legal custodian who has been~~
578 ~~designated as a long-term custodian shall have all of the rights~~
579 ~~and duties of a parent, including, but not limited to, the right~~
580 ~~and duty to protect, train, and discipline the child and to~~
581 ~~provide the child with food, shelter, and education, and~~
582 ~~ordinary medical, dental, psychiatric, and psychological care,~~
583 ~~unless these rights and duties are otherwise enlarged or limited~~
584 ~~by the court order establishing the long-term custodial~~
585 ~~relationship.~~
586 (41) ~~(42)~~ "Mediation" means a process whereby a neutral
587 third person called a mediator acts to encourage and facilitate
588 the resolution of a dispute between two or more parties. It is

589 an informal and nonadversarial process with the objective of
590 helping the disputing parties reach a mutually acceptable and
591 voluntary agreement. The role of the mediator includes, but is
592 not limited to, assisting the parties in identifying issues,
593 fostering joint problem solving, and exploring settlement
594 alternatives.
595 (42) ~~(43)~~ "Mental injury" means an injury to the
596 intellectual or psychological capacity of a child as evidenced
597 by a discernible and substantial impairment in the ability to
598 function within the normal range of performance and behavior.
599 (43) ~~(44)~~ "Necessary medical treatment" means care which is
600 necessary within a reasonable degree of medical certainty to
601 prevent the deterioration of a child's condition or to alleviate
602 immediate pain of a child.
603 (44) ~~(45)~~ "Neglect" occurs when a child is deprived of, or
604 is allowed to be deprived of, necessary food, clothing, shelter,
605 or medical treatment or a child is permitted to live in an
606 environment when such deprivation or environment causes the
607 child's physical, mental, or emotional health to be
608 significantly impaired or to be in danger of being significantly
609 impaired. The foregoing circumstances shall not be considered
610 neglect if caused primarily by financial inability unless actual
611 services for relief have been offered to and rejected by such
612 person. A parent or legal custodian legitimately practicing
613 religious beliefs in accordance with a recognized church or
614 religious organization who thereby does not provide specific
615 medical treatment for a child may ~~shall~~ not, for that reason
616 alone, be considered a negligent parent or legal custodian;

617 however, such an exception does not preclude a court from
618 ordering the following services to be provided, when the health
619 of the child so requires:
620 (a) Medical services from a licensed physician, dentist,
621 optometrist, podiatric physician, or other qualified health care
622 provider; or
623 (b) Treatment by a duly accredited practitioner who relies
624 solely on spiritual means for healing in accordance with the
625 tenets and practices of a well-recognized church or religious
626 organization.
627
628 Neglect of a child includes acts or omissions.
629 (45) ~~(46)~~ "Next of kin" means an adult relative of a child
630 who is the child's brother, sister, grandparent, aunt, uncle, or
631 first cousin.
632 (46) ~~(47)~~ "Other person responsible for a child's welfare"
633 includes the child's legal guardian~~, legal custodian,~~ or foster
634 parent; an employee of a private school, public or private child
635 day care center, residential home, institution, facility, or
636 agency; or any other person legally responsible for the child's
637 welfare in a residential setting; and also includes an adult
638 sitter or relative entrusted with a child's care. For the
639 purpose of departmental investigative jurisdiction, this
640 definition does not include law enforcement officers, or
641 employees of municipal or county detention facilities or the
642 Department of Corrections, while acting in an official capacity.
643 (47) ~~(48)~~ "Out-of-home" means a placement outside of the
644 home of the parents or a parent.

645 (48) ~~(49)~~ "Parent" means a woman who gives birth to a child
646 and a man who was married to the mother at the time the child
647 was conceived or born, who has been determined by a court to be
648 the father of the child, who has filed an affidavit of paternity
649 under s. 382.013(2), or who has claimed to be the father of the
650 child and has provided, or has attempted to provide, the child,
651 or the mother during her pregnancy, with support in a
652 repetitive, customary manner ~~whose consent to the adoption of~~
653 ~~the child would be required under s. 63.062(1)~~. If a child has
654 been legally adopted, the term "parent" means the adoptive
655 mother or father of the child. The term does not include an
656 individual whose parental relationship to the child has been
657 legally terminated, or an alleged or prospective parent, unless
658 the parental status falls within the terms of s. 39.503(1) or
659 this subsection ~~s. 63.062(1)~~. For purposes of this chapter only,
660 when the phrase "parent or legal custodian" is used, it refers
661 to rights or responsibilities of the parent and, only if there
662 is no living parent with intact parental rights, to the rights
663 or responsibilities of the legal custodian who has assumed the
664 role of the parent.
665 (49) ~~(50)~~ "Participant," for purposes of a shelter
666 proceeding, dependency proceeding, or termination of parental
667 rights proceeding, means any person who is not a party but who
668 should receive notice of hearings involving the child, including
669 the actual custodian of the child, the foster parents or the
670 legal custodian of the child, identified prospective parents,
671 ~~grandparents entitled to priority for adoption consideration~~
672 ~~under s. 63.0425, actual custodians of the child,~~ and any other

673 person whose participation may be in the best interest of the
674 child. A community-based agency under contract with the
675 department to provide protective services may be designated as a
676 participant at the discretion of the court. Participants may be
677 granted leave by the court to be heard without the necessity of
678 filing a motion to intervene.
679 (50) ~~(51)~~ "Party" means the parent or parents of the child,
680 the petitioner, the department, the guardian ad litem or the
681 representative of the guardian ad litem program when the program
682 has been appointed, and the child. The presence of the child may
683 be excused by order of the court when presence would not be in
684 the child's best interest. Notice to the child may be excused by
685 order of the court when the age, capacity, or other condition of
686 the child is such that the notice would be meaningless or
687 detrimental to the child.
688 (51) "Permanency goal" means the living arrangement
689 identified for the child to return to or identified as the
690 permanent living arrangement of the child. Permanency goals
691 applicable under this chapter are:
692 (a) Reunification;
693 (b) Adoption when a petition for termination of parental
694 rights has been or will be filed;
695 (c) Permanent guardianship of a dependent child under s.
696 39.6221;
697 (d) Permanent placement with a fit and willing relative
698 under s. 39.6231; or
699 (e) Placement in another planned permanent living
700 arrangement under s. 39.6241.

701
702 The permanency goal is also the case plan goal. If concurrent
703 case planning is being used, reunification may be pursued at the
704 same time that another permanency goal is pursued.
705 (52) "Permanency plan" means the plan that establishes the
706 placement intended to serve as the child's permanent home.
707 (53) "Permanent guardian" means the relative or other
708 adult in a permanent guardianship of a dependent child under s.
709 39.6221.
710 (54) "Permanent guardianship of a dependent child" means a
711 legal relationship that a court creates under s. 39.6221 between
712 a child and a relative or other adult approved by the court
713 which is intended to be permanent and self-sustaining through
714 the transfer of parental rights with respect to the child
715 relating to protection, education, care, and control of the
716 child, custody of the child, and decisionmaking on behalf of the
717 child.
718 (55) ~~(52)~~ "Physical injury" means death, permanent or
719 temporary disfigurement, or impairment of any bodily part.
720 (56) ~~(53)~~ "Physician" means any licensed physician,
721 dentist, podiatric physician, or optometrist and includes any
722 intern or resident.
723 (57) ~~(54)~~ "Preliminary screening" means the gathering of
724 preliminary information to be used in determining a child's need
725 for further evaluation or assessment or for referral for other
726 substance abuse services through means such as psychosocial
727 interviews; urine and breathalyzer screenings; and reviews of
728 available educational, delinquency, and dependency records of

729 the child.
730 (58) ~~(55)~~ "Preventive services" means social services and
731 other supportive and rehabilitative services provided to the
732 parent or legal custodian of the child and to the child for the
733 purpose of averting the removal of the child from the home or
734 disruption of a family which will or could result in the
735 placement of a child in foster care. Social services and other
736 supportive and rehabilitative services shall promote the child's
737 need for physical, mental, and emotional health and a safe,
738 stable, living environment, shall promote family autonomy, and
739 shall strengthen family life, whenever possible.
740 (59) ~~(56)~~ "Prospective parent" means a person who claims to
741 be, or has been identified as, a person who may be a mother or a
742 father of a child.
743 (60) ~~(57)~~ "Protective investigation" means the acceptance
744 of a report alleging child abuse, abandonment, or neglect, as
745 defined in this chapter, by the central abuse hotline or the
746 acceptance of a report of other dependency by the department;
747 the investigation of each report; the determination of whether
748 action by the court is warranted; the determination of the
749 disposition of each report without court or public agency action
750 when appropriate; and the referral of a child to another public
751 or private agency when appropriate.
752 (61) ~~(58)~~ "Protective investigator" means an authorized
753 agent of the department who receives and investigates reports of
754 child abuse, abandonment, or neglect; who, as a result of the
755 investigation, may recommend that a dependency petition be filed
756 for the child; and who performs other duties necessary to carry

757 out the required actions of the protective investigation
758 function.
759 (62) ~~(59)~~ "Protective supervision" means a legal status in
760 dependency cases which permits the child to remain safely in his
761 or her own home or other nonlicensed placement under the
762 supervision of an agent of the department and which must be
763 reviewed by the court during the period of supervision.
764 (63) ~~(60)~~ "Relative" means a grandparent, great-
765 grandparent, sibling, first cousin, aunt, uncle, great-aunt,
766 great-uncle, niece, or nephew, whether related by the whole or
767 half blood, by affinity, or by adoption. The term does not
768 include a stepparent.
769 (64) ~~(61)~~ "Reunification services" means social services
770 and other supportive and rehabilitative services provided to the
771 parent of the child, to the child, and, where appropriate, to
772 the relative placement, nonrelative placement, or foster parents
773 of the child, for the purpose of enabling a child who has been
774 placed in out-of-home care to safely return to his or her parent
775 at the earliest possible time. The health and safety of the
776 child shall be the paramount goal of social services and other
777 supportive and rehabilitative services. The ~~Such~~ services shall
778 promote the child's need for physical, mental, and emotional
779 health and a safe, stable, living environment, shall promote
780 family autonomy, and shall strengthen family life, whenever
781 possible.
782 (65) ~~(62)~~ "Secretary" means the Secretary of Children and
783 Family Services.
784 (66) ~~(63)~~ "Sexual abuse of a child" means one or more of

785 the following acts:
786 (a) Any penetration, however slight, of the vagina or anal
787 opening of one person by the penis of another person, whether or
788 not there is the emission of semen.
789 (b) Any sexual contact between the genitals or anal
790 opening of one person and the mouth or tongue of another person.
791 (c) Any intrusion by one person into the genitals or anal
792 opening of another person, including the use of any object for
793 this purpose, except that this does not include any act intended
794 for a valid medical purpose.
795 (d) The intentional touching of the genitals or intimate
796 parts, including the breasts, genital area, groin, inner thighs,
797 and buttocks, or the clothing covering them, of either the child
798 or the perpetrator, except that this does not include:
799 1. Any act which may reasonably be construed to be a
800 normal caregiver responsibility, any interaction with, or
801 affection for a child; or
802 2. Any act intended for a valid medical purpose.
803 (e) The intentional masturbation of the perpetrator's
804 genitals in the presence of a child.
805 (f) The intentional exposure of the perpetrator's genitals
806 in the presence of a child, or any other sexual act
807 intentionally perpetrated in the presence of a child, if such
808 exposure or sexual act is for the purpose of sexual arousal or
809 gratification, aggression, degradation, or other similar
810 purpose.
811 (g) The sexual exploitation of a child, which includes
812 allowing, encouraging, or forcing a child to:

813 1. Solicit for or engage in prostitution; or
814 2. Engage in a sexual performance, as defined by chapter
815 827.
816 (67) ~~(64)~~ "Shelter" means a placement with a relative or a
817 nonrelative, or in a licensed home or facility, for the
818 temporary care of a child who is alleged to be or who has been
819 found to be dependent, pending court disposition before or after
820 adjudication.
821 (68) ~~(65)~~ "Shelter hearing" means a hearing in which the
822 court determines whether probable cause exists to keep a child
823 in shelter status pending further investigation of the case.
824 (69) ~~(66)~~ "Social service agency" means the department, a
825 licensed child-caring agency, or a licensed child-placing
826 agency.
827 (70) ~~(67)~~ "Substance abuse" means using, without medical
828 reason, any psychoactive or mood-altering drug, including
829 alcohol, in such a manner as to induce impairment resulting in
830 dysfunctional social behavior.
831 (71) ~~(68)~~ "Substantial compliance" means that the
832 circumstances which caused the creation of the case plan have
833 been significantly remedied to the extent that the well-being
834 and safety of the child will not be endangered upon the child's
835 remaining with or being returned to the child's parent.
836 (72) ~~(69)~~ "Taken into custody" means the status of a child
837 immediately when temporary physical control over the child is
838 attained by a person authorized by law, pending the child's
839 release or placement.
840 (73) ~~(70)~~ "Temporary legal custody" means the relationship

841 that a ~~juvenile~~ court creates between a child and an adult
842 relative of the child, legal custodian, agency, or other person
843 approved by the court until a more permanent arrangement is
844 ordered. Temporary legal custody confers upon the custodian the
845 right to have temporary physical custody of the child and the
846 right and duty to protect, nurture, guide ~~train~~, and discipline
847 the child and to provide the child with food, shelter, and
848 education, and ordinary medical, dental, psychiatric, and
849 psychological care, unless these rights and duties are otherwise
850 enlarged or limited by the court order establishing the
851 temporary legal custody relationship.
852 (74) ~~(71)~~ "Victim" means any child who has sustained or is
853 threatened with physical, mental, or emotional injury identified
854 in a report involving child abuse, neglect, or abandonment, or
855 child-on-child sexual abuse.
856 ~~(72) "Long-term licensed custody" means the relationship~~
857 ~~that a juvenile court order creates between a child and a~~
858 ~~placement licensed by the state to provide residential care for~~
859 ~~dependent children, if the licensed placement is willing and~~
860 ~~able to continue to care for the child until the child reaches~~
861 ~~the age of majority.~~
862 Section 2. Subsection (15) is added to section 39.0121,
863 Florida Statutes, to read:
864 39.0121 Specific rulemaking authority.--Pursuant to the
865 requirements of s. 120.536, the department is specifically
866 authorized to adopt, amend, and repeal administrative rules
867 which implement or interpret law or policy, or describe the
868 procedure and practice requirements necessary to implement this

869 chapter, including, but not limited to, the following:
870 (15) Provision for making available to all physical
871 custodians and family services counselors the information
872 required by s. 39.6012(2) and for ensuring that this information
873 follows the child until permanency has been achieved.
874 Section 3. Section 39.013, Florida Statutes, is amended to
875 read:
876 39.013 Procedures and jurisdiction; right to counsel.--
877 (1) All procedures, including petitions, pleadings,
878 subpoenas, summonses, and hearings, in this chapter shall be
879 conducted according to the Florida Rules of Juvenile Procedure
880 unless otherwise provided by law. Parents must be informed by
881 the court of their right to counsel in dependency proceedings at
882 each stage of the dependency proceedings. Parents who are unable
883 to afford counsel must be appointed counsel.
884 (2) The circuit court has ~~shall have~~ exclusive original
885 jurisdiction of all proceedings under this chapter, of a child
886 voluntarily placed with a licensed child-caring agency, a
887 licensed child-placing agency, or the department, and of the
888 adoption of children whose parental rights have been terminated
889 under this chapter. Jurisdiction attaches when the initial
890 shelter petition, dependency petition, or termination of
891 parental rights petition is filed or when a child is taken into
892 the custody of the department. The circuit court may assume
893 jurisdiction over any such proceeding regardless of whether the
894 child was in the physical custody of both parents, was in the
895 sole legal or physical custody of only one parent, caregiver, or
896 some other person, or was in the physical or legal custody of no

897 person when the event or condition occurred that brought the
898 child to the attention of the court. When the court obtains
899 jurisdiction of any child who has been found to be dependent,
900 the court shall retain jurisdiction, unless relinquished by its
901 order, until the child reaches 18 years of age. However, if a
902 youth petitions the court at any time before his or her 19th
903 birthday requesting the court's continued jurisdiction, the
904 juvenile court may retain jurisdiction under this chapter for a
905 period not to exceed 1 year following the youth's 18th birthday
906 for the purpose of determining whether appropriate aftercare
907 support, Road-to-Independence Scholarship, transitional support,
908 mental health, and developmental disability services, to the
909 extent otherwise authorized by law, have been provided to the
910 formerly dependent child who was in the legal custody of the
911 department immediately before his or her 18th birthday. If a
912 petition for special immigrant juvenile status and an
913 application for adjustment of status have been filed on behalf
914 of a foster child and the petition and application have not been
915 granted by the time the child reaches 18 years of age, the court
916 may retain jurisdiction over the dependency case solely for the
917 purpose of allowing the continued consideration of the petition
918 and application by federal authorities. Review hearings for the
919 child shall be set solely for the purpose of determining the
920 status of the petition and application. The court's jurisdiction
921 terminates upon the final decision of the federal authorities.
922 Retention of jurisdiction in this instance does not affect the
923 services available to a young adult under s. 409.1451. The court
924 may not retain jurisdiction of the case after the immigrant

925 child's 22nd birthday.
926 (3) When a child is under the jurisdiction of the circuit
927 court pursuant to ~~the provisions of~~ this chapter, the circuit
928 court assigned to handle dependency matters may exercise the
929 general and equitable jurisdiction over guardianship proceedings
930 under ~~pursuant to the provisions of~~ chapter 744 and proceedings
931 for temporary custody of minor children by extended family under
932 ~~pursuant to the provisions of~~ chapter 751.
933 (4) Orders entered pursuant to this chapter which affect
934 the placement of, access to, parental time with, adoption of, or
935 parental rights and responsibilities for a minor child shall
936 take precedence over other orders entered in civil actions or
937 proceedings. However, if the court has terminated jurisdiction,
938 the ~~such~~ order may be subsequently modified by a court of
939 competent jurisdiction in any other civil action or proceeding
940 affecting placement of, access to, parental time with, adoption
941 of, or parental rights and responsibilities for the same minor
942 child.
943 (5) The court shall expedite the resolution of the
944 placement issue in cases involving a child who has been removed
945 from the parent and placed in an out-of-home placement.
946 (6) The court shall expedite the judicial handling of all
947 cases when the child has been removed from the parent and placed
948 in an out-of-home placement.
949 (7) Children removed from their homes shall be provided
950 equal treatment with respect to goals, objectives, services, and
951 case plans, without regard to the location of their placement.
952 (8) For any child who remains in the custody of the

953 department, the court shall, within the month which constitutes
954 the beginning of the 6-month period before the child's 18th
955 birthday, hold a hearing to review the progress of the child
956 while in the custody of the department.
957 (9)(a) At each stage of the proceedings under this
958 chapter, the court shall advise the parents of the right to
959 counsel. The court shall appoint counsel for indigent parents.
960 The court shall ascertain whether the right to counsel is
961 understood. When right to counsel is waived, the court shall
962 determine whether the waiver is knowing and intelligent. The
963 court shall enter its findings in writing with respect to the
964 appointment or waiver of counsel for indigent parents or the
965 waiver of counsel by nonindigent parents.
966 (b) Once counsel has entered an appearance or been
967 appointed by the court to represent the parent of the child, the
968 attorney shall continue to represent the parent throughout the
969 proceedings. If the attorney-client relationship is
970 discontinued, the court shall advise the parent of the right to
971 have new counsel retained or appointed for the remainder of the
972 proceedings.
973 (c)1. A ~~No~~ waiver of counsel may not be accepted if it
974 appears that the parent is unable to make an intelligent and
975 understanding choice because of mental condition, age,
976 education, experience, the nature or complexity of the case, or
977 other factors.
978 2. A waiver of counsel made in court must be of record.
979 3. If a waiver of counsel is accepted at any hearing or
980 proceeding, the offer of assistance of counsel must be renewed

981 by the court at each subsequent stage of the proceedings at
982 which the parent appears without counsel.
983 (d) This subsection does not apply to any parent who has
984 voluntarily executed a written surrender of the child and
985 consents to the entry of a court order terminating parental
986 rights.
987 ~~(10) The time limitations in this chapter do not include:~~
988 ~~(a) Periods of delay resulting from a continuance granted~~
989 ~~at the request or with the consent of the child's counsel or the~~
990 ~~child's guardian ad litem, if one has been appointed by the~~
991 ~~court, or, if the child is of sufficient capacity to express~~
992 ~~reasonable consent, at the request or with the consent of the~~
993 ~~child.~~
994 ~~(b) Periods of delay resulting from a continuance granted~~
995 ~~at the request of any party, if the continuance is granted:~~
996 ~~1. Because of an unavailability of evidence material to~~
997 ~~the case when the requesting party has exercised due diligence~~
998 ~~to obtain such evidence and there are substantial grounds to~~
999 ~~believe that such evidence will be available within 30 days.~~
1000 ~~However, if the requesting party is not prepared to proceed~~
1001 ~~within 30 days, any other party, inclusive of the parent or~~
1002 ~~legal custodian, may move for issuance of an order to show cause~~
1003 ~~or the court on its own motion may impose appropriate sanctions,~~
1004 ~~which may include dismissal of the petition.~~
1005 ~~2. To allow the requesting party additional time to~~
1006 ~~prepare the case and additional time is justified because of an~~
1007 ~~exceptional circumstance.~~
1008 ~~(c) Reasonable periods of delay necessary to accomplish~~

1009 ~~notice of the hearing to the child's parent or legal custodian;~~
1010 ~~however, the petitioner shall continue regular efforts to~~
1011 ~~provide notice to the parents during such periods of delay.~~
1012 ~~(d) Reasonable periods of delay resulting from a~~
1013 ~~continuance granted at the request of the parent or legal~~
1014 ~~custodian of a subject child.~~
1015 ~~(e) Notwithstanding the foregoing, continuances and~~
1016 ~~extensions of time are limited to the number of days absolutely~~
1017 ~~necessary to complete a necessary task in order to preserve the~~
1018 ~~rights of a party or the best interests of a child. Time is of~~
1019 ~~the essence for the best interests of dependent children in~~
1020 ~~conducting dependency proceedings in accordance with the time~~
1021 ~~limitations set forth in this chapter. Time limitations are a~~
1022 ~~right of the child which may not be waived, extended, or~~
1023 ~~continued at the request of any party in advance of the~~
1024 ~~particular circumstances or need arising upon which delay of the~~
1025 ~~proceedings may be warranted.~~
1026 ~~(f) Continuances or extensions of time may not total more~~
1027 ~~than 60 days for all parties within any 12-month period during~~
1028 ~~proceedings under this chapter. A continuance or extension of~~
1029 ~~time beyond the 60 days may be granted only for extraordinary~~
1030 ~~circumstances necessary to preserve the constitutional rights of~~
1031 ~~a party or when substantial evidence demonstrates that the~~
1032 ~~child's best interests will be affirmatively harmed without the~~
1033 ~~granting of a continuance or extension of time.~~
1034 (10) ~~(11)~~ Court-appointed counsel representing indigent
1035 parents at shelter hearings shall be paid from state funds
1036 appropriated by general law.

1037 (11) ~~(12)~~ The court shall encourage the Statewide Guardian
1038 Ad Litem Office to provide greater representation to those
1039 children who are within 1 year of transferring out of foster
1040 care.
1041 Section 4. Section 39.0136, Florida Statutes, is created
1042 to read:
1043 39.0136 Time limitations; continuances.--
1044 (1) The Legislature finds that time is of the essence for
1045 establishing permanency for a child in the dependency system.
1046 Time limitations are a right of the child which may not be
1047 waived, extended, or continued at the request of any party
1048 except as provided in this section.
1049 (2) The time limitations in this chapter do not include:
1050 (a) Periods of delay resulting from a continuance granted
1051 at the request of the child's counsel or the child's guardian ad
1052 litem or, if the child is of sufficient capacity to express
1053 reasonable consent, at the request or with the consent of the
1054 child. The court must consider the best interest of the child
1055 when determining periods of delay under this section.
1056 (b) Periods of delay resulting from a continuance granted
1057 at the request of any party if the continuance is granted:
1058 1. Because of an unavailability of evidence that is
1059 material to the case if the requesting party has exercised due
1060 diligence to obtain evidence and there are substantial grounds
1061 to believe that the evidence will be available within 30 days.
1062 However, if the requesting party is not prepared to proceed
1063 within 30 days, any other party may move for issuance of an
1064 order to show cause or the court, on its own motion, may impose

1065 appropriate sanctions, which may include dismissal of the
1066 petition.
1067 2. To allow the requesting party additional time to
1068 prepare the case and additional time is justified because of an
1069 exceptional circumstance.
1070 (c) Reasonable periods of delay necessary to accomplish
1071 notice of the hearing to the child's parent or legal custodian;
1072 however, the petitioner shall continue regular efforts to
1073 provide notice to the parents during the periods of delay.
1074 (3) Notwithstanding subsection (2), in order to expedite
1075 permanency for a child, the total time allowed for continuances
1076 or extensions of time may not exceed 60 days within any 12-month
1077 period for proceedings conducted under this chapter. A
1078 continuance or extension of time may be granted only for
1079 extraordinary circumstances in which it is necessary to preserve
1080 the constitutional rights of a party or if substantial evidence
1081 exists to demonstrate that without granting a continuance or
1082 extension of time the child's best interest will be harmed.
1083 (4) Notwithstanding subsection (2), a continuance or an
1084 extension of time is limited to the number of days absolutely
1085 necessary to complete a necessary task in order to preserve the
1086 rights of a party or the best interest of a child.
1087 Section 5. Section 39.0137, Florida Statutes, is created
1088 to read:
1089 39.0137 Federal law; rulemaking authority.--
1090 (1) This chapter does not supersede the requirements of
1091 the Indian Child Welfare Act, 25 U.S.C. ss. 1901 et seq., or the
1092 Multi-Ethnic Placement Act of 1994, Pub. L. No. 103-382, as

1093 amended, or the implementing regulations.
1094 (2) The department shall adopt rules no later than July 1,
1095 2007, to ensure that the provisions of these federal laws are
1096 enforced in this state. The department is encouraged to enter
1097 into agreements with recognized American Indian tribes in order
1098 to facilitate the implementation of the Indian Child Welfare
1099 Act.
1100 Section 6. Section 39.0138, Florida Statutes, is created
1101 to read:
1102 39.0138 Requirements for placement of children; exemptions
1103 from disqualification.--
1104 (1)(a) The department may conduct criminal records checks
1105 equivalent to the level 2 screening required in s. 435.04 for
1106 any person being considered by the department for approval for
1107 placement of a child subject to a placement decision under this
1108 chapter. Approval for placement with any person other than a
1109 parent may not be granted in any case in which a criminal
1110 records check reveals a felony conviction in a court of
1111 competent jurisdiction for:
1112 1. Child abuse, abandonment, or neglect; spousal abuse; a
1113 crime against children, including child pornography, or a crime
1114 involving violence, including sexual battery, sexual assault, or
1115 homicide, but not including other physical assault or battery,
1116 if the felony was committed at any time; or
1117 2. Physical assault, battery, or a drug-related offense if
1118 the felony was committed within the past 5 years.
1119 (b) Notwithstanding paragraph (a), the department may
1120 place a child in a home that otherwise meets placement

1121 requirements if state and local criminal records checks do not
1122 disqualify the applicant and if the department has submitted
1123 fingerprint information to the Department of Law Enforcement for
1124 forwarding to the Federal Bureau of Investigation and is
1125 awaiting the results of the federal criminal records check.
1126 (c) Persons with whom placement of a child is being
1127 considered or approved must disclose to the department any prior
1128 or pending local, state, or federal criminal proceedings in
1129 which they are or have been involved.
1130 (d) The results of any criminal records check of a parent
1131 conducted under this section must be considered in determining
1132 whether placement with the parent will jeopardize the safety of
1133 the child being placed.
1134 (2)(a) The court may review the decision of the department
1135 to grant or deny an exemption upon the motion of any party, the
1136 request of any person who has been denied an exemption by the
1137 department, or on its own motion. The court shall prepare
1138 written findings to support its decision in this matter.
1139 (b) A person seeking placement of a child when the
1140 department has denied the placement based on a disqualifying
1141 criminal offense has the burden of setting forth sufficient
1142 evidence of rehabilitation, including, but not limited to, the
1143 circumstances surrounding the incident for which an exemption
1144 from disqualification is sought, the time period that has
1145 elapsed since the incident, the nature of the harm caused to the
1146 victim, the history of the person since the incident, and any
1147 other evidence or circumstances indicating that the person will
1148 not present a danger if the placement of the child is allowed.

1149 Section 7. Paragraph (a) of subsection (1), paragraph (a)
1150 of subsection (2), and subsection (5) of section 39.201, Florida
1151 Statutes, are amended to read:
1152 39.201 Mandatory reports of child abuse, abandonment, or
1153 neglect; mandatory reports of death; central abuse hotline.--
1154 (1)(a) Any person who knows, or has reasonable cause to
1155 suspect, that a child is abused, abandoned, or neglected by a
1156 parent, legal custodian, caregiver, or other person responsible
1157 for the child's welfare, as defined in this chapter, <u>or that a</u>
1158 <u>child is in need of supervision and care and has no parent,</u>
1159 <u>legal custodian, or responsible adult relative immediately known</u>
1160 <u>and available to provide supervision and care</u> shall report such
1161 knowledge or suspicion to the department in the manner
1162 prescribed in subsection (2).
1163 (2)(a) Each report of known or suspected child abuse,
1164 abandonment, or neglect by a parent, legal custodian, caregiver,
1165 or other person responsible for the child's welfare as defined
1166 in this chapter, except those solely under s. 827.04(3), <u>and</u>
1167 <u>each report that a child is in need of supervision and care and</u>
1168 <u>has no parent, legal custodian, or responsible adult relative</u>
1169 <u>immediately known and available to provide supervision and care</u>
1170 shall be made immediately to the department's central abuse
1171 hotline on the single statewide toll-free telephone number.
1172 Personnel at the department's central abuse hotline shall
1173 determine if the report received meets the statutory definition
1174 of child abuse, abandonment, or neglect. Any report meeting one
1175 of these definitions shall be accepted for the protective
1176 investigation pursuant to part III of this chapter.

1177 (5) The department shall be capable of receiving and
1178 investigating, 24 hours a day, 7 days a week, reports of known
1179 or suspected child abuse, abandonment, or neglect and reports
1180 that a child is in need of supervision and care and has no
1181 parent, legal custodian, or responsible adult relative
1182 immediately known and available to provide supervision and care
1183 ~~24 hours a day, 7 days a week~~. If it appears that the immediate
1184 safety or well-being of a child is endangered, that the family
1185 may flee or the child will be unavailable for purposes of
1186 conducting a child protective investigation, or that the facts
1187 otherwise so warrant, the department shall commence an
1188 investigation immediately, regardless of the time of day or
1189 night. In all other child abuse, abandonment, or neglect cases,
1190 a child protective investigation shall be commenced within 24
1191 hours after receipt of the report. In an institutional
1192 investigation, the alleged perpetrator may be represented by an
1193 attorney, at his or her own expense, or accompanied by another
1194 person, if the person or the attorney executes an affidavit of
1195 understanding with the department and agrees to comply with the
1196 confidentiality provisions of s. 39.202. The absence of an
1197 attorney or other person does not prevent the department from
1198 proceeding with other aspects of the investigation, including
1199 interviews with other persons. In institutional child abuse
1200 cases when the institution is not operating and the child cannot
1201 otherwise be located, the investigation shall commence
1202 immediately upon the resumption of operation. If requested by a
1203 state attorney or local law enforcement agency, the department
1204 shall furnish all investigative reports to that agency.

1205 Section 8. Subsections (1), (2), (5), and (22) of section
1206 39.301, Florida Statutes, are amended, and subsection (23) is
1207 added to that section, to read:
1208 39.301 Initiation of protective investigations.--
1209 (1) Upon receiving an oral or written report of known or
1210 suspected child abuse, abandonment, or neglect, <u>or that a child</u>
1211 <u>is in need of supervision and care and has no parent, legal</u>
1212 <u>custodian, or responsible adult relative immediately known and</u>
1213 <u>available to provide supervision and care,</u> the central abuse
1214 hotline shall determine if the report requires an immediate
1215 onsite protective investigation. For reports requiring an
1216 immediate onsite protective investigation, the central abuse
1217 hotline shall immediately notify the department's designated
1218 children and families district staff responsible for protective
1219 investigations to ensure that an onsite investigation is
1220 promptly initiated. For reports not requiring an immediate
1221 onsite protective investigation, the central abuse hotline shall
1222 notify the department's designated children and families
1223 district staff responsible for protective investigations in
1224 sufficient time to allow for an investigation. At the time of
1225 notification of district staff with respect to the report, the
1226 central abuse hotline shall also provide information on any
1227 previous report concerning a subject of the present report or
1228 any pertinent information relative to the present report or any
1229 noted earlier reports.
1230 (2)(a) The department shall immediately forward
1231 allegations of criminal conduct to the municipal or county law
1232 enforcement agency of the municipality or county in which the

1233 alleged conduct has occurred.
1234 (b) As used in this subsection, the term "criminal
1235 conduct" means:
1236 1. A child is known or suspected to be the victim of child
1237 abuse, as defined in s. 827.03, or of neglect of a child, as
1238 defined in s. 827.03.
1239 2. A child is known or suspected to have died as a result
1240 of abuse or neglect.
1241 3. A child is known or suspected to be the victim of
1242 aggravated child abuse, as defined in s. 827.03.
1243 4. A child is known or suspected to be the victim of
1244 sexual battery, as defined in s. 827.071, or of sexual abuse, as
1245 defined in s. 39.01.
1246 5. A child is known or suspected to be the victim of
1247 institutional child abuse or neglect, as defined in s. 39.01,
1248 and as provided for in s. 39.302(1).
1249 6. A child is known or suspected to be a victim of human
1250 trafficking, as provided in s. 787.06.
1251 (c) Upon receiving a written report of an allegation of
1252 criminal conduct from the department, the law enforcement agency
1253 shall review the information in the written report to determine
1254 whether a criminal investigation is warranted. If the law
1255 enforcement agency accepts the case for criminal investigation,
1256 it shall coordinate its investigative activities with the
1257 department, whenever feasible. If the law enforcement agency
1258 does not accept the case for criminal investigation, the agency
1259 shall notify the department in writing.
1260 (d) The local law enforcement agreement required in s.

1261 39.306 shall describe the specific local protocols for
1262 implementing this section.
1263 (5)(a) Upon commencing an investigation under this part,
1264 the child protective investigator shall inform any subject of
1265 the investigation of the following:
1266 1. The names of the investigators and identifying
1267 credentials from the department.
1268 2. The purpose of the investigation.
1269 3. The right to obtain his or her own attorney and ways
1270 that the information provided by the subject may be used.
1271 4. The possible outcomes and services of the department's
1272 response, which shall be explained to the parent or legal
1273 custodian.
1274 5. The right of the parent or legal custodian to be
1275 involved to the fullest extent possible in determining the
1276 nature of the allegation and the nature of any identified
1277 problem.
1278 6. The duty of the parent or legal custodian to report any
1279 change in the residence or location of the child to the
1280 investigator and that the duty to report continues until the
1281 investigation is closed.
1282 (b) The department's training program shall ensure that
1283 protective investigators know how to fully inform parents or
1284 legal custodians of their rights and options, including
1285 opportunities for audio or video recording of investigators'
1286 interviews with parents or legal custodians or children.
1287 (22) When an investigation is closed and a person is not
1288 identified as a caregiver responsible for the abuse, neglect, or

1289 abandonment alleged in the report, the fact that the person is
1290 named in some capacity in the report may not be used in any way
1291 to adversely affect the interests of that person. This
1292 prohibition applies to any use of the information in employment
1293 screening, licensing, child placement, adoption, or any other
1294 decisions by a private adoption agency or a state agency or its
1295 contracted providers, except that a previous report may be used
1296 to determine whether a child is safe and what the known risk is
1297 to the child at any stage of a child protection proceeding.
1298 (23) If, after having been notified of the requirement to
1299 report a change in residence or location of the child to the
1300 protective investigator, a parent or legal custodian causes the
1301 child to move, or allows the child to be moved, to a different
1302 residence or location, or if the child leaves the residence on
1303 his or her own accord and the parent or legal custodian does not
1304 notify the protective investigator of the move within 2 business
1305 days, the child may be considered to be a missing child for the
1306 purposes of filing a report with a law enforcement agency under
1307 s. 937.021.
1308 Section 9. Subsection (2) of section 39.303, Florida
1309 Statutes, is amended to read:
1310 39.303 Child protection teams; services; eligible
1311 cases.--The Children's Medical Services Program in the
1312 Department of Health shall develop, maintain, and coordinate the
1313 services of one or more multidisciplinary child protection teams
1314 in each of the service districts of the Department of Children
1315 and Family Services. Such teams may be composed of appropriate
1316 representatives of school districts and appropriate health,

1317 mental health, social service, legal service, and law
1318 enforcement agencies. The Legislature finds that optimal
1319 coordination of child protection teams and sexual abuse
1320 treatment programs requires collaboration between the Department
1321 of Health and the Department of Children and Family Services.
1322 The two departments shall maintain an interagency agreement that
1323 establishes protocols for oversight and operations of child
1324 protection teams and sexual abuse treatment programs. The
1325 Secretary of Health and the Deputy Secretary for Children's
1326 Medical Services, in consultation with the Secretary of Children
1327 and Family Services, shall maintain the responsibility for the
1328 screening, employment, and, if necessary, the termination of
1329 child protection team medical directors, at headquarters and in
1330 the 15 districts. Child protection team medical directors shall
1331 be responsible for oversight of the teams in the districts.
1332 (2) The child abuse, abandonment, and neglect reports that
1333 must be referred by the department ~~of Children and Family~~
1334 ~~Services~~ to child protection teams of the Department of Health
1335 for an assessment and other appropriate available support
1336 services as set forth in subsection (1) must include cases
1337 involving:
1338 (a) Injuries to the head, bruises to the neck or head,
1339 burns, or fractures in a child of any age.
1340 (b) Bruises anywhere on a child 5 years of age or under.
1341 (c) Any report alleging sexual abuse of a child ~~in which~~
1342 ~~vaginal or anal penetration is alleged or in which other~~
1343 ~~unlawful sexual conduct has been determined to have occurred~~.
1344 (d) Any sexually transmitted disease in a prepubescent

1345 child.
1346 (e) Reported malnutrition of a child and failure of a
1347 child to thrive.
1348 (f) Reported medical neglect of a child.
1349 (g) Any family in which one or more children have been
1350 pronounced dead on arrival at a hospital or other health care
1351 facility, or have been injured and later died, as a result of
1352 suspected abuse, abandonment, or neglect, when any sibling or
1353 other child remains in the home.
1354 (h) Symptoms of serious emotional problems in a child when
1355 emotional or other abuse, abandonment, or neglect is suspected.
1356 Section 10. Subsections (10) and (16) of section 39.402,
1357 Florida Statutes, are amended, and subsections (17) and (18) are
1358 added to that section, to read:
1359 39.402 Placement in a shelter.--
1360 (10)(a) The shelter hearing order shall contain a written
1361 determination as to whether the department has made a reasonable
1362 effort to prevent or eliminate the need for removal or continued
1363 removal of the child from the home. This determination must
1364 include a description of which specific services, if available,
1365 could prevent or eliminate the need for removal or continued
1366 removal from the home and the date by which the services are
1367 expected to become available.
1368 (b) If services are not available to prevent or eliminate
1369 the need for removal or continued removal of the child from the
1370 home, the written determination must also contain a explanation
1371 describing why the services are not available for the child.
1372 (c) If the department has not made ~~such~~ an effort to

1373 prevent or eliminate the need for removal, the court shall order
1374 the department to provide appropriate and available services to
1375 ensure the protection of the child in the home when the ~~such~~
1376 services are necessary for the child's health and safety.
1377 (16) At the conclusion of a shelter hearing, the court
1378 shall:
1379 (a) Notify all parties in writing of the next scheduled
1380 hearing to review the shelter placement. The ~~Such~~ hearing shall
1381 be held no later than 30 days after placement of the child in
1382 shelter status, in conjunction with the arraignment hearing, and
1383 at such times as are otherwise provided by law or determined by
1384 the court to be necessary; and~~.~~
1385 (b) Notify all parties in writing of the date, time, and
1386 place of the case plan conference, family team conference, or
1387 mediation that will be used to develop the case plan. The case
1388 plan conference, family team conference, or mediation must take
1389 place no later than 30 days after placing the child in shelter
1390 status.
1391 (17) At the shelter hearing, the court shall inquire of
1392 the parent whether the parent has relatives who might be
1393 considered as a placement for the child. The parent shall
1394 provide to the court and all parties identification and location
1395 information regarding the relatives. The court shall advise the
1396 parent that the parent has a continuing duty to inform the
1397 department of any relative who should be considered as a
1398 placement for the child.
1399 (18) The court shall advise the parents that, if the
1400 parents fail to substantially comply with the case plan, their

1401 parental rights may be terminated and that the child's out-of-
1402 home placement may become permanent.
1403 Section 11. Present subsections (7) and (8) of section
1404 39.507, Florida Statutes, are redesignated as subsections (8)
1405 and (9), respectively, and a new subsection (7) is added to that
1406 section, to read:
1407 39.507 Adjudicatory hearings; orders of adjudication.--
1408 (7) If a court adjudicates a child dependent and the child
1409 is in out-of-home care, the court shall inquire of the parent or
1410 parents whether the parents have relatives who might be
1411 considered as a placement for the child. The court shall advise
1412 the parents that, if the parents fail to substantially comply
1413 with the case plan, their parental rights may be terminated and
1414 that the child's out-of-home placement may become permanent. The
1415 parent or parents shall provide to the court and all parties
1416 identification and location information of the relatives.
1417 Section 12. Paragraph (c) of subsection (1) and paragraph
1418 (a) of subsection (2) of section 39.5085, Florida Statutes, are
1419 amended to read:
1420 39.5085 Relative Caregiver Program.--
1421 (1) It is the intent of the Legislature in enacting this
1422 section to:
1423 (c) Recognize that permanency in the best interests of the
1424 child can be achieved through a variety of permanency options,
1425 including permanent guardianship under s. 39.6221 if the
1426 guardian is a relative, permanent placement with a fit and
1427 willing relative ~~long-term relative custody~~, guardianship under
1428 chapter 744, or adoption, by providing additional placement

1429 options and incentives that will achieve permanency and
1430 stability for many children who are otherwise at risk of foster
1431 care placement because of abuse, abandonment, or neglect, but
1432 who may successfully be able to be placed by the dependency
1433 court in the care of such relatives.
1434 (2)(a) The Department of Children and Family Services
1435 shall establish and operate the Relative Caregiver Program under
1436 ~~pursuant to~~ eligibility guidelines established in this section
1437 as further implemented by rule of the department. The Relative
1438 Caregiver Program shall, within the limits of available funding,
1439 provide financial assistance to:
1440 1. Relatives who are within the fifth degree by blood or
1441 marriage to the parent or stepparent of a child and who are
1442 caring full-time for that dependent child in the role of
1443 substitute parent as a result of a court's determination of
1444 child abuse, neglect, or abandonment and subsequent placement
1445 with the relative under ~~pursuant to~~ this chapter.
1446 2. Relatives who are within the fifth degree by blood or
1447 marriage to the parent or stepparent of a child and who are
1448 caring full-time for that dependent child, and a dependent half-
1449 brother or half-sister of that dependent child, in the role of
1450 substitute parent as a result of a court's determination of
1451 child abuse, neglect, or abandonment and subsequent placement
1452 with the relative under ~~pursuant to~~ this chapter.
1453
1454 The ~~Such~~ placement may be either court-ordered temporary legal
1455 custody to the relative under protective supervision of the
1456 department under ~~pursuant to~~ s. 39.521(1)(b)3., or court-ordered

1457 placement in the home of a relative as a permanency option under
1458 s. 39.6221 or s. 39.6231, or under former ~~pursuant to~~ s. 39.622.
1459 The Relative Caregiver Program shall offer financial assistance
1460 to caregivers who are relatives and who would be unable to serve
1461 in that capacity without the relative caregiver payment because
1462 of financial burden, thus exposing the child to the trauma of
1463 placement in a shelter or in foster care.
1464 Section 13. Paragraph (d) of subsection (1) of section
1465 39.521, Florida Statutes, is amended to read:
1466 39.521 Disposition hearings; powers of disposition.--
1467 (1) A disposition hearing shall be conducted by the court,
1468 if the court finds that the facts alleged in the petition for
1469 dependency were proven in the adjudicatory hearing, or if the
1470 parents or legal custodians have consented to the finding of
1471 dependency or admitted the allegations in the petition, have
1472 failed to appear for the arraignment hearing after proper
1473 notice, or have not been located despite a diligent search
1474 having been conducted.
1475 (d) The court shall, in its written order of disposition,
1476 include all of the following:
1477 1. The placement or custody of the child.
1478 2. Special conditions of placement and visitation.
1479 3. Evaluation, counseling, treatment activities, and other
1480 actions to be taken by the parties, if ordered.
1481 4. The persons or entities responsible for supervising or
1482 monitoring services to the child and parent.
1483 5. Continuation or discharge of the guardian ad litem, as
1484 appropriate.

1485 6. The date, time, and location of the next scheduled
1486 review hearing, which must occur within the earlier of:
1487 a. Ninety days after the disposition hearing;
1488 b. Ninety days after the court accepts the case plan;
1489 c. Six months after the date of the last review hearing;
1490 or
1491 d. Six months after the date of the child's removal from
1492 his or her home, if no review hearing has been held since the
1493 child's removal from the home.
1494 7. If the child is in an out-of-home placement, child
1495 support to be paid by the parents, or the guardian of the
1496 child's estate if possessed of assets which under law may be
1497 disbursed for the care, support, and maintenance of the child.
1498 The court may exercise jurisdiction over all child support
1499 matters, shall adjudicate the financial obligation, including
1500 health insurance, of the child's parents or guardian, and shall
1501 enforce the financial obligation as provided in chapter 61. The
1502 state's child support enforcement agency shall enforce child
1503 support orders under this section in the same manner as child
1504 support orders under chapter 61. Placement of the child shall
1505 not be contingent upon issuance of a support order.
1506 8.a. If the court does not commit the child to the
1507 temporary legal custody of an adult relative, legal custodian,
1508 or other adult approved by the court, the disposition order
1509 shall include the reasons for such a decision and shall include
1510 a determination as to whether diligent efforts were made by the
1511 department to locate an adult relative, legal custodian, or
1512 other adult willing to care for the child in order to present

1513 that placement option to the court instead of placement with the
1514 department.
1515 b. If ~~diligent efforts are made to locate an adult~~
1516 ~~relative willing and able to care for the child but, because~~ no
1517 suitable relative is found and~~,~~ the child is placed with the
1518 department or a legal custodian or other adult approved by the
1519 court, both the department and the court shall consider
1520 transferring temporary legal custody to an adult relative
1521 approved by the court at a later date, but neither the
1522 department nor the court is obligated to so place the child if
1523 it is in the child's best interest to remain in the current
1524 placement.
1525
1526 For the purposes of this subparagraph, "diligent efforts to
1527 locate an adult relative" means a search similar to the diligent
1528 search for a parent, but without the continuing obligation to
1529 search after an initial adequate search is completed.
1530 9. Other requirements necessary to protect the health,
1531 safety, and well-being of the child, to preserve the stability
1532 of the child's educational placement, and to promote family
1533 preservation or reunification whenever possible.
1534 Section 14. Subsection (1) of section 39.522, Florida
1535 Statutes, is amended to read:
1536 39.522 Postdisposition change of custody.--The court may
1537 change the temporary legal custody or the conditions of
1538 protective supervision at a postdisposition hearing, without the
1539 necessity of another adjudicatory hearing.
1540 (1) A child who has been placed in the child's own home

1541 under the protective supervision of an authorized agent of the
1542 department, in the home of a relative, in the home of a legal
1543 custodian, or in some other place may be brought before the
1544 court by the department or by any other interested person, upon
1545 the filing of a petition alleging a need for a change in the
1546 conditions of protective supervision or the placement. If the
1547 parents or other legal custodians deny the need for a change,
1548 the court shall hear all parties in person or by counsel, or
1549 both. Upon the admission of a need for a change or after such
1550 hearing, the court shall enter an order changing the placement,
1551 modifying the conditions of protective supervision, or
1552 continuing the conditions of protective supervision as ordered.
1553 The standard for changing custody of the child shall be the best
1554 interest of the child. When applying this standard, the court
1555 shall consider the continuity of the child's placement in the
1556 same out-of-home residence as a factor when determining the best
1557 interest of the child. If the child is not placed in foster
1558 care, then the new placement for the child must meet the home
1559 study criteria and court approval pursuant to this chapter.
1560 Section 15. Section 39.6011, Florida Statutes, is created
1561 to read:
1562 39.6011 Case plan development.--
1563 (1) The department shall prepare a draft of the case plan
1564 for each child receiving services under this chapter. A parent
1565 of a child may not be threatened or coerced with the loss of
1566 custody or parental rights for failing to admit in the case plan
1567 to abusing, neglecting, or abandoning a child. Participating in
1568 the development of a case plan is not an admission to any

1569 allegation of abuse, abandonment, or neglect, and it is not a
1570 consent to a finding of dependency or termination of parental
1571 rights. The case plan shall be developed subject to the
1572 following requirements:
1573 (a) The case plan must be developed in a face-to-face
1574 conference with the parent of the child, any court-appointed
1575 guardian ad litem, and, if appropriate, the child and the
1576 temporary custodian of the child. The conference to prepare a
1577 case plan must be scheduled under s. 39.402(16)(b) and must be
1578 conducted according to one of the following procedures:
1579 1. A case plan conference that is a meeting among the
1580 parties described in this subsection.
1581 2. A mediation if dependency mediation services are
1582 available and appropriate and in the best interest of the child.
1583 3. A family team conference if a family team conference is
1584 available.
1585 (b) The parent may receive assistance from any person or
1586 social service agency in preparing the case plan. The social
1587 service agency, the department, and the court, when applicable,
1588 shall inform the parent of the right to receive such assistance,
1589 including the right to assistance of counsel.
1590 (c) If a parent is unwilling or unable to participate in
1591 developing a case plan, the department shall document that
1592 unwillingness or inability to participate. The documentation
1593 must be provided in writing to the parent when available for the
1594 court record, and the department shall prepare a case plan
1595 conforming as nearly as possible with the requirements set forth
1596 in this section. The unwillingness or inability of the parent to

1597 participate in developing a case plan does not preclude the
1598 filing of a petition for dependency or for termination of
1599 parental rights. The parent, if available, must be provided a
1600 copy of the case plan and be advised that he or she may, at any
1601 time before the filing of a petition for termination of parental
1602 rights, enter into a case plan and that he or she may request
1603 judicial review of any provision of the case plan with which he
1604 or she disagrees at any court hearing set for the child.
1605 (2) The case plan must be written simply and clearly in
1606 English and, if English is not the principal language of the
1607 child's parent, to the extent possible in the parent's principal
1608 language. Each case plan must contain:
1609 (a) A description of the identified problem being
1610 addressed, including the parent's behavior or acts resulting in
1611 risk to the child and the reason for the intervention by the
1612 department.
1613 (b) The permanency goal as defined in s. 39.01(51).
1614 (c) If concurrent planning is being used, a description of
1615 the permanency goal of reunification with the parent or legal
1616 custodian in addition to a description of one of the remaining
1617 permanency goals described in s. 39.01(51).
1618 (d) The date the compliance period expires. The case plan
1619 must be limited to as short a period as possible for
1620 accomplishing its provisions. The plan's compliance period
1621 expires no later than 12 months after the date the child was
1622 initially removed from the home or the date the case plan was
1623 accepted by the court, whichever occurs sooner.
1624 (e) A written notice to the parent that failure of the

1625 parent to substantially comply with the case plan may result in
1626 the termination of parental rights and that a material breach of
1627 the case plan may result in the filing of a petition for
1628 termination of parental rights sooner than the compliance period
1629 set forth in the case plan.
1630 (3) The case plan must be signed by all parties, except
1631 that the signature of a child may be waived if the child is not
1632 of an age or capacity to participate in the case planning
1633 process. Signing the case plan constitutes an acknowledgement
1634 that the case plan has been developed by the parties and that
1635 they are in agreement as to the terms and conditions contained
1636 in the case plan. The refusal of a parent to sign the case plan
1637 does not prevent the court from accepting the case plan if the
1638 case plan is otherwise acceptable to the court. Signing the case
1639 plan does not constitute an admission to any allegation of
1640 abuse, abandonment, or neglect and does not constitute consent
1641 to a finding of dependency or termination of parental rights.
1642 Before signing the case plan, the department shall explain the
1643 provisions of the plan to all persons involved in its
1644 implementation, including, when appropriate, the child.
1645 (4) The case plan must describe:
1646 (a) The role of the foster parents or legal custodians
1647 when developing the services that are to be provided to the
1648 child, foster parents, or legal custodians.
1649 (b) The minimum number of face-to-face meetings to be held
1650 each month between the parents and the department's family
1651 services counselors to review the progress of the plan, to
1652 eliminate barriers to progress, and to resolve conflicts or

1653 disagreements.
1654 (c) The parent's responsibility for financial support of
1655 the child, including, but not limited to, health insurance and
1656 child support. The case plan must list the costs associated with
1657 any services or treatment that the parent and child are expected
1658 to receive which are the financial responsibility of the parent.
1659 The determination of child support and other financial support
1660 shall be made independently of any determination of indigency
1661 under s. 39.013.
1662 (5) When the permanency goal for a child is adoption, the
1663 case plan must include documentation of the steps the agency is
1664 taking to find an adoptive family or other permanent living
1665 arrangement for the child. At a minimum, the documentation shall
1666 include recruitment efforts that are specific to the child, such
1667 as the use of state, regional, and national adoption exchanges,
1668 including electronic exchange systems.
1669 (6) After the case plan has been developed, the department
1670 shall adhere to the following procedural requirements:
1671 (a) If the parent's substantial compliance with the case
1672 plan requires the department to provide services to the parents
1673 or the child and the parents agree to begin compliance with the
1674 case plan before the case plan's acceptance by the court, the
1675 department shall make the appropriate referrals for services
1676 that will allow the parents to immediately begin the agreed upon
1677 tasks and services.
1678 (b) After the case plan has been agreed upon and signed by
1679 the parties, a copy of the plan must immediately be given to the
1680 parties, including the child, if appropriate, and to other

1681 persons as directed by the court.
1682 1. A case plan must be prepared, but need not be submitted
1683 to the court, for a child who will be in care no longer than 30
1684 days unless that child is placed in out-of-home care a second
1685 time within a 12-month period.
1686 2. In each case in which a child has been placed in out-
1687 of-home care, a case plan must be prepared within 60 days after
1688 the department removes the child from the home and shall be
1689 submitted to the court before the disposition hearing for the
1690 court to review and approve.
1691 3. After jurisdiction attaches, all case plans must be
1692 filed with the court and a copy provided to all the parties
1693 whose whereabouts are known not less than 3 business days before
1694 the disposition hearing. The department shall file with the
1695 court, and provide copies to the parties, all case plans
1696 prepared before jurisdiction of the court attached.
1697 (7) The case plan must be filed with the court and copies
1698 provided to all parties, including the child, if appropriate,
1699 not less than 3 business days before the disposition hearing.
1700 (8) The case plan must describe a process for making
1701 available to all physical custodians and family services
1702 counselors the information required by s. 39.6012(2) and for
1703 ensuring that this information follows the child until
1704 permanency has been achieved.
1705 Section 16. Section 39.6012, Florida Statutes, is created
1706 to read:
1707 39.6012 Case plan tasks; services.--
1708 (1) The services to be provided to the parent and the

1709 tasks that must be completed are subject to the following:
1710 (a) The services described in the case plan must be
1711 designed to improve the conditions in the home and aid in
1712 maintaining the child in the home, facilitate the child's safe
1713 return to the home, ensure proper care of the child, or
1714 facilitate the child's permanent placement. The services offered
1715 must be the least intrusive possible into the life of the parent
1716 and child, must focus on clearly defined objectives, and must
1717 provide the most efficient path to quick reunification or
1718 permanent placement given the circumstances of the case and the
1719 child's need for safe and proper care.
1720 (b) The case plan must describe each of the tasks with
1721 which the parent must comply and the services to be provided to
1722 the parent, specifically addressing the identified problem,
1723 including:
1724 1. The type of services or treatment.
1725 2. The date the department will provide each service or
1726 referral for the service if the service is being provided by the
1727 department or its agent.
1728 3. The date by which the parent must complete each task.
1729 4. The frequency of services or treatment provided. The
1730 frequency of the delivery of services or treatment provided
1731 shall be determined by the professionals providing the services
1732 or treatment on a case-by-case basis and adjusted according to
1733 their best professional judgment.
1734 5. The location of the delivery of the services.
1735 6. The staff of the department or service provider
1736 accountable for the services or treatment.

1737 7. A description of the measurable objectives, including
1738 the timeframes specified for achieving the objectives of the
1739 case plan and addressing the identified problem.
1740 (2) The case plan must include all available information
1741 relevant to the child's care, including, at a minimum:
1742 (a) A description of the identified needs of the child
1743 while in care.
1744 (b) A description of the plan for ensuring that the child
1745 receives safe and proper care and that services are provided to
1746 the child in order to address the child's needs. To the extent
1747 available and accessible, the following health, mental health,
1748 and education information and records of the child must be
1749 attached to the case plan and updated throughout the judicial
1750 review process:
1751 1. The names and addresses of the child's health, mental
1752 health, and education providers.
1753 2. The child's grade-level performance.
1754 3. The child's school record.
1755 4. Assurances that the child's placement takes into
1756 account proximity to the school in which the child is enrolled
1757 at the time of placement.
1758 5. A record of the child's immunizations.
1759 6. The child's known medical history, including any known
1760 problems.
1761 7. The child's medications, if any.
1762 8. Any other relevant health, mental health, and education
1763 information concerning the child.
1764 (3) In addition to any other requirement, if the child is

1765 in an out-of-home placement, the case plan must include:
1766 (a) A description of the type of placement in which the
1767 child is to be living.
1768 (b) A description of the parent's visitation rights and
1769 obligations and the plan for sibling visitation if the child has
1770 siblings and is separated from them.
1771 (c) When appropriate, for a child who is 13 years of age
1772 or older, a written description of the programs and services
1773 that will help the child prepare for the transition from foster
1774 care to independent living.
1775 (d) A discussion of the safety and the appropriateness of
1776 the child's placement, which placement is intended to be safe,
1777 the least restrictive and the most family-like setting available
1778 consistent with the best interest and special needs of the
1779 child, and in as close proximity as possible to the child's
1780 home.
1781 Section 17. Section 39.6013, Florida Statutes, is created
1782 to read:
1783 39.6013 Case plan amendments.--
1784 (1) After the case plan has been developed under s.
1785 39.6011, the tasks and services agreed upon in the plan may not
1786 be changed or altered in any way except as provided in this
1787 section.
1788 (2) The case plan may be amended at any time in order to
1789 change the goal of the plan, employ the use of concurrent
1790 planning, add or remove tasks the parent must complete to
1791 substantially comply with the plan, provide appropriate services
1792 for the child, and update the child's health, mental health, and

1793 education records required by s. 39.6012.
1794 (3) The case plan may be amended upon approval of the
1795 court if all parties are in agreement regarding the amendments
1796 to the plan and the amended plan is signed by all parties and
1797 submitted to the court with a memorandum of explanation.
1798 (4) The case plan may be amended by the court or upon
1799 motion of any party at any hearing to change the goal of the
1800 plan, employ the use of concurrent planning, or add or remove
1801 tasks the parent must complete in order to substantially comply
1802 with the plan if there is a preponderance of evidence
1803 demonstrating the need for the amendment. The need to amend the
1804 case plan may be based on information discovered or
1805 circumstances arising after the approval of the case plan for:
1806 (a) A previously unaddressed condition that, without
1807 services, may prevent the child from safely returning to the
1808 home or may prevent the child from safely remaining in the home;
1809 (b) The child's need for permanency, taking into
1810 consideration the child's age and developmental needs;
1811 (c) The failure of a party to substantially comply with a
1812 task in the original case plan, including the ineffectiveness of
1813 a previously offered service; or
1814 (d) An error or oversight in the case plan.
1815 (5) The case plan may be amended by the court or upon the
1816 motion of any party at any hearing to provide appropriate
1817 services to the child if there is competent evidence
1818 demonstrating the need for the amendment. The reason for
1819 amending the case plan may be based on information discovered or
1820 circumstances arising after the approval of the case plan

1821 regarding the provision of safe and proper care to the child.
1822 (6) The case plan is deemed amended as to the child's
1823 health, mental health, and education records required by s.
1824 39.6012 when the child's updated health, mental health, and
1825 education records are filed by the department under s.
1826 39.701(7)(a).
1827 (7) Amendments must include service interventions that are
1828 the least intrusive into the life of the parent and child, must
1829 focus on clearly defined objectives, and must provide the most
1830 efficient path to quick reunification or permanent placement
1831 given the circumstances of the case and the child's need for
1832 safe and proper care. A copy of the amended plan must
1833 immediately be given to the persons identified in s. 39.6011.
1834 Section 18. Subsections (1) and (2) of section 39.603,
1835 Florida Statutes, are amended to read:
1836 39.603 Court approvals of case planning.--
1837 (1) All case plans and amendments to case plans must be
1838 approved by the court. At the hearing on the case plan, which
1839 shall occur in conjunction with the disposition hearing unless
1840 otherwise directed by the court, the court shall determine:
1841 (a) All parties who were notified and are in attendance at
1842 the hearing, either in person or through a legal representative.
1843 The court may appoint a guardian ad litem under Rule 1.210,
1844 Florida Rules of Civil Procedure, to represent the interests of
1845 any parent, if the location of the parent is known but the
1846 parent is not present at the hearing and the development of the
1847 plan is based upon the physical, emotional, or mental condition
1848 or physical location of the parent.

1849 (b) If the plan is consistent with previous orders of the
1850 court placing the child in care.
1851 (c) If the plan is consistent with the requirements for
1852 the content of a plan as specified in this chapter.
1853 (d) In involuntary placements, whether each parent was
1854 notified of the right to counsel at each stage of the dependency
1855 proceedings, in accordance with the Florida Rules of Juvenile
1856 Procedure.
1857 (e) Whether each parent whose location was known was
1858 notified of the right to participate in the preparation of a
1859 case plan and of the right to receive assistance from any other
1860 person in the preparation of the case plan.
1861 (f) Whether the plan is meaningful and designed to address
1862 facts and circumstances upon which the court based the finding
1863 of dependency in involuntary placements or the plan is
1864 meaningful and designed to address facts and circumstances upon
1865 which the child was placed in out-of-home care voluntarily.
1866 (2) When the court determines that any of the elements
1867 considered at the hearing related to the plan have not been met,
1868 the court shall require the parties to make necessary amendments
1869 to the plan under s. 39.6013. The amended plan must be submitted
1870 to the court for review and approval within 30 days after the
1871 hearing. A copy of the amended plan must also be provided to
1872 each party, if the location of the party is known, at least 3
1873 business days before ~~72 hours prior to~~ filing with the court.
1874 Section 19. Section 39.621, Florida Statutes, is amended
1875 to read:
1876 39.621 Permanency determination by the court.--

1877 (1) The Legislature finds that time is of the essence for
1878 permanency of children in the dependency system. A permanency
1879 hearing must be held no later than 12 months after the date the
1880 child was removed from the home or no later than 30 days after a
1881 court determines that reasonable efforts to return a child to
1882 either parent are not required, whichever occurs first. The
1883 purpose of the permanency hearing is to determine when the child
1884 will achieve the permanency goal or whether modifying the
1885 current goal is in the best interest of the child. A permanency
1886 hearing must be held at least every 12 months for any child who
1887 continues to receive supervision from the department or awaits
1888 adoption. ~~When the court has determined that reunification with~~
1889 ~~either parent is not appropriate, then the court must make a~~
1890 ~~permanency determination for the child.~~
1891 (2) The permanency goals available under this chapter are:
1892 (a) Reunification;
1893 (b) Adoption, if a petition for termination of parental
1894 rights has been or will be filed;
1895 (c) Permanent guardianship of a dependent child under s.
1896 39.6221;
1897 (d) Permanent placement with a fit and willing relative
1898 under s. 39.6231; or
1899 (e) Placement in another planned permanent living
1900 arrangement under s. 39.6241.
1901 (3)(a) At least 3 business days before the permanency
1902 hearing, the department shall file its judicial review social
1903 services report with the court and provide copies of the report
1904 to all parties. The report must include a recommended permanency

1905 goal for the child, suggest changes to the case plan, if needed,
1906 and describe why the recommended goal is in the best interest of
1907 the child.
1908 (b) Before the permanency hearing, the department shall
1909 advise the child and the individuals with whom the child will be
1910 placed about the availability of more permanent and legally
1911 secure placements and what type of financial assistance is
1912 associated with each placement.
1913 (4) At the permanency hearing, the court shall determine:
1914 (a) Whether the current permanency goal for the child is
1915 appropriate or should be changed.
1916 (b) When the child will achieve one of the permanency
1917 goals.
1918 (c) Whether the department has made reasonable efforts to
1919 finalize the permanency plan currently in effect.
1920 (5) The best interest of the child is the primary
1921 consideration in determining the permanency goal for the child.
1922 The court must also consider:
1923 (a) The reasonable preference of the child if the court
1924 has found the child to be of sufficient intelligence,
1925 understanding, and experience to express a preference.
1926 (b) Any recommendation of the guardian ad litem.
1927 (6)(a) ~~(2)~~ If a child will not be reunited with a parent,
1928 adoption, under ~~pursuant to~~ chapter 63, is the primary
1929 permanency option ~~available to the court~~. If the child is placed
1930 with a relative or with a relative of the child's half-brother
1931 or half-sister as a permanency option, the court may ~~shall~~
1932 recognize the permanency of this placement without requiring the

1933 relative to adopt the child.
1934 (b) If the court approves a permanency goal of permanent
1935 guardianship of a dependent child, placement with a fit and
1936 willing relative, or another planned permanent living
1937 arrangement, the court shall make findings as to why this
1938 permanent placement is established without adoption of the child
1939 to follow. If the court approves a permanency goal of another
1940 planned permanent living arrangement, the court shall document
1941 the compelling reasons for choosing this goal.
1942 (7) The findings of the court regarding reasonable efforts
1943 to finalize the permanency plan must be explicitly documented,
1944 made on a case-by-case basis, and stated in the court order.
1945 (8) The case plan must list the tasks necessary to
1946 finalize the permanency placement and shall be updated at the
1947 permanency hearing if necessary. If a concurrent case plan is in
1948 place, the court may choose between the permanency goal options
1949 presented and shall approve the goal that is in the child's best
1950 interest.
1951 (9) The permanency placement is intended to continue until
1952 the child reaches the age of majority and may not be disturbed
1953 absent a finding by the court that the circumstances of the
1954 permanency placement are no longer in the best interest of the
1955 child. If a parent who has not had his or her parental rights
1956 terminated makes a motion for reunification or increased contact
1957 with the child, the court shall hold a hearing to determine
1958 whether the dependency case should be reopened and whether there
1959 should be a modification of the order. At the hearing, the
1960 parent must demonstrate that the safety, well-being, and

1961 physical, mental, and emotional health of the child is not
1962 endangered by the modification.
1963 (10) The court shall base its decision concerning any
1964 motion by a parent for reunification or increased contact with a
1965 child on the effect of the decision on the safety, well-being,
1966 and physical and emotional health of the child. Factors that
1967 must be considered and addressed in the findings of fact of the
1968 order on the motion must include:
1969 (a) The compliance or noncompliance of the parent with the
1970 case plan.
1971 (b) The circumstances which caused the child's dependency
1972 and whether those circumstances have been resolved.
1973 (c) The stability and longevity of the child's placement;
1974 (d) The preferences of the child, if the child is of
1975 sufficient age and understanding to express a preference;
1976 (e) The recommendation of the current custodian.
1977 (f) The recommendation of the guardian ad litem, if one
1978 has been appointed.
1979 ~~(3) The permanency options listed in the following~~
1980 ~~paragraphs shall only be considered by the court if adoption is~~
1981 ~~determined by the court to not be in the child's best interest,~~
1982 ~~except as otherwise provided in subsection (2):~~
1983 ~~(a) Guardianship pursuant to chapter 744.~~
1984 ~~(b) Long-term custody.~~
1985 ~~(c) Long-term licensed custody.~~
1986 ~~(d) Independent living.~~
1987
1988 ~~The permanency placement is intended to continue until the child~~

1989 ~~reaches the age of majority and shall not be disturbed absent a~~
1990 ~~finding by the court that the circumstances of the permanency~~
1991 ~~placement are no longer in the best interest of the child.~~
1992 Section 20. Section 39.6221, Florida Statutes, is created
1993 to read:
1994 39.6221 Permanent guardianship of a dependent child.--
1995 (1) If a court determines that reunification or adoption
1996 is not in the best interest of the child, the court may place
1997 the child in a permanent guardianship with a relative or other
1998 adult approved by the court if all of the following conditions
1999 are met:
2000 (a) The child has been in the placement for not less than
2001 the preceding 6 months.
2002 (b) The permanent guardian is suitable and able to provide
2003 a safe and permanent home for the child.
2004 (c) The court determines that the child and the relative
2005 or other adult are not likely to need supervision or services of
2006 the department to ensure the stability of the permanent
2007 guardianship.
2008 (d) The permanent guardian has made a commitment to
2009 provide for the child until the child reaches the age of
2010 majority and to prepare the child for adulthood and
2011 independence.
2012 (e) The permanent guardian agrees to give notice of any
2013 change in his or her residential address or the residence of the
2014 child by filing a written document in the dependency file of the
2015 child with the clerk of the court.
2016 (2) In its written order establishing a permanent

2017 guardianship, the court shall:
2018 (a) List the circumstances or reasons the child's parents
2019 are not fit to care for the child and why reunification is not
2020 possible by referring to specific findings of fact made in its
2021 order adjudicating the child dependent or by making separate
2022 findings of fact.
2023 (b) State the reasons a permanent guardianship is being
2024 established instead of adoption.
2025 (c) Specify the frequency and nature of visitation or
2026 contact between the child and his or her parents.
2027 (d) Specify the frequency and nature of visitation or
2028 contact between the child and his or her grandparents, under s.
2029 39.509.
2030 (e) Specify the frequency and nature of visitation or
2031 contact between the child and his or her siblings.
2032 (f) Require that the permanent guardian not return the
2033 child to the physical care and custody of the person from whom
2034 the child was removed without the approval of the court.
2035 (g) List the powers and duties of the permanent guardian
2036 which shall include the rights and duties of a parent,
2037 including, but not limited to:
2038 1. The right to physical and legal custody of the child.
2039 2. The right and duty to protect, nurture, guide, and
2040 discipline the child.
2041 3. The right and duty to provide the child with food,
2042 shelter, and education.
2043 4. The right and duty to provide the child with ordinary
2044 medical, dental, psychiatric, and psychological care, unless

2045 these rights and duties are otherwise enlarged or limited by
2046 court order.
2047 (3) The court shall give the permanent guardian a separate
2048 order establishing the authority of the permanent guardian to
2049 care for the child, specifying what powers and duties listed in
2050 paragraph (2)(g) belong to the permanent guardian, and providing
2051 any other information the court deems proper which can be
2052 provided to persons who are not parties to the proceeding as
2053 necessary, notwithstanding the confidentiality provisions of s.
2054 39.202.
2055 (4) A permanent guardianship of a dependent child
2056 established under this chapter is not a plenary guardianship and
2057 is not subject to the requirements of chapter 744.
2058 (5) The court shall retain jurisdiction over the case and
2059 the child shall remain in the custody of the permanent guardian
2060 unless the order creating the permanent guardianship is modified
2061 by the court. The court shall discontinue regular review
2062 hearings and relieve the department of the responsibility for
2063 supervising the placement of the child. Notwithstanding the
2064 retention of jurisdiction, the placement shall be considered
2065 permanency for the child.
2066 (6) Placement of a child in a permanent guardianship does
2067 not terminate the parent-child relationship, including:
2068 (a) The right of the child to inherit from his or her
2069 parents.
2070 (b) The parents' right to consent to the child's adoption.
2071 (c) The parents' responsibility to provide financial,
2072 medical, and other support for the child as ordered by the

2073 court.
2074 Section 21. Section 39.6231, Florida Statutes, is created
2075 to read:
2076 39.6231 Permanent placement with a fit and willing
2077 relative.--
2078 (1) If a court finds that reunification or adoption are
2079 not in the best interest of a child, the court may place the
2080 child with a fit and willing relative as a permanency option if:
2081 (a) The child has been in the placement for at least the
2082 preceding 6 months.
2083 (b) The relative has made a commitment to provide for the
2084 child until the child reaches the age of majority and to prepare
2085 the child for adulthood and independence.
2086 (c) The relative is suitable and able to provide a safe
2087 and permanent home for the child.
2088 (d) The relative agrees to give notice of any change in
2089 his or her residence or the residence of the child by filing a
2090 written document with the clerk of court.
2091 (2) The department and the guardian ad litem shall provide
2092 the court with a recommended list and description of services
2093 needed by the child and the family in order to ensure the
2094 permanency of the placement.
2095 (3) In its written order placing the child with a fit and
2096 willing relative, the court shall:
2097 (a) List the circumstances or reasons reunification is not
2098 possible by referring to specific findings of fact made in its
2099 order adjudicating the child dependent or by making separate
2100 findings of fact.

2101 (b) State the reasons permanent placement with a fit and
2102 willing relative is being established instead of adoption;
2103 (c) Specify the frequency and nature of visitation or
2104 contact between the child and his or her parents.
2105 (d) Specify the frequency and nature of visitation or
2106 contact between the child and his or her grandparents, under s.
2107 39.509.
2108 (e) Specify the frequency and nature of visitation or
2109 contact between the child and his or her siblings.
2110 (f) Require that the relative not return the child to the
2111 physical care and custody of the person from whom the child was
2112 removed without the approval of the court.
2113 (4) The court shall give the relative a separate order
2114 establishing his or her authority to care for the child and
2115 providing other information the court deems proper which can be
2116 provided to entities and individuals who are not parties to the
2117 proceeding as necessary, notwithstanding the confidentiality of
2118 s. 39.202.
2119 (5) The department shall continue to supervise the
2120 placement with the relative until further court order. The court
2121 shall continue to review the placement at least once every 6
2122 months.
2123 (6) Each party to the proceeding must be advised by the
2124 department and the court that placement with a fit and willing
2125 relative does not preclude the possibility of the child
2126 returning to the custody of the parent.
2127 (7) The court shall continue to conduct permanency
2128 hearings in order to reevaluate the possibility of adoption or

2129 permanent guardianship of the child.
2130 Section 22. Section 39.6241, Florida Statutes, is created
2131 to read:
2132 39.6241 Another planned permanent living arrangement.--
2133 (1) If a court finds that reunification is not in the best
2134 interest of a child, the court may approve placement of the
2135 child in another planned permanent living arrangement if:
2136 (a) The court finds a more permanent placement, such as
2137 adoption, permanent guardianship, or placement with a fit and
2138 willing relative, is not in the best interest of the child.
2139 (b) The department documents reasons the placement will
2140 endure and how the proposed arrangement will be more stable and
2141 secure than ordinary foster care.
2142 (c) The court finds that the health, safety, and well-
2143 being of the child will not be jeopardized by such an
2144 arrangement.
2145 (d) There are compelling reasons to show that another
2146 placement is the most appropriate permanency goal. Compelling
2147 reasons for another placement may include, but are not limited
2148 to:
2149 1. The case of a parent and child who have a significant
2150 bond but the parent is unable to care for the child because of
2151 an emotional or physical disability and the child's foster
2152 parents have committed to raising him or her to the age of
2153 majority and to facilitate visitation with the disabled parent;
2154 2. The case of a child for whom an Indian tribe has
2155 identified another planned permanent living arrangement for the
2156 child; or

2157 3. The case of a foster child who is 16 years of age or
2158 older who chooses to remain in foster care and the child's
2159 foster parents are willing to care for the child until the child
2160 reaches 18 years of age.
2161 (2) The department and the guardian ad litem must provide
2162 the court with a recommended list and description of services
2163 needed by the child, such as independent living services and
2164 medical, dental, educational, or psychological referrals, and a
2165 recommended list and description of services needed by his or
2166 her caregiver.
2167 Section 23. Paragraphs (a) and (c) of subsection (7),
2168 paragraph (g) of subsection (8), and subsection (9) of section
2169 39.701, Florida Statutes, are amended, and paragraph (k) is
2170 added to subsection (8) of that section, to read:
2171 39.701 Judicial review.--
2172 (7)(a) Before ~~Prior to~~ every judicial review hearing or
2173 citizen review panel hearing, the social service agency shall
2174 make an investigation and social study concerning all pertinent
2175 details relating to the child and shall furnish to the court or
2176 citizen review panel a written report that includes, but is not
2177 limited to:
2178 1. A description of the type of placement the child is in
2179 at the time of the hearing, including the safety of the child
2180 and the continuing necessity for and appropriateness of the
2181 placement.
2182 2. Documentation of the diligent efforts made by all
2183 parties to the case plan to comply with each applicable
2184 provision of the plan.

2185 3. The amount of fees assessed and collected during the
2186 period of time being reported.
2187 4. The services provided to the foster family or legal
2188 custodian in an effort to address the needs of the child as
2189 indicated in the case plan.
2190 5. A statement that either:
2191 a. The parent, though able to do so, did not comply
2192 substantially with the ~~provisions of the~~ case plan, and the
2193 agency recommendations;
2194 b. The parent did substantially comply with the ~~provisions~~
2195 ~~of the~~ case plan; or
2196 c. The parent has partially complied with the ~~provisions~~
2197 ~~of the~~ case plan, with a summary of additional progress needed
2198 and the agency recommendations.
2199 6. A statement from the foster parent or legal custodian
2200 providing any material evidence concerning the return of the
2201 child to the parent or parents.
2202 7. A statement concerning the frequency, duration, and
2203 results of the parent-child visitation, if any, and the agency
2204 recommendations for an expansion or restriction of future
2205 visitation.
2206 8. The number of times a child has been removed from his
2207 or her home and placed elsewhere, the number and types of
2208 placements that have occurred, and the reason for the changes in
2209 placement.
2210 9. The number of times a child's educational placement has
2211 been changed, the number and types of educational placements
2212 which have occurred, and the reason for any change in placement.

2213 10. If the child has reached 13 years of age but is not
2214 yet 18 years of age, the results of the preindependent living,
2215 life skills, or independent living assessment; the specific
2216 services needed; and the status of the delivery of the
2217 identified services.
2218 11. Copies of all medical, psychological, and educational
2219 records that support the terms of the case plan and that have
2220 been produced concerning the ~~child,~~ parents~~,~~ or any caregiver
2221 since the last judicial review hearing.
2222 12. Copies of the child's current health, mental health,
2223 and education records as identified in s. 39.6012.
2224 (c) In a case in which the child has been permanently
2225 placed with the social service agency, the agency shall furnish
2226 to the court a written report concerning the progress being made
2227 to place the child for adoption. If the child cannot be placed
2228 for adoption, a report on the progress made by the child towards
2229 alternative permanency goals or placements, including, but not
2230 limited to, guardianship, permanent guardianship under s.
2231 39.6221, permanent placement under s. 39.6231 ~~long-term custody,~~
2232 ~~long-term licensed custody~~, or independent living, must be
2233 submitted to the court. The report must be submitted to the
2234 court at least 72 hours before each scheduled judicial review.
2235 (8) The court and any citizen review panel shall take into
2236 consideration the information contained in the social services
2237 study and investigation and all medical, psychological, and
2238 educational records that support the terms of the case plan;
2239 testimony by the social services agency, the parent, the foster
2240 parent or legal custodian, the guardian ad litem if one has been

2241 appointed for the child, and any other person deemed
2242 appropriate; and any relevant and material evidence submitted to
2243 the court, including written and oral reports to the extent of
2244 their probative value. These reports and evidence may be
2245 received by the court in its effort to determine the action to
2246 be taken with regard to the child and may be relied upon to the
2247 extent of their probative value, even though not competent in an
2248 adjudicatory hearing. In its deliberations, the court and any
2249 citizen review panel shall seek to determine:
2250 (g) Whether the child is receiving safe and proper care
2251 according to s. 39.6012, including, but not limited to, the
2252 appropriateness of the child's current placement, including
2253 whether the child is in a setting that ~~which~~ is as family-like
2254 and as close to the parent's home as possible, consistent with
2255 the child's best interests and special needs, and including
2256 maintaining stability in the child's educational placement.
2257 (k) If amendments to the case plan are required.
2258 Amendments to the case plan must be made under s. 39.6013.
2259 (9)(a) Based upon the criteria set forth in subsection (8)
2260 and the recommended order of the citizen review panel, if any,
2261 the court shall determine whether or not the social service
2262 agency shall initiate proceedings to have a child declared a
2263 dependent child, return the child to the parent, continue the
2264 child in out-of-home care for a specified period of time, or
2265 initiate termination of parental rights proceedings for
2266 subsequent placement in an adoptive home. Amendments
2267 ~~Modifications~~ to the case plan must be prepared ~~handled~~ as
2268 prescribed in s. 39.6013 ~~s. 39.601~~. If the court finds that the

2269 prevention or reunification efforts of the department will allow
2270 the child to remain safely at home or be safely returned to the
2271 home, the court shall allow the child to remain in or return to
2272 the home after making a specific finding of fact that the
2273 reasons for the creation of the case plan have been remedied to
2274 the extent that the child's safety, well-being, and physical,
2275 mental, and emotional health will not be endangered.
2276 (b) The court shall return the child to the custody of the
2277 parents at any time it determines that they have substantially
2278 complied with the case plan, if the court is satisfied that
2279 reunification will not be detrimental to the child's safety,
2280 well-being, and physical, mental, and emotional health.
2281 (c) If, in the opinion of the court, the social service
2282 agency has not complied with its obligations as specified in the
2283 written case plan, the court may find the social service agency
2284 in contempt, shall order the social service agency to submit its
2285 plans for compliance with the agreement, and shall require the
2286 social service agency to show why the child could not safely be
2287 returned to the home of the parents.
2288 ~~(d) The court may extend the time limitation of the case~~
2289 ~~plan, or may modify the terms of the plan, based upon~~
2290 ~~information provided by the social service agency, and the~~
2291 ~~guardian ad litem, if one has been appointed, the parent or~~
2292 ~~parents, and the foster parents or legal custodian, and any~~
2293 ~~other competent information on record demonstrating the need for~~
2294 ~~the amendment. If the court extends the time limitation of the~~
2295 ~~case plan, the court must make specific findings concerning the~~
2296 ~~frequency of past parent-child visitation, if any, and the court~~

2297 ~~may authorize the expansion or restriction of future visitation.~~
2298 ~~Modifications to the plan must be handled as prescribed in s.~~
2299 ~~39.601. Any extension of a case plan must comply with the time~~
2300 ~~requirements and other requirements specified by this chapter.~~
2301 (d) ~~(e)~~ If, at any judicial review, the court finds that
2302 the parents have failed to substantially comply with the case
2303 plan to the degree that further reunification efforts are
2304 without merit and not in the best interest of the child, on its
2305 own motion, the court ~~it~~ may order ~~authorize~~ the filing of a
2306 petition for termination of parental rights, whether or not the
2307 time period as contained in the case plan for substantial
2308 compliance has expired ~~elapsed~~.
2309 (e) ~~(f)~~ No later than 6 ~~12~~ months after the date that the
2310 child was placed in shelter care, the court shall conduct a
2311 judicial review hearing to review ~~plan for~~ the child's
2312 permanency goal as identified in the case plan. At the hearing,
2313 the court shall make findings regarding the likelihood of the
2314 child's reunification with the parent or legal custodian within
2315 12 months after the removal of the child from the home. If, at
2316 this hearing, the court makes a written finding that it is not
2317 likely that the child will be reunified with the parent or legal
2318 custodian within 12 months after the child was removed from the
2319 home, the department must file with the court and serve on all
2320 parties a motion to amend the case plan under s. 39.6013 and
2321 declare that it will use concurrent planning for the case plan.
2322 The department must file the motion no later than 10 business
2323 days after receiving the written finding of the court. The
2324 department must attach the proposed amended case plan to the

2325 motion. If concurrent planning is already being used, the case
2326 plan must document the efforts the department is taking to
2327 complete the concurrent goal. ~~At this hearing, if the child is~~
2328 ~~not returned to the physical custody of the parents, the case~~
2329 ~~plan may be extended with the same goals only if the court finds~~
2330 ~~that the situation of the child is so extraordinary that the~~
2331 ~~plan should be extended. The case plan must document steps the~~
2332 ~~department is taking to find an adoptive parent or other~~
2333 ~~permanent living arrangement for the child.~~
2334 (f) ~~(g)~~ The court may issue a protective order in
2335 assistance, or as a condition, of any other order made under
2336 this part. In addition to the requirements included in the case
2337 plan, the protective order may set forth requirements relating
2338 to reasonable conditions of behavior to be observed for a
2339 specified period of time by a person or agency who is before the
2340 court; and the ~~such~~ order may require any ~~such~~ person or agency
2341 to make periodic reports to the court containing such
2342 information as the court in its discretion may prescribe.
2343 Section 24. Section 39.703, Florida Statutes, is amended
2344 to read:
2345 39.703 Initiation of termination of parental rights
2346 proceedings; judicial review.--
2347 (1) If, in preparation for a ~~any~~ judicial review hearing
2348 under this chapter, it is the opinion of the social service
2349 agency that the parents of the child have not complied with
2350 their responsibilities as specified in the written case plan
2351 although able to do so, the department shall state its intent to
2352 initiate proceedings to terminate parental rights, unless the

2353 social service agency can demonstrate to the court that such a
2354 recommendation would not be in the child's best interests. If it
2355 is the intent of the department to initiate proceedings to
2356 terminate parental rights, the department shall file a petition
2357 for termination of parental rights no later than 3 months after
2358 the date of the previous judicial review hearing. If the
2359 petition cannot be filed within 3 months, the department shall
2360 provide a written report to the court outlining the reasons for
2361 delay, the progress made in the termination of parental rights
2362 process, and the anticipated date of completion of the process.
2363 (2) If, at the time of the 12-month judicial review
2364 hearing, a child is not returned to the physical custody of the
2365 parents, the department shall file a petition to terminate
2366 parental rights. The court shall set an advisory hearing at the
2367 judicial review hearing if an advisory hearing has not
2368 previously been set. ~~initiate termination of parental rights~~
2369 ~~proceedings under this chapter within 30 days. Only if the court~~
2370 ~~finds that the situation of the child is so extraordinary and~~
2371 ~~that the best interests of the child will be met by such action~~
2372 ~~at the time of the judicial review may the case plan be~~
2373 ~~extended. If the court decides to extend the plan, the court~~
2374 ~~shall enter detailed findings justifying the decision to extend,~~
2375 ~~as well as the length of the extension. A termination of~~
2376 ~~parental rights petition need not be filed if: the child is~~
2377 ~~being cared for by a relative who chooses not to adopt the child~~
2378 ~~but who is willing, able, and suitable to serve as the legal~~
2379 ~~custodian for the child until the child reaches 18 years of age;~~
2380 ~~the court determines that filing such a petition would not be in~~

2381 ~~the best interests of the child; or the state has not provided~~
2382 ~~the child's parent, when reasonable efforts to return a child~~
2383 ~~are required, consistent with the time period in the state's~~
2384 ~~case plan, such services as the state deems necessary for the~~
2385 ~~safe return of the child to his or her home. Failure to initiate~~
2386 ~~termination of parental rights proceedings at the time of the~~
2387 ~~12-month judicial review or within 30 days after such review~~
2388 ~~does not prohibit initiating termination of parental rights~~
2389 ~~proceedings at any other time.~~
2390 (3) Notwithstanding subsection (2), the department may
2391 choose to not file or join in a petition to terminate the
2392 parental rights of a parent under subsection (2) if:
2393 (a) The child is being cared for by a relative under s.
2394 39.6231;
2395 (b) The department has documented in the report to the
2396 court a compelling reason for determining that filing such a
2397 petition would not be in the best interest of the child.
2398 Compelling reasons for not filing or joining a petition to
2399 terminate parental rights may include, but are not limited to:
2400 1. Adoption is not the appropriate permanency goal for the
2401 child;
2402 2. No grounds to file a petition to terminate parental
2403 rights exist;
2404 3. The child is an unaccompanied refugee minor as defined
2405 in 45 C.F.R. 400.111;
2406 4. There are international legal obligations or compelling
2407 reasons relating to foreign policy that would preclude
2408 terminating parental rights; or

2409 5. The department has not provided to the family,
2410 consistent with the time period in the case plan, services that
2411 the department deems necessary for the safe return of the child
2412 to the home.
2413 (4) Upon good cause shown by any party or on its own
2414 motion, the court may review the determination by the department
2415 that compelling reasons exist for not filing a petition for
2416 termination of parental rights.
2417 Section 25. Subsections (1) and (2) of section 39.806,
2418 Florida Statutes, are amended to read:
2419 39.806 Grounds for termination of parental rights.--
2420 (1) ~~The department, the guardian ad litem, or any person~~
2421 ~~who has knowledge of the facts alleged or who is informed of~~
2422 ~~those facts and believes that they are true may petition~~ Grounds
2423 for the termination of parental rights may be established under
2424 any of the following circumstances:
2425 (a) When the parent or parents have voluntarily executed a
2426 written surrender of the child and consented to the entry of an
2427 order giving custody of the child to the department for
2428 subsequent adoption and the department is willing to accept
2429 custody of the child.
2430 1. The surrender document must be executed before two
2431 witnesses and a notary public or other person authorized to take
2432 acknowledgments.
2433 2. The surrender and consent may be withdrawn after
2434 acceptance by the department only after a finding by the court
2435 that the surrender and consent were obtained by fraud or under
2436 duress.

2437 (b) Abandonment as defined in s. 39.01(1) or when the
2438 identity or location of the parent or parents is unknown and
2439 cannot be ascertained by diligent search within 60 days.
2440 (c) When the parent or parents engaged in conduct toward
2441 the child or toward other children that demonstrates that the
2442 continuing involvement of the parent or parents in the parent-
2443 child relationship threatens the life, safety, well-being, or
2444 physical, mental, or emotional health of the child irrespective
2445 of the provision of services. Provision of services may be
2446 evidenced by proof that services were provided through a
2447 previous plan or offered as a case plan from a child welfare
2448 agency.
2449 (d) When the parent of a child is incarcerated in a state
2450 or federal correctional institution and either:
2451 1. The period of time for which the parent is expected to
2452 be incarcerated will constitute a substantial portion of the
2453 period of time before the child will attain the age of 18 years;
2454 2. The incarcerated parent has been determined by the
2455 court to be a violent career criminal as defined in s. 775.084,
2456 a habitual violent felony offender as defined in s. 775.084, or
2457 a sexual predator as defined in s. 775.21; has been convicted of
2458 first degree or second degree murder in violation of s. 782.04
2459 or a sexual battery that constitutes a capital, life, or first
2460 degree felony violation of s. 794.011; or has been convicted of
2461 an offense in another jurisdiction which is substantially
2462 similar to one of the offenses listed in this paragraph. As used
2463 in this section, the term "substantially similar offense" means
2464 any offense that is substantially similar in elements and

2465 penalties to one of those listed in this subparagraph, and that
2466 is in violation of a law of any other jurisdiction, whether that
2467 of another state, the District of Columbia, the United States or
2468 any possession or territory thereof, or any foreign
2469 jurisdiction; or
2470 3. The court determines by clear and convincing evidence
2471 that continuing the parental relationship with the incarcerated
2472 parent would be harmful to the child and, for this reason, that
2473 termination of the parental rights of the incarcerated parent is
2474 in the best interest of the child.
2475 (e) ~~A petition for termination of parental rights may also~~
2476 ~~be filed~~ When a child has been adjudicated dependent, a case
2477 plan has been filed with the court, and:
2478 1. The child continues to be abused, neglected, or
2479 abandoned by the parents. In this case, the failure of the
2480 parents to substantially comply for a period of 12 months after
2481 an adjudication of the child as a dependent child or the child's
2482 placement into shelter care, whichever came first, constitutes
2483 evidence of continuing abuse, neglect, or abandonment unless the
2484 failure to substantially comply with the case plan was due
2485 either to the lack of financial resources of the parents or to
2486 the failure of the department to make reasonable efforts to
2487 reunify the parent and child. The ~~Such~~ 12-month period begins
2488 ~~may begin~~ to run only after the child's placement into shelter
2489 care or the entry of a disposition order placing the custody of
2490 the child with the department or a person other than the parent
2491 and the approval by the court of a case plan with a goal of
2492 reunification with the parent, whichever came first; or

2493 2. The parent has materially breached the case plan by
2494 making it unlikely that he or she will be able to substantially
2495 comply with the case plan before the time for compliance
2496 expires. Because time is of the essence for permanency of
2497 children in the dependency system and, thus, in order to prove
2498 the parent has materially breached the case plan, the court must
2499 find by clear and convincing evidence that the parent is
2500 unlikely or unable to substantially comply with the case plan
2501 before time expires to comply with the case plan.
2502 (f) When the parent or parents engaged in egregious
2503 conduct or had the opportunity and capability to prevent and
2504 knowingly failed to prevent egregious conduct that threatens the
2505 life, safety, or physical, mental, or emotional health of the
2506 child or the child's sibling.
2507 1. As used in this subsection, the term "sibling" means
2508 another child who resides with or is cared for by the parent or
2509 parents regardless of whether the child is related legally or by
2510 consanguinity.
2511 2. As used in this subsection, the term "egregious
2512 conduct" means abuse, abandonment, neglect, or any other conduct
2513 of the parent or parents that is deplorable, flagrant, or
2514 outrageous by a normal standard of conduct. Egregious conduct
2515 may include an act or omission that occurred only once but was
2516 of such intensity, magnitude, or severity as to endanger the
2517 life of the child.
2518 (g) When the parent or parents have subjected the child to
2519 aggravated child abuse as defined in s. 827.03, sexual battery
2520 or sexual abuse as defined in s. 39.01, or chronic abuse.

2521 (h) When the parent or parents have committed murder or
2522 voluntary manslaughter of another child, or a felony assault
2523 that results in serious bodily injury to the child or another
2524 child, or aided or abetted, attempted, conspired, or solicited
2525 to commit such a murder or voluntary manslaughter or felony
2526 assault.
2527 (i) When the parental rights of the parent to a sibling
2528 have been terminated involuntarily.
2529 (2) Reasonable efforts to preserve and reunify families
2530 are ~~shall~~ not ~~be~~ required if a court of competent jurisdiction
2531 has determined that any of the events described in paragraphs
2532 (1)(e)-(i) have occurred.
2533 Section 26. Subsection (1) of section 39.810, Florida
2534 Statutes, is amended to read:
2535 39.810 Manifest best interests of the child.--In a hearing
2536 on a petition for termination of parental rights, the court
2537 shall consider the manifest best interests of the child. This
2538 consideration shall not include a comparison between the
2539 attributes of the parents and those of any persons providing a
2540 present or potential placement for the child. For the purpose of
2541 determining the manifest best interests of the child, the court
2542 shall consider and evaluate all relevant factors, including, but
2543 not limited to:
2544 (1) Any suitable permanent custody arrangement with a
2545 relative of the child. However, the availability of a
2546 nonadoptive placement with a relative may not receive greater
2547 consideration than any other factor weighing on the manifest
2548 best interest of the child and may not be considered as a factor

2549 weighing against termination of parental rights. If a child has
2550 been in a stable or preadoptive placement for not less than 6
2551 months, the availability of a different placement, including a
2552 placement with a relative, may not be considered as a ground to
2553 deny the termination of parental rights.
2554 Section 27. Subsection (4) of section 39.811, Florida
2555 Statutes, is amended to read:
2556 39.811 Powers of disposition; order of disposition.--
2557 (4) If the child is neither in the custody of the
2558 department nor in the custody of a parent and the court finds
2559 that the grounds for termination of parental rights have been
2560 established for either or both parents, the court shall enter an
2561 order terminating parental rights for the parent or parents for
2562 whom the grounds for termination have been established and
2563 placing the child with the department or an appropriate legal
2564 custodian. If the parental rights of both parents have been
2565 terminated, or if the parental rights of only one parent have
2566 been terminated and the court makes specific findings based on
2567 evidence presented that placement with the remaining parent is
2568 likely to be harmful to the child, the court may order that the
2569 child be placed with a legal custodian other than the department
2570 after hearing evidence of the suitability of the ~~such~~ intended
2571 placement. Suitability of the intended placement includes the
2572 fitness and capabilities of the proposed legal custodian to
2573 function as the primary caregiver for a particular child; and
2574 the compatibility of the child with the home in which the child
2575 is intended to be placed. If the court orders that a child be
2576 placed with a legal custodian under this subsection, the court

2577 shall appoint a ~~such~~ legal custodian ~~either~~ as the guardian for
2578 the child as provided in s. 744.3021 or s. 39.621 ~~or as the~~
2579 ~~long-term custodian of the child as provided in s. 39.622 so~~
2580 ~~long as the child has been residing with the legal custodian for~~
2581 ~~a minimum of 6 months~~. The court may modify the order placing
2582 the child in the custody of the legal custodian and revoke the
2583 guardianship established under s. 744.3021 or another ~~the long-~~
2584 ~~term custodial~~ relationship if the court subsequently finds the
2585 placement to be no longer in the best interest of the child.
2586 Section 28. Paragraph (b) of subsection (3) of section
2587 39.0015, Florida Statutes, is amended to read:
2588 39.0015 Child abuse prevention training in the district
2589 school system.--
2590 (3) DEFINITIONS.--As used in this section:
2591 (b) "Child abuse" means those acts as defined in ss.
2592 39.01(1), (2), (32), (42), (44), (55) ~~(30), (43), (45), (52)~~,
2593 and (66) ~~(63)~~, 827.04, and 984.03(1), (2), and (37).
2594 Section 29. Subsection (5) of section 39.205, Florida
2595 Statutes, is amended to read:
2596 39.205 Penalties relating to reporting of child abuse,
2597 abandonment, or neglect.--
2598 (5) If the department or its authorized agent has
2599 determined after its investigation that a report is false, the
2600 department shall, with the consent of the alleged perpetrator,
2601 refer the report to the local law enforcement agency having
2602 jurisdiction for an investigation to determine whether
2603 sufficient evidence exists to refer the case for prosecution for
2604 filing a false report as defined in s. 39.01(28) ~~s. 39.01(27)~~.

2605 During the pendency of the investigation by the local law
2606 enforcement agency, the department must notify the local law
2607 enforcement agency of, and the local law enforcement agency must
2608 respond to, all subsequent reports concerning children in that
2609 same family in accordance with s. 39.301. If the law enforcement
2610 agency believes that there are indicators of abuse, abandonment,
2611 or neglect, it must immediately notify the department, which
2612 must assure the safety of the children. If the law enforcement
2613 agency finds sufficient evidence for prosecution for filing a
2614 false report, it must refer the case to the appropriate state
2615 attorney for prosecution.
2616 Section 30. Subsection (1) of section 39.302, Florida
2617 Statutes, is amended to read:
2618 39.302 Protective investigations of institutional child
2619 abuse, abandonment, or neglect.--
2620 (1) The department shall conduct a child protective
2621 investigation of each report of institutional child abuse,
2622 abandonment, or neglect. Upon receipt of a report that alleges
2623 that an employee or agent of the department, or any other entity
2624 or person covered by s. 39.01(33) or (46) ~~s. 39.01(31) or (47)~~,
2625 acting in an official capacity, has committed an act of child
2626 abuse, abandonment, or neglect, the department shall initiate a
2627 child protective investigation within the timeframe established
2628 by the central abuse hotline under ~~pursuant to~~ s. 39.201(5) and
2629 orally notify the appropriate state attorney, law enforcement
2630 agency, and licensing agency. These agencies shall immediately
2631 conduct a joint investigation, unless independent investigations
2632 are more feasible. When conducting investigations onsite or

2633 having face-to-face interviews with the child, such
2634 investigation visits shall be unannounced unless it is
2635 determined by the department or its agent that the ~~such~~
2636 unannounced visits would threaten the safety of the child. When
2637 a facility is exempt from licensing, the department shall inform
2638 the owner or operator of the facility of the report. Each agency
2639 conducting a joint investigation is ~~shall be~~ entitled to full
2640 access to the information gathered by the department in the
2641 course of the investigation. A protective investigation must
2642 include an onsite visit of the child's place of residence. In
2643 all cases, the department shall make a full written report to
2644 the state attorney within 3 working days after making the oral
2645 report. A criminal investigation shall be coordinated, whenever
2646 possible, with the child protective investigation of the
2647 department. Any interested person who has information regarding
2648 the offenses described in this subsection may forward a
2649 statement to the state attorney as to whether prosecution is
2650 warranted and appropriate. Within 15 days after the completion
2651 of the investigation, the state attorney shall report the
2652 findings to the department and shall include in the ~~such~~ report
2653 a determination of whether or not prosecution is justified and
2654 appropriate in view of the circumstances of the specific case.
2655 Section 31. For the purpose of incorporating the
2656 amendments made by this act to section 39.806, Florida Statutes,
2657 in a reference thereto, subsection (5) of section 39.802,
2658 Florida Statutes, is reenacted to read:
2659 39.802 Petition for termination of parental rights;
2660 filing; elements.--

2661 (5) When a petition for termination of parental rights is
2662 filed under s. 39.806(1), a separate petition for dependency
2663 need not be filed and the department need not offer the parents
2664 a case plan with a goal of reunification, but may instead file
2665 with the court a case plan with a goal of termination of
2666 parental rights to allow continuation of services until the
2667 termination is granted or until further orders of the court are
2668 issued.
2669 Section 32. Subsection (1) of section 39.828, Florida
2670 Statutes, is amended to read:
2671 39.828 Grounds for appointment of a guardian advocate.--
2672 (1) The court shall appoint the person named in the
2673 petition as a guardian advocate with all the powers and duties
2674 specified in s. 39.829 for an initial term of 1 year upon a
2675 finding that:
2676 (a) The child named in the petition is or was a drug
2677 dependent newborn as described in s. 39.01(32)(g) ~~s.~~
2678 ~~39.01(30)(g)~~;
2679 (b) The parent or parents of the child have voluntarily
2680 relinquished temporary custody of the child to a relative or
2681 other responsible adult;
2682 (c) The person named in the petition to be appointed the
2683 guardian advocate is capable of carrying out the duties as
2684 provided in s. 39.829; and
2685 (d) A petition to adjudicate the child dependent under
2686 ~~pursuant to~~ this chapter has not been filed.
2687 Section 33. Subsection (3) of section 63.092, Florida
2688 Statutes, is amended to read:

2689 63.092 Report to the court of intended placement by an
2690 adoption entity; at-risk placement; preliminary study.--
2691 (3) PRELIMINARY HOME STUDY.--Before placing the minor in
2692 the intended adoptive home, a preliminary home study must be
2693 performed by a licensed child-placing agency, a child-caring
2694 agency registered under s. 409.176, a licensed professional, or
2695 agency described in s. 61.20(2), unless the adoptee is an adult
2696 or the petitioner is a stepparent or a relative. If the adoptee
2697 is an adult or the petitioner is a stepparent or a relative, a
2698 preliminary home study may be required by the court for good
2699 cause shown. The department is required to perform the
2700 preliminary home study only if there is no licensed child-
2701 placing agency, child-caring agency registered under s. 409.176,
2702 licensed professional, or agency described in s. 61.20(2), in
2703 the county where the prospective adoptive parents reside. The
2704 preliminary home study must be made to determine the suitability
2705 of the intended adoptive parents and may be completed prior to
2706 identification of a prospective adoptive minor. A favorable
2707 preliminary home study is valid for 1 year after the date of its
2708 completion. Upon its completion, a copy of the home study must
2709 be provided to the intended adoptive parents who were the
2710 subject of the home study. A minor may not be placed in an
2711 intended adoptive home before a favorable preliminary home study
2712 is completed unless the adoptive home is also a licensed foster
2713 home under s. 409.175. The preliminary home study must include,
2714 at a minimum:
2715 (a) An interview with the intended adoptive parents;
2716 (b) Records checks of the department's central abuse

2717 registry and criminal records ~~correspondence~~ checks under s.
2718 39.0138 ~~pursuant to s. 435.045~~ through the Department of Law
2719 Enforcement on the intended adoptive parents;
2720 (c) An assessment of the physical environment of the home;
2721 (d) A determination of the financial security of the
2722 intended adoptive parents;
2723 (e) Documentation of counseling and education of the
2724 intended adoptive parents on adoptive parenting;
2725 (f) Documentation that information on adoption and the
2726 adoption process has been provided to the intended adoptive
2727 parents;
2728 (g) Documentation that information on support services
2729 available in the community has been provided to the intended
2730 adoptive parents; and
2731 (h) A copy of each signed acknowledgment of receipt of
2732 disclosure required by s. 63.085.
2733
2734 If the preliminary home study is favorable, a minor may be
2735 placed in the home pending entry of the judgment of adoption. A
2736 minor may not be placed in the home if the preliminary home
2737 study is unfavorable. If the preliminary home study is
2738 unfavorable, the adoption entity may, within 20 days after
2739 receipt of a copy of the written recommendation, petition the
2740 court to determine the suitability of the intended adoptive
2741 home. A determination as to suitability under this subsection
2742 does not act as a presumption of suitability at the final
2743 hearing. In determining the suitability of the intended adoptive
2744 home, the court must consider the totality of the circumstances

2745 in the home. No minor may be placed in a home in which there
2746 resides any person determined by the court to be a sexual
2747 predator as defined in s. 775.21 or to have been convicted of an
2748 offense listed in s. 63.089(4)(b)2.
2749 Section 34. Paragraph (b) of subsection (3) of section
2750 409.165, Florida Statutes, is amended to read:
2751 409.165 Alternate care for children.--
2752 (3) With the written consent of parents, custodians, or
2753 guardians, or in accordance with those provisions in chapter 39
2754 that relate to dependent children, the department, under rules
2755 properly adopted, may place a child:
2756 (b) With an adult nonrelative approved by the court for
2757 permanent guardianship ~~long-term custody~~;
2758
2759 under such conditions as are determined to be for the best
2760 interests or the welfare of the child. Any child placed in an
2761 institution or in a family home by the department or its agency
2762 may be removed by the department or its agency, and such other
2763 disposition may be made as is for the best interest of the
2764 child, including transfer of the child to another institution,
2765 another home, or the home of the child. Expenditure of funds
2766 appropriated for out-of-home care can be used to meet the needs
2767 of a child in the child's own home or the home of a relative if
2768 the child can be safely served in the child's own home or that
2769 of a relative if placement can be avoided by the expenditure of
2770 such funds, and if the expenditure of such funds in this manner
2771 is calculated by the department to be a potential cost savings.
2772 Section 35. Paragraph (d) of subsection (1) of section

2773 419.001, Florida Statutes, is amended to read:
2774 419.001 Site selection of community residential homes.--
2775 (1) For the purposes of this section, the following
2776 definitions shall apply:
2777 (d) "Resident" means any of the following: a frail elder
2778 as defined in s. 400.618; a physically disabled or handicapped
2779 person as defined in s. 760.22(7)(a); a developmentally disabled
2780 person as defined in s. 393.063; a nondangerous mentally ill
2781 person as defined in s. 394.455(18); or a child <u>who is found to</u>
2782 <u>be dependent or a child in need of services</u> as defined in s.
2783 39.01(14), s. 984.03(9) or (12), or s. 985.03(8).
2784 Section 36. <u>Sections 39.601, 39.622, 39.623, 39.624, and</u>
2785 <u>435.045, Florida Statutes, are repealed.</u>
2786 Section 37. This act shall take effect July 1, 2006.

AMENDMENTS TO HB 7123 by Rep. Galvano

AMENDMENT #1 – Clarifies that use of "family team conferencing" is voluntary and is not always facilitated by professional staff.

AMENDMENT #2 – Restores current definition of the term "parent."

AMENDMENT #3 – Lists in order of preference the permanency goals for children.

AMENDMENT #4 – Specifies process for background screening related to placement of dependent children.

AMENDMENT #5 – Corrects a reference.

AMENDMENT #6 – Clarifies that placement of a dependent child in any of the statutorily defined permanency options does not terminate the parent-child relationship.

AMENDMENT #7 – Removes redundant language.

AMENDMENT #8 – Specifies that department supervision and court review shall continue when a dependent child is placed in "another planned permanent living arrangement."

AMENDMENT #9 – Provides that the department shall file a petition to terminate parental rights if any of 3 conditions are met, specifies when the department may choose not to file or join such petition, and provides that the court may review the determination by the department not to file a petition.

AMENDMENT #10 – Adds s. 39.703 to the sections of statute being repealed.

Bill No. **HB 7123**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Health and Families Council
2 Representative(s) Galvano offered the following:
3
4 **Amendment**
5 Remove line(s) 372 - 375 and insert:
6 (30) "Family team conference" means a voluntary process for
7 family-focused intervention which is designed to develop a plan
8 for the care, safety, and well-being of a child and the child's
9 family.

Bill No. **HB 7123**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Health and Families Council
2 Representative(s) Galvano offered the following:
3
4 **Amendment**
5 Remove line(s) 646 - 653 and insert:
6 and a man whose consent to the adoption of the child would be
7 required under s. 63.062(1). If a child has

Bill No. **HB 7123**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Health and Families Council
2 Representative(s) Galvano offered the following:
3
4 **Amendment**
5 Remove line(s) 688 - 691 and insert:
6 (51)"Permanency goal" means the living arrangement
7 identified for the child to return to or identified as the
8 permanent living arrangement of the child. Permanency goals
9 applicable under this chapter, listed in order of preference,
10 are:

Bill No. **HB 7123**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Health and Families Council
2 Representative(s) Galvano offered the following:
3
4 **Amendment**
5 Remove lines 1100-1148 and insert:
6 Section 6. Section 39.0138, Florida Statutes, is created
7 to read:
8 39.0138 Criminal history records check; limit on placement
9 of a child.--
10 (1) The department shall conduct a criminal history
11 records check for any person being considered by the department
12 for approval for placement of a child subject to a placement
13 decision under this chapter. For purposes of this section,
14 criminal history records checks may include, but not be limited
15 to, submission of fingerprints to the Florida Department of Law
16 Enforcement for processing and forwarding to the Federal Bureau
17 of Investigation for state and national criminal history
18 information, and local criminal records checks through local law
19 enforcement agencies.
20 (2) The department shall not place any child with a person
21 other than a parent if the criminal history records check
22 reveals that such person has ever been convicted of a felony
23 that falls within any of the following categories:

24 (a) Child abuse, abandonment, or neglect;
25 (b) Domestic violence;
26 (c) Child pornography or other felony in which a child was
27 a victim of the offense; or
28 (d) Homicide, sexual battery, or other felony involving
29 violence, other than felony assault or felony battery where an
30 adult was the victim of the assault or battery.
31 (3) The department shall not place any child with any
32 person other than a parent if the criminal history records check
33 reveals that such person has, within the previous 5 years, been
34 convicted of a felony that falls within any of the following
35 categories:
36 (a) Assault;
37 (b) Battery; or
38 (c) A drug-related offense.
39 (4) The department may place a child in a home that
40 otherwise meets placement requirements if a name check of state
41 and local criminal history records systems does not disqualify
42 the applicant and if the department submits fingerprints to the
43 Department of Law Enforcement for forwarding to the Federal
44 Bureau of Investigation and is awaiting the results of the state
45 and national criminal history records check.
46 (5) Persons with whom placement of a child is being
47 considered or approved must disclose to the department any prior
48 or pending local, state, or national criminal proceedings in
49 which they are or have been involved.
50 (6) The department may examine the results of any criminal
51 history records check of any person, including a parent, with
52 whom placement of a child is being considered under this
53 section. The complete criminal history records check must be
54 considered when determining whether placement with the person
55 will jeopardize the safety of the child being placed

56 (7)(a) The court may review a decision of the department
57 to grant or deny the placement of a child based upon criminal
58 history records check information. The review may be upon the
59 motion of any party, the request of any person who has been
60 denied a placement by the department, or on its own motion. The
61 court shall prepare written findings to support its decision in
62 this matter.
63 (b) A person seeking placement of a child when the
64 department has denied the placement based on results of a
65 criminal history records check has the burden of setting forth
66 sufficient evidence of rehabilitation, including, but not
67 limited to, the circumstances surrounding the incident providing
68 the basis for denying the application, the time period that has
69 elapsed since the incident, the nature of the harm caused to the
70 victim, whether the victim was a child, the history of the
71 person since the incident, whether the person complied with any
72 requirement to pay restitution, and any other evidence or
73 circumstances indicating that the person will not present a
74 danger to the child if the placement of the child is allowed.

Bill No. **HB 7123**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

---

1 Council/Committee hearing bill: Health and Families Council
2 Representative(s) Galvano offered the following:
3
4 **Amendment**
5 Remove line 1526 and insert:
6 For the purposes of this section, ~~subparagraph~~ "diligent efforts
7 to

Bill No. **HB 7123**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Health and Families Council
2 Representative(s) Galvano offered the following:
3
4 **Amendment**
5 Between lines 1978 and 1979, insert:
6 (11) Placement of a child in a permanent guardianship, with
7 a fit and willing relative or in another planned permanent
8 living arrangement does not terminate the parent-child
9 relationship, including, but not limited to:
10 (a) The right of the child to inherit from his or her
11 parents;
12 (b) The parents' right to consent to the child's adoption;
13 or
14 (c) The parents' responsibility to provide financial,
15 medical, and other support for the child as ordered by the
16 court.

Bill No. **HB 7123**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Health and Families Council
2 Representative(s) Galvano offered the following:
3
4 **Amendment**
5 Remove lines 2035-2046

Bill No. **HB 7123**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Health and Families Council
2 Representative(s) Galvano offered the following:
3
4 **Amendment**
5 Remove lines 2130-2166 and insert:
6 Section 22. Section 39.6241, Florida Statutes, is created
7 to read:
8 39.6241 Another planned permanent living arrangement.--
9 (1) If a court finds that reunification is not in the best
10 interest of a child, the court may approve placement of the
11 child in another planned permanent living arrangement if:
12 (a) The court finds a more permanent placement, such as
13 adoption, permanent guardianship, or placement with a fit and
14 willing relative, is not in the best interest of the child.
15 (b) The department documents reasons the placement will
16 endure and how the proposed arrangement will be more stable and
17 secure than ordinary foster care.
18 (c) The court finds that the health, safety, and well-
19 being of the child will not be jeopardized by such an
20 arrangement.
21 (d) There are compelling reasons to show that placement in
22 another planned permanent living arrangement is the most

23 appropriate permanency goal. Compelling reasons for such
24 placement may include, but are not limited to:
25 1. The case of a parent and child who have a significant
26 bond but the parent is unable to care for the child because of
27 an emotional or physical disability and the child's foster
28 parents have committed to raising him or her to the age of
29 majority and to facilitate visitation with the disabled parent;
30 2. The case of a child for whom an Indian tribe has
31 identified another planned permanent living arrangement for the
32 child; or
33 3. The case of a foster child who is 16 years of age or
34 older who chooses to remain in foster care and the child's
35 foster parents are willing to care for the child until the child
36 reaches 18 years of age.
37 (2) The department and the guardian ad litem must provide
38 the court with a recommended list and description of services
39 needed by the child, such as independent living services and
40 medical, dental, educational, or psychological referrals, and a
41 recommended list and description of services needed by his or
42 her caregiver.
43 (3) The department shall continue to supervise the planned
44 permanent living arrangement until further court order. The
45 court shall continue to review the placement at least once every
46 6 months.

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Health and Families Council
2 Representative(s) Galvano offered the following:
3
4 **Amendment**
5 Remove lines 2343-2416 and insert:
6 Section 24. Section 39.8055, Florida Statutes, is created
7 to read:
8 39.8055 Requirement to file termination of parental rights
9 petition; exceptions:
10 (1) The department shall file a petition to terminate
11 parental rights within 60 days of any of the following events:
12 (a) if, at the time of the 12-month judicial review
13 hearing, a child is not returned to the physical custody of the
14 parents;
15 (b) if a petition for termination of parental rights has
16 not otherwise been filed and the child has been in out-of-home
17 care under the responsibility of the state for 15 of the most
18 recent 22 months, calculated on a cumulative basis, but not
19 including any trial home visits or time during which the child
20 was a runaway;
21 (c) if the parent has been convicted of murder of the other
22 parent, manslaughter of the other parent, aiding or abetting or
23 conspiracy or solicitation to murder the other parent, or a

24 felony battery that resulted in serious bodily injury to the
25 child or to any other child of the parent;
26 (d) if a court determines that reasonable efforts to
27 reunify the child and parent are not required.
28 (2) Notwithstanding subsection (1), the department may
29 choose not to file or join in a petition to terminate the
30 parental rights of a parent if:
31 (a) The child is being cared for by a relative under s.
32 39.6231;
33 (b) The department has documented in the report to the
34 court a compelling reason for determining that filing such a
35 petition would not be in the best interests of the child.
36 Compelling reasons for not filing or joining a petition to
37 terminate parental rights may include, but are not limited to:
38 1. Adoption is not the appropriate permanency goal for the
39 child;
40 2. No grounds to file a petition to terminate parental
41 rights exist;
42 3. The child is an unaccompanied refugee minor as defined
43 in 45 C.F.R. 400.111;
44 4. There are international legal obligations or compelling
45 foreign-policy reasons that would preclude terminating parental
46 rights; or
47 5. The department has not provided to the family,
48 consistent with the time period in the case plan, services that
49 the department deems necessary for the safe return of the child
50 to the home.
51 (4) Upon good cause shown by any party or on its own
52 motion, the court may review the determination by the department
53 that compelling reasons exist for not filing a petition for
54 termination of parental rights.
55

56 **TITLE AMENDMENT**

57 Remove lines 133-134 and insert:

58 after the child is placed in shelter care; creating s. 39.8055

59 F.S.; providing when the department may file a

Bill No. **HB 7123**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Health and Families Council
2 Representative(s) Galvano offered the following:
3
4 **Amendment**
5 Remove lines 2784-2785 and insert:
6 Section 36. Sections 39.601, 39.622, 39.623, 39.624,
7 39.703, and 435.045, Florida Statutes, are repealed.
8
9 **Title Amendment**
10 Remove line 152 and insert:
11 ss.39.601, 39.622, 39.623, 39.624, 39.703, and 435.045, F.S.,

HB 7141

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7141 PCB HCR 06-02 Licensure of Health Care Providers
SPONSOR(S): Health Care Regulation Committee, Garcia
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Health Care Regulation Committee	11 Y, 0 N	Bell	Mitchell
1) Health Care Appropriations Committee	15 Y, 0 N	Speir	Massengale
2) Health & Families Council		Bell	Moore
3)			
4)			
5)			

SUMMARY ANALYSIS

House Bill 7141 eliminates unnecessary duplication and variation of licensure requirements by health care providers licensed by the Agency for Health Care Administration (AHCA). The bill defines common terminology and consolidates core licensure requirements in newly created part II of chapter 408, F.S. The organization of core, uniform standards is similar to the regulatory scheme for health care practitioners by the Department of Health.

Standard minimum licensure requirements consolidated in the bill include timeframes for the license application processing, two-year renewal cycle, definition of change of ownership, background screening, notice of exclusion from Medicare or Medicaid, notice of closure, inactive license, records retention, right of inspection, inspection reports, unlicensed activity, administrative fines, moratoriums, license denial, emergency suspension, and revocation.

The bill lists the facilities affected by the bill.

This bill does not have a fiscal impact on the state or local governments. It may have an impact on service providers in future years if licensure fee increases are necessary to support the actual cost of regulation.

The effective date of the bill is October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government - The bill consolidates licensure standards and regulations of health care facilities into core licensure statutes. The bill streamlines current regulation and decreases unnecessary variations.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The licensure statutes for various health care providers regulated by AHCA contain duplication and variation of certain basic licensing standards. These standards include the application process, changes of ownership, licensure categories, background screenings, changes of administrator, right of inspection, inspection reports, unlicensed activity, administrative fines, moratoriums, and license denial and revocation. The majority of licenses are required to be renewed annually, although some programs call for biennial licensure. Each of these regulatory statutes has evolved independently and, as such, there is variation in the definitions of similar requirements. Licensure processing occurs within the broad requirements of licensure under the Administrative Procedures Act, s. 120.60, F.S., and many unique requirements within each specify authorizing statutes or rules.

Effect of Bill

House Bill 7141 creates part II of chapter 408, F.S., by establishing a set of minimum core licensing requirements for all health care providers licensed by the Agency for Health Care Administration to eliminate unnecessary duplication and variation of licensure requirements among providers. This organization of core, uniform standards is similar to the regulatory scheme for health care practitioners within chapter 456, F.S., by the Department of Health. Common definitions of basic standards serve to eliminate confusion for operators of multiple provider types and streamline the licensure process. The bill creates streamlined and consistent licensing requirements for all providers regulated by AHCA, by standardizing terminology in basic licensure requirements.

The health care licensing programs subject to part II of Chapter 408, F.S., include:

- Drug Free Workplace Laboratories, as provided under ss. 112.0455 and 440.102, F.S.;
- Birth Centers, as provided under chapter 383, F.S.;
- Abortion Clinics, as provided under chapter 390, F.S.;
- Crisis Stabilization Units, as provided under parts I and IV of chapter 394, F.S.;
- Short Term Residential Treatment Units, as provided under parts I and IV of chapter 394, F.S.; Residential Treatment Facilities, as provided under part IV of chapter 394, F.S.;
- Residential Treatment Centers for Children and Adolescents, as provided under part IV of chapter 394;
- Hospitals, as provided under part I of chapter 395, F.S.;
- Ambulatory Surgical Centers, as provided under part I of chapter 395, F.S.;
- Mobile Surgical Facilities, as provided under part I of chapter 395, F.S.;
- Private Review Agents, as provided under part I of chapter 395, F.S.;
- Health Care Risk Managers, as provided under part I of chapter 395, F.S.;
- Nursing Homes, as provided under part II of chapter 400, F.S.;
- Assisted Living Facilities, as provided under part III of chapter 400, F.S.;

- Home Health Agencies, as provided under part IV of chapter 400, F.S.;
- Nurse Registries, as provided under part IV of chapter 400, F.S.;
- Companion Services or Homemaker Services Providers, as provided under part IV of chapter 400, F.S.;
- Adult Day Care Centers, as provided under part V of chapter 400, F.S.;
- Hospices, as provided under part VI of chapter 400, F.S.;
- Adult Family-Care Homes, as provided under part VII of chapter 400, F.S.;
- Homes for Special Services as provided under part VIII of chapter 400, F.S.;
- Transitional Living Facilities, as provided under part VIII of chapter 400, F.S.;
- Prescribed Pediatric Extended Care Centers, as provided under part IX of chapter 400, F.S.;
- Home Medical Equipment Providers, as provided under part X of chapter 400, F.S.;
- Intermediate Care Facilities for the Developmentally Disabled, as provided under part XI of chapter 400, F.S.;
- Health Care Services Pools, as provided under part XII of chapter 400, F.S.;
- Health Care Clinics, as provided under part XIII of chapter 400, F.S.;
- Clinical Laboratories, as provided under part I of chapter 483, F.S.;
- Multiphasic Health Testing Centers, as provided under part II of chapter 483, F.S.; and
- Certification of Organizations Engaged in the Practice Of Cadaveric Organ and Tissue Procurement, Certification of Organ Procurement Organizations, Tissue Banks and Eye Banks as provided under chapter 765, F.S.

The bill creates licensing and regulatory standards for all of the facilities above.

Licensure Requirements
The bill provides that it is unlawful to provide or offer services that require a license without first obtaining a license. Applicants must submit the appropriate application with license fee to the Agency for Health Care Administration (AHCA). The license fee cannot exceed the actual cost of regulation pursuant to part II of chapter 408. F.S., authorizing statutes, and administrative rules. Licensure fees may be adjusted annually based on the change in the consumer price index within existing maximum levels if increases are necessary to support the actual cost of regulation.

Inspection Fees
The bill provides for the assessment of inspection fees if required by authorizing statute and a fee assessment for license re-issuance because of a reported change by the provider.

Licensure Renewals
The bill mandates the timeframes for initial, renewal, and change of ownership application submission; the timeframe for AHCA review and approval or denial of applications; and the timeframe for applicant submission of omitted application information. These timeframes provide more specific direction than the broad licensing requirements of s. 120.60, F.S. The duration of a license is typically two years, but conditions of licensure category can shorten that period, such as the issuance of a provisional license. Change of ownership responsibilities of the transferor and transferee are specified in the bill.

Licensure Categories
The bill details the conditions for issuing a standard, provisional, or inactive license.

Background Check Requirements
Federal Bureau of Investigation (FBI) and Florida Department of Law Enforcement (FDLE) background screening is required for administrators, individual owners, and financial officers. A person with controlling interest is subject to background screening when there is reason to believe such person has a disqualifying offense. Notice of change of a person required to undergo background screening must be reported to AHCA, pursuant to the specific authorizing statute and rule requirements. New persons

who are subject to the screening requirements must comply with background screening requirements; however, they may be employed pending FBI screening results if the state level (FDLE) screening is clear.

AHCA Right of Entry & Administrative Actions
The Agency for Health Care Administration (AHCA) has the right of entry and inspection of premises to determine compliance with part II of Chapter 408, F.S., authorizing statutes, and rules. AHCA may not enter into a premise, which AHCA believes is operating without a valid license unless permission is granted by the owner or a warrant is first obtained. The bill provides for administrative actions against unlicensed providers. The bill allows the agency to impose administrative fines, a moratorium on admissions, license denial, emergency suspension or revocation, or seek injunctive relief for regulatory violations affecting resident health, safety or welfare.

C. SECTION DIRECTORY:

Section 1. Creates Part I of Chapter 408, F.S., consisting of sections 408.031, 408.032, 408.033, 408.034, 408.035, 408.036, 408.0361, 408.037, 408.038, 408.039, 408.040, 408.041, 408.042, 408.043, 408.044, 408.045, 408.0455, 408.05, 408.061, 408.062, 408.063, 408.07, 408.08, 408.09, 408.10, 408.15, 408.16, 408.18, 408.185, 408.20, 408.301, 408.302, 408.40, 408.50, 408.70, 408.7056, 408.7057, and 408.7071, F.S., entitled "Health Facility and Services Planning."

Section 2. Creates Part II of Chapter 408, F.S., consisting of sections 408.801, 408.802, 408.803, 408.804, 408.805, 408.806, 408.807, 408.808, 408.809, 408.810, 408.811, 408.812, 408.813, 408.814, 408.815, 408.816, 408.817, 408.818, 408.819, 408.820, and 408.831, F.S., entitled "Health Care Licensing: General Provisions."

Section 3. Creates Part III of Chapter 408, F.S., consisting of sections 408.90, 408.901, 408.902, 408.903, 408.904, 408.905, 408.906, 408.907, 408.908, and 408.909, F.S., entitled "Health Insurance Access."

Section 4. Creates Part IV of Chapter 408, F.S., consisting of sections 408.911, 408.913, 408.914, 408.915, 408.916, 408.917, and 408.918, F.S., entitled "Health and Human Services Eligibility Access System."

Section 5. Creates sections 408.801 – 408.820, F.S., consolidating licensing requirements for facilities and services licensed by AHCA.

Section 6. Amends s. 400.801, F.S., redefining "home for special services" to mean a site licensed by AHCA prior to January 1, 2006.

Section 7. Amends s. 408.831, F.S., authorizing AHCA to deny any application, or suspend or revoke any license when a licensee subject to part II of chapter 408, F.S., shares a common controlling interest with the applicant and has failed to pay all outstanding monies due to AHCA.

Section 8. Specifies that the provisions of part II of chapter 408, F.S., prevail over provider authorizing statutes in case of a conflict.

Section 9. Authorizes AHCA to double current annual licensure fees to provide for biennial licensure.

Section 10. Directs the Division of Statutory Revision of the Office of Legislative Services to assist substantive committees of the Senate and House of Representatives in the preparation of draft legislation to conform the Florida Statutes and any legislation enacted during 2006 to the act.

Section 11. Authorizes AHCA to issue any license for less than two years by charging a prorated licensure fee and specifying a different renewal date between October 1, 2006 and September 30, 2008. This will allow for staggering of expiration dates as providers change from annual to biennial licensure.

Section 12. The effective date of the bill is October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

In future years, licensure fees may be adjusted annually based on the change in the consumer price index within existing maximum levels if increases are necessary to support the actual cost of regulation.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill authorizes rule making authority for the Agency for Health Care Administration to carry out provisions of the core licensing provisions. Some licensure requirements that are currently in rule will no longer be necessary if core licensure standards are implemented.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 15, 2006 the Health Care Regulation Committee adopted three amendments.

Amendment 1: Specifies that if a license renewal application is submitted late or items are missing from the application, the license will not expire until the Agency for Health Care Administration makes a final decision.
Amendment 2: Clarifies the date that a provider's conditional license will be lifted.
Amendment 3: Adds manmade disasters to the types of disasters that might occur which would cause a licensee to request an inactive license.

The analysis is drafted to the committee substitute.

1 A bill to be entitled
2 An act relating to the licensure of health care providers;
3 creating pts. I, II, III, and IV of ch. 408, F.S.;
4 creating s. 408.801, F.S.; providing a short title;
5 providing legislative findings and purpose; creating s.
6 408.802, F.S.; providing applicability; creating s.
7 408.803, F.S.; providing definitions; creating s. 408.804,
8 F.S.; requiring providers to have and display a license;
9 providing limitations; creating s. 408.805, F.S.;
10 establishing license fees and conditions for assessment
11 thereof; providing a method for calculating annual
12 adjustment of fees; providing for inspection fees;
13 providing that fees are nonrefundable; creating s.
14 408.806, F.S.; providing a license application process;
15 requiring specified information to be included on the
16 application; requiring payment of late fees under certain
17 circumstances; requiring inspections; providing an
18 exception; authorizing the Agency for Health Care
19 Administration to establish procedures and rules for
20 electronic transmission of required information; creating
21 s. 408.807, F.S.; providing procedures for change of
22 ownership; requiring the transferor to notify the agency
23 in writing within a specified time period; providing for
24 duties and liability of the transferor; providing for
25 maintenance of certain records; creating s. 408.808, F.S.;
26 providing license categories and requirements therefor;
27 creating s. 408.809, F.S.; requiring background screening
28 of specified employees; providing for submission of proof

29 of compliance, under certain circumstances; providing
30 conditions for granting provisional and standard licenses;
31 providing an exception to screening requirements; creating
32 s. 408.810, F.S.; providing minimum licensure
33 requirements; providing procedures for discontinuance of
34 operation and surrender of license; requiring forwarding
35 of client records; requiring publication of a notice of
36 discontinuance of operation of a provider; providing for
37 statewide toll-free telephone numbers for reporting
38 complaints and abusive, neglectful, and exploitative
39 practices; requiring proof of legal right to occupy
40 property, proof of insurance, and proof of financial
41 viability, under certain circumstances; requiring
42 disclosure of information relating to financial
43 instability; providing a penalty; prohibiting the agency
44 from licensing a health care provider that does not have a
45 certificate of need or an exemption; creating s. 408.811,
46 F.S.; providing for inspections and investigations to
47 determine compliance; providing that inspection reports
48 are public records; requiring retention of records for a
49 specified period of time; creating s. 408.812, F.S.;
50 prohibiting certain unlicensed activity by a provider;
51 requiring unlicensed providers to cease activity;
52 providing penalties; requiring reporting of unlicensed
53 providers; creating s. 408.813, F.S.; authorizing the
54 agency to impose administrative fines; creating s.
55 408.814, F.S.; providing conditions for the agency to
56 impose a moratorium or emergency suspension on a provider;

57 requiring notice; creating s. 408.815, F.S.; providing
58 grounds for denial or revocation of a license or change-
59 of-ownership application; providing conditions to continue
60 operation; exempting renewal applications from provisions
61 requiring the agency to approve or deny an application
62 within a specified period of time, under certain
63 circumstances; creating s. 408.816, F.S.; authorizing the
64 agency to institute injunction proceedings, under certain
65 circumstances; creating s. 408.817, F.S.; providing basis
66 for review of administrative proceedings challenging
67 agency licensure enforcement action; creating s. 408.818,
68 F.S.; requiring fees and fines related to health care
69 licensing to be deposited into the Health Care Trust Fund;
70 creating s. 408.819, F.S.; authorizing the agency to adopt
71 rules; providing a timeframe for compliance; creating s.
72 408.820, F.S.; providing exemptions from specified
73 requirements of pt. II of ch. 408, F.S.; amending s.
74 400.801, F.S.; providing that the definition of homes for
75 special services applies to sites licensed by the agency
76 after a certain date; amending s. 408.831, F.S.; revising
77 provisions relating to agency action to deny, suspend, or
78 revoke a license, registration, certificate, or
79 application; conforming cross-references; providing for
80 priority of application in case of conflict; authorizing
81 the agency to adjust annual licensure fees to provide
82 biennial licensure fees; requesting interim assistance of
83 the Division of Statutory Revision to prepare conforming
84 legislation for the 2007 Regular Session; authorizing the

85 agency to issue licenses for less than a specified time
86 period and providing conditions therefor; providing an
87 effective date.
88
89 Be It Enacted by the Legislature of the State of Florida:
90
91 Section 1. Part I of chapter 408, Florida Statutes,
92 consisting of sections 408.031, 408.032, 408.033, 408.034,
93 408.035, 408.036, 408.0361, 408.037, 408.038, 408.039, 408.040,
94 408.041, 408.042, 408.043, 408.044, 408.045, 408.0455, 408.05,
95 408.061, 408.062, 408.063, 408.07, 408.08, 408.09, 408.10,
96 408.15, 408.16, 408.18, 408.185, 408.20, 408.301, 408.302,
97 408.40, 408.50, 408.70, 408.7056, 408.7057, and 408.7071,
98 Florida Statutes, is created and entitled "Health Facility and
99 Services Planning."
100 Section 2. Part II of chapter 408, Florida Statutes,
101 consisting of sections 408.801, 408.802, 408.803, 408.804,
102 408.805, 408.806, 408.807, 408.808, 408.809, 408.810, 408.811,
103 408.812, 408.813, 408.814, 408.815, 408.816, 408.817, 408.818,
104 408.819, 408.820, and 408.831, Florida Statutes, is created and
105 entitled "Health Care Licensing: General Provisions."
106 Section 3. Part III of chapter 408, Florida Statutes,
107 consisting of sections 408.90, 408.901, 408.902, 408.903,
108 408.904, 408.905, 408.906, 408.907, 408.908, and 408.909,
109 Florida Statutes, is created and entitled "Health Insurance
110 Access."
111 Section 4. Part IV of chapter 408, Florida Statutes,
112 consisting of sections 408.911, 408.913, 408.914, 408.915,

113 408.916, 408.917, and 408.918, Florida Statutes, is created and
114 entitled "Health and Human Services Eligibility Access System."
115 Section 5. Sections 408.801, 408.802, 408.803, 408.804,
116 408.805, 408.806, 408.807, 408.808, 408.809, 408.810, 408.811,
117 408.812, 408.813, 408.814, 408.815, 408.816, 408.817, 408.818,
118 408.819, and 408.820, Florida Statutes, are created to read:
119 408.801 Short title; purpose.--
120 (1) This part may be cited as the "Health Care Licensing
121 Procedures Act."
122 (2) The Legislature finds that there is unnecessary
123 duplication and variation in the requirements for licensure by
124 the agency. It is the intent of the Legislature to provide a
125 streamlined and consistent set of basic licensing requirements
126 for all such providers in order to minimize confusion,
127 standardize terminology, and include issues that are otherwise
128 not adequately addressed in the Florida Statutes pertaining to
129 specific providers.
130 408.802 Applicability.--The provisions of this part apply
131 to the provision of services that require licensure as defined
132 in this part and to the following entities licensed, registered,
133 or certified by the agency, as described in chapters 112, 383,
134 390, 394, 395, 400, 440, 483, and 765:
135 (1) Laboratories authorized to perform testing under the
136 Drug-Free Workplace Act, as provided under ss. 112.0455 and
137 440.102.
138 (2) Birth centers, as provided under chapter 383.
139 (3) Abortion clinics, as provided under chapter 390.
140 (4) Crisis stabilization units, as provided under parts I

141 and IV of chapter 394.
142 (5) Short-term residential treatment facilities, as
143 provided under parts I and IV of chapter 394.
144 (6) Residential treatment facilities, as provided under
145 part IV of chapter 394.
146 (7) Residential treatment centers for children and
147 adolescents, as provided under part IV of chapter 394.
148 (8) Hospitals, as provided under part I of chapter 395.
149 (9) Ambulatory surgical centers, as provided under part I
150 of chapter 395.
151 (10) Mobile surgical facilities, as provided under part I
152 of chapter 395.
153 (11) Private review agents, as provided under part I of
154 chapter 395.
155 (12) Health care risk managers, as provided under part I
156 of chapter 395.
157 (13) Nursing homes, as provided under part II of chapter
158 400.
159 (14) Assisted living facilities, as provided under part
160 III of chapter 400.
161 (15) Home health agencies, as provided under part IV of
162 chapter 400.
163 (16) Nurse registries, as provided under part IV of
164 chapter 400.
165 (17) Companion services or homemaker services providers,
166 as provided under part IV of chapter 400.
167 (18) Adult day care centers, as provided under part V of
168 chapter 400.

169 (19) Hospices, as provided under part VI of chapter 400.
170 (20) Adult family-care homes, as provided under part VII
171 of chapter 400.
172 (21) Homes for special services, as provided under part
173 VIII of chapter 400.
174 (22) Transitional living facilities, as provided under
175 part VIII of chapter 400.
176 (23) Prescribed pediatric extended care centers, as
177 provided under part IX of chapter 400.
178 (24) Home medical equipment providers, as provided under
179 part X of chapter 400.
180 (25) Intermediate care facilities for persons with
181 developmental disabilities, as provided under part XI of chapter
182 400.
183 (26) Health care services pools, as provided under part
184 XII of chapter 400.
185 (27) Health care clinics, as provided under part XIII of
186 chapter 400.
187 (28) Clinical laboratories, as provided under part I of
188 chapter 483.
189 (29) Multiphasic health testing centers, as provided under
190 part II of chapter 483.
191 (30) Organ and tissue procurement agencies, as provided
192 under chapter 765.
193 408.803 Definitions.--As used in this part, the term:
194 (1) "Agency" means the Agency for Health Care
195 Administration, which is the licensing agency under this part.
196 (2) "Applicant" means an individual, corporation,

197 partnership, firm, association, or governmental entity that
198 submits an application for a license to the agency.
199 (3) "Authorizing statute" means the statute authorizing
200 the licensed operation of a provider listed in s. 408.802 and
201 includes chapters 112, 383, 390, 394, 395, 400, 440, 483, and
202 765.
203 (4) "Certification" means certification as a Medicare or
204 Medicaid provider of the services that require licensure, or
205 certification pursuant to the federal Clinical Laboratory
206 Improvement Amendment (CLIA).
207 (5) "Change of ownership" means an event in which the
208 licensee changes to a different legal entity or in which 45
209 percent or more of the ownership, voting shares, or controlling
210 interest in a corporation whose shares are not publicly traded
211 on a recognized stock exchange is transferred or assigned,
212 including the final transfer or assignment of multiple transfers
213 or assignments over a 2-year period that cumulatively total 45
214 percent or greater. A change solely in the management company or
215 board of directors is not a change of ownership.
216 (6) "Client" means any person receiving services from a
217 provider listed in s. 408.802.
218 (7) "Controlling interest" means:
219 (a) The applicant or licensee;
220 (b) A person or entity that serves as an officer of, is on
221 the board of directors of, or has a 5-percent or greater
222 ownership interest in the applicant or licensee; or
223 (c) A person or entity that serves as an officer of, is on
224 the board of directors of, or has a 5-percent or greater

225 ownership interest in the management company or other entity,
226 related or unrelated, with which the applicant or licensee
227 contracts to manage the provider.
228
229 The term does not include a voluntary board member.
230 (8) "License" means any permit, registration, certificate,
231 or license issued by the agency.
232 (9) "Licensee" means an individual, corporation,
233 partnership, firm, association, or governmental entity that is
234 issued a permit, registration, certificate, or license by the
235 agency. The licensee is legally responsible for all aspects of
236 the provider operation.
237 (10) "Moratorium" means a prohibition on the acceptance of
238 new clients.
239 (11) "Provider" means any activity, service, agency, or
240 facility regulated by the agency and listed in s. 408.802.
241 (12) "Services that require licensure" means those
242 services, including residential services, that require a valid
243 license before those services may be provided in accordance with
244 authorizing statutes and agency rules.
245 (13) "Voluntary board member" means a board member of a
246 not-for-profit corporation or organization who serves solely in
247 a voluntary capacity, does not receive any remuneration for his
248 or her services on the board of directors, and has no financial
249 interest in the corporation or organization. The agency shall
250 recognize a person as a voluntary board member following
251 submission of a statement to the agency by the board member and
252 the not-for-profit corporation or organization that affirms that

253 the board member conforms to this definition. The statement
254 affirming the status of the board member must be submitted to
255 the agency on a form provided by the agency.
256 408.804 License required; display.--
257 (1) It is unlawful to provide services that require
258 licensure, or operate or maintain a provider that offers or
259 provides services that require licensure, without first
260 obtaining from the agency a license authorizing the provision of
261 such services or the operation or maintenance of such provider.
262 (2) A license must be displayed in a conspicuous place
263 readily visible to clients who enter at the address that appears
264 on the license and is valid only in the hands of the licensee to
265 whom it is issued and may not be sold, assigned, or otherwise
266 transferred, voluntarily or involuntarily. The license is valid
267 only for the licensee, provider, and location for which the
268 license is issued.
269 408.805 Fees required; adjustments.--Unless otherwise
270 limited by authorizing statutes, license fees must be reasonably
271 calculated by the agency to cover its costs in carrying out its
272 responsibilities under this part, authorizing statutes, and
273 applicable rules, including the cost of licensure, inspection,
274 and regulation of providers.
275 (1) Licensure fees shall be adjusted to provide for
276 biennial licensure under agency rules.
277 (2) The agency shall annually adjust licensure fees,
278 including fees paid per bed, by not more than the change in the
279 Consumer Price Index based on the 12 months immediately
280 preceding the increase.

281 (3) The agency may, by rule, adjust licensure fees to
282 cover the cost of administering this part, authorizing statutes,
283 and applicable rules.
284 (4) An inspection fee must be paid as required in
285 authorizing statutes.
286 (5) Fees are nonrefundable.
287 (6) When a change is reported that requires issuance of a
288 license, a fee may be assessed. The fee must be based on the
289 actual cost of processing and issuing the license.
290 (7) A fee may be charged to a licensee requesting a
291 duplicate license. The fee may not exceed the actual cost of
292 duplication and postage.
293 (8) Total fees collected may not exceed the cost of
294 administering this part, authorizing statutes, and applicable
295 rules.
296 408.806 License application process.--
297 (1) An application for licensure must be made to the
298 agency on forms furnished by the agency, submitted under oath,
299 and accompanied by the appropriate fee in order to be accepted
300 and considered timely. The application must contain information
301 required by authorizing statutes and applicable rules and must
302 include:
303 (a) The name, address, and social security number of the
304 applicant and each controlling interest if the applicant or
305 controlling interest is an individual.
306 (b) The name, address, and federal employer identification
307 number or taxpayer identification number of the applicant and
308 each controlling interest if the applicant or controlling

309 interest is not an individual.
310 (c) The name by which the provider is to be known.
311 (d) The total number of beds or capacity requested, as
312 applicable.
313 (e) The name of the person or persons under whose
314 management or supervision the provider will operate and the name
315 of the administrator, if required.
316 (f) If the applicant offers continuing care agreements as
317 defined in chapter 651, proof shall be furnished that the
318 applicant has obtained a certificate of authority as required
319 for operation under chapter 651.
320 (g) Other information, including satisfactory inspection
321 results, that the agency finds necessary to determine the
322 ability of the applicant to carry out its responsibilities under
323 this part, authorizing statutes, and applicable rules.
324 (2)(a) The applicant for a renewal license must submit an
325 application that must be received by the agency at least 60 days
326 prior to the expiration of the current license. If the renewal
327 application and fee are received prior to the license expiration
328 date, the license shall not be deemed to have expired if the
329 license expiration date occurs during the agency's review of the
330 renewal application.
331 (b) The applicant for initial licensure due to a change of
332 ownership must submit an application that must be received by
333 the agency at least 60 days prior to the date of change of
334 ownership.
335 (c) For any other application or request, the applicant
336 must submit an application or request that must be received by

337 the agency at least 60 days prior to the requested effective
338 date, unless otherwise specified in authorizing statutes or
339 applicable rules.
340 (d) The agency shall notify the licensee by mail or
341 electronically at least 90 days prior to the expiration of a
342 license that a renewal license is necessary to continue
343 operation. The failure to timely submit an application and
344 license fee shall result in a late fee charged to the licensee
345 by the agency in an amount equal to 50 percent of the licensure
346 fee, but the aggregate amount of the fine may not exceed $5,000.
347 If an application is received after the required filing date and
348 exhibits a hand-canceled postmark obtained from a United States
349 post office dated on or before the required filing date, no fine
350 will be levied.
351 (3)(a) Upon receipt of an application for a license, the
352 agency shall examine the application and, within 30 days after
353 receipt, notify the applicant in writing of any apparent errors
354 or omissions and request any additional information required.
355 (b) Requested information omitted from an application for
356 licensure, license renewal, or change of ownership, other than
357 an inspection, must be filed with the agency within 21 days
358 after the agency's request for omitted information or the
359 application shall be deemed incomplete and shall be withdrawn
360 from further consideration and the fees shall be forfeited.
361 (c) Within 60 days after the receipt of a complete
362 application, the agency shall approve or deny the application.
363 (4)(a) Licensees subject to the provisions of this part
364 shall be issued biennial licenses unless conditions of the

365 license category specify a shorter license period.
366 (b) Each license issued shall indicate the name of the
367 licensee, the type of provider or service that the licensee is
368 required or authorized to operate or offer, the date the license
369 is effective, the expiration date of the license, the maximum
370 capacity of the licensed premises, if applicable, and any other
371 information required or deemed necessary by the agency.
372 (5) In accordance with authorizing statutes and applicable
373 rules, proof of compliance with s. 408.810 must be submitted
374 with an application for licensure.
375 (6) The agency may not issue an initial license to a
376 health care provider subject to the certificate-of-need
377 provisions in part I of this chapter if the licensee has not
378 been issued a certificate of need or certificate-of-need
379 exemption, when applicable. Failure to apply for the renewal of
380 a license prior to the expiration date renders the license void.
381 (7)(a) An applicant must demonstrate compliance with the
382 requirements in this part, authorizing statutes, and applicable
383 rules during an inspection pursuant to s. 408.811, as required
384 by authorizing statutes.
385 (b) An initial inspection is not required for companion
386 services or homemaker services providers, as provided under part
387 IV of chapter 400, or for health care services pools, as
388 provided under part XII of chapter 400.
389 (c) If an inspection is required by the authorizing
390 statute for a license application other than an initial
391 application, the inspection must be unannounced. This paragraph
392 does not apply to inspections required pursuant to ss. 383.324,

393 395.0161(4), and 483.061(2).
394 (d) If a provider is not available when an inspection is
395 attempted, the application shall be denied.
396 (8) The agency may establish procedures for the electronic
397 notification and submission of required information, including,
398 but not limited to:
399 (a) Licensure applications.
400 (b) Required signatures.
401 (c) Payment of fees.
402 (d) Notarization of applications.
403
404 Requirements for electronic submission of any documents required
405 by this part or authorizing statutes may be established by rule.
406 408.807 Change of ownership.--Whenever a change of
407 ownership occurs:
408 (1) The transferor shall notify the agency in writing at
409 least 60 days before the anticipated date of the change of
410 ownership.
411 (2) The transferee shall make application to the agency
412 for a license within the timeframes required in s. 408.806.
413 (3) The transferor shall be responsible and liable for:
414 (a) The lawful operation of the provider and the welfare
415 of the clients served until the date the transferee is licensed
416 by the agency.
417 (b) Any and all penalties imposed against the transferor
418 for violations occurring before the date of change of ownership.
419 (4) Any restriction on licensure, including a conditional
420 license existing at the time of a change of ownership, shall

421 remain in effect until the agency determines that the grounds
422 for the restriction are corrected.
423 (5) The transferee shall maintain records of the
424 transferor as required in this part, authorizing statutes, and
425 applicable rules, including:
426 (a) All client records.
427 (b) Inspection reports.
428 (c) All records required to be maintained pursuant to s.
429 409.913, if applicable.
430 408.808 License categories.--
431 (1) STANDARD LICENSE.--A standard license may be issued to
432 an applicant at the time of initial licensure, license renewal,
433 or change of ownership. A standard license shall be issued when
434 the applicant is in compliance with all statutory requirements
435 and agency rules. Unless sooner revoked, a standard license
436 expires 2 years after the date of issue.
437 (2) PROVISIONAL LICENSE.--A provisional license may be
438 issued to an applicant pursuant to s. 408.809(3). An applicant
439 against whom a proceeding denying or revoking a license is
440 pending at the time of license renewal may be issued a
441 provisional license effective until final action not subject to
442 further appeal.
443 (3) INACTIVE LICENSE.--An inactive license may be issued
444 to a health care provider subject to the certificate-of-need
445 provisions in part I of this chapter when the provider is
446 currently licensed, does not have a provisional license, and
447 will be temporarily unable to provide services but is reasonably
448 expected to resume services within 12 months. Such designation

449 may be made for a period not to exceed 12 months but may be
450 renewed by the agency for up to 12 additional months upon
451 demonstration by the licensee of the provider's progress toward
452 reopening. A request by a licensee for an inactive license or to
453 extend the previously approved inactive period must be submitted
454 to the agency and must include a written justification for the
455 inactive license with the beginning and ending dates of
456 inactivity specified, a plan for the transfer of any clients to
457 other providers, and the appropriate licensure fees. The agency
458 may not accept a request that is submitted after initiating
459 closure, after any suspension of service, or after notifying
460 clients of closure or suspension of service, unless the action
461 is a result of a natural or manmade disaster. Upon agency
462 approval, the provider shall notify clients of any necessary
463 discharge or transfer as required by authorizing statutes or
464 applicable rules. The beginning of the inactive license period
465 is the date the provider ceases operations. The end of the
466 inactive license period shall become the license expiration
467 date. All licensure fees must be current, must be paid in full,
468 and may be prorated. Reactivation of an inactive license
469 requires the approval of a renewal application, including
470 payment of licensure fees and agency inspections indicating
471 compliance with all requirements of this part, authorizing
472 statutes, and applicable rules.
473 (4) OTHER LICENSES.--Other types of license categories may
474 be issued pursuant to authorizing statutes or applicable rules.
475 408.809 Background screening; prohibited offenses.--
476 (1) Level 2 background screening pursuant to chapter 435

477 must be conducted through the agency on each of the following
478 persons, who shall be considered an employee for the purposes of
479 conducting screening under chapter 435:
480 (a) The licensee, if an individual.
481 (b) The administrator or a similarly titled person who is
482 responsible for the day-to-day operation of the provider.
483 (c) The financial officer or similarly titled individual
484 who is responsible for the financial operation of the licensee
485 or provider.
486 (d) Any person who is a controlling interest if the agency
487 has reason to believe that such person has been convicted of any
488 offense prohibited by s. 435.04. For each controlling interest
489 who has been convicted of any such offense, the licensee shall
490 submit to the agency a description and explanation of the
491 conviction at the time of license application.
492 (2) Proof of compliance with level 2 screening standards
493 submitted within the previous 5 years to meet any provider or
494 professional licensure requirements of the agency, the
495 Department of Health, the Agency for Persons with Disabilities,
496 or the Department of Children and Family Services satisfies the
497 requirements of this section, provided that such proof is
498 accompanied, under penalty of perjury, by an affidavit of
499 compliance with the provisions of chapter 435 using forms
500 provided by the agency. Proof of compliance with the background
501 screening requirements of the Department of Financial Services
502 submitted within the previous 5 years for an applicant for a
503 certificate of authority to operate a continuing care retirement
504 community under chapter 651 satisfies the Department of Law

505 Enforcement and Federal Bureau of Investigation portions of a
506 level 2 background check.
507 (3) A provisional license may be granted to an applicant
508 when each individual required by this section to undergo
509 background screening has met the standards for the Department of
510 Law Enforcement background check but the agency has not yet
511 received background screening results from the Federal Bureau of
512 Investigation. A standard license may be granted to the licensee
513 upon the agency's receipt of a report of the results of the
514 Federal Bureau of Investigation background screening for each
515 individual required by this section to undergo background
516 screening that confirms that all standards have been met or upon
517 the granting of an exemption from disqualification by the agency
518 as set forth in chapter 435.
519 (4) When a person is newly employed in a capacity that
520 requires screening under this section, the licensee must notify
521 the agency of the change within the time period specified in the
522 authorizing statute or rules and must submit to the agency
523 information necessary to conduct level 2 screening or provide
524 evidence of compliance with background screening requirements of
525 this section. The person may serve in his or her capacity
526 pending the agency's receipt of the report from the Federal
527 Bureau of Investigation if he or she has met the standards for
528 the Department of Law Enforcement background check. However, the
529 person may not continue to serve in his or her capacity if the
530 report indicates any violation of background screening standards
531 unless an exemption from disqualification has been granted by
532 the agency as set forth in chapter 435.

533 (5) Background screening is not required to obtain a
534 certificate of exemption issued under s. 483.106.
535 408.810 Minimum licensure requirements.--In addition to
536 the licensure requirements specified in this part, authorizing
537 statutes, and applicable rules, each applicant and licensee must
538 comply with the requirements of this section in order to obtain
539 and maintain a license.
540 (1) An applicant for licensure must comply with the
541 background screening requirements of s. 408.809.
542 (2) An applicant for licensure must provide a description
543 and explanation of any exclusions, suspensions, or terminations
544 of the applicant from the Medicare, Medicaid, or federal
545 Clinical Laboratory Improvement Amendment (CLIA) programs.
546 (3) Unless otherwise specified in this part, authorizing
547 statutes, or applicable rules, any information required to be
548 reported to the agency must be submitted within 21 calendar days
549 after the report period or effective date of the information.
550 (4) Whenever a licensee discontinues operation of a
551 provider:
552 (a) The licensee must inform the agency not less than 30
553 days prior to the discontinuance of operation and inform clients
554 of such discontinuance as required by authorizing statutes.
555 Immediately upon discontinuance of operation by a provider, the
556 licensee shall surrender the license to the agency and the
557 license shall be canceled.
558 (b) The licensee shall remain responsible for retaining
559 and appropriately distributing all records within the timeframes
560 prescribed in authorizing statutes and applicable rules. In

561 addition, the licensee or, in the event of death or dissolution
562 of a licensee, the estate or agent of the licensee shall:
563 1. Make arrangements to forward records for each client to
564 one of the following, based upon the client's choice: the client
565 or the client's legal representative, the client's attending
566 physician, or the health care provider where the client
567 currently receives services; or
568 2. Cause a notice to be published in the newspaper of
569 greatest general circulation in the county in which the provider
570 was located that advises clients of the discontinuance of the
571 provider operation. The notice must inform clients that they may
572 obtain copies of their records and specify the name, address,
573 and telephone number of the person from whom the copies of
574 records may be obtained. The notice must appear at least once a
575 week for 4 consecutive weeks.
576 (5)(a) On or before the first day services are provided to
577 a client, a licensee must inform the client and his or her
578 immediate family or representative, if appropriate, of the right
579 to report:
580 1. Complaints. The statewide toll-free telephone number
581 for reporting complaints to the agency must be provided to
582 clients in a manner that is clearly legible and must include the
583 words: "To report a complaint regarding the services you
584 receive, please call toll-free (phone number)."
585 2. Abusive, neglectful, or exploitative practices. The
586 statewide toll-free telephone number for the central abuse
587 hotline must be provided to clients in a manner that is clearly
588 legible and must include the words: "To report abuse, neglect,

589 or exploitation, please call toll-free (phone number)." The
590 agency shall publish a minimum of a 90-day advance notice of a
591 change in the toll-free telephone numbers.
592 (b) Each licensee shall establish appropriate policies and
593 procedures for providing such notice to clients.
594 (6) An applicant must provide the agency with proof of the
595 applicant's legal right to occupy the property before a license
596 may be issued. Proof may include, but need not be limited to,
597 copies of warranty deeds, lease or rental agreements, contracts
598 for deeds, quitclaim deeds, or other such documentation.
599 (7) If proof of insurance is required by the authorizing
600 statute, that insurance must be in compliance with chapter 624,
601 chapter 626, chapter 627, or chapter 628 and with agency rules.
602 (8) Upon application for initial licensure or change of
603 ownership licensure, the applicant shall furnish satisfactory
604 proof of the applicant's financial ability to operate in
605 accordance with the requirements of this part, authorizing
606 statutes, and applicable rules. The agency shall establish
607 standards for this purpose, including information concerning the
608 applicant's controlling interests. The agency shall also
609 establish documentation requirements, to be completed by each
610 applicant, that show anticipated provider revenues and
611 expenditures, the basis for financing the anticipated cash-flow
612 requirements of the provider, and an applicant's access to
613 contingency financing. A current certificate of authority,
614 pursuant to chapter 651, may be provided as proof of financial
615 ability to operate. The agency may require a licensee to provide
616 proof of financial ability to operate at any time if there is

617 evidence of financial instability, including, but not limited
618 to, unpaid expenses necessary for the basic operations of the
619 provider.
620 (9) A controlling interest may not withhold from the
621 agency any evidence of financial instability, including, but not
622 limited to, checks returned due to insufficient funds,
623 delinquent accounts, nonpayment of withholding taxes, unpaid
624 utility expenses, nonpayment for essential services, or adverse
625 court action concerning the financial viability of the provider
626 or any other provider licensed under this part that is under the
627 control of the controlling interest. Any person who violates
628 this subsection commits a misdemeanor of the second degree,
629 punishable as provided in s. 775.082 or s. 775.083. Each day of
630 continuing violation is a separate offense.
631 (10) The agency may not issue a license to a health care
632 provider subject to the certificate-of-need provisions in part I
633 of this chapter if the health care provider has not been issued
634 a certificate of need or an exemption. Upon initial licensure of
635 any such provider, the authorization contained in the
636 certificate of need shall be considered fully implemented and
637 merged into the license and shall have no force and effect upon
638 termination of the license for any reason.
639 408.811 Right of inspection; copies; inspection reports.--
640 (1) An authorized officer or employee of the agency may
641 make or cause to be made any inspection or investigation deemed
642 necessary by the agency to determine the state of compliance
643 with this part, authorizing statutes, and applicable rules. The
644 right of inspection extends to any business that the agency has

645 reason to believe is being operated as a provider without a
646 license, but inspection of any business suspected of being
647 operated without the appropriate license may not be made without
648 the permission of the owner or person in charge unless a warrant
649 is first obtained from a circuit court. Any application for a
650 license issued under this part, authorizing statutes, or
651 applicable rules constitutes permission for an appropriate
652 inspection to verify the information submitted on or in
653 connection with the application.
654 (a) All inspections shall be unannounced, except as
655 specified in s. 408.806.
656 (b) Inspections for relicensure shall be conducted
657 biennially unless otherwise specified by authorizing statutes or
658 applicable rules.
659 (2) Inspections conducted in conjunction with
660 certification may be accepted in lieu of a complete licensure
661 inspection. However, a licensure inspection may also be
662 conducted to review any licensure requirements that are not also
663 requirements for certification.
664 (3) The agency shall have access to and the licensee shall
665 provide copies of all provider records required during an
666 inspection at no cost to the agency.
667 (4)(a) Each licensee shall maintain as public information,
668 available upon request, records of all inspection reports
669 pertaining to that provider that have been filed by the agency
670 unless those reports are exempt from or contain information that
671 is exempt from s. 119.07(1) and s. 24(a), Art. I of the State
672 Constitution or is otherwise made confidential by law. Effective

673 October 1, 2006, copies of such reports shall be retained in the
674 records of the provider for at least 3 years following the date
675 the reports are filed and issued, regardless of a change of
676 ownership.
677 (b) A licensee shall, upon the request of any person who
678 has completed a written application with intent to be admitted
679 by such provider, any person who is a client of such provider,
680 or any relative, spouse, or guardian of any such person, furnish
681 to the requester a copy of the last inspection report pertaining
682 to the licensed provider that was issued by the agency or by an
683 accrediting organization if such report is used in lieu of a
684 licensure inspection.
685 408.812 Unlicensed activity.--
686 (1) A person or entity may not offer or advertise services
687 that require licensure as defined by this part, authorizing
688 statutes, or applicable rules to the public without obtaining a
689 valid license from the agency. A licenseholder may not advertise
690 or hold out to the public that he or she holds a license for
691 other than that for which he or she actually holds the license.
692 (2) The operation or maintenance of an unlicensed provider
693 or the performance of any services that require licensure
694 without proper licensure is a violation of this part and
695 authorizing statutes. Unlicensed activity constitutes harm that
696 materially affects the health, safety, and welfare of clients.
697 The agency or any state attorney may, in addition to other
698 remedies provided in this part, bring an action for an
699 injunction to restrain such violation, or to enjoin the future
700 operation or maintenance of the unlicensed provider or the

701 performance of any services in violation of this part and
702 authorizing statutes, until compliance with this part,
703 authorizing statutes, and agency rules has been demonstrated to
704 the satisfaction of the agency.
705 (3) It is unlawful for any person or entity to own,
706 operate, or maintain an unlicensed provider. If after receiving
707 notification from the agency, such person or entity fails to
708 cease operation and apply for a license under this part and
709 authorizing statutes, the person or entity shall be subject to
710 penalties as prescribed by authorizing statutes and applicable
711 rules. Each day of continued operation is a separate offense.
712 (4) Any person or entity that fails to cease operation
713 after agency notification may be fined $1,000 for each day of
714 noncompliance.
715 (5) When a controlling interest or licensee has an
716 interest in more than one provider and fails to license a
717 provider rendering services that require licensure, the agency
718 may revoke all licenses and impose actions under s. 408.814 and
719 a fine of $1,000 per day, unless otherwise specified by
720 authorizing statutes, against each licensee until such time as
721 the appropriate license is obtained for the unlicensed
722 operation.
723 (6) In addition to granting injunctive relief pursuant to
724 subsection (2), if the agency determines that a person or entity
725 is operating or maintaining a provider without obtaining a
726 license and determines that a condition exists that poses a
727 threat to the health, safety, or welfare of a client of the
728 provider, the person or entity is subject to the same actions

729 and fines imposed against a licensee as specified in this part,
730 authorizing statutes, and agency rules.
731 (7) Any person aware of the operation of an unlicensed
732 provider must report that provider to the agency.
733 408.813 Administrative fines.--As a penalty for any
734 violation of this part, authorizing statutes, or applicable
735 rules, the agency may impose an administrative fine. Unless the
736 amount or aggregate limitation of the fine is prescribed by
737 authorizing statutes or applicable rules, the agency may
738 establish criteria by rule for the amount or aggregate
739 limitation of administrative fines applicable to this part,
740 authorizing statutes, and applicable rules. Each day of
741 violation constitutes a separate violation and is subject to a
742 separate fine. For fines imposed by final order of the agency
743 and not subject to further appeal, the violator shall pay the
744 fine plus interest at the rate specified in s. 55.03 for each
745 day beyond the date set by the agency for payment of the fine.
746 408.814 Moratorium; emergency suspension.--
747 (1) The agency may impose an immediate moratorium or
748 emergency suspension as defined in s. 120.60 on any provider if
749 the agency determines that any condition related to the provider
750 or licensee presents a threat to the health, safety, or welfare
751 of a client.
752 (2) A provider or licensee, the license of which is denied
753 or revoked, may be subject to immediate imposition of a
754 moratorium or emergency suspension to run concurrently with
755 licensure denial, revocation, or injunction.
756 (3) A moratorium or emergency suspension remains in effect

757 after a change of ownership, unless the agency has determined
758 that the conditions that created the moratorium, emergency
759 suspension, or denial of licensure have been corrected.
760 (4) When a moratorium or emergency suspension is placed on
761 a provider or licensee, notice of the action shall be posted and
762 visible to the public at the location of the provider until the
763 action is lifted.
764 408.815 License or application denial; revocation.--
765 (1) In addition to the grounds provided in authorizing
766 statutes, grounds that may be used by the agency for denying and
767 revoking a license or change of ownership application include
768 any of the following actions by a controlling interest:
769 (a) False representation of a material fact in the license
770 application or omission of any material fact from the
771 application.
772 (b) An intentional or negligent act materially affecting
773 the health or safety of a client of the provider.
774 (c) A violation of this part, authorizing statutes, or
775 applicable rules.
776 (d) A demonstrated pattern of deficient performance.
777 (e) The applicant, licensee, or controlling interest has
778 been or is currently excluded, suspended, or terminated from
779 participation in the state Medicaid program, the Medicaid
780 program of any other state, or the Medicare program.
781 (2) If a licensee lawfully continues to operate while a
782 denial or revocation is pending in litigation, the licensee must
783 continue to meet all other requirements of this part,
784 authorizing statutes, and applicable rules and must file

785 subsequent renewal applications for licensure and pay all
786 licensure fees. The provisions of ss. 120.60(1) and
787 408.806(3)(c) shall not apply to renewal applications filed
788 during the time period in which the litigation of the denial or
789 revocation is pending until that litigation is final.
790 (3) An action under s. 408.814 or denial of the license of
791 the transferor may be grounds for denial of a change of
792 ownership application of the transferee.
793 408.816 Injunctions.--
794 (1) In addition to the other powers provided by this part,
795 authorizing statutes, and applicable rules, the agency may
796 institute injunction proceedings in a court of competent
797 jurisdiction to:
798 (a) Restrain or prevent the establishment or operation of
799 a provider that does not have a license or is in violation of
800 any provision of this part, authorizing statutes, or applicable
801 rules. The agency may also institute injunction proceedings in a
802 court of competent jurisdiction when a violation of this part,
803 authorizing statutes, or applicable rules constitutes an
804 emergency affecting the immediate health and safety of a client.
805 (b) Enforce the provisions of this part, authorizing
806 statutes, or any minimum standard, rule, or order issued or
807 entered into pursuant thereto when the attempt by the agency to
808 correct a violation through administrative sanctions has failed
809 or when the violation materially affects the health, safety, or
810 welfare of clients or involves any operation of an unlicensed
811 provider.
812 (c) Terminate the operation of a provider when a violation

813 of any provision of this part, authorizing statutes, or any
814 standard or rule adopted pursuant thereto exists that materially
815 affects the health, safety, or welfare of a client.
816
817 Such injunctive relief may be temporary or permanent.
818 (2) If action is necessary to protect clients of providers
819 from immediate, life-threatening situations, the court may allow
820 a temporary injunction without bond upon proper proofs being
821 made. If it appears by competent evidence or a sworn,
822 substantiated affidavit that a temporary injunction should be
823 issued, the court, pending the determination on final hearing,
824 shall enjoin the operation of the provider.
825 408.817 Administrative proceedings.--Administrative
826 proceedings challenging agency licensure enforcement action
827 shall be reviewed on the basis of the facts and conditions that
828 resulted in the agency action.
829 408.818 Health Care Trust Fund.--Unless otherwise
830 prescribed by authorizing statutes, all fees and fines collected
831 under this part, authorizing statutes, and applicable rules
832 shall be deposited into the Health Care Trust Fund, created in
833 s. 408.16, and used to pay the costs of the agency in
834 administering the provider program paying the fees or fines.
835 408.819 Rules.--The agency is authorized to adopt rules as
836 necessary to administer this part. Any licensed provider that is
837 in operation at the time of adoption of any applicable rule
838 under this part or authorizing statutes shall be given a
839 reasonable time under the particular circumstances, not to
840 exceed 6 months after the date of such adoption, within which to

841 comply with such rule, unless otherwise specified by rule.
842 408.820 Exemptions.--Except as prescribed in authorizing
843 statutes, the following exemptions shall apply to specified
844 requirements of this part:
845 (1) Laboratories authorized to perform testing under the
846 Drug-Free Workplace Act, as provided under ss. 112.0455 and
847 440.102, are exempt from s. 408.810(5)-(10).
848 (2) Birth centers, as provided under chapter 383, are
849 exempt from s. 408.810(7)-(10).
850 (3) Abortion clinics, as provided under chapter 390, are
851 exempt from s. 408.810(7)-(10).
852 (4) Crisis stabilization units, as provided under parts I
853 and IV of chapter 394, are exempt from s. 408.810(8)-(10).
854 (5) Short-term residential treatment facilities, as
855 provided under parts I and IV of chapter 394, are exempt from s.
856 408.810(8)-(10).
857 (6) Residential treatment facilities, as provided under
858 part IV of chapter 394, are exempt from s. 408.810(8)-(10).
859 (7) Residential treatment centers for children and
860 adolescents, as provided under part IV of chapter 394, are
861 exempt from s. 408.810(8)-(10).
862 (8) Hospitals, as provided under part I of chapter 395,
863 are exempt from s. 408.810(7)-(9).
864 (9) Ambulatory surgical centers, as provided under part I
865 of chapter 395, are exempt from s. 408.810(7)-(10).
866 (10) Mobile surgical facilities, as provided under part I
867 of chapter 395, are exempt from s. 408.810(7)-(10).
868 (11) Private review agents, as provided under part I of

869 chapter 395, are exempt from ss. 408.806(7), 408.810, and
870 408.811.
871 (12) Health care risk managers, as provided under part I
872 of chapter 395, are exempt from ss. 408.806(7), 408.810, and
873 408.811.
874 (13) Nursing homes, as provided under part II of chapter
875 400, are exempt from s. 408.810(7).
876 (14) Assisted living facilities, as provided under part
877 III of chapter 400, are exempt from s. 408.810(10).
878 (15) Home health agencies, as provided under part IV of
879 chapter 400, are exempt from s. 408.810(10).
880 (16) Nurse registries, as provided under part IV of
881 chapter 400, are exempt from s. 408.810(6) and (10).
882 (17) Companion services or homemaker services providers,
883 as provided under part IV of chapter 400, are exempt from s.
884 408.810(6)-(10).
885 (18) Adult day care centers, as provided under part V of
886 chapter 400, are exempt from s. 408.810(10).
887 (19) Adult family-care homes, as provided under part VII
888 of chapter 400, are exempt from s. 408.810(7)-(10).
889 (20) Homes for special services, as provided under part
890 VIII of chapter 400, are exempt from s. 408.810(7)-(10).
891 (21) Transitional living facilities, as provided under
892 part VIII of chapter 400, are exempt from s. 408.810(7)-(10).
893 (22) Prescribed pediatric extended care centers, as
894 provided under part IX of chapter 400, are exempt from s.
895 408.810(10).
896 (23) Home medical equipment providers, as provided under

897 part X of chapter 400, are exempt from s. 408.810(10).
898 (24) Intermediate care facilities for persons with
899 developmental disabilities, as provided under part XI of chapter
900 400, are exempt from s. 408.810(7).
901 (25) Health care services pools, as provided under part
902 XII of chapter 400, are exempt from s. 408.810(6)-(10).
903 (26) Health care clinics, as provided under part XIII of
904 chapter 400, are exempt from ss. 408.809 and 408.810(1), (6),
905 (7), and (10).
906 (27) Clinical laboratories, as provided under part I of
907 chapter 483, are exempt from s. 408.810(5)-(10).
908 (28) Multiphasic health testing centers, as provided under
909 part II of chapter 483, are exempt from s. 408.810(5)-(10).
910 (29) Organ and tissue procurement agencies, as provided
911 under chapter 765, are exempt from s. 408.810(5)-(10).
912 Section 6. Paragraph (b) of subsection (1) of section
913 400.801, Florida Statutes, is amended to read:
914 400.801 Homes for special services.--
915 (1) As used in this section, the term:
916 (b) "Home for special services" means a site licensed by
917 the agency prior to January 1, 2006, where specialized health
918 care services are provided, including personal and custodial
919 care, but not continuous nursing services.
920 Section 7. Subsections (1) and (3) of section 408.831,
921 Florida Statutes, are amended to read:
922 408.831 Denial, suspension, or revocation of a license,
923 registration, certificate, or application.--
924 (1) In addition to any other remedies provided by law, the

925 agency may deny each application or suspend or revoke each
926 license, registration, or certificate of entities regulated or
927 licensed by it:
928 (a) If the applicant, licensee, or a licensee subject to
929 this part which shares a common controlling interest with the
930 applicant ~~registrant, or certificateholder, or, in the case of a~~
931 ~~corporation, partnership, or other business entity, if any~~
932 ~~officer, director, agent, or managing employee of that business~~
933 ~~entity or any affiliated person, partner, or shareholder having~~
934 ~~an ownership interest equal to 5 percent or greater in that~~
935 ~~business entity,~~ has failed to pay all outstanding fines, liens,
936 or overpayments assessed by final order of the agency or final
937 order of the Centers for Medicare and Medicaid Services, not
938 subject to further appeal, unless a repayment plan is approved
939 by the agency; or
940 (b) For failure to comply with any repayment plan.
941 (3) This section provides standards of enforcement
942 applicable to all entities licensed or regulated by the Agency
943 for Health Care Administration. This section controls over any
944 conflicting provisions of chapters 39, ~~381,~~ 383, 390, 391, ~~393,~~
945 394, 395, 400, 408, 468, 483, and 765 ~~641~~ or rules adopted
946 pursuant to those chapters.
947 Section 8. In case of conflict between the provisions of
948 part II of chapter 408, Florida Statutes, and the authorizing
949 statutes governing the licensure of health care providers by the
950 Agency for Health Care Administration found in s. 112.0455 and
951 chapters 383, 390, 394, 395, 400, 440, 483, and 765, Florida
952 Statutes, the provisions of part II of chapter 408, Florida

953 Statutes, shall prevail.
954 Section 9. All provisions that apply to the entities
955 specified in s. 408.802, Florida Statutes, as created by this
956 act, in effect on October 1, 2006, that provide for annual
957 licensure fees are hereby adjusted to provide for biennial
958 licensure fees with a corresponding doubling of the amount.
959 Section 10. The Legislature recognizes that there is a
960 need to conform the Florida Statutes to the policy decisions
961 reflected in this act and that there may be a need to resolve
962 apparent conflicts between any changes or additions to the
963 authorizing statutes, as defined in s. 408.803, Florida
964 Statutes, or any other legislation that has been or may be
965 enacted during 2006 and this chapter 408, Florida Statutes, as
966 amended by this act. Therefore, in the interim between this act
967 becoming a law and the 2007 Regular Session of the Legislature
968 or an earlier special session addressing this issue, the
969 Division of Statutory Revision shall provide the relevant
970 substantive committees of the Senate and the House of
971 Representatives with assistance, upon request, to enable such
972 committees to prepare draft legislation to conform the Florida
973 Statutes and any legislation enacted during 2006 to the
974 provisions of this act.
975 Section 11. For the purpose of staggering license
976 expiration dates, the Agency for Health Care Administration may
977 issue a license for less than a 2-year period to those providers
978 making the transition from annual to biennial licensure as
979 authorized in this act. The agency shall charge a prorated
980 licensure fee for this shortened period. This authority shall

981 expire September 30, 2008.

982 Section 12. This act shall take effect October 1, 2006.

Amendments to HB 7141 by Rep. Garcia

Amendment #1

The amendment provides criteria for creation of a nursing home by combining licensed beds from two or more licensed nursing homes within a district.

Amendment #2

The amendment clarifies the fine charged to a facility for failure to submit a licensure renewal application.

Amendment #3

HB 7141 provides that in the event of a disaster an inactive license may be issue to a facility. The amendment defines disaster to mean a sudden emergency occurrence beyond the control of the licensee including natural, technological, or manmade, which renders the provider inoperable at the premises.

Amendment #4

The amendment provides that certain health care providers are not a "clinic" licensed under part XIII of chapter 400, F.S.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **HB 7141**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Health & Families Council
2 Representative(s) Garcia offered the following:
3
4 **Amendment (with directory and title amendments)**
5 Between line(s) 114-115 and insert:
6
7 Section 5. Paragraphs (f)-(s) of subsection (3) of section
8 408.036, Florida Statutes, are redesignated as paragraphs (g)-
9 (t), respectively, and a paragraph (f) is added to that
10 subsection, to read:
11 408.036 Projects subject to review; exemptions.--
12 (3) EXEMPTIONS.--Upon request, the following projects are
13 subject to exemption from the provisions of subsection (1):
14 (f) For the creation of a single nursing home within a
15 district by combining licensed beds from two or more licensed
16 nursing homes within such district, regardless of subdistrict
17 boundaries, if 50 percent of the beds in the created nursing
18 home are transferred from the only nursing home in a county and
19 its utilization data demonstrate that it had an occupancy rate
20 of less than 75 percent for the 12-month period ending 90 days
21 before the request for the exemption. This paragraph shall be

22 repealed upon the expiration of the moratorium established in s.
23 651.1185(1).
24
25 ========== T I T L E A M E N D M E N T ==========
26 Between line(s) 3-4 insert:
27
28 amending s. 408.036, F.S.; exempting a nursing home
29 that is created by combining certain licensed beds
30 from requirements for obtaining a certificate of need
31 from the Agency for Health Care Administration;
32 providing for future repeal;

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

Bill No. **HB 7141**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Health & Families Council
2 Representative(s) Garcia offered the following:
3
4 **Amendment (with directory and title amendments)**
5 Remove line(s) 343-346 and insert:
6
7 operation. The failure to timely submit a renewal application
8 and license fee shall result in a $50 per day late fee charged
9 to the licensee by the agency; however, the aggregate amount of
10 the late fee may not exceed 50 percent of the licensure fee or
11 $500, whichever is less.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3 (for drafter's use only)

Bill No. **HB 7141**

COUNCIL/COMMITTEE ACTION

ADOPTED __ (Y/N)

ADOPTED AS AMENDED __ (Y/N)

ADOPTED W/O OBJECTION __ (Y/N)

FAILED TO ADOPT __ (Y/N)

WITHDRAWN __ (Y/N)

OTHER ____

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1 Council/Committee hearing bill: Health & Families Council
2 Representative(s) Garcia offered the following:
3
4 **Amendment (with directory and title amendments)**
5 Remove line(s) 461 and insert:
6
7 is the result of a disaster at the licensed premises. For the
8 purposes of this section, the term "disaster" means a sudden
9 emergency occurrence beyond the control of the licensee, whether
10 natural, technological, or manmade, which renders the provider
11 inoperable at the premises. Upon agency

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 4 (for drafter's use only)

Bill No. **HB 7141**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Health & Families Council
2 Representative(s) Garcia offered the following:
3
4 **Amendment (with directory and title amendments)**
5 Between line(s) 919-920 and insert:
6
7 Section 7. Paragraphs (e) and (i) of subsection (4) of
8 section 400.9905, Florida Statutes, are amended, and paragraph
9 (k) is added to that subsection, to read:
10 400.9905 Definitions.--
11 (4) "Clinic" means an entity at which health care services
12 are provided to individuals and which tenders charges for
13 reimbursement for such services, including a mobile clinic and a
14 portable equipment provider. For purposes of this part, the term
15 does not include and the licensure requirements of this part do
16 not apply to:
17 (e) An entity that is exempt from federal taxation under
18 26 U.S.C. s. 501(c)(3) or s. 501(c)(4), <u>an employee stock</u>
19 <u>ownership plan under 26 U.S.C. s. 409 having a Board of Trustees</u>
20 <u>of not less than two-thirds of which are Florida licensed health</u>
21 <u>care practitioners and providing only physical therapy services</u>

22 under physician orders, any community college or university
23 clinic, and any entity owned or operated by the federal or state
24 government, including agencies, subdivisions, or municipalities
25 thereof.
26 (i) Entities that provide ~~only~~ oncology or radiation
27 therapy services by physicians licensed under chapter 458 or
28 chapter 459 which are owned by a corporation whose shares are
29 publicly traded on a recognized stock exchange.
30 (k) Entities that provide licensed practitioners to staff
31 emergency departments or to deliver anesthesia services in
32 facilities licensed under chapter 395 and that derive at least
33 90 percent of their gross annual revenues from the provision of
34 such services. Entities claiming exemption from licensure under
35 this paragraph must provide documentation demonstrating
36 compliance.
37
38 ========== T I T L E A M E N D M E N T ==========
39 Remove line(s) 76 and insert:
40
41 after a certain date; amending s. 400.9905, F.S.;
42 excluding certain entities from the definition of
43 "clinic"; amending s. 408.831, F.S.; revising

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7199 (PCB FFF 06-05) CS Forensic Treatment and Training
SPONSOR(S): Future of Florida's Families Committee and Rep. Galvano
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 2010, HB 1503

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Future of Florida's Families Committee	5 Y, 0 N	Davis	Collins
1) Criminal Justice Committee	6 Y, 0 N, w/CS	Cunningham	Kramer
2) Health & Families Council		Davis	Moore
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill revises various provisions of Chapter 916, F.S., related to the treatment and training of persons who have a mental illness, mental retardation, or are autistic. The bill also clarifies that the treatment and training of defendants with mental retardation or autism is no longer provided by the Department of Children and Families (DCF), but is now provided through the Agency for Persons with Disabilities (APD). In addition, the bill:

- Removes numerous outdated and obsolete provisions, and streamlines, clarifies, and reorganizes provisions;
- Updates definitions to tie term for 'forensic client' to procedures in chapter rather than recreate procedures in definitions; and creates definition for "defendant" to distinguish persons who have not yet become clients via commitment procedures;
- Requires separate housing requirements for forensic clients (conforms to current practice);
- Adds provisions relating to the use of "restraints" and "seclusion" including rule authority to establish standards and procedures for the use of restraints and seclusion in forensic facilities;
- Clarifies provisions to distinguish defendants who are currently in the custody of the Department of Corrections;
- Removes some references to Florida Rules of Criminal Procedure as these references change and applicability of rules is under jurisdiction of courts;
- Deletes requirement for APD's Inspector General to study and notify state attorney of sexual misconduct (needs to be reported and investigated immediately);
- Allows transfer of court jurisdiction for forensic clients; and
- Clarifies distinction between ch. 916, F.S., forensic procedures for involuntary commitment and ch. 393, F.S., procedures for **non**-forensic involuntary commitment (the source of much court confusion).

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: ss. 916.105, 916.106, 916.107, 916.1075, 916.1081, 916.1085, 916.1091, 916.1093, 916.111, 916.115, 916.12, 916.13, 916.145, 916.15, 916.16, 916.17, 916.301, 916.3012, 916.302, 916.3025, 916.303, 916.304, 921.137, 985.223, 287.057, 408.036, 943.0585, 942.059.

According to the Agency for Persons with Disabilities, there is no fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provides Limited Government: The bill revises various provisions of Chapter 916, F.S., related to the treatment and training of defendants who have a mental illness, mental retardation, or are autistic.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Chapter 916, F.S., the "Forensic Client Services Act," applies to persons charged with a felony and found to be incompetent to proceed due to mental illness, mental retardation, or autism or who have been acquitted of felonies by reason of insanity. Persons committed under ch. 916, F.S., remain under the jurisdiction of the committing court but are committed to the custody of the department. Chapter 916, F.S., is divided into three parts: Part I, General Provisions; Part II, Forensic Services for Persons Who are Mentally Ill; and, Part III, Forensic Services for Persons Who are Retarded or Autistic. The Florida Rules of Criminal Procedure (FRCP Rules 3.210-3.219) contain court procedures for forensic clients in areas such as the appointment of experts, mental competency examination and report, competence to proceed, hearing and disposition, judgment of not guilty by reason of insanity disposition, and conditional release.

Part I provides legislative intent for DCF to "establish, locate, and maintain separate and secure facilities and programs for the treatment or training of defendants" committed under the provisions of the chapter.[1] This part provides definitions for terminology used in the entire chapter, including definitions of "autism," "forensic client," "mental illness," and "retardation."[2] Part I also includes the rights of forensic clients, which include the right to:

- Individual dignity,
- Treatment,
- Express and informed consent,
- Quality treatment, communication,
- Abuse reporting, and visits,
- To have personal effects and clothing,
- To vote if otherwise eligible,
- Confidentiality of the clinical record, and
- Habeas corpus.[3]

This part also provides prohibitions and penalties for sexual misconduct by an employee with a forensic client, penalties for escape from a forensic program, and penalties for the introduction or removal of certain articles into a forensic facility. It provides general rulemaking authority for the department.

Part II of ch. 916, F.S., relates to forensic services for persons who are mentally ill and describes the criteria and procedures for the examination, involuntary commitment, and adjudication of persons who are incompetent to proceed due to mental illness or who have been adjudicated not guilty by reason of insanity.

This part also directs DCF to provide either directly or through a contract with accredited institutions standardized criteria and procedures to be used in evaluations and to develop clinical protocol and procedures consistent with the FRCP. In addition, DCF must develop a training plan for community

[1] s. 916.105, F.S.
[2] s. 916.106, F.S.
[3] s. 916.107, F.S.

mental health professionals who perform forensic evaluations, provide training for professionals doing evaluations and providing reports to the court and develop a system to evaluate the program's success. Each year DCF is required to provide the court with a list of mental health professionals approved as experts.

Part II authorizes the court to appoint no more than three nor fewer than two experts to evaluate a criminal defendant's mental condition, including competency, insanity, and the need for involuntary hospitalization or placement. The court is required to authorize reasonable fees for expert evaluations and testimony.

Pursuant to this part, an individual is incompetent to proceed if he or she "does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding or if the defendant has no rational, as well as factual, understanding of the proceedings against her or him."[4]

In considering the issue of competence to proceed, the statute requires that the examining expert must report to the court regarding the defendant's capacity to appreciate the charges or allegations against him or her, appreciate the range and nature of possible penalties, understand the adversarial nature of the legal process, consult with counsel regarding the facts pertinent to the case, behave appropriately in court, and testify relevantly. The examining expert must include in the report to the court any other information deemed relevant. If the expert finds the defendant incompetent to proceed, they must also report on recommended treatment that will allow the defendant to regain competence. The expert's report to the court must also address the defendant's mental illness, recommended treatments and alternatives and their availability in the community, the likelihood of the defendant's attaining competence under the recommended treatment, an assessment of the probable duration of the treatment, and the probability that the defendant will attain competence to proceed in the foreseeable future.[5]

A defendant may not automatically be deemed incompetent to proceed simply because his or her satisfactory mental functioning is dependent upon psychotropic medication. "Psychotropic medication" is defined for the purposes of ch. 916, F.S., as "any drug or compound used to treat mental or emotional disorders affecting the mind, behavior, intellectual functions, perception, moods, or emotions and includes antipsychotic, antidepressant, antimanic, and antianxiety drugs."[6]

Part II of ch. 916, F.S., also provides the criteria for defendants who are adjudicated incompetent to proceed to be involuntarily committed for treatment. The court must find by clear and convincing evidence that the defendant is mentally ill and because of the mental illness:

- The defendant is manifestly incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services, and, without treatment, the defendant is likely to suffer from neglect or refuse to care for herself or himself and such neglect or refusal poses a real and present threat of substantial harm to the defendant's well-being; and
- There is a substantial likelihood that in the near future the defendant will inflict serious bodily harm on herself or himself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm; and
- All available, less restrictive treatment alternatives, including treatment in community residential facilities or community inpatient or outpatient settings, which would offer an opportunity for improvement of the defendant's condition have been judged to be inappropriate; and
- There is a substantial probability that the mental illness causing the defendant's incompetence will respond to treatment and the defendant will regain competency to proceed in the reasonably foreseeable future.[7]

---

[4] s. 916.12, F.S.
[5] s. 916.12, F.S.
[6] s. 916.12(5), F.S.
[7] s. 916.13, F.S.

This part also provides that a defendant who is acquitted of criminal charges because of a finding of not guilty by reason of insanity may be involuntarily committed if he or she is mentally ill and, because of the mental illness, is manifestly dangerous to himself or herself or others.[8] Persons committed under Part I of ch. 916, F.S., are committed to the custody of DCF and are usually treated at one of the three forensic state mental health treatment facilities at Florida State Hospital in Chattahoochee, North Florida Evaluation and Treatment Center in Gainesville, or South Florida Evaluation and Treatment Center in Miami.

The court may also order conditional release of a defendant who has been found incompetent to proceed or not guilty by reason of insanity. Conditional release must be based on an approved plan for providing appropriate outpatient care. The court may also order conditional release in lieu of an involuntary commitment to a facility. If outpatient treatment is appropriate, a written plan for outpatient treatment, including recommendations from qualified professionals, must be filed with the court.[9]

Part III of ch. 916, F.S., relates to forensic services for persons with retardation or autism and describes the criteria and procedures for the examination, involuntary commitment, and adjudication of persons who are incompetent to proceed due to mental retardation or autism. Similar to the provisions of Part I, this section directs that the department must provide the courts annually with a list of professionals who are qualified to perform evaluations of defendants alleged to be incompetent to proceed due to retardation or autism. The courts may use professionals from this list when ordering evaluations for defendants suspected of being retarded or autistic, but one of the experts appointed by the court must be the "developmental services program of the department," and the department is directed to "select a psychologist who is licensed or authorized by law to practice in this state, with experience in evaluating persons suspected of having retardation or autism and a social service professional with experience in working with persons with retardation or autism to evaluate the defendant."[10]

The court must find by clear and convincing evidence that:

- The defendant is retarded or autistic,
- There is a substantial likelihood that in the near future he or she will inflict serious bodily harm on himself or herself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm,
- There is no less restrictive treatment available, and
- There is a substantial probability that the retardation or autism causing the defendant's incompetence will respond to training and he or she will regain competency to proceed in the reasonably foreseeable future.[11]

A defendant who is found to be incompetent to proceed and meets the above criteria is committed to the department. No later than six months after admission, at the end of any period of extended commitment, or at any time the administrator determines that the defendant has regained competency to proceed or no longer meets the criteria for continued commitment, the administrator must file a report with the court.[12]

If a defendant remains incompetent to proceed within a reasonable time after such determination, not to exceed two years, the charges against him or her are to be dropped. The only exception is if the court specifies in its order the reasons for expecting that the defendant will become competent to proceed within the foreseeable future and specifies the time within which that is expected to occur. The charges against the defendant are dismissed without prejudice to the state to refile the charges should the

[8] s. 916.15, F.S.
[9] s. 916.17, F.S.
[10] s. 916.301, F.S.
[11] s. 916.302, F.S.
[12] Ibid.

defendant be declared competent to proceed in the future.[13] The individual may then apply for services from the agency.

If the defendant requires involuntary residential services under s. 393.11, F.S., and there is a substantial likelihood that he or she will injure another person or continues to present a danger of escape, and all available less restrictive alternatives, including services in community residential facilities or other community settings are inappropriate, then the defendant's placement in a secure facility or program may be continued. An individual involuntarily placed under this provision must have an annual review of his or her status by the court at a hearing. The annual review and hearing are to determine whether the individual continues to meet the criteria for involuntary residential services and, if so, if placement in a secure facility is still required because the court finds that the individual is likely to physically injure others. However, in no circumstance may a defendant's placement in a secure facility or program exceed the maximum sentence for the crime for which the defendant was charged.[14]

Forensic programs for persons with developmental disabilities are the Mentally Retarded Defendant Programs, which are located at Sunland in Marianna, Florida State Hospital in Chattahoochee, and Taccachale in Gainesville.

The Agency for Persons with Disabilities (APD) was created effective October 1, 2004. The agency is housed within the Department of Children and Families (DCF) for administrative purposes only. It is not subject to the control, supervision or direction of DCF, and the director of APD is appointed by the Governor. The agency's mission is to assist people who have developmental disabilities and their families. The agency also provides assistance to identify the needs of people with developmental disabilities and funding to purchase supports and services. Although the agency's Central Office is located in Tallahassee, supports and services for people with developmental disabilities are provided through district offices throughout the state.

Developmental disabilities include mental retardation, autism, spina bifida, cerebral palsy, and Prader Willi syndrome. The bill proposes to continue the conforming changes to statutes begun in 2004 to conform to the establishment of the new agency, plus make some needed updating and clarifications; as well as several substantive changes that will allow the agency to better serve the needs of service recipients and the public interest.

As part of those transitions, institutions housing clients with developmental disabilities were also transferred to APD. This included institutions housing forensic clients diagnosed with mental retardation or autism that had been charged with a felony offense but found incompetent to proceed to trial. Statutory provisions relating to forensic clients are found in chapter 916, F.S. However, the current chapter, which is divided into 3 parts, has not yet been modified to recognize the distinction between the DCF with respect to forensic clients with mental illness, and the APD, which is responsible for forensic clients with mental retardation or autism.

The DCF is no longer responsible for the treatment and training of defendants who have solely mental retardation or autism. The delay in modifying Chapter 916, F.S., to clearly distinguish the department's responsibility from the responsibilities of the new agency has caused confusion among the courts. Individuals with mental retardation or autism, at times, continue to be committed to the department and commitment packets are being sent to the Forensic Admissions Office within mental health. Because individuals can have both mental retardation and mental illness, it becomes very difficult at times to determine whether the court intended to commit the individual due to mental illness or mental retardation. This uncertainty requires staff time to obtain clarification from the court and may result in the court's issuing new orders and/or requiring new evaluations. The individual may have to move from the mental health waiting list to the mental retardation waiting list, which ultimately delays the individual's admission time.

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[13] s. 916.303, F.S.
[14] s. 916.303, F.S.

According to DCF, clearly distinguishing that the treatment and training of defendants with mental retardation or autism is the responsibility of the Agency for Persons with Disabilities will minimize the courts' confusion, lead to fewer inappropriate commitments to the department, and help to ensure that defendants with mental retardation or autism are placed on the appropriate waiting list so that admission can occur without unnecessary delays.

Use of Restraint and Seclusion

According to the Advocacy Center for Persons with Disabilities (Advocacy Center), based on data from the federal Centers for Medicare and Medicaid Services (CMS), Florida had the highest per-capita restraint/seclusion related death rate of any state during 2004 and 2005. Of those deaths, 14 of the 16 suspicious deaths that came to the attention of the Advocacy Center involved the use of restraint and/or seclusion. The Advocacy Center learned of these deaths from a variety of sources, including the CMS, Agency for Healthcare Administration (AHCA), APD, DCF, and newspaper articles, as well as from families and friends of the deceased. However, the unreliability and uncertainty of the reporting procedures in Florida make it difficult to know with complete certainty the extent of use of restraint and seclusion.

Both the agency and DCF have some statutory provisions in place regarding the use of restraint and seclusion. Section 393.13(4)(i), F.S., states, "Clients shall have the right to be free from unnecessary physical, chemical, or mechanical restraint. Restraints shall be employed only in emergencies or to protect the client from imminent injury to himself or herself or others. Restraints shall not be employed as punishment, for the convenience of staff, or as a substitute for a rehabilitative plan. Restraints shall impose the least possible restrictions consistent with their purpose and shall be removed when the emergency ends. Restraints shall not cause physical injury to the client and shall be designed to allow the greatest possible comfort."

Pursuant to federal law, CMS must report Florida restraint or seclusion related deaths to the Advocacy Center. Hospitals receiving federal funds must report to CMS any deaths that occur while an individual is restrained or in seclusion or where it is reasonable to assume that an individual's death is a result of restraint and seclusion. However, according to the Advocacy Center, Florida hospitals are often late sending reports to CMS, which then often fails to notify the Advocacy Center in a timely manner or sends incomplete information.

Mental Health Treatment Facilities

The purpose of mental health treatment facilities is to stabilize adults with mental illnesses so they can return to the community. Florida's mental health institutions, also known as mental health treatment facilities, are part of the continuum of care for the most seriously mentally ill residents of the state. In Fiscal Year 2004-05, the program served 3,950 adults in two population categories.

The "civil population category" includes adults with a serious mental illness who meet voluntary or involuntary admission criteria (are a danger to themselves or others) and for whom less restrictive treatment settings are not available or appropriate.

The "forensic population category" includes adults with a serious mental illness who are either charged with a criminal offense and found not guilty of a crime by reason of insanity or found incompetent to proceed through any phase of the judicial process.

Institutional mental health services are provided at five state mental health treatment facilities, which include two civil facilities, two forensic facilities, and one facility with both civil and forensic units.

"Civil facilities" serve the general population and provide evaluation, mental health treatment, rehabilitation and support to facilitate clients' successful return to the community. Each hospital serves a designated geographic area.

"Forensic facilities" serve adults charged with a felony criminal offense (and juveniles adjudicated as adults) and provide mental health treatment and competency restoration services in a secure residential setting. The facilities serve individuals who are found incompetent to proceed to trial and individuals who are found not guilty of their crime due to reason of insanity. Forensic facilities serve individuals from all geographic areas of the state.

Florida's forensic system is a network of state facilities and community services for individuals who have a mental illness and are involved with the criminal justice system. The goal is to provide assessment, evaluation, and treatment to individuals adjudicated incompetent to proceed at any stage of a criminal proceeding or not guilty by reason of insanity.

In addition to the general psychiatric treatment approaches and milieu, specialized services include:

- Psychosocial rehabilitation
- Education
- Treatment modules such as competency, anger management, mental health awareness, medication and relapse prevention
- Sexually transmitted disease education and prevention
- Substance abuse awareness and prevention
- Vocational training
- Occupational therapies
- Full range of medical and dental services

Services include comprehensive assessment, evaluation, and treatment of psychiatric disorders for individuals involved with the criminal court system. Evaluations for competency to proceed, treatment following a finding of not guilty by reason of insanity, and services to individuals on conditional release in the community are provided. Additionally, in-jail services are provided by local county jails, often with assistance from community mental health providers.

Forensic services are provided to adults over the age of 18 and juveniles adjudicated as adults. Diagnostic categories include all major DSMIV disorder classifications (primarily schizophrenia and mood disorders). Secondary diagnoses, such as substance abuse and personality disorders, are also present for a significant number of people.

Individuals determined by the court to require treatment in a state mental health facility are typically served by one of three maximum security facilities. These facilities have a combined capacity to serve 890 people. Individuals who do not require a secure setting may be directly admitted or transferred into one of three civil mental health treatment facilities. The facilities admit over 1,000 individuals into the state treatment facilities on a yearly basis.

Community services are provided as a first level of treatment and assessment aimed at stabilization and reducing the need for admission into a state facility. Community services are also available to individuals released from state mental health treatment facilities. There are two forensic halfway houses in Florida, with a capacity to serve 35 individuals from one of the state treatment facilities. Individuals are also accepted into other community programs. Services are provided in local county jails to individuals awaiting state facility admission, to individuals returning from state facilities, and to individuals who are able to proceed with disposition of their criminal charges without requiring facility admission. Services vary by county jail, ranging from visits by a mental health professional on an as needed basis to full service inpatient mental health units located in the jail complex.

Section 916.145, F.S., states, "The charges against any defendant adjudicated incompetent to proceed due to the defendant's mental illness shall be dismissed without prejudice to the state if the defendant remains incompetent to proceed five years after such determination, unless the court in its order specifies its reasons for believing that the defendant will become competent to proceed within the

foreseeable future and specifies the time within which the defendant is expected to become competent to proceed. The charges against the defendant are dismissed without prejudice to the state to refile the charges should the defendant be declared competent to proceed in the future."

An acquittal of not guilty by reason of insanity (NGBRI) is an adjudication by the court. The individual remains NGBRI of the charge(s) indefinitely and cannot be retried on the same charge(s). However, the court may maintain jurisdiction and may commit the individual to the DCF for inpatient treatment or order treatment and supervision in the community under the terms of a conditional release.

If committed to the department for inpatient treatment, the treating facility must file a report with the court within six months of the individual's admission, prior to the end of any extended period of treatment or at any time the administrator or designee determines that the individual no longer meets the criteria for involuntary commitment. Individuals placed on conditional release may remain under court supervision until such time that the court determines they no longer require court supervision.

In Fiscal Year 2003-04, 69% of the individuals committed under the civil statute experienced symptom relief, and 53% of the forensic individuals who were Not Guilty by Reason of Insanity experienced symptom relief. In future years, the performance measurement system will shift from measuring symptom relief to measuring improvement in functioning. In Fiscal Year 2005-06, the DCF goal is to improve the level of functioning for 73% of the civil population and 63% of the forensic population.

Effect of the Bill

The bill revises various provisions of Chapter 916, F.S., related to the treatment and training of defendants who have a mental illness, mental retardation, or are autistic. The bill also clarifies that the treatment and training of defendants with mental retardation or autism is no longer provided by the Department of Children and Families (DCF), but is now provided through the Agency for Persons with Disabilities (APD). In addition, the bill:

- Removes numerous outdated and obsolete provisions, and streamlines, clarifies, and reorganizes provisions;
- Updates definitions to tie term for "forensic client" to procedures in chapter rather than recreate procedures in definitions; and creates definition for "defendant" to distinguish persons who have not yet become clients via commitment procedures;
- Requires separate housing requirements for forensic clients (conforms to current practice);
- Adds provisions relating to the use of "restraints" and "seclusion" including rule authority to establish standards and procedures for the use of restraints and seclusion in forensic facilities.
- Clarifies provisions to distinguish defendants who are currently in the custody of the Department of Corrections;
- Removes some references to Florida Rules of Criminal Procedures as these references change and applicability of rules is under jurisdiction of courts;
- Deletes requirement for APD's Inspector General to study and notify state attorney of sexual misconduct (needs to be reported and investigated immediately);
- Allows transfer of court jurisdiction for forensic clients; and

- Amends statute to clarify distinction between ch. 916 forensic procedures for involuntary commitment and ch. 393 procedures for **non**-forensic involuntary commitment (the source of much court confusion).

The bill updates, clarifies, and adds reference to APD; adds language relating to the use of restraints and seclusion; revises the definition of "Forensic Clients" and their right to treatment; revises a forensic client's right to express and informed consent during emergency situations to include a review of the need for treatment review every 48 hours; adds quality of treatment language pertaining to a client's right to be free from unnecessary use of restraint and seclusion (restraints and seclusion should only be used in situations in which the client or others are at risk); and specifies that the release of confidential information comply with state and federal law.

Provisions related to the appointment of experts are updated. The department shall maintain and provide the courts annually with a list of available mental health professionals who have completed approved training as experts.

In considering the issue of competence to proceed, the examining experts shall first consider and specifically include in their report the defendant's capacity to:

(a) Appreciate the charges or allegations against the defendant;
(b) Appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant;
(c) Understand the adversarial nature of the legal process;
(d) Disclose to counsel facts pertinent to the proceedings at issue;
(e) Manifest appropriate courtroom behavior;
(f) Testify relevantly; and
(g) Any other factor deemed relevant by the experts.

C. SECTION DIRECTORY:

Section 1. Amends s. 916.105, F.S., relating to legislative intent to reduce the use of restraint and seclusion in forensic facilities serving persons with developmental disabilities.

Section 2. Amends s. 916.106, F.S., providing and revising definitions.

Section 3. Amends s. 916.107, F.S., relating to the rights of forensic clients.

Section 4. Amends s. 916.1075, F.S., relating to sexual misconduct to substitute the term "covered person" for "employee" and require APD to directly report misconduct rather than reporting through the agency's inspector general.

Section 5. Amends s. 916.1081, F.S., relating to penalties for escaping from a forensic facility to distinguish from forensic clients in the correctional system.

Section 6. Amends s. 916.1085. F.S., providing for certain prohibitions concerning contraband articles to apply to facilities under the supervision or control of the Agency for Persons with Disabilities.

Section 7. Amends s. 916.1091, F.S., relating to security personnel to add APD.

Section 8. Amends s. 916.1093, F.S., relating to administration and rules to add APD, and to specify the content of rules relating to restraint and seclusion.

Section 9. Amends s. 916.111, F.S., updating provisions relating to training of mental health experts.

Section 10. Amends s. 916.115, F.S., updating provisions relating to appointment of experts. The department shall maintain and provide the courts annually with a list of available mental health professionals who have completed approved training as experts.

Section 11. Amends s. 916.12, F.S., adding provisions relating to competency to proceed.

Section 12. Amends s. 916.13, F.S., relating to involuntary commitment to alter the burden of commitment.

Section 13. Amends s. 916.145, F.S., relating to dismissal of charges against a defendant adjudicated incompetent.

Section 14. Amends s. 916.15, F.S., relating to insanity to clarify that incompetence is determined according to Rule 3.217 of the Florida Rules of Criminal Procedure.

Section 15. Amends s. 916.16, F.S., relating to jurisdiction of courts over defendants involuntarily committed due to a determination of incompetence.

Section 16. Amends s. 916.17, F.S., relating to conditional release.

Section 17. Amends s. 916.301, F.S., relating to the appointment of experts and to update and clarify the persons to be selected as experts.

Section 18. Amends s. 916.3012, F.S., clarifying provisions governing the determination of a defendant's mental competence to proceed.

Section 19. Amends s. 916.302, F.S., relating to involuntary commitment and to require the submission of an evaluation by DCF and APD for dually diagnosed defendants.

Section 20. Amends s. 916.3025, F.S., relating to jurisdiction of committing court and to permit the court to transfer jurisdiction to a court in the circuit where the defendant resides.

Section 21. Amends s. 916.303, F.S., relating to determination of incompetency to clarify the difference between the grounds for involuntary commitments under ch. 393, F.S., and the requirement for continued secure placement under ch. 916, F.S.

Section 22. Amends s. 916.304, F.S., relating to conditional release to update and clarify the difference between involuntary placements and forensic commitments.

Section 23. Amends s. 921.137, F.S., relating to the death sentence for retarded inmates and to update the reference from DCF to APD.

Section 24. Amends s. 985.223, updating the provisions relating to juvenile delinquency cases.

Section 25. Amends. s. 287.057, F.S., to update cross-reference.

Section 26. Amends s. 408.036, F.S., to update cross-reference.

Section 27. Amends s. 943.0585, F.S., to update cross-reference.

Section 28. Amends s. 943.059, F.S., to update cross-reference.

Section 29. Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the Agency for Persons with Disabilities and the Department and Children and Family Services, there is no fiscal impact to this bill.

The Legislature appropriated $289 million to the state mental health institutions for Fiscal Year 2005-06. Approximately 65% of the funding is used for personnel. For Fiscal Year 2005-06, the Legislature has authorized 4,270.5 staff positions for the institutions. The staff provides mental health, medical, security, administrative, housekeeping and maintenance services. The program's annual appropriation also includes funds for the department to contract with a private provider for the operation and management of South Florida Evaluation and Treatment Center.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Agency for Persons with Disabilities to adopt rules under s. 916.1093, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 4, 2006, the Criminal Justice Committee adopted a strike-all amendment to the bill and reported the bill favorably with Committee Substitute. The strike-all amendment:

- Further clarifies definition of 'restraint' to exclude use of drugs that are part of treatment regimen for DCF clients with mental illness;
- Adds language specifying that restraints/seclusion shall only be used in emergencies or to avoid imminent injury;
- Clarifies the procedure for reporting instances of sexual misconduct and eliminates the requirement that the department/agency Inspector General conduct an investigation and determine probable cause (not an IG function);
- Requires that the agency provide notice to all parties (as well as the court) of detention of a defendant in a forensic facility; and
- Makes technical changes.

CHAMBER ACTION

1 The Criminal Justice Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to forensic treatment and training;
7 amending s. 916.105, F.S.; revising legislative intent
8 with respect to the treatment or training of defendants
9 who have mental illness, mental retardation, or autism and
10 are committed to the Agency for Persons with Disabilities;
11 providing intent with respect to the use of restraint and
12 seclusion; amending s. 916.106, F.S.; providing and
13 revising definitions; amending s. 916.107, F.S., relating
14 to the rights of forensic clients; conforming provisions
15 to the transfer of duties from the Developmental
16 Disabilities Program Office within the Department of
17 Children and Family Services to the Agency for Persons
18 with Disabilities; revising provisions governing the
19 involuntary treatment of clients; requiring the
20 coordination of services between the department, the
21 agency, and the Department of Corrections; amending s.
22 916.1075, F.S.; revising certain prohibitions on sexual
23 misconduct involving covered persons of the Department of

24 Children and Family Services or the Agency for Persons
25 with Disabilities; defining the term "covered person";
26 requiring that notice of sexual misconduct be provided to
27 the inspector general of the agency or department;
28 amending s. 916.1081, F.S.; providing that an escape or an
29 attempt to escape from a civil or forensic facility
30 constitutes a second-degree felony; amending s. 916.1085,
31 F.S.; providing for certain prohibitions concerning
32 contraband articles to apply to facilities under the
33 supervision or control of the Agency for Persons with
34 Disabilities; deleting a cross-reference; amending s.
35 916.1091, F.S.; authorizing the use of chemical weapons by
36 agency personnel; amending s. 916.1093, F.S.; authorizing
37 the agency to enter into contracts and adopt rules;
38 requiring department and agency rules to address the use
39 of restraint and seclusion; providing requirements for
40 such rules; amending s. 916.111, F.S.; revising provisions
41 governing the training of mental health experts; amending
42 s. 916.115, F.S.; requiring that the court appoint experts
43 to determine the mental condition of a criminal defendant;
44 requiring that the Department of Children and Family
45 Services annually provide the courts with a list of
46 certain mental health professionals; amending s. 916.12,
47 F.S.; revising provisions governing the evaluation of a
48 defendant's competence to proceed; amending s. 916.13,
49 F.S.; revising conditions under which a defendant may be
50 involuntarily committed for treatment; amending s.
51 916.145, F.S., relating to dismissal of charges against a

52 defendant adjudicated incompetent; conforming provisions
53 to changes made by the act; amending s. 916.15, F.S.;
54 clarifying that the determination of not guilty by reason
55 of insanity is made under a specified Florida Rule of
56 Criminal Procedure; amending s. 916.16, F.S.; providing
57 for the continuing jurisdiction of the court over a
58 defendant involuntarily committed due to mental illness;
59 amending s. 916.17, F.S.; clarifying circumstances under
60 which the court may order the conditional release of a
61 defendant; amending s. 916.301, F.S.; requiring that
62 certain evaluations be conducted by certain qualified
63 experts; requiring that the Agency for Persons with
64 Disabilities provide the court with a list of certain
65 available retardation and autism professionals; conforming
66 provisions to the transfer of duties from the
67 Developmental Disabilities Program Office within the
68 Department of Children and Family Services to the agency;
69 amending s. 916.3012, F.S.; clarifying provisions
70 governing the determination of a defendant's mental
71 competence to proceed; amending s. 916.302, F.S., relating
72 to the involuntary commitment of a defendant; conforming
73 provisions to the transfer of duties from the
74 Developmental Disabilities Program Office within the
75 Department of Children and Family Services to the agency;
76 requiring that the department and agency submit an
77 evaluation to the court before the transfer of a defendant
78 from one civil or forensic facility to another; amending
79 s. 916.3025, F.S.; clarifying that the committing court

80 retains jurisdiction over a defendant placed on
81 conditional release; providing for the transfer of
82 continuing jurisdiction to another court where the
83 defendant resides; amending s. 916.303, F.S.; clarifying
84 provisions governing the dismissal of charges against a
85 defendant found to be incompetent to proceed due to
86 retardation or autism; amending s. 916.304, F.S.;
87 providing for the conditional release of a defendant to a
88 civil facility; amending ss. 921.137 and 985.223, F.S.,
89 relating to provisions governing the imposition of the
90 death sentence upon a defendant with mental retardation
91 and the determination of incompetency in cases involving
92 juvenile delinquency; conforming provisions to the
93 transfer of duties from the Developmental Disabilities
94 Program Office within the Department of Children and
95 Family Services to the Agency for Persons with
96 Disabilities; amending ss. 287.057, 408.036, 943.0585, and
97 943.059, F.S.; conforming cross-references; providing an
98 effective date.
99
100 Be It Enacted by the Legislature of the State of Florida:
101
102 Section 1. Section 916.105, Florida Statutes, is amended
103 to read:
104 916.105 Legislative intent.--
105 (1) It is the intent of the Legislature that the
106 Department of Children and Family Services <u>and the Agency for</u>
107 <u>Persons with Disabilities, as appropriate,</u> establish, locate,

108 and maintain separate and secure forensic facilities and
109 programs for the treatment or training of defendants who have
110 been ~~are~~ charged with a felony and who have been found to be
111 incompetent to proceed due to their mental illness, mental
112 retardation, or autism, or who have been acquitted of a felony
113 ~~felonies~~ by reason of insanity, and who, while still under the
114 jurisdiction of the committing court, are committed to the
115 department or agency under the provisions of this chapter. Such
116 ~~The separate, secure~~ facilities shall be sufficient to
117 accommodate the number of defendants committed under the
118 conditions noted above.~~,~~ Except for those defendants found by
119 the department or agency to be appropriate for treatment or
120 training in a civil ~~treatment~~ facility or program pursuant to
121 subsection (3), forensic~~. Such secure~~ facilities shall be
122 designed and administered so that ingress and egress, together
123 with other requirements of this chapter, may be strictly
124 controlled by staff responsible for security in order to protect
125 the defendant, facility personnel, other clients, and citizens
126 in adjacent communities.
127 (2) It is ~~further~~ the intent of the Legislature that
128 treatment or training programs for defendants who are found to
129 have mental illness, mental retardation, or autism ~~are found to~~
130 ~~be mentally ill, retarded, or autistic~~ and are involuntarily
131 committed to the department or agency, and who are still under
132 the jurisdiction of the committing court, be provided in ~~such~~ a
133 manner, subject to security requirements and other mandates of
134 this chapter, as to ensure the rights of the defendants as
135 provided in this chapter.

136 (3) It is the intent of the Legislature that evaluation
137 and services to defendants who have mental illness, mental
138 retardation, or autism ~~are mentally ill, retarded, or autistic~~
139 be provided in community settings, in community residential
140 facilities, or in civil~~, nonforensic~~ facilities, whenever this
141 is a feasible alternative to treatment or training in a state
142 forensic facility.
143 (4) It is the intent of the Legislature to minimize and
144 achieve an ongoing reduction in the use of restraint and
145 seclusion in forensic facilities serving persons with
146 developmental disabilities.
147 Section 2. Section 916.106, Florida Statutes, is amended
148 to read:
149 916.106 Definitions.--For the purposes of this chapter,
150 the term:
151 (1) "Agency" means the Agency for Persons with
152 Disabilities. The agency is responsible for training forensic
153 clients who are developmentally disabled due to mental
154 retardation or autism and have been determined incompetent to
155 proceed.
156 (2) ~~(1)~~ "Autism" has the same meaning as in s. 393.063.
157 ~~means a pervasive, neurologically based developmental disability~~
158 ~~of extended duration which causes severe learning,~~
159 ~~communication, and behavior disorders, with the age of onset of~~
160 ~~autism occurring during infancy or childhood. Individuals with~~
161 ~~autism exhibit impairment in reciprocal social interaction,~~
162 ~~impairment in verbal and nonverbal communication and imaginative~~

163 ~~ability, and a markedly restricted repertoire of activities and~~
164 ~~interests.~~
165 (3) ~~(2)~~ "Chemical weapon" means any shell, cartridge, bomb,
166 gun, or other device capable of emitting chloroacetophenone
167 (CN), chlorobenzalmalononitrile (CS) or any derivatives thereof
168 in any form, or any other agent with lacrimatory properties, and
169 shall include products such as that commonly known as "mace."
170 (4) ~~(3)~~ "Civil facility" means:
171 (a) A mental health facility established within the
172 department or by contract with the department to serve
173 individuals committed pursuant to chapter 394 and those
174 defendants committed pursuant to this chapter who do not require
175 the security provided in a forensic facility; or~~.~~
176 (b) An intermediate care facility for the developmentally
177 disabled, a foster care facility, a group home facility, or a
178 supported living setting, as defined in s. 393.063, designated
179 by the agency to serve those defendants who do not require the
180 security provided in a forensic facility.
181 (5) ~~(4)~~ "Court" means the circuit court.
182 (6) "Defendant" means an adult, or a juvenile who is
183 prosecuted as an adult, who has been arraigned and charged with
184 a felony offense under the laws of this state.
185 (7) ~~(5)~~ "Department" means the Department of Children and
186 Family Services. The department is responsible for the treatment
187 of forensic clients who have been determined incompetent to
188 proceed due to mental illness or who have been acquitted of a
189 felony by reason of insanity.

190 (8) ~~(6)~~ "Express and informed consent" or "consent" means
191 consent given voluntarily in writing after a conscientious and
192 sufficient explanation and disclosure of the purpose of the
193 proposed treatment, the common side effects of the treatment, if
194 any, the expected duration of the treatment, and any alternative
195 treatment available.
196 (9) ~~(7)~~ "Forensic client" or "client" means any defendant
197 who has been ~~is mentally ill, retarded, or autistic and who is~~
198 committed to the department or agency pursuant to s. 916.13, s.
199 916.15, or s. 916.302. ~~this chapter and:~~
200 ~~(a) Who has been determined to need treatment for a mental~~
201 ~~illness or training for retardation or autism;~~
202 ~~(b) Who has been found incompetent to proceed on a felony~~
203 ~~offense or has been acquitted of a felony offense by reason of~~
204 ~~insanity;~~
205 ~~(c) Who has been determined by the department to:~~
206 ~~1. Be dangerous to himself or herself or others; or~~
207 ~~2. Present a clear and present potential to escape; and~~
208 ~~(d) Who is an adult or a juvenile prosecuted as an adult.~~
209 (10) ~~(8)~~ "Forensic facility" means a separate and secure
210 facility established within the department or agency to serve
211 forensic clients. A ~~Such~~ separate and secure facility means a
212 ~~facilities shall be~~ security-grade building for the purpose of
213 separately housing persons who have mental illness from persons
214 with retardation or autism and separately housing persons who
215 have been involuntarily committed pursuant to this chapter from
216 nonforensic residents ~~buildings located on grounds distinct in~~
217 ~~location from other facilities for persons who are mentally ill~~.

218 ~~The Florida State Hospital shall not be required to maintain~~
219 ~~separate facilities for mentally ill, retarded, or autistic~~
220 ~~defendants who are found incompetent to proceed or who are~~
221 ~~acquitted of a criminal offense by reason of insanity.~~
222 (11) ~~(9)~~ "Incompetent to proceed" means unable to proceed
223 at any material stage of a criminal proceeding, which shall
224 include trial of the case, pretrial hearings involving questions
225 of fact on which the defendant might be expected to testify,
226 entry of a plea, proceedings for violation of probation or
227 violation of community control, sentencing, and hearings on
228 issues regarding a defendant's failure to comply with court
229 orders or conditions or other matters in which the mental
230 competence of the defendant is necessary for a just resolution
231 of the issues being considered.
232 (12) ~~(10)~~ "Institutional security personnel" means the
233 staff of forensic facilities ~~members~~ who meet or exceed the
234 requirements of s. 943.13 and who are responsible for providing
235 security, protecting ~~for protection of~~ clients and personnel,
236 enforcing ~~for the enforcement of~~ rules, preventing and
237 investigating ~~for prevention and investigation of~~ unauthorized
238 activities, and ~~for~~ safeguarding the interests of citizens in
239 the surrounding communities.
240 (13) ~~(11)~~ "Mental illness" means an impairment of the
241 emotional processes that exercise conscious control of one's
242 actions, or of the ability to perceive or understand reality,
243 which impairment substantially interferes with a defendant's
244 ability to meet the ordinary demands of living. For the purposes
245 of this chapter, the term does not apply to defendants with only

246 mental retardation or autism ~~who are solely retarded or~~
247 ~~autistic,~~ and does not include intoxication or conditions
248 manifested only by antisocial behavior or substance abuse
249 impairment.
250 (14) "Restraint" means a physical device, method, or drug
251 used to control dangerous behavior.
252 (a) A physical restraint is any manual method or physical
253 or mechanical device, material, or equipment attached or
254 adjacent to a person's body so that he or she cannot easily
255 remove the restraint and that restricts freedom of movement or
256 normal access to one's body.
257 (b) A drug used as a restraint is a medication used to
258 control the person's behavior or to restrict his or her freedom
259 of movement and not part of the standard treatment regimen of an
260 individual with a diagnosed mental illness who is a client of
261 the department. Physically holding a person during a procedure
262 to forcibly administer psychotropic medication is a physical
263 restraint.
264 (c) Restraint does not include physical devices, such as
265 orthopedically prescribed appliances, surgical dressings and
266 bandages, supportive body bands, or other physical holding when
267 necessary for routine physical examinations and tests; for
268 purposes of orthopedic, surgical, or other similar medical
269 treatment; when used to provide support for the achievement of
270 functional body position or proper balance; or when used to
271 protect a person from falling out of bed.
272 (15) ~~(12)~~ "Retardation" has the same meaning as in s.
273 393.063. ~~means significantly subaverage general intellectual~~

274 ~~functioning existing concurrently with deficits in adaptive~~
275 ~~behavior and manifested during the period from conception to age~~
276 ~~18. "Significantly subaverage general intellectual functioning,"~~
277 ~~for the purpose of this definition, means performance which is~~
278 ~~two or more standard deviations from the mean score on a~~
279 ~~standardized intelligence test specified in the rules of the~~
280 ~~department. "Adaptive behavior," for the purpose of this~~
281 ~~definition, means the effectiveness or degree with which an~~
282 ~~individual meets the standards of personal independence and~~
283 ~~social responsibility expected of the individual's age, cultural~~
284 ~~group, and community.~~
285 (16) "Seclusion" means the physical segregation of a
286 person in any fashion or the involuntary isolation of a person
287 in a room or area from which the person is prevented from
288 leaving. The prevention may be by physical barrier or by a staff
289 member who is acting in a manner, or who is physically situated,
290 so as to prevent the person from leaving the room or area. For
291 purposes of this chapter, the term does not mean isolation due
292 to a person's medical condition or symptoms, the confinement in
293 a forensic facility to a bedroom or area during normal hours of
294 sleep when there is not an active order for seclusion, or during
295 an emergency such as a riot or hostage situation when clients
296 may be temporarily placed in their rooms for their own safety.
297 (17) ~~(13)~~ "Social service professional~~,~~" ~~for the purposes~~
298 ~~of part III,~~ means a person whose minimum qualifications include
299 a bachelor's degree and at least 2 years of social work,
300 clinical practice, special education, habilitation, or

301 equivalent experience working directly with persons with
302 retardation, autism, or other developmental disabilities.
303 Section 3. Section 916.107, Florida Statutes, is amended
304 to read:
305 916.107 Rights of forensic clients.--
306 (1) RIGHT TO INDIVIDUAL DIGNITY.--
307 (a) The policy of the state is that the individual dignity
308 of the client shall be respected at all times and upon all
309 occasions, including any occasion when the forensic client is
310 detained, transported, or treated. Clients with mental illness,
311 retardation, or autism ~~Defendants who are mentally ill,~~
312 ~~retarded, or autistic~~ and who are charged with committing
313 felonies shall receive appropriate treatment or training. In a
314 criminal case involving a client ~~defendant~~ who has been
315 adjudicated incompetent to proceed or not guilty by reason of
316 insanity, a jail may be used as an emergency facility for up to
317 15 days following ~~from~~ the date the department or agency
318 receives a completed copy of the court commitment order
319 containing all ~~the~~ documentation required by the applicable
320 ~~Rules 3.212 and 3.217,~~ Florida Rules of Criminal Procedure. For
321 a forensic client ~~defendant who is mentally ill, retarded, or~~
322 ~~autistic,~~ who is held in a jail awaiting admission to a facility
323 of the department or agency~~, and who has been adjudicated~~
324 ~~incompetent to proceed or not guilty by reason of insanity~~,
325 evaluation and treatment or training may ~~shall~~ be provided in
326 the jail by the local community mental health provider ~~public~~
327 ~~receiving facility~~ for mental health services, ~~or~~ by the
328 developmental disabilities ~~services~~ program for persons with

329 retardation or autism, the client's physician or psychologist,
330 or any other appropriate program until the client is transferred
331 to a civil or forensic facility ~~the custody of the department~~.
332 (b) Forensic clients ~~Mentally ill, retarded, or autistic~~
333 ~~defendants who are committed to the department pursuant to this~~
334 ~~chapter and~~ who are initially placed in, or subsequently
335 transferred to, a civil facility as described in part I of
336 chapter 394 or to a residential facility as described in chapter
337 393 shall have the same rights as other persons committed to
338 these facilities for as long as they remain there.
339 (2) RIGHT TO TREATMENT.--
340 (a) The policy of the state is that neither the department
341 nor the agency shall ~~not~~ deny treatment or training to any
342 client and that no services shall be delayed ~~at a facility~~
343 because the forensic client is indigent pursuant to s. 27.52 and
344 presently unable to pay. However, every reasonable effort to
345 collect appropriate reimbursement for the cost of providing
346 services to clients able to pay for the services, including
347 reimbursement from insurance or other third-party payments,
348 shall be made by facilities providing services pursuant to this
349 chapter and in accordance with the provisions of s. 402.33.
350 (b) Each forensic client shall be given, at the time of
351 admission and at regular intervals thereafter, a physical
352 examination, which shall include screening for communicable
353 disease by a health practitioner authorized by law to give such
354 screenings and examinations.
355 (c) Every forensic client ~~committed pursuant to this act~~
356 shall be afforded the opportunity to participate in activities

357 designed to enhance self-image and the beneficial effects of
358 other treatments or training, as determined by the facility.
359 (d) Not more than 30 days after admission, each client
360 shall have and receive, in writing, an individualized treatment
361 or training plan which the client has had an opportunity to
362 assist in preparing.
363 (3) RIGHT TO EXPRESS AND INFORMED CONSENT.--
364 (a) A forensic client ~~committed to the department pursuant~~
365 ~~to this act~~ shall be asked to give express and informed written
366 consent for treatment. If a client ~~in a forensic facility~~
367 refuses such treatment as is deemed necessary and essential by
368 the client's multidisciplinary treatment team ~~at the forensic~~
369 ~~facility~~ for the appropriate care of the client ~~and the safety~~
370 ~~of the client or others~~, such treatment may be provided under
371 the following circumstances:
372 1. In an emergency situation in which there is immediate
373 danger to the safety of the client or others, such treatment may
374 be provided upon the written order of a physician for a period
375 not to exceed 48 hours, excluding weekends and legal holidays.
376 If, after the 48-hour period, the client has not given express
377 and informed consent to the treatment initially refused, the
378 administrator or designee of the civil or forensic facility
379 shall, within 48 hours, excluding weekends and legal holidays,
380 petition the committing court or the circuit court serving the
381 county in which the facility is located, at the option of the
382 facility administrator or designee, for an order authorizing the
383 continued treatment of the client. In the interim, the need for
384 treatment shall be reviewed every 48 hours and may be continued

385 without the consent of the client upon the continued written
386 order of a physician who has determined that the emergency
387 situation continues to present a danger to the safety of the
388 client or others.
389 2. In a situation other than an emergency situation, the
390 administrator or designee of the ~~forensic~~ facility shall
391 petition the court for an order authorizing necessary and
392 essential ~~the~~ treatment for ~~to~~ the client. The order shall allow
393 such treatment for a period not to exceed 90 days following ~~from~~
394 the date of the entry of the order. Unless the court is notified
395 in writing that the client has provided express and informed
396 consent in writing or that the client has been discharged by the
397 committing court, the administrator or designee shall, prior to
398 the expiration of the initial 90-day order, petition the court
399 for an order authorizing the continuation of treatment for
400 another 90-day period. This procedure shall be repeated until
401 the client provides consent or is discharged by the committing
402 court.
403 3. At the hearing on the issue of whether the court should
404 enter an order authorizing treatment for which a client was
405 unable to or ~~has~~ refused to give express and informed consent,
406 the court shall determine by clear and convincing evidence that
407 the client has mental illness, retardation, or autism ~~is~~
408 ~~mentally ill, retarded, or autistic as defined in this chapter~~,
409 that the treatment not consented to is essential to the care of
410 the client, and that the treatment not consented to is not
411 experimental and does not present an unreasonable risk of
412 serious, hazardous, or irreversible side effects. In arriving at

413 the substitute judgment decision, the court must consider at
414 least the following factors:
415 a. The client's expressed preference regarding treatment;
416 b. The probability of adverse side effects;
417 c. The prognosis without treatment; and
418 d. The prognosis with treatment.
419
420 The hearing shall be as convenient to the client as may be
421 consistent with orderly procedure and shall be conducted in
422 physical settings not likely to be injurious to the client's
423 condition. The court may appoint a general or special magistrate
424 to preside at the hearing. The client or the client's guardian,
425 and the representative, shall be provided with a copy of the
426 petition and the date, time, and location of the hearing. The
427 client has the right to have an attorney represent him or her at
428 the hearing, and, if the client is indigent, the court shall
429 appoint the office of the public defender to represent the
430 client at the hearing. The client may testify or not, as he or
431 she chooses, and has the right to cross-examine witnesses and
432 may present his or her own witnesses.
433 (b) In addition to the provisions of paragraph (a), in the
434 case of surgical procedures requiring the use of a general
435 anesthetic or electroconvulsive treatment or nonpsychiatric
436 medical procedures, and prior to performing the procedure,
437 written permission shall be obtained from the client, if the
438 client is legally competent, from the parent or guardian of a
439 minor client, or from the guardian of an incompetent client. The
440 administrator or designee of the forensic facility or a

441 designated representative may, with the concurrence of the
442 client's attending physician, authorize emergency surgical or
443 nonpsychiatric medical treatment if such treatment is deemed
444 lifesaving or for a situation threatening serious bodily harm to
445 the client and permission of the client or the client's guardian
446 could not ~~cannot~~ be obtained before provision of the needed
447 treatment.
448 (4) QUALITY OF TREATMENT.--
449 (a) Each forensic client ~~committed pursuant to this~~
450 ~~chapter~~ shall receive treatment or training suited to the
451 client's needs, which shall be administered skillfully, safely,
452 and humanely with full respect for the client's dignity and
453 personal integrity. Each client shall receive such medical,
454 vocational, social, educational, and rehabilitative services as
455 the client's condition requires to bring about a return to court
456 for disposition of charges or a return to the community. In
457 order to achieve this goal, the department and the agency shall
458 coordinate their services with each other, the Department of
459 Corrections, ~~is directed to coordinate the services of the~~
460 ~~Mental Health Program Office and the Developmental Disabilities~~
461 ~~Program Office with all other programs of the department~~ and
462 other appropriate state agencies.
463 (b) Forensic clients shall be free from the unnecessary
464 use of restraint or seclusion. Restraints shall be employed only
465 in emergencies or to protect the client or others from imminent
466 injury. Restraints may not be employed as punishment or for the
467 convenience of staff.
468 (5) COMMUNICATION, ABUSE REPORTING, AND VISITS.--

469 ~~(a)~~ Each forensic client ~~committed pursuant to the~~
470 ~~provisions of this chapter~~ has the right to communicate freely
471 and privately with persons outside the facility unless it is
472 determined that such communication is likely to be harmful to
473 the client or others. Clients shall have the right to contact
474 and to receive communication from their attorneys at any
475 reasonable time.
476 (a) ~~(b)~~ Each forensic client ~~committed under the provisions~~
477 ~~of this chapter~~ shall be allowed to receive, send, and mail
478 sealed, unopened correspondence; and no client's incoming or
479 outgoing correspondence shall be opened, delayed, held, or
480 censored by the facility unless there is reason to believe that
481 it contains items or substances that ~~which~~ may be harmful to the
482 client or others, in which case the administrator or designee
483 may direct reasonable examination of such mail and may regulate
484 the disposition of such items or substances. For purposes of
485 this paragraph, the term "correspondence" does ~~shall~~ not include
486 parcels or packages. Forensic facilities may ~~are authorized to~~
487 promulgate reasonable institutional policies to provide for the
488 inspection of parcels or packages and for the removal of
489 contraband items for health or security reasons prior to the
490 contents being given to a client.
491 (b) ~~(c)~~ If a client's right to communicate is restricted by
492 the administrator, written notice of such restriction and the
493 duration of the restriction shall be served on the client or his
494 or her legal guardian or representatives, and such restriction
495 shall be recorded on the client's clinical record with the

496 reasons therefor. The restriction of a client's right to
497 communicate shall be reviewed at least every 7 days.
498 (c) ~~(d)~~ Each forensic facility shall establish reasonable
499 institutional policies governing visitors, visiting hours, and
500 the use of telephones by clients in the least restrictive manner
501 possible.
502 (d) ~~(e)~~ Each forensic client ~~committed pursuant to this~~
503 ~~chapter~~ shall have ready access to a telephone in order to
504 report an alleged abuse. The facility or program staff shall
505 orally and in writing inform each client of the procedure for
506 reporting abuse and shall present the information in a language
507 the client understands. A written copy of that procedure,
508 including the telephone number of the central abuse hotline and
509 reporting forms, shall be posted in plain view.
510 (e) ~~(f)~~ The department's or agency's forensic facilities
511 shall develop policies providing a procedure for reporting
512 abuse. Facility staff shall be required, as a condition of
513 employment, to become familiar with the procedures for the
514 reporting of abuse.
515 (6) CARE AND CUSTODY OF PERSONAL EFFECTS OF CLIENTS.--A
516 forensic client's right to possession of clothing and personal
517 effects shall be respected. The department or agency by rule, or
518 the administrator of any forensic facility by written
519 institutional policy, may declare certain items to be hazardous
520 to the health or welfare of clients or others or to the
521 operation of the facility. Such items may be restricted from
522 introduction into the facility or may be restricted from being
523 in a client's possession. The administrator or designee may take

524 temporary custody of such effects when required for medical and
525 safety reasons. Custody of such personal effects shall be
526 recorded in the client's clinical record.
527 (7) VOTING IN PUBLIC ELECTIONS.--A forensic client
528 ~~committed pursuant to this chapter~~ who is eligible to vote
529 according to the laws of the state has the right to vote in the
530 primary and general elections. The department and agency shall
531 establish rules to enable clients to obtain voter registration
532 forms, applications for absentee ballots, and absentee ballots.
533 (8) CLINICAL RECORD; CONFIDENTIALITY.--A clinical record
534 for each forensic client shall be maintained. The record shall
535 include data pertaining to admission and such other information
536 as may be required under rules of the department or the agency.
537 Unless waived by express and informed consent of the client or
538 the client's legal guardian or, if the client is deceased, by
539 the client's personal representative or by that family member
540 who stands next in line of intestate succession or except as
541 otherwise provided in this subsection, the clinical record is
542 confidential and exempt from the provisions of s. 119.07(1) and
543 s. 24(a), Art. I of the State Constitution.
544 (a) Such clinical record may be released:
545 1. To such persons and agencies as are designated by the
546 client or the client's legal guardian.
547 2. To persons authorized by order of court and to the
548 client's counsel when the records are needed by the counsel for
549 adequate representation.
550 3. To a qualified researcher, as defined by rule; a staff
551 member of the facility; or an employee of the department or

552 agency when the administrator of the facility, or secretary or
553 director of the department or agency, deems it necessary for
554 treatment of the client, maintenance of adequate records,
555 compilation of treatment data, or evaluation of programs.
556 4. For statistical and research purposes if the
557 information is abstracted in such a way as to protect the
558 identity of individuals.
559 5. If a client receiving services ~~pursuant to this chapter~~
560 has declared an intention to harm other persons~~. When such a~~
561 ~~declaration has been made~~, the administrator shall authorize the
562 release of sufficient information to provide adequate warning to
563 the person threatened with harm by the client, and to the
564 committing court, the state attorney, and the attorney
565 representing the client.
566 6. To the parent or next of kin of a client ~~mentally ill,~~
567 ~~retarded, or autistic person~~ who is committed to, or is being
568 served by, a facility or program when such information is
569 limited to that person's service plan and current physical and
570 mental condition. Release of such information shall be in
571 accordance with the code of ethics of the profession involved
572 and must comply with all state and federal laws and regulations
573 pertaining to the release of personal health information.
574 (b) Notwithstanding other provisions of this subsection,
575 the department or agency may request or receive from or provide
576 to any of the following entities client information to
577 facilitate treatment, habilitation, rehabilitation, and
578 continuity of care of any forensic client:

579 1. The Social Security Administration and the United
580 States Department of Veterans Affairs;
581 2. Law enforcement agencies, state attorneys, defense
582 attorneys, and judges in regard to the client's status;
583 3. Jail personnel in the jail in ~~to~~ which a client may be
584 housed ~~returned~~; and
585 4. Community agencies and others expected to provide
586 followup care to the client upon the client's return to the
587 community.
588 (c) The department or agency may provide notice to any
589 client's next of kin or first representative regarding any
590 serious medical illness or the death of the client.
591 (d)1. Any law enforcement agency, facility, or other
592 governmental agency that receives information pursuant to this
593 subsection shall maintain the confidentiality of such
594 information except as otherwise provided herein.
595 2. Any agency or private practitioner who acts in good
596 faith in releasing information pursuant to this subsection is
597 not subject to civil or criminal liability for such release.
598 (9) HABEAS CORPUS.--
599 (a) At any time, and without notice, a forensic client
600 detained by a facility, or a relative, friend, guardian,
601 representative, or attorney on behalf of such client, may
602 petition for a writ of habeas corpus to question the cause and
603 legality of such detention and request that the committing court
604 issue a writ for release. Each client ~~committed pursuant to this~~
605 ~~chapter~~ shall receive a written notice of the right to petition
606 for a writ of habeas corpus.

607 (b) A client or his or her legal guardian or
608 representatives or attorney may file a petition in the circuit
609 court in the county where the client is committed alleging that
610 the client is being unjustly denied a right or privilege granted
611 herein or that a procedure authorized herein is being abused.
612 Upon the filing of such a petition, the circuit court shall have
613 the authority to conduct a judicial inquiry and to issue any
614 appropriate order to correct an abuse of the provisions of this
615 chapter.
616 (10) TRANSPORTATION.--
617 (a) The sheriff shall consult with the governing board of
618 the county as to the most appropriate and cost-effective means
619 of transportation for forensic clients who have been committed
620 for treatment or training. Such consultation shall include, but
621 is not limited to, consideration of the cost to the county of
622 transportation performed by sheriff's ~~department~~ personnel as
623 opposed to transportation performed by other means and, if
624 sheriff's ~~department~~ personnel are to be used for
625 transportation, the effect such use will have, if any, on
626 service delivery levels of the sheriff's road patrol. After such
627 consultation with the governing board of the county, the sheriff
628 shall determine the most appropriate and cost-effective means of
629 transportation for forensic clients committed for treatment or
630 training.
631 (b) The governing board of each county is authorized to
632 contract with private transport companies for the transportation
633 of such clients to and from a facility.

634 (c) Any company that transports a client pursuant to this
635 section is considered an independent contractor and is solely
636 liable for the safe and dignified transportation of the client.
637 Any transport company that contracts with the governing board of
638 a county for the transport of clients as provided for in this
639 section shall be insured and provide no less than $100,000 in
640 liability insurance with respect to the transportation of the
641 clients.
642 (d) Any company that contracts with a governing board of a
643 county to transport clients shall comply with the applicable
644 rules of the department or agency to ensure the safety and
645 dignity of the clients.
646 (11) LIABILITY FOR VIOLATIONS.--Any person who violates or
647 abuses any rights or privileges of a forensic client in the
648 custody of the department or agency that are provided under this
649 chapter shall be ~~by this act is~~ liable for damages as determined
650 by law. Any person who acts in good faith in complying with the
651 provisions of this chapter ~~act~~ is immune from civil or criminal
652 liability for his or her actions in connection with the
653 admission, diagnosis, treatment, training, or discharge of a
654 client to or from a facility. However, this subsection does not
655 relieve any person from liability if he or she is negligent.
656 Section 4. Subsections (1), (2), (3), (4), and (5) of
657 section 916.1075, Florida Statutes, are amended to read:
658 916.1075 Sexual misconduct prohibited; reporting required;
659 penalties.--
660 (1) As used in this section, the term:

661 (a) "Covered person" means an employee,~~"~~ ~~includes any paid~~
662 ~~staff member,~~ volunteer, or intern of the department or agency;
663 any person under contract with the department or agency; and any
664 person providing care or support to a forensic client on behalf
665 of the department, the agency, or their ~~its~~ providers.
666 (b) "Sexual activity" means:
667 1. Fondling the genital area, groin, inner thighs,
668 buttocks, or breasts of a person.
669 2. The oral, anal, or vaginal penetration by or union with
670 the sexual organ of another or the anal or vaginal penetration
671 of another by any other object.
672 3. Intentionally touching in a lewd or lascivious manner
673 the breasts, genitals, the genital area, or buttocks, or the
674 clothing covering them, of a person, or forcing or enticing a
675 person to touch the perpetrator.
676 4. Intentionally masturbating in the presence of another
677 person.
678 5. Intentionally exposing the genitals in a lewd or
679 lascivious manner in the presence of another person.
680 6. Intentionally committing any other sexual act that does
681 not involve actual physical or sexual contact with the victim,
682 including, but not limited to, sadomasochistic abuse, sexual
683 bestiality, or the simulation of any act involving sexual
684 activity in the presence of a victim.
685 (c) "Sexual misconduct" means any sexual activity between
686 a covered person ~~an employee~~ and a forensic client in the
687 custody of the department or agency, regardless of the consent
688 of the client. The term does not include an act done for a bona

689 fide medical purpose or an internal search conducted in the
690 lawful performance of duty by a covered person ~~an employee~~.
691 (2) A covered person ~~An employee~~ who engages in sexual
692 misconduct with a forensic client who resides in a civil or
693 forensic facility commits a felony of the second degree,
694 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
695 Such person ~~An employee~~ may be found guilty of violating this
696 subsection without having committed the crime of sexual battery.
697 (3) The consent of a forensic ~~the~~ client to sexual
698 activity is not a defense to prosecution under this section.
699 (4) This section does not apply to a covered person ~~an~~
700 ~~employee~~ who:
701 (a) Is legally married to the client; or
702 (b) Has no reason to believe that the person with whom the
703 covered person ~~employee~~ engaged in sexual misconduct is a client
704 receiving services as described in subsection (2).
705 (5) A covered person ~~An employee~~ who witnesses sexual
706 misconduct, or who otherwise knows or has reasonable cause to
707 suspect that a person has engaged in sexual misconduct, shall
708 immediately report the incident to the department's central
709 abuse hotline and to the appropriate local law enforcement
710 agency. The covered person ~~Such employee~~ shall also prepare,
711 date, and sign an independent report that specifically describes
712 the nature of the sexual misconduct, the location and time of
713 the incident, and the persons involved. For an allegation
714 pertaining to a forensic client committed to the department or
715 agency, the covered person ~~employee~~ shall deliver the report
716 directly to the department's or agency's inspector general, as

717 appropriate, or to the supervisor or program director, who shall
718 provide copies to the department's or agency's ~~is responsible~~
719 ~~for providing copies to the department's~~ inspector general. ~~The~~
720 ~~inspector general shall immediately conduct an appropriate~~
721 ~~administrative investigation, and, if there is probable cause to~~
722 ~~believe that sexual misconduct has occurred, the inspector~~
723 ~~general shall notify the state attorney in the circuit in which~~
724 ~~the incident occurred.~~
725 Section 5. Section 916.1081, Florida Statutes, is amended
726 to read:
727 916.1081 Escape from program; penalty.--
728 (1) A forensic client who is ~~A defendant~~ involuntarily
729 committed to the department or agency, who is in the custody of
730 the department or agency, and ~~under the provisions of this~~
731 ~~chapter~~ who escapes or attempts to escape from a civil or
732 forensic facility ~~or program~~ commits a felony of the second
733 degree, punishable as provided in s. 775.082, s. 775.083, or s.
734 775.084.
735 (2) A person who is involuntarily committed to the
736 department or the agency, who is in the custody of the
737 Department of Corrections, and who escapes or attempts to escape
738 from a facility or program commits a felony of the second
739 degree, punishable as provided in s. 775.082, s. 775.083, or s.
740 775.084. Any punishment of imprisonment imposed under this
741 subsection shall run consecutive to any former sentence imposed
742 upon the person.
743 Section 6. Subsection (1) and paragraph (b) of subsection
744 (2) of section 916.1085, Florida Statutes, are amended to read:

745 916.1085 Introduction or removal of certain articles
746 unlawful; penalty.--
747 (1)(a) Except as authorized by law or as specifically
748 authorized by the person in charge of a facility, it is unlawful
749 to introduce into or upon the grounds of any facility under the
750 supervision or control of the department or agency, or to take
751 or attempt to take or send therefrom, any of the following
752 articles, which are ~~hereby~~ declared to be contraband for the
753 purposes of this section:
754 1. Any intoxicating beverage or beverage which causes or
755 may cause an intoxicating effect;
756 2. Any controlled substance as defined in chapter 893;
757 3. Any firearm or deadly weapon; or
758 4. Any other item as determined by the department or the
759 agency, and as designated by ~~departmental~~ rule or ~~by the~~
760 ~~administrator of any facility, and designated~~ by written
761 institutional policies, to be hazardous to the welfare of
762 clients ~~patients~~ or the operation of the facility.
763 (b) It is unlawful to transmit to, attempt to transmit to,
764 or cause or attempt to cause to be transmitted to or received by
765 any client of any facility under the supervision or control of
766 the department or agency any article or thing declared by this
767 section to be contraband, at any place that ~~which~~ is outside of
768 the grounds of such facility, except as authorized by law or as
769 specifically authorized by the person in charge of such
770 facility.
771 (2)

772 (b) These provisions shall be enforced by institutional
773 security personnel ~~as defined in s. 916.106(10)~~ or by a law
774 enforcement officer as defined in s. 943.10.
775 Section 7. Section 916.1091, Florida Statutes, is amended
776 to read:
777 916.1091 Duties, functions, and powers of institutional
778 security personnel.--In case of emergency, and when necessary to
779 provide protection and security to any client, to the personnel,
780 equipment, buildings, or grounds of a department or agency
781 facility, or to citizens in the surrounding community,
782 institutional security personnel may, when authorized by the
783 administrator of the facility or her or his designee when the
784 administrator is not present, use a chemical weapon against a
785 patient housed in a forensic facility. However, such weapon
786 shall be used only to the extent necessary to provide ~~such~~
787 protection and security. Under no circumstances shall any ~~such~~
788 officer carry a chemical weapon on her or his person except
789 during the period of the emergency for which its use was
790 authorized. All chemical weapons shall be placed in secure
791 storage when their use is not authorized as provided in this
792 section.
793 Section 8. Section 916.1093, Florida Statutes, is amended
794 to read:
795 916.1093 Operation and administration; rules.--
796 (1) The department or agency may ~~is authorized to~~ enter
797 into contracts and do such things as may be necessary and
798 incidental to assure compliance with and to carry out the

799 provisions of this chapter in accordance with the stated
800 legislative intent.
801 (2) The department and agency are authorized ~~has authority~~
802 to adopt rules pursuant to ss. 120.536(1) and 120.54 to
803 implement the provisions of this chapter. Such rules must
804 address the use of restraint and seclusion in forensic
805 facilities and must be consistent with recognized best
806 practices; prohibit inherently dangerous restraint or seclusion
807 procedures; establish limitations on the use and duration of
808 restraint and seclusion; establish measures to ensure the safety
809 of clients and staff during an incident of restraint or
810 seclusion; establish procedures for staff to follow before,
811 during, and after incidents of restraint or seclusion; establish
812 professional qualifications of and training for staff who may
813 order or be engaged in the use of restraint or seclusion;
814 provide data reporting and data collection procedures relating
815 to the use of restraint and seclusion; and provide for the
816 documentation of the use of restraint or seclusion in the
817 client's facility record.
818 Section 9. Subsection (1) of section 916.111, Florida
819 Statutes, is amended to read:
820 916.111 Training of mental health experts.--The evaluation
821 of defendants for competency to proceed or for sanity at the
822 time of the commission of the offense shall be conducted in such
823 a way as to ensure uniform application of the criteria
824 enumerated in Rules 3.210 and 3.216, Florida Rules of Criminal
825 Procedure. The department shall develop, and may contract with
826 accredited institutions:

827 (1) To provide:
828 (a) A plan for training ~~community~~ mental health
829 professionals to perform forensic evaluations and to standardize
830 the criteria and procedures to be used in these evaluations;
831 (b) Clinical protocols and procedures based upon the
832 criteria of Rules 3.210 and 3.216, Florida Rules of Criminal
833 Procedure; and
834 (c) Training for ~~community~~ mental health professionals in
835 the application of these protocols and procedures in performing
836 forensic evaluations and providing reports to the courts; and
837 Section 10. Section 916.115, Florida Statutes, is amended
838 to read:
839 916.115 Appointment of experts.--
840 (1)~~(a) Annually, the department shall provide the courts~~
841 ~~with a list of mental health professionals who have completed~~
842 ~~approved training as experts.~~
843 ~~(b)~~ The court shall ~~may~~ appoint no more than three experts
844 to determine ~~issues of~~ the mental condition of a defendant in a
845 criminal case, including ~~the issues of~~ competency to proceed,
846 insanity, ~~and~~ involuntary ~~hospitalization or~~ placement, and
847 treatment. The experts ~~An expert~~ may evaluate the defendant in
848 jail or in another appropriate local facility or in a facility
849 of the Department of Corrections.
850 (a)~~(c)~~ To the extent possible, the ~~an~~ appointed experts
851 ~~expert~~ shall have completed forensic evaluator training approved
852 by the department and each shall be ~~either~~ a psychiatrist,
853 licensed psychologist, or physician.

854 (b) The department shall maintain and annually provide the
855 courts with a list of available mental health professionals who
856 have completed the approved training as experts.
857 (2) ~~Expert witnesses appointed by the court to evaluate~~
858 ~~the mental condition of a defendant in a criminal case shall be~~
859 ~~allowed reasonable fees for services rendered as evaluators of~~
860 ~~competence or sanity and as witnesses.~~
861 ~~(a)1.~~ The court shall pay for any expert that it appoints
862 by court order, upon motion of counsel for the defendant or the
863 state or upon its own motion. If the defense or the state
864 retains an expert and waives the confidentiality of the expert's
865 report, the court may pay for no more than two additional
866 experts appointed by court order. If an expert appointed by the
867 court upon motion of counsel for the defendant specifically to
868 evaluate the competence of the defendant to proceed also
869 addresses ~~in his or her evaluation~~ issues related to sanity as
870 an affirmative defense, the court shall pay only for that
871 portion of the expert's fees relating to the evaluation on
872 competency to proceed, and the balance of the fees shall be
873 chargeable to the defense.
874 (a)~~2.~~ Pursuant to s. 29.006, the office of the public
875 defender shall pay for any expert retained by the office.
876 (b)~~3.~~ Pursuant to s. 29.005, the office of the state
877 attorney shall pay for any expert retained by the office and~~.~~
878 ~~Notwithstanding subparagraph 1., the office of the state~~
879 ~~attorney shall pay~~ for any expert whom the office retains and
880 whom the office moves the court to appoint in order to ensure
881 that the expert has access to the defendant.

882 (c) ~~4.~~ An expert retained by the defendant who is
883 represented by private counsel appointed under s. 27.5303 shall
884 be paid by the Justice Administrative Commission.
885 (d) ~~5.~~ An expert retained by a defendant who is indigent
886 for costs as determined by the court and who is represented by
887 private counsel, other than private counsel appointed under s.
888 27.5303, on a fee or pro bono basis, or who is representing
889 himself or herself, shall be paid by the Justice Administrative
890 Commission from funds specifically appropriated for these
891 expenses.
892 (e) ~~(b)~~ State employees shall be reimbursed for ~~paid~~
893 expenses pursuant to s. 112.061.
894 (f) ~~(c)~~ The fees shall be taxed as costs in the case.
895 (g) ~~(d)~~ In order for an expert to be paid for the services
896 rendered, the expert's report and testimony must explicitly
897 address each of the factors and follow the procedures set out in
898 this chapter and in the Florida Rules of Criminal Procedure.
899 Section 11. Subsections (1), (2), and (3) of section
900 916.12, Florida Statutes, are amended to read:
901 916.12 Mental competence to proceed.--
902 (1) A defendant is incompetent to proceed within the
903 meaning of this chapter if the defendant does not have
904 sufficient present ability to consult with her or his lawyer
905 with a reasonable degree of rational understanding or if the
906 defendant has no rational, as well as factual, understanding of
907 the proceedings against her or him.
908 (2) Mental health experts appointed pursuant to s. 916.115
909 ~~An expert~~ shall first determine whether the defendant has a

910 mental illness ~~person is mentally ill~~ and, if so, consider the
911 factors related to the issue of whether the defendant meets the
912 criteria for competence to proceed as described in subsection
913 (1)~~; that is, whether the defendant has sufficient present~~
914 ~~ability to consult with counsel with a reasonable degree of~~
915 ~~rational understanding and whether the defendant has a rational,~~
916 ~~as well as factual, understanding of the pending proceedings~~. A
917 defendant must be evaluated by no fewer than two experts before
918 the court commits the defendant or takes other action authorized
919 by this chapter or the Florida Rules of Criminal Procedure,
920 except if one expert finds that the defendant is incompetent to
921 proceed and the parties stipulate to that finding, the court may
922 commit the defendant or take other action authorized by this
923 chapter or the rules without further evaluation or hearing, or
924 the court may appoint no more than two additional experts to
925 evaluate the defendant. Notwithstanding any stipulation by the
926 state and the defendant, the court may require a hearing with
927 testimony from the expert or experts before ordering the
928 commitment of a defendant.
929 (3) In considering the issue of competence to proceed, an
930 examining expert shall first consider and specifically include
931 in his or her report the defendant's capacity to:
932 (a) Appreciate the charges or allegations against the
933 defendant.~~;~~
934 (b) Appreciate the range and nature of possible penalties,
935 if applicable, that may be imposed in the proceedings against
936 the defendant.~~;~~

937 (c) Understand the adversarial nature of the legal
938 process.~~;~~
939 (d) Disclose to counsel facts pertinent to the proceedings
940 at issue.~~;~~
941 (e) Manifest appropriate courtroom behavior.~~; and~~
942 (f) Testify relevantly.~~;~~
943 (g) ~~and include in his or her report~~ Any other factor
944 deemed relevant by the expert.
945 Section 12. Section 916.13, Florida Statutes, is amended
946 to read:
947 916.13 Involuntary commitment of defendant adjudicated
948 incompetent.--
949 (1) Every defendant who is charged with a felony and who
950 is adjudicated incompetent to proceed~~, pursuant to the~~
951 ~~applicable Florida Rules of Criminal Procedure,~~ may be
952 involuntarily committed for treatment upon a finding by the
953 court of clear and convincing evidence that:
954 (a) The defendant has a mental illness ~~is mentally ill~~ and
955 because of the mental illness:
956 1. The defendant is manifestly incapable of surviving
957 alone or with the help of willing and responsible family or
958 friends, including available alternative services, and, without
959 treatment, the defendant is likely to suffer from neglect or
960 refuse to care for herself or himself and such neglect or
961 refusal poses a real and present threat of substantial harm to
962 the defendant's well-being; or ~~and~~
963 2. There is a substantial likelihood that in the near
964 future the defendant will inflict serious bodily harm on herself

965 or himself or another person, as evidenced by recent behavior
966 causing, attempting, or threatening such harm;
967 (b) All available, less restrictive treatment
968 alternatives, including treatment in community residential
969 facilities or community inpatient or outpatient settings, which
970 would offer an opportunity for improvement of the defendant's
971 condition have been judged to be inappropriate; and
972 (c) There is a substantial probability that the mental
973 illness causing the defendant's incompetence will respond to
974 treatment and the defendant will regain competency to proceed in
975 the reasonably foreseeable future.
976 (2) A defendant who has been charged with a felony and who
977 has been adjudicated incompetent to proceed due to mental
978 illness, and who meets the criteria for involuntary commitment
979 to the department under the provisions of this chapter, may be
980 committed to the department, and the department shall retain and
981 treat the defendant. No later than 6 months after the date of
982 admission and ~~or~~ at the end of any period of extended
983 commitment, or at any time the administrator or designee shall
984 have determined that the defendant has regained competency to
985 proceed or no longer meets the criteria for continued
986 commitment, the administrator or designee shall file a report
987 with the court pursuant to the applicable Florida Rules of
988 Criminal Procedure.
989 Section 13. Section 916.145, Florida Statutes, is amended
990 to read:
991 916.145 ~~Adjudication of incompetency due to mental~~
992 ~~illness;~~ Dismissal of charges.--The charges against any

993 defendant adjudicated incompetent to proceed due to the
994 defendant's mental illness shall be dismissed without prejudice
995 to the state if the defendant remains incompetent to proceed 5
996 years after such determination, unless the court in its order
997 specifies its reasons for believing that the defendant will
998 become competent to proceed within the foreseeable future and
999 specifies the time within which the defendant is expected to
1000 become competent to proceed. The charges against the defendant
1001 are dismissed without prejudice to the state to refile the
1002 charges should the defendant be declared competent to proceed in
1003 the future.
1004 Section 14. Section 916.15, Florida Statutes, is amended
1005 to read:
1006 916.15 Involuntary commitment of defendant adjudicated not
1007 guilty by reason of insanity.--
1008 (1) The determination of whether a defendant is not guilty
1009 by reason of insanity shall be determined in accordance with
1010 Rule 3.217, Florida Rules of Criminal Procedure.
1011 (2) ~~(1)~~ A defendant who is acquitted of criminal charges
1012 because of a finding of not guilty by reason of insanity may be
1013 involuntarily committed pursuant to such finding if the
1014 defendant has a mental illness ~~is mentally ill~~ and, because of
1015 the illness, is manifestly dangerous to himself or herself or
1016 others.
1017 (3) ~~(2)~~ Every defendant acquitted of criminal charges by
1018 reason of insanity and found to meet the criteria for
1019 involuntary commitment may be committed and treated in
1020 accordance with the provisions of this section and the

1021 applicable Florida Rules of Criminal Procedure. The department
1022 shall admit a defendant so adjudicated to an appropriate
1023 facility or program for treatment and shall retain and treat
1024 such defendant. No later than 6 months after the date of
1025 admission, prior to the end of any period of extended
1026 commitment, or at any time the administrator or designee shall
1027 have determined that the defendant no longer meets the criteria
1028 for continued commitment placement, the administrator or
1029 designee shall file a report with the court pursuant to the
1030 applicable Florida Rules of Criminal Procedure.
1031 (4) ~~(3)~~ In all proceedings under this section ~~subsection~~,
1032 both the defendant and the state shall have the right to a
1033 hearing before the committing court. Evidence at such hearing
1034 may be presented by the hospital administrator or the
1035 administrator's designee as well as by the state and the
1036 defendant. The defendant shall have the right to counsel at any
1037 such hearing. In the event that a defendant is determined to be
1038 indigent pursuant to s. 27.52, the public defender shall
1039 represent the defendant. The parties shall have access to the
1040 defendant's records at the treating facilities and may interview
1041 or depose personnel who have had contact with the defendant at
1042 the treating facilities.
1043 Section 15. Section 916.16, Florida Statutes, is amended
1044 to read:
1045 916.16 Jurisdiction of committing court.--
1046 (1) The committing court shall retain jurisdiction over ~~in~~
1047 ~~the case of~~ any defendant involuntarily committed due to a
1048 determination of incompetency ~~hospitalized as incompetent~~ to

1049 proceed due to mental illness or ~~because of~~ a finding of not
1050 guilty by reason of insanity pursuant to this chapter. The ~~No~~
1051 ~~such~~ defendant may not be released except by order of the
1052 committing court. An ~~The~~ administrative hearing examiner does
1053 not ~~shall~~ have ~~no~~ jurisdiction to determine issues of continuing
1054 commitment ~~hospitalization~~ or release of any defendant
1055 involuntarily committed ~~admitted~~ pursuant to this chapter.
1056 (2) The committing court shall retain jurisdiction in the
1057 case of any defendant placed on conditional release pursuant to
1058 s. 916.17. ~~No~~ Such defendant may not be released from the
1059 conditions of release except by order of the committing court.
1060 Section 16. Section 916.17, Florida Statutes, is amended
1061 to read:
1062 916.17 Conditional release.--
1063 (1) Except for an inmate currently serving a prison
1064 sentence, ~~The committing court may order a conditional release~~
1065 ~~of any defendant who has been found to be incompetent to proceed~~
1066 ~~or not guilty by reason of insanity, based on an approved plan~~
1067 ~~for providing appropriate outpatient care and treatment.~~ the
1068 committing court may order a conditional release of any
1069 defendant in lieu of an involuntary commitment to a facility
1070 pursuant to s. 916.13 or s. 916.15 based upon an approved plan
1071 for providing appropriate outpatient care and treatment. Upon a
1072 recommendation that outpatient treatment of the defendant is
1073 appropriate, a written plan for outpatient treatment, including
1074 recommendations from qualified professionals, must be filed with
1075 the court, with copies to all parties. Such a plan may also be

1076 submitted by the defendant and filed with the court with copies
1077 to all parties. The plan shall include:
1078 (a) Special provisions for residential care or adequate
1079 supervision of the defendant.
1080 (b) Provisions for outpatient mental health services.
1081 (c) If appropriate, recommendations for auxiliary services
1082 such as vocational training, educational services, or special
1083 medical care.
1084
1085 In its order of conditional release, the court shall specify the
1086 conditions of release based upon the release plan and shall
1087 direct the appropriate agencies or persons to submit periodic
1088 reports to the court regarding the defendant's compliance with
1089 the conditions of the release and progress in treatment, with
1090 copies to all parties.
1091 (2) Upon the filing of an affidavit or statement under
1092 oath by any person that the defendant has failed to comply with
1093 the conditions of release, that the defendant's condition has
1094 deteriorated to the point that inpatient care is required, or
1095 that the release conditions should be modified, the court shall
1096 hold a hearing within 7 days after receipt of the affidavit or
1097 statement under oath. After the hearing, the court may modify
1098 the release conditions. The court may also order that the
1099 defendant be returned to the department if it is found, after
1100 the appointment and report of experts, that the person meets the
1101 criteria for involuntary commitment under s. 916.13 or s. 916.15
1102 ~~treatment~~.

1103 (3) If at any time it is determined after a hearing that
1104 the defendant who has been conditionally released under
1105 subsection (1) no longer requires court-supervised followup
1106 care, the court shall terminate its jurisdiction in the cause
1107 and discharge the defendant.
1108 Section 17. Section 916.301, Florida Statutes, is amended
1109 to read:
1110 916.301 Appointment of experts.--
1111 (1) All evaluations ordered by the court under this part
1112 must be conducted by qualified experts who have expertise in
1113 evaluating persons with retardation or autism. The agency
1114 ~~department~~ shall maintain and provide the courts annually with a
1115 list of available retardation and autism professionals who are
1116 appropriately licensed and qualified to perform evaluations of
1117 defendants alleged to be incompetent to proceed due to
1118 retardation or autism. The courts may use professionals from
1119 this list when appointing experts and ordering evaluations under
1120 this part ~~for defendants suspected of being retarded or~~
1121 ~~autistic~~.
1122 (2) If a defendant's suspected mental condition is
1123 retardation or autism, the court shall appoint the following:
1124 ~~two experts, one of whom must be the developmental services~~
1125 ~~program of the department, each of whom will evaluate whether~~
1126 ~~the defendant meets the definition of retardation or autism and,~~
1127 ~~if so, whether the defendant is competent to proceed.~~
1128 (a) ~~(3)~~ At least one, or at the request of any party, two
1129 experts ~~the court may appoint one additional expert~~ to evaluate
1130 ~~the defendant. The expert appointed by the court will evaluate~~

1131 whether the defendant meets the definition of retardation or
1132 autism and, if so, whether the defendant is competent to
1133 proceed.
1134 (b) ~~(4)~~ ~~The developmental services program shall select~~ A
1135 psychologist selected by the agency who is licensed or
1136 authorized by law to practice in this state, with experience in
1137 evaluating persons suspected of having retardation or autism,
1138 and a social service professional, with experience in working
1139 with persons with retardation or autism ~~to evaluate the~~
1140 ~~defendant~~.
1141 1. ~~(a)~~ The psychologist shall evaluate whether the
1142 defendant meets the definition of retardation or autism and, if
1143 so, whether the defendant is incompetent to proceed due to
1144 retardation or autism.
1145 2. ~~(b)~~ The social service professional shall provide a
1146 social and developmental history of the defendant.
1147 ~~(5) All evaluations ordered by the court must be from~~
1148 ~~qualified experts with experience in evaluating persons with~~
1149 ~~retardation or autism.~~
1150 (3) ~~(6)~~ The ~~panel of~~ experts may examine the defendant in
1151 jail, in another appropriate local facility, in a facility of
1152 the Department of Corrections, or on an outpatient basis.
1153 (4) ~~(7)~~ Experts ~~Expert witnesses~~ appointed by the court to
1154 evaluate the mental condition of a defendant in a criminal case
1155 shall be allowed reasonable fees for services rendered as
1156 evaluators and as witnesses, which shall be paid by the court.
1157 State employees shall be paid expenses pursuant to s. 112.061.
1158 The fees shall be taxed as costs in the case. In order for the

1159 experts to be paid for the services rendered, the reports and
1160 testimony must explicitly address each of the factors and follow
1161 the procedures set out in this chapter and in the Florida Rules
1162 of Criminal Procedure.
1163 Section 18. Subsections (1), (2), and (3) of section
1164 916.3012, Florida Statutes, are amended to read:
1165 916.3012 Mental competence to proceed.--
1166 (1) A defendant whose suspected mental condition is
1167 retardation or autism is incompetent to proceed within the
1168 meaning of this chapter if the defendant does not have
1169 sufficient present ability to consult with the defendant's
1170 lawyer with a reasonable degree of rational understanding or if
1171 the defendant has no rational, as well as factual, understanding
1172 of the proceedings against the defendant.
1173 (2) ~~The~~ Experts in retardation or autism appointed
1174 pursuant to s. 916.301 shall first consider whether the
1175 defendant meets the definition of retardation or autism and, if
1176 so, consider the factors related to the issue of whether the
1177 defendant meets the criteria for competence to proceed as
1178 described in subsection (1)~~; that is, whether the defendant has~~
1179 ~~sufficient present ability to consult with counsel with a~~
1180 ~~reasonable degree of rational understanding and whether the~~
1181 ~~defendant has a rational, as well as factual, understanding of~~
1182 ~~the pending proceedings~~.
1183 (3) In considering the issue of competence to proceed, the
1184 examining experts shall first consider and specifically include
1185 in their report the defendant's capacity to:

1186 (a) Appreciate the charges or allegations against the
1187 defendant.~~;~~
1188 (b) Appreciate the range and nature of possible penalties,
1189 if applicable, that may be imposed in the proceedings against
1190 the defendant.~~;~~
1191 (c) Understand the adversarial nature of the legal
1192 process.~~;~~
1193 (d) Disclose to counsel facts pertinent to the proceedings
1194 at issue.~~;~~
1195 (e) Manifest appropriate courtroom behavior.~~; and~~
1196 (f) Testify relevantly.~~;~~
1197 (g) ~~and include in their report~~ Any other factor deemed
1198 relevant by the experts.
1199 Section 19. Section 916.302, Florida Statutes, is amended
1200 to read:
1201 916.302 Involuntary commitment of defendant determined to
1202 be incompetent to proceed ~~due to retardation or autism~~.--
1203 (1) CRITERIA.--Every defendant who is charged with a
1204 felony and who is adjudicated ~~found to be~~ incompetent to proceed
1205 due to retardation or autism~~, pursuant to this chapter and the~~
1206 ~~applicable Florida Rules of Criminal Procedure,~~ may be
1207 involuntarily committed for training upon a finding by the court
1208 of clear and convincing evidence that:
1209 (a) The defendant has retardation or autism ~~is retarded or~~
1210 ~~autistic~~;
1211 (b) There is a substantial likelihood that in the near
1212 future the defendant will inflict serious bodily harm on himself

1213 or herself or another person, as evidenced by recent behavior
1214 causing, attempting, or threatening such harm;
1215 (c) All available, less restrictive alternatives,
1216 including services provided in community residential facilities
1217 or other community settings, which would offer an opportunity
1218 for improvement of the condition have been judged to be
1219 inappropriate; and
1220 (d) There is a substantial probability that the
1221 retardation or autism causing the defendant's incompetence will
1222 respond to training and the defendant will regain competency to
1223 proceed in the reasonably foreseeable future.
1224 (2) ADMISSION TO A FACILITY.--
1225 (a) A defendant who has been charged with a felony and who
1226 is found to be incompetent to proceed due to retardation or
1227 autism, and who meets the criteria for involuntary commitment to
1228 the agency ~~department~~ under the provisions of this chapter,
1229 shall be committed to the agency ~~department~~, and the agency
1230 ~~department~~ shall retain and provide appropriate training for
1231 ~~serve~~ the defendant. No later than 6 months after the date of
1232 admission or at the end of any period of extended commitment or
1233 at any time the administrator or designee shall have determined
1234 that the defendant has regained competency to proceed or no
1235 longer meets the criteria for continued commitment, the
1236 administrator or designee shall file a report with the court
1237 pursuant to this chapter and the applicable Florida Rules of
1238 Criminal Procedure.
1239 (b) A defendant determined to be incompetent to proceed
1240 due to retardation or autism may be ordered by a circuit court

1241 into a forensic ~~secure~~ facility designated by the agency
1242 ~~department~~ for ~~retarded or autistic~~ defendants who have mental
1243 retardation or autism.
1244 (c) The agency ~~department~~ may transfer a defendant from a
1245 designated forensic ~~secure~~ facility to another designated
1246 forensic ~~secure~~ facility and must notify the court of the
1247 transfer within 30 days after the transfer is completed.
1248 (d) The agency ~~department~~ may not transfer a defendant
1249 from a designated forensic ~~secure~~ facility to a civil ~~nonsecure~~
1250 facility without first notifying the court, and all parties, 30
1251 days before the proposed transfer. If the court objects to the
1252 proposed transfer ~~to a nonsecure facility~~, it must send its
1253 written objection to the agency ~~department~~. The agency
1254 ~~department~~ may transfer the defendant unless it receives the
1255 written objection from the court within 30 days after the
1256 court's receipt of the notice of the proposed transfer.
1257 (3) PLACEMENT OF DUALLY DIAGNOSED DEFENDANTS.--
1258 (a) If a defendant has ~~is~~ both mental retardation or
1259 autism ~~retarded or autistic~~ and has a mental illness ~~mentally~~
1260 ~~ill~~, evaluations must address which condition is primarily
1261 affecting the defendant's competency to proceed. Referral of the
1262 defendant should be made to a civil or forensic ~~the~~ facility ~~or~~
1263 ~~program~~ most appropriate to address the symptoms that ~~which~~ are
1264 the cause of the defendant's incompetence.
1265 (b) Transfer from one civil or forensic facility ~~or~~
1266 ~~program~~ to another civil or forensic facility ~~or program~~ may
1267 occur when, in the department's and agency's judgment, it is in
1268 the defendant's best treatment or training interests. The

1269 department and agency shall submit an evaluation and
1270 justification for the transfer to the court. The court may
1271 consult with an outside expert if necessary. Transfer will
1272 require an amended order from the committing court.
1273 Section 20. Section 916.3025, Florida Statutes, is amended
1274 to read:
1275 916.3025 Jurisdiction of committing court.--
1276 (1) The committing court shall retain jurisdiction in the
1277 case of any defendant found to be incompetent to proceed due to
1278 retardation or autism and ordered into a forensic ~~secure~~
1279 facility designated by the agency ~~department~~ for ~~retarded or~~
1280 ~~autistic~~ defendants who have mental retardation or autism. A ~~No~~
1281 defendant may not be released except by the order of the
1282 committing court. An administrative hearing examiner does not
1283 have jurisdiction to determine issues of continuing commitment
1284 or release of any defendant involuntarily committed pursuant to
1285 this chapter.
1286 (2) The committing court shall retain jurisdiction in the
1287 case of any defendant placed on conditional release pursuant to
1288 s. 916.304. ~~No~~ Such defendant may not be released from the
1289 conditions of release except by order of the committing court.
1290 (3) The committing court shall consider a ~~the~~ petition to
1291 involuntarily admit a defendant whose charges have been
1292 dismissed to residential services provided by the agency
1293 ~~department's developmental services program a person whose~~
1294 ~~charges have been dismissed,~~ and, when applicable, to continue
1295 secure placement of such person as provided in s. 916.303. The
1296 committing court shall retain jurisdiction over such person so

1297 long as he or she remains in secure placement or is on
1298 conditional release as provided in s. 916.304. However, upon
1299 request, the court may transfer continuing jurisdiction to the
1300 court in the circuit where the defendant resides. The defendant
1301 may not be released from an order for secure placement except by
1302 order of the court.
1303 Section 21. Section 916.303, Florida Statutes, is amended
1304 to read:
1305 916.303 Determination of incompetency due to retardation
1306 or autism; dismissal of charges.--
1307 (1) The charges against any defendant found to be
1308 incompetent to proceed due to retardation or autism shall be
1309 dismissed without prejudice to the state if the defendant
1310 remains incompetent to proceed within a reasonable time after
1311 such determination, not to exceed 2 years, unless the court in
1312 its order specifies its reasons for believing that the defendant
1313 will become competent to proceed within the foreseeable future
1314 and specifies the time within which the defendant is expected to
1315 become competent to proceed. The charges may be refiled by the
1316 state if ~~against the defendant are dismissed without prejudice~~
1317 ~~to the state to refile the charges should~~ the defendant is ~~be~~
1318 declared competent to proceed in the future.
1319 (2)~~(a)~~ If the charges are dismissed and if the defendant
1320 is considered to lack sufficient capacity to give express and
1321 informed consent to a voluntary application for services and
1322 lacks the basic survival and self-care skills to provide for his
1323 or her well-being or is likely to physically injure himself or
1324 herself or others if allowed to remain at liberty, the agency

1325 ~~department~~, the state attorney, or the defendant's attorney
1326 shall ~~may~~ apply to the committing court to involuntarily admit
1327 the defendant to residential services pursuant to s. 393.11.
1328 (3) ~~(b)~~ If the defendant is considered to need involuntary
1329 residential services for reasons described in subsection (2)
1330 ~~under s. 393.11~~ and, further, there is a substantial likelihood
1331 that the defendant will injure another person or continues to
1332 present a danger of escape, and all available less restrictive
1333 alternatives, including services in community residential
1334 facilities or other community settings, which would offer an
1335 opportunity for improvement of the condition have been judged to
1336 be inappropriate, ~~then~~ the agency ~~person or entity filing the~~
1337 ~~petition under s. 393.11~~, the state attorney, or the defendant's
1338 counsel may request~~, the petitioning commission, or the~~
1339 ~~department may also petition~~ the committing court to continue
1340 the defendant's placement in a secure facility ~~or program~~
1341 pursuant to this part ~~section~~. Any placement so continued under
1342 this subsection must be ~~defendant involuntarily admitted under~~
1343 ~~this paragraph shall have his or her status~~ reviewed by the
1344 court at least annually at a hearing. The annual review and
1345 hearing shall determine whether the defendant continues to meet
1346 the criteria described in this subsection ~~for involuntary~~
1347 ~~residential services~~ and, if so, whether the defendant still
1348 requires involuntary placement in a secure facility ~~or program~~
1349 ~~because the court finds that the defendant is likely to~~
1350 ~~physically injure others as specified in s. 393.11~~ and whether
1351 the defendant is receiving adequate care, treatment,
1352 habilitation, and rehabilitation, including psychotropic

1353 medication and behavioral programming. Notice of the annual
1354 review and review hearing shall be given to the state attorney
1355 and ~~to~~ the defendant's attorney. In no instance may a
1356 defendant's placement in a secure facility ~~or program~~ exceed the
1357 maximum sentence for the crime for which the defendant was
1358 charged.
1359 Section 22. Section 916.304, Florida Statutes, is amended
1360 to read:
1361 916.304 Conditional release.--
1362 (1) Except for an inmate currently serving a prison
1363 sentence, the committing court may order a conditional release
1364 of any defendant who has been found to be incompetent to proceed
1365 due to retardation or autism, based on an approved plan for
1366 providing ~~continuing~~ community-based training. The committing
1367 criminal court may order a conditional release of any defendant
1368 to a civil facility in lieu of an involuntary commitment to a
1369 forensic facility pursuant to s. 916.302. Upon a recommendation
1370 that community-based training for the defendant is appropriate,
1371 a written plan for community-based training, including
1372 recommendations from qualified professionals, may be filed with
1373 the court, with copies to all parties. Such a plan may also be
1374 submitted by the defendant and filed with the court, with copies
1375 to all parties. The plan must ~~shall~~ include:
1376 (a) Special provisions for residential care and adequate
1377 supervision of the defendant, including recommended location of
1378 placement.

1379 (b) Recommendations for auxiliary services such as
1380 vocational training, psychological training, educational
1381 services, leisure services, and special medical care.
1382
1383 In its order of conditional release, the court shall specify the
1384 conditions of release based upon the release plan and shall
1385 direct the appropriate agencies or persons to submit periodic
1386 reports to the courts regarding the defendant's compliance with
1387 the conditions of the release and progress in training, with
1388 copies to all parties.
1389 (2) Upon the filing of an affidavit or statement under
1390 oath by any person that the defendant has failed to comply with
1391 the conditions of release, that the defendant's condition has
1392 deteriorated, or that the release conditions should be modified,
1393 the court shall hold a hearing within 7 days after receipt of
1394 the affidavit or statement under oath. With notice to the court
1395 and all parties, the agency may detain a defendant in a forensic
1396 facility until the hearing occurs. After the hearing, the court
1397 may modify the release conditions. The court may also order that
1398 the defendant be placed into more appropriate programs for
1399 further training or may order the defendant to be committed
1400 ~~returned~~ to a forensic facility ~~involuntary residential services~~
1401 ~~of the department~~ if it is found, after the appointment and
1402 report of experts, that the defendant meets the criteria for
1403 placement in a forensic facility ~~involuntary residential~~
1404 ~~services~~.
1405 (3) If at any time it is determined after a hearing that
1406 the defendant conditionally released under subsection (1) no

1407 longer requires court-supervised followup care, the court shall
1408 terminate its jurisdiction in the cause and discharge the
1409 defendant.
1410 Section 23. Subsection (1) of section 921.137, Florida
1411 Statutes, is amended to read:
1412 921.137 Imposition of the death sentence upon a ~~mentally~~
1413 ~~retarded~~ defendant with mental retardation prohibited.--
1414 (1) As used in this section, the term "mental retardation"
1415 means significantly subaverage general intellectual functioning
1416 existing concurrently with deficits in adaptive behavior and
1417 manifested during the period from conception to age 18. The term
1418 "significantly subaverage general intellectual functioning," for
1419 the purpose of this section, means performance that is two or
1420 more standard deviations from the mean score on a standardized
1421 intelligence test specified in the rules of the Agency for
1422 Persons with Disabilities ~~Department of Children and Family~~
1423 ~~Services~~. The term "adaptive behavior," for the purpose of this
1424 definition, means the effectiveness or degree with which an
1425 individual meets the standards of personal independence and
1426 social responsibility expected of his or her age, cultural
1427 group, and community. The Agency for Persons with Disabilities
1428 ~~Department of Children and Family Services~~ shall adopt rules to
1429 specify the standardized intelligence tests as provided in this
1430 subsection.
1431 Section 24. Paragraphs (d), (e), (g), and (h) of
1432 subsection (1), subsections (2), (3), and (4), paragraph (b) of
1433 subsection (5), and paragraph (a) of subsection (6) of section
1434 985.223, Florida Statutes, are amended to read:

1435 985.223 Incompetency in juvenile delinquency cases.--
1436 (1) If, at any time prior to or during a delinquency case,
1437 the court has reason to believe that the child named in the
1438 petition may be incompetent to proceed with the hearing, the
1439 court on its own motion may, or on the motion of the child's
1440 attorney or state attorney must, stay all proceedings and order
1441 an evaluation of the child's mental condition.
1442 (d) For incompetency evaluations related to mental
1443 illness, the Department of Children and Family Services shall
1444 maintain and annually provide the courts with a list of
1445 available mental health professionals who have completed a
1446 training program approved by the Department of Children and
1447 Family Services to perform the evaluations.
1448 (e) For incompetency evaluations related to mental
1449 retardation or autism, the court shall order the Agency for
1450 Persons with Disabilities ~~Developmental Disabilities Program~~
1451 ~~Office within the Department of Children and Family Services~~ to
1452 examine the child to determine if the child meets the definition
1453 of "retardation" or "autism" in s. 393.063 and, if so, whether
1454 the child is competent to proceed with delinquency proceedings.
1455 (g) Immediately upon the filing of the court order finding
1456 a child incompetent to proceed, the clerk of the court shall
1457 notify the Department of Children and Family Services and the
1458 Agency for Persons with Disabilities and fax or hand deliver to
1459 the department and to the agency ~~of Children and Family Services~~
1460 a referral packet that ~~which~~ includes, at a minimum, the court
1461 order, the charging documents, the petition, and the court-
1462 appointed evaluator's reports.

1463 (h) After placement of the child in the appropriate
1464 setting, the Department of Children and Family Services in
1465 consultation with the Agency for Persons with Disabilities, as
1466 appropriate, must, within 30 days after placement of ~~the~~
1467 ~~Department of Children and Family Services places~~ the child,
1468 prepare and submit to the court a treatment or training plan for
1469 the child's restoration of competency. A copy of the ~~treatment~~
1470 plan must be served upon the child's attorney, the state
1471 attorney, and the attorneys representing the Department of
1472 Juvenile Justice.
1473 (2) A child ~~who is mentally ill or retarded,~~ who is
1474 adjudicated incompetent to proceed, and who has committed a
1475 delinquent act or violation of law, either of which would be a
1476 felony if committed by an adult, must be committed to the
1477 Department of Children and Family Services for treatment or
1478 training. A child who has been adjudicated incompetent to
1479 proceed because of age or immaturity, or for any reason other
1480 than for mental illness or retardation or autism, must not be
1481 committed to the department or to the Department of Children and
1482 Family Services for restoration-of-competency treatment or
1483 training services. For purposes of this section, a child who has
1484 committed a delinquent act or violation of law, either of which
1485 would be a misdemeanor if committed by an adult, may not be
1486 committed to the department or to the Department of Children and
1487 Family Services for restoration-of-competency treatment or
1488 training services.
1489 (3) If the court finds that a child has mental illness,
1490 mental retardation, or autism ~~is mentally ill or retarded~~ and

1491 adjudicates the child incompetent to proceed, the court must
1492 also determine whether the child meets the criteria for secure
1493 placement. A child may be placed in a secure facility or program
1494 if the court makes a finding by clear and convincing evidence
1495 that:
1496 (a) The child has mental illness, mental retardation, or
1497 autism ~~is mentally ill~~ and because of the mental illness, mental
1498 retardation, or autism~~; or the child is mentally retarded and~~
1499 ~~because of the mental retardation~~:
1500 1. The child is manifestly incapable of surviving with the
1501 help of willing and responsible family or friends, including
1502 available alternative services, and without treatment or
1503 training the child is likely to either suffer from neglect or
1504 refuse to care for self, and such neglect or refusal poses a
1505 real and present threat of substantial harm to the child's well-
1506 being; or
1507 2. There is a substantial likelihood that in the near
1508 future the child will inflict serious bodily harm on self or
1509 others, as evidenced by recent behavior causing, attempting, or
1510 threatening such harm; and
1511 (b) All available less restrictive alternatives, including
1512 treatment or training in community residential facilities or
1513 community settings which would offer an opportunity for
1514 improvement of the child's condition, are inappropriate.
1515 (4) A child who is determined to have mental retardation
1516 or autism ~~be mentally ill or retarded~~, who has been adjudicated
1517 incompetent to proceed, and who meets the criteria set forth in
1518 subsection (3), must be committed to the Department of Children

1519 and Family Services~~,~~ and receive treatment or training ~~the~~
1520 ~~Department of Children and Family Services must treat or train~~
1521 ~~the child~~ in a secure facility or program that ~~which~~ is the
1522 least restrictive alternative consistent with public safety. Any
1523 placement of a child to a secure residential program must be
1524 separate from adult forensic programs. If the child attains
1525 competency, then custody, case management, and supervision of
1526 the child will be transferred to the department in order to
1527 continue delinquency proceedings; however, the court retains
1528 authority to order the Department of Children and Family
1529 Services to provide continued treatment or training to maintain
1530 competency.
1531 (a) A child adjudicated incompetent due to mental
1532 retardation or autism may be ordered into a secure program or
1533 facility designated by the Department of Children and Family
1534 Services for ~~retarded~~ children with mental retardation or
1535 autism.
1536 (b) A child adjudicated incompetent due to mental illness
1537 may be ordered into a secure program or facility designated by
1538 the Department of Children and Family Services for ~~mentally ill~~
1539 children have mental illnesses.
1540 (c) Whenever a child is placed in a secure residential
1541 facility, the department will provide transportation to the
1542 secure residential facility for admission and from the secure
1543 residential facility upon discharge.
1544 (d) The purpose of the treatment or training is the
1545 restoration of the child's competency to proceed.

1546 (e) The service provider must file a written report with
1547 the court pursuant to the applicable Florida Rules of Juvenile
1548 Procedure not later than 6 months after the date of commitment,
1549 or at the end of any period of extended treatment or training,
1550 and at any time the Department of Children and Family Services,
1551 through its service provider determines the child has attained
1552 competency or no longer meets the criteria for secure placement,
1553 or at such shorter intervals as ordered by the court. A copy of
1554 a written report evaluating the child's competency must be filed
1555 by the provider with the court and with the state attorney, the
1556 child's attorney, the department, and the Department of Children
1557 and Family Services.
1558 (5)
1559 (b) Whenever the provider files a report with the court
1560 informing the court that the child will never become competent
1561 to proceed, the Department of Children and Family Services will
1562 develop a discharge plan for the child prior to any hearing
1563 determining whether the child will ever become competent to
1564 proceed and send the~~. The Department of Children and Family~~
1565 ~~Services must send the proposed discharge~~ plan to the court, the
1566 state attorney, the child's attorney, and the attorneys
1567 representing the Department of Juvenile Justice. The provider
1568 will continue to provide services to the child until the court
1569 issues the order finding the child will never become competent
1570 to proceed.
1571 (6)(a) If a child is determined to have mental illness,
1572 mental retardation, or autism ~~be mentally ill or retarded~~ and is
1573 found to be incompetent to proceed but does not meet the

1574 criteria set forth in subsection (3), the court shall commit the
1575 child to the Department of Children and Family Services and
1576 shall order the Department of Children and Family Services to
1577 provide appropriate treatment and training in the community. The
1578 purpose of the treatment or training is the restoration of the
1579 child's competency to proceed.
1580 Section 25. Paragraph (b) of subsection (14) of section
1581 287.057, Florida Statutes, is amended to read:
1582 287.057 Procurement of commodities or contractual
1583 services.--
1584 (14)
1585 (b) Notwithstanding paragraph (a), the Department of
1586 Children and Family Services may enter into agreements, not to
1587 exceed 20 years, with a private provider to finance, design, and
1588 construct a forensic treatment facility, as defined in s.
1589 916.106(10) ~~(8)~~, of at least 200 beds and to operate all aspects
1590 of daily operations within the forensic treatment facility. The
1591 selected contractor is authorized to sponsor the issuance of
1592 tax-exempt certificates of participation or other securities to
1593 finance the project, and the state is authorized to enter into a
1594 lease-purchase agreement for the forensic treatment facility.
1595 This paragraph expires July 1, 2006.
1596 Section 26. Paragraph (r) of subsection (3) of section
1597 408.036, Florida Statutes, is amended to read:
1598 408.036 Projects subject to review; exemptions.--
1599 (3) EXEMPTIONS.--Upon request, the following projects are
1600 subject to exemption from the provisions of subsection (1):

1601 (r) For beds in state mental health treatment facilities
1602 defined in s. 394.455 ~~operated under s. 394.455(30)~~ and state
1603 mental health forensic facilities operated under chapter 916 ~~s.~~
1604 ~~916.106(8)~~.
1605 Section 27. Paragraph (a) of subsection (4) of section
1606 943.0585, Florida Statutes, is amended to read:
1607 943.0585 Court-ordered expunction of criminal history
1608 records.--The courts of this state have jurisdiction over their
1609 own procedures, including the maintenance, expunction, and
1610 correction of judicial records containing criminal history
1611 information to the extent such procedures are not inconsistent
1612 with the conditions, responsibilities, and duties established by
1613 this section. Any court of competent jurisdiction may order a
1614 criminal justice agency to expunge the criminal history record
1615 of a minor or an adult who complies with the requirements of
1616 this section. The court shall not order a criminal justice
1617 agency to expunge a criminal history record until the person
1618 seeking to expunge a criminal history record has applied for and
1619 received a certificate of eligibility for expunction pursuant to
1620 subsection (2). A criminal history record that relates to a
1621 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
1622 s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071,
1623 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
1624 s. 916.1075, or a violation enumerated in s. 907.041 may not be
1625 expunged, without regard to whether adjudication was withheld,
1626 if the defendant was found guilty of or pled guilty or nolo
1627 contendere to the offense, or if the defendant, as a minor, was
1628 found to have committed, or pled guilty or nolo contendere to

1629 committing, the offense as a delinquent act. The court may only
1630 order expunction of a criminal history record pertaining to one
1631 arrest or one incident of alleged criminal activity, except as
1632 provided in this section. The court may, at its sole discretion,
1633 order the expunction of a criminal history record pertaining to
1634 more than one arrest if the additional arrests directly relate
1635 to the original arrest. If the court intends to order the
1636 expunction of records pertaining to such additional arrests,
1637 such intent must be specified in the order. A criminal justice
1638 agency may not expunge any record pertaining to such additional
1639 arrests if the order to expunge does not articulate the
1640 intention of the court to expunge a record pertaining to more
1641 than one arrest. This section does not prevent the court from
1642 ordering the expunction of only a portion of a criminal history
1643 record pertaining to one arrest or one incident of alleged
1644 criminal activity. Notwithstanding any law to the contrary, a
1645 criminal justice agency may comply with laws, court orders, and
1646 official requests of other jurisdictions relating to expunction,
1647 correction, or confidential handling of criminal history records
1648 or information derived therefrom. This section does not confer
1649 any right to the expunction of any criminal history record, and
1650 any request for expunction of a criminal history record may be
1651 denied at the sole discretion of the court.
1652 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
1653 criminal history record of a minor or an adult which is ordered
1654 expunged by a court of competent jurisdiction pursuant to this
1655 section must be physically destroyed or obliterated by any
1656 criminal justice agency having custody of such record; except

1657 that any criminal history record in the custody of the
1658 department must be retained in all cases. A criminal history
1659 record ordered expunged that is retained by the department is
1660 confidential and exempt from the provisions of s. 119.07(1) and
1661 s. 24(a), Art. I of the State Constitution and not available to
1662 any person or entity except upon order of a court of competent
1663 jurisdiction. A criminal justice agency may retain a notation
1664 indicating compliance with an order to expunge.
1665 (a) The person who is the subject of a criminal history
1666 record that is expunged under this section or under other
1667 provisions of law, including former s. 893.14, former s. 901.33,
1668 and former s. 943.058, may lawfully deny or fail to acknowledge
1669 the arrests covered by the expunged record, except when the
1670 subject of the record:
1671 1. Is a candidate for employment with a criminal justice
1672 agency;
1673 2. Is a defendant in a criminal prosecution;
1674 3. Concurrently or subsequently petitions for relief under
1675 this section or s. 943.059;
1676 4. Is a candidate for admission to The Florida Bar;
1677 5. Is seeking to be employed or licensed by or to contract
1678 with the Department of Children and Family Services or the
1679 Department of Juvenile Justice or to be employed or used by such
1680 contractor or licensee in a sensitive position having direct
1681 contact with children, the developmentally disabled, the aged,
1682 or the elderly as provided in s. 110.1127(3), s. 393.063, s.
1683 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.

1684 409.175(2)(i), s. 415.102(4), chapter 916 ~~s. 916.106(10) and~~
1685 ~~(13)~~, s. 985.407, or chapter 400; or
1686 6. Is seeking to be employed or licensed by the Department
1687 of Education, any district school board, any university
1688 laboratory school, any charter school, any private or parochial
1689 school, or any local governmental entity that licenses child
1690 care facilities.
1691 Section 28. Paragraph (a) of subsection (4) of section
1692 943.059, Florida Statutes, is amended to read:
1693 943.059 Court-ordered sealing of criminal history
1694 records.--The courts of this state shall continue to have
1695 jurisdiction over their own procedures, including the
1696 maintenance, sealing, and correction of judicial records
1697 containing criminal history information to the extent such
1698 procedures are not inconsistent with the conditions,
1699 responsibilities, and duties established by this section. Any
1700 court of competent jurisdiction may order a criminal justice
1701 agency to seal the criminal history record of a minor or an
1702 adult who complies with the requirements of this section. The
1703 court shall not order a criminal justice agency to seal a
1704 criminal history record until the person seeking to seal a
1705 criminal history record has applied for and received a
1706 certificate of eligibility for sealing pursuant to subsection
1707 (2). A criminal history record that relates to a violation of s.
1708 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
1709 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s.
1710 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or
1711 a violation enumerated in s. 907.041 may not be sealed, without

1712 regard to whether adjudication was withheld, if the defendant
1713 was found guilty of or pled guilty or nolo contendere to the
1714 offense, or if the defendant, as a minor, was found to have
1715 committed or pled guilty or nolo contendere to committing the
1716 offense as a delinquent act. The court may only order sealing of
1717 a criminal history record pertaining to one arrest or one
1718 incident of alleged criminal activity, except as provided in
1719 this section. The court may, at its sole discretion, order the
1720 sealing of a criminal history record pertaining to more than one
1721 arrest if the additional arrests directly relate to the original
1722 arrest. If the court intends to order the sealing of records
1723 pertaining to such additional arrests, such intent must be
1724 specified in the order. A criminal justice agency may not seal
1725 any record pertaining to such additional arrests if the order to
1726 seal does not articulate the intention of the court to seal
1727 records pertaining to more than one arrest. This section does
1728 not prevent the court from ordering the sealing of only a
1729 portion of a criminal history record pertaining to one arrest or
1730 one incident of alleged criminal activity. Notwithstanding any
1731 law to the contrary, a criminal justice agency may comply with
1732 laws, court orders, and official requests of other jurisdictions
1733 relating to sealing, correction, or confidential handling of
1734 criminal history records or information derived therefrom. This
1735 section does not confer any right to the sealing of any criminal
1736 history record, and any request for sealing a criminal history
1737 record may be denied at the sole discretion of the court.
1738 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal
1739 history record of a minor or an adult which is ordered sealed by

1740 a court of competent jurisdiction pursuant to this section is
1741 confidential and exempt from the provisions of s. 119.07(1) and
1742 s. 24(a), Art. I of the State Constitution and is available only
1743 to the person who is the subject of the record, to the subject's
1744 attorney, to criminal justice agencies for their respective
1745 criminal justice purposes, or to those entities set forth in
1746 subparagraphs (a)1., 4., 5., and 6. for their respective
1747 licensing and employment purposes.
1748 (a) The subject of a criminal history record sealed under
1749 this section or under other provisions of law, including former
1750 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
1751 deny or fail to acknowledge the arrests covered by the sealed
1752 record, except when the subject of the record:
1753 1. Is a candidate for employment with a criminal justice
1754 agency;
1755 2. Is a defendant in a criminal prosecution;
1756 3. Concurrently or subsequently petitions for relief under
1757 this section or s. 943.0585;
1758 4. Is a candidate for admission to The Florida Bar;
1759 5. Is seeking to be employed or licensed by or to contract
1760 with the Department of Children and Family Services or the
1761 Department of Juvenile Justice or to be employed or used by such
1762 contractor or licensee in a sensitive position having direct
1763 contact with children, the developmentally disabled, the aged,
1764 or the elderly as provided in s. 110.1127(3), s. 393.063, s.
1765 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
1766 409.175(2)(i), s. 415.102(4), s. 415.103, chapter 916 ~~s.~~
1767 ~~916.106(10) and (13)~~, s. 985.407, or chapter 400; or

1768 6. Is seeking to be employed or licensed by the Department
1769 of Education, any district school board, any university
1770 laboratory school, any charter school, any private or parochial
1771 school, or any local governmental entity that licenses child
1772 care facilities.
1773 Section 29. This act shall take effect upon becoming a
1774 law.

Amendment to HB 7199 CS by Rep. Galvano

The amendment brings the bill more in line with federal regulations and clarifies that medications prescribed as part of the normal treatment regimen of a person with mental illness are not drug "restraints."

Bill No. **HB 7199 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Health and Families Council
2 Representative(s) Galvano offered the following:
3
4 **Amendment**
5 Remove lines 259-260 and insert:
6 of movement and not part of the standard treatment regimen of
7 the person with a diagnosed mental illness who is a client of