

1 A bill to be entitled
2 An act relating to the Department of Children
3 and Family Services; amending s. 20.19, F.S.;
4 removing the developmental disabilities program
5 from the Department of Children and Family
6 Services; creating s. 20.197, F.S.;
7 establishing the Agency for Persons with
8 Disabilities for the purpose of providing
9 services to persons with developmental
10 disabilities, including institutional services;
11 directing the agency to execute interagency
12 agreements with the Agency for Health Care
13 Administration for the financial management of
14 the Medicaid waivers and the Department of
15 Children and Family Services for administrative
16 support; amending s. 393.063, F.S.; updating
17 definitions and deleting obsolete definitions;
18 amending s. 393.064, F.S.; deleting
19 requirements that the agency's legislative
20 budget request include funding for prevention;
21 amending s. 393.0655, F.S.; requiring Level 2
22 screening for specified service providers;
23 amending s. 393.066, F.S.; removing requirement
24 that services be administered and approved by
25 the districts; modifying a requirement to
26 provide certain services; deleting a
27 requirement for a 5-year plan relating to
28 community-based services; adding a requirement
29 to assist clients in gaining employment;
30 repealing obsolete requirement authorizing the
31 state to lease or construct residential

1 facilities; deleting authorization to adopt
2 rules ensuring compliance with federal rules;
3 amending s. 393.0661, F.S.; deleting an
4 obsolete provision; modifying provisions
5 relating to an assessment instrument; adding
6 requirements for adoption of rate
7 methodologies; authorizing the Agency for
8 Disabled Persons to enter into certain
9 contracts; providing for reimbursement to
10 certain providers of services to the
11 developmentally disabled pursuant to a
12 methodology; requiring the Agency for Health
13 Care Administration, in consultation with the
14 Agency for Persons with Disabilities, to adopt
15 rules related to such methodology; authorizing
16 the Agency for Health Care Administration to
17 adopt emergency rules in certain circumstances;
18 limiting the applicability of such emergency
19 rules; authorizing the Agency for Health Care
20 Administration, in consultation with the Agency
21 for Persons with Disabilities, to make certain
22 adjustments necessary to comply with the
23 availability of appropriations; amending s.
24 393.068, F.S.; making service provision subject
25 to available resources; updating list of
26 services to be provided; deleting provision
27 referring to 5-year plans; amending s.
28 393.0695, F.S.; requiring in-home subsidy
29 amounts to be reassessed annually; amending s.
30 393.11, F.S.; deleting provisions referring to
31 districts, department programs, and the

1 nonexistent Department of Labor and Employment
2 Security; amending s. 393.13, F.S.; deleting
3 obsolete provisions; adding legislative intent
4 relating to reducing the use of sheltered
5 workshops; amending s. 393.17, F.S.;
6 authorizing the agency to contract for the
7 certification of behavioral analysts; deleting
8 provisions relating to a certification program
9 and provisions allowing fees; amending s.
10 393.22, F.S.; deleting prohibition preventing
11 transfer of funds and ensuring financial
12 commitment for specified developmental
13 conditions; amending s. 393.502, F.S.; removing
14 reference to districts; deleting a provision
15 permitting appointment of family care council
16 members if the Governor does not act; amending
17 ss. 408.301, 408.302, F.S.; amending
18 legislative intent to add the Agency for
19 Persons with Disabilities and the Department of
20 Elderly Affairs as agencies that the Agency for
21 Health Care Administration must enter into
22 interagency agreement with regarding persons
23 with special needs; amending s. 409.906, F.S.;
24 clarifying powers of the Agency for Health Care
25 Administration with respect to limiting
26 coverage for certain services; authorizing the
27 agency to implement necessary adjustments to
28 remain within appropriations; repealing s.
29 393.14, F.S.; requiring a multiyear plan;
30 repealing s. 393.165, F.S., relating to
31 ICF/DDs; repealing s. 393.166, F.S., relating

1 to homes for special services; repealing s.
2 393.505, F.S., relating to comprehensive day
3 treatment service projects; transferring
4 programs and institutions relating to
5 developmental disabilities from the Department
6 of Children and Family Services to the Agency
7 for Persons with Disabilities; providing duties
8 of those agencies as well as the Department of
9 Management Services; providing for substitution
10 of parties in administrative and judicial
11 proceedings; providing duties of the Office of
12 Program Policy Analysis and Government
13 Accountability; providing for a report;
14 amending ss. 92.53, 397.405, 400.464, 409.906,
15 419.001, 914.16, 914.17, 918.16, F.S.;
16 conforming cross-references; amending s.
17 393.067, F.S.; conforming to changes made by
18 the act; amending ss. 393.0641, 393.065,
19 393.0651, 393.0673, 393.0675, 393.0678,
20 393.071, 393.075, 393.115, 393.12, 393.125,
21 393.15, 393.501, 393.503, 393.506, F.S.;
22 creating ss. 393.135, 394.4593, and 916.1075,
23 F.S.; defining the terms "employee," "sexual
24 activity," and "sexual misconduct"; providing
25 that it is a second-degree felony for an
26 employee to engage in sexual misconduct with
27 certain developmentally disabled clients,
28 certain mental health patients, or certain
29 forensic clients; providing certain exceptions;
30 requiring certain employees to report sexual
31 misconduct to the central abuse hotline of the

1 department and to law enforcement; providing
2 for notification to the inspector general of
3 the department or agency; providing that it is
4 a first-degree misdemeanor to knowingly and
5 willfully fail to make a report as required, or
6 to prevent another from doing so, or to submit
7 inaccurate or untruthful information; providing
8 that it is a third-degree felony to coerce or
9 threaten another person to alter testimony or a
10 report with respect to an incident of sexual
11 misconduct; providing criminal penalties;
12 providing that the penalties are in addition to
13 other actions provided in law; amending s.
14 435.03, F.S.; expanding level 1 screening
15 standards to include criminal offenses related
16 to sexual misconduct with certain
17 developmentally disabled clients, mental health
18 patients, or forensic clients and the reporting
19 of such sexual misconduct; amending s. 435.04,
20 F.S.; expanding level 2 screening standards to
21 include the offenses related to sexual
22 misconduct with certain developmentally
23 disabled clients, mental health patients, or
24 forensic clients and the reporting of such
25 sexual misconduct; amending s. 943.0585, F.S.,
26 relating to court-ordered expunction of
27 criminal history records, for the purpose of
28 incorporating the amendment to s. 943.059,
29 F.S., in a reference thereto; providing that
30 certain criminal history records relating to
31 sexual misconduct with developmentally disabled

1 clients, mental health patients, or forensic
2 clients, or the reporting of such sexual
3 misconduct, shall not be expunged; providing
4 that the application for eligibility for
5 expunction certify that the criminal history
6 record does not relate to an offense involving
7 sexual misconduct with certain developmentally
8 disabled clients, mental health patients, or
9 forensic clients, or the reporting of such
10 sexual misconduct; conforming cross-references;
11 amending s. 943.059, F.S., relating to
12 court-ordered sealing of criminal history
13 records, for the purpose of incorporating the
14 amendment to s. 943.0585, F.S., in a reference
15 thereto; providing that certain criminal
16 history records relating to sexual misconduct
17 with developmentally disabled clients, mental
18 health patients, or forensic clients, or the
19 reporting of such sexual misconduct, shall not
20 be sealed; providing that the application for
21 eligibility for sealing certify that the
22 criminal history record does not relate to an
23 offense involving sexual misconduct with
24 certain developmentally disabled clients,
25 mental health patients, or forensic clients, or
26 the reporting of such sexual misconduct;
27 conforming cross-references; amending s.
28 400.215, F.S., and reenacting paragraphs (b)
29 and (c) of subsection (2) and subsection (3),
30 relating to background screening requirements
31 for certain nursing home personnel, for the

1 purpose of incorporating the amendments to ss.
2 435.03 and 435.04, F.S., in references thereto;
3 correcting a cross-reference; amending s.
4 400.964, F.S., and reenacting subsections (1),
5 (2), and (7), relating to background screening
6 requirements for certain personnel employed by
7 intermediate care facilities for the
8 developmentally disabled, for the purpose of
9 incorporating the amendments to ss. 435.03 and
10 435.04, F.S., in references thereto; correcting
11 a cross-reference; amending s. 435.045, F.S.,
12 and reenacting paragraph (a) of subsection (1),
13 relating to requirements for the placement of
14 dependent children, for the purpose of
15 incorporating the amendment to s. 435.04, F.S.,
16 in a reference thereto; correcting a
17 cross-reference; reenacting ss. 400.414(1)(f)
18 and (g), 400.4174, 400.509(4)(a), (b), (c),
19 (d), (f), and (g), 400.556(2)(c), 400.6065(1),
20 (2), and (4), 400.980(4)(a), (b), (c), (d),
21 (f), and (g), 409.175(2)(k), 409.907(8)(d),
22 435.05(1) and (3), 744.3135, and 985.04(2),
23 F.S., relating to denial, revocation, or
24 suspension of license to operate an assisted
25 living facility; background screening
26 requirements for certain personnel employed by
27 assisted living facilities; registration of
28 particular home health care service providers;
29 denial, suspension, or revocation of license to
30 operate adult day care centers; background
31 screening requirements for certain hospice

1 personnel; background screening requirements
2 for registrants of the health care service
3 pools; the definition of "screening" in
4 connection with the licensure of family foster
5 homes, residential child-caring agencies, and
6 child-placing agencies; background screening
7 requirements of Medicaid providers; employment
8 of persons in positions requiring background
9 screening; credit and criminal investigations
10 of guardians; and oaths, records, and
11 confidential information pertaining to juvenile
12 offenders, respectively, for the purpose of
13 incorporating the amendments to ss. 435.03 and
14 435.04, F.S., in references thereto; reenacting
15 ss. 400.512, 400.619(4), 400.6194(1), 400.953,
16 409.912(32), 435.07(4), 464.018(1)(e),
17 744.309(3), 744.474(12), and 985.407(4), F.S.,
18 relating to background screening of home health
19 agency personnel, nurse registry personnel,
20 companions, and homemakers; application and
21 renewal of adult family-care home provider
22 licenses; denial, revocation, or suspension of
23 adult family-care home provider license;
24 background screening of home medical equipment
25 provider personnel and background screening
26 requirements for certain persons responsible
27 for managed care plans; exemptions from
28 disqualification from employment; denial of
29 nursing license and disciplinary actions
30 against such licensees; disqualification of
31 guardians; removal of guardians; and background

1 screening requirements for certain Department
2 of Juvenile Justice personnel, respectively,
3 for the purpose of incorporating the amendment
4 to s. 435.03, F.S., in references thereto;
5 reenacting ss. 39.001(2)(b), 39.821(1),
6 110.1127(3)(a) and (c), 112.0455(12)(a),
7 381.0059(1), (2), and (4), 381.60225(1)(a),
8 (b), (c), (d), (f), and (g), 383.305(7)(a),
9 (b), (c), (d), (f), and (g), 390.015(3)(a),
10 (b), (c), (d), (f), and (g), 394.875(13)(a),
11 (b), (c), (d), (f), and (g), 395.0055(1), (2),
12 (3), (4), (6), and (8), 395.0199(4)(a), (b),
13 (c), (d), (f), and (g), 397.451(1)(a),
14 400.071(4)(a), (b), (c), (d), and (f),
15 400.471(4)(a), (b), (c), (d), (f), and (g),
16 400.506(2)(a), (b), (c), (d), (f), and (g),
17 400.5572, 400.607(3)(a), 400.801(4)(a), (b),
18 (c), (d), (f), and (g), 400.805(3)(a), (b),
19 (c), (d), (f), and (g), 400.906(5)(a), (b),
20 (c), (d), (f), and (g), 400.931(5)(a), (b),
21 (c), (e), and (f), 400.962(10)(a), (b), (c),
22 (d), and (f), 400.991(7)(b) and (d),
23 402.302(2)(e), 402.305(2)(a), 402.3054(3),
24 483.30(2)(a), (b), (c), (d), (f), and (g),
25 483.101(2)(a), (b), (c), (d), (f), and (g),
26 744.1085(5), 984.01(2)(b), 985.01(2)(b),
27 1002.36(7)(a) and (b), F.S., relating to
28 background screening requirements for certain
29 Department of Children and Family Services
30 personnel; qualifications of guardians ad
31 litem; security checks of certain public

1 officers and employees; background screening
2 requirements of certain laboratory personnel in
3 connection with the Drug-Free Workplace Act;
4 background screening requirements for school
5 health services personnel; background screening
6 of certain personnel of the public health
7 system; background screening and licensure of
8 birth center personnel; background screening
9 and licensure of abortion clinic personnel;
10 background screening of direct service
11 providers; background screening and licensure
12 of personnel of intermediate care facilities
13 for the developmentally disabled; background
14 screening of mental health personnel;
15 background screening and licensure of personnel
16 of crisis stabilization units, residential
17 treatment facilities, and residential treatment
18 centers for children and adolescents;
19 background screening and licensure of personnel
20 of hospitals, ambulatory surgical centers, and
21 mobile surgical facilities; background
22 screening of certain personnel in connection
23 with registration for private utilization
24 reviews; background screening of certain
25 service provider personnel; background
26 screening and licensure of certain long-term
27 care facility personnel; background screening
28 and licensure of certain home health agency
29 personnel; background screening and licensure
30 of nurse registry applicants; background
31 screening of certain adult day care center

1 personnel; denial or revocation of hospice
2 license; background screening and licensure of
3 certain transitional living facility personnel;
4 background screening and licensure of certain
5 prescribed pediatric extended care center
6 personnel; background screening and licensure
7 of certain home medical equipment provider
8 personnel; background screening and licensure
9 of certain personnel of intermediate care
10 facilities for the developmentally disabled;
11 background screening and licensure of health
12 care clinic personnel; the definition of "child
13 care facility" in connection with background
14 screening of operators; background screening
15 requirements for personnel of child care
16 facilities; background screening requirements
17 for child enrichment service providers;
18 background screening and licensure of certain
19 personnel of multiphasic health testing
20 centers; background screening and licensure of
21 certain clinical laboratory personnel;
22 regulation of professional guardians;
23 background screening of certain Department of
24 Juvenile Justice and Department of Children and
25 Family Services personnel in connection with
26 programs for children and families in need of
27 services; and background screening of certain
28 Department of Juvenile Justice and Department
29 of Children and Family Services personnel in
30 connection with juvenile justice programs,
31 background screening of personnel of the

1 Florida School for the Deaf and the Blind,
2 respectively, for the purposes of incorporating
3 the amendment to s. 435.04, F.S., in references
4 thereto; amending s. 394.4572, F.S.; requiring
5 the department and the agency to check the
6 employment history of a person when screening
7 mental health personnel for employment;
8 reenacting s. 943.0582(2)(a) and (6), F.S.,
9 relating to prearrest, postarrest, or teen
10 court diversion program expunction for the
11 purpose of incorporating the amendments to ss.
12 943.0585 and 943.059, F.S., in references
13 thereto; reenacting s. 943.053(7), (8), and
14 (9), F.S., relating to dissemination of
15 criminal justice information, for the purpose
16 of incorporating the amendment to s. 943.059,
17 F.S., in references thereto; providing
18 applicability; directing the Department of
19 Children and Family Services to provide its
20 eligibility determination functions with
21 department staff or through contract, with
22 certain restrictions; conforming to the changes
23 made by the act; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Paragraph (b) of subsection (4) of section
28 20.19, Florida Statutes, is amended to read:

29 20.19 Department of Children and Family
30 Services.--There is created a Department of Children and
31 Family Services.

- 1 (4) PROGRAM OFFICES AND SUPPORT OFFICES.--
2 (b) The following program offices are established:
3 1. Adult Services.
4 2. Child Care Services.
5 3. Domestic Violence ~~Developmental Disabilities~~.
6 4. Economic Self-Sufficiency Services.
7 5. Family Safety.
8 6. Mental Health.
9 7. Refugee Services.
10 8. Substance Abuse.

11 Section 2. Section 20.197, Florida Statutes, is
12 created to read:

13 20.197 Agency for Persons with Disabilities.--There is
14 created the Agency for Persons with Disabilities, housed
15 within the Department of Children and Family Services for
16 administrative purposes only. The agency shall be a separate
17 budget entity not subject to control, supervision, or
18 direction by the Department of Children and Family Services in
19 any manner, including, but not limited to, personnel,
20 purchasing, transactions involving real or personal property,
21 and budgetary matters.

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

30 (2) The agency shall be responsible for the provision
31 of all services provided to persons with developmental

1 disabilities pursuant to chapter 393, including the operation
2 of all state institutional programs and the programmatic
3 management of Medicaid waivers established to provide services
4 to persons with developmental disabilities.

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

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

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

16 (b) Billing, payment, and reconciliation of claims for
17 Medicaid services reimbursed by the agency.

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

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

28 Section 3. Section 393.063, Florida Statutes, is
29 amended to read:

30 393.063 Definitions.--For the purposes of this
31 chapter:

1 ~~(1)~~ "Active treatment" means the provision of services
2 ~~by an interdisciplinary team necessary to maximize a client's~~
3 ~~individual independence or prevent regression or loss of~~
4 ~~functional status.~~

5 ~~(1)~~~~(2)~~ "Agency" means the Agency for Persons with
6 Disabilities ~~Health Care Administration.~~

7 ~~(2)~~~~(3)~~ "Autism" means a pervasive, neurologically
8 based developmental disability of extended duration which
9 causes severe learning, communication, and behavior disorders
10 with age of onset during infancy or childhood. Individuals
11 with autism exhibit impairment in reciprocal social
12 interaction, impairment in verbal and nonverbal communication
13 and imaginative ability, and a markedly restricted repertoire
14 of activities and interests.

15 ~~(3)~~~~(4)~~ "Cerebral palsy" means a group of disabling
16 symptoms of extended duration which results from damage to the
17 developing brain that may occur before, during, or after birth
18 and that results in the loss or impairment of control over
19 voluntary muscles. For the purposes of this definition,
20 cerebral palsy does not include those symptoms or impairments
21 resulting solely from a stroke.

22 ~~(4)~~~~(5)~~ "Client" means any person determined eligible
23 by the agency department ~~for developmental~~ services under this
24 chapter.

25 ~~(5)~~~~(6)~~ "Client advocate" means a friend or relative of
26 the client, or of the client's immediate family, who advocates
27 for the best interests of the client in any proceedings under
28 this chapter in which the client or his or her family has the
29 right or duty to participate.

30 ~~(6)~~~~(7)~~ "Comprehensive assessment" means the process
31 ~~which is~~ used to determine eligibility for ~~developmental~~

1 ~~services under this chapter and develop the family or~~
2 ~~individual support plan. The term includes review and~~
3 ~~evaluation of information provided by the applicant, the~~
4 ~~individual receiving supports or services through~~
5 ~~developmental services, or the family, and others providing~~
6 ~~supports or services to the individual or family, as well as~~
7 ~~the use of formal assessment instruments.~~

8 ~~(7)(8)~~ "Comprehensive transitional education program"
9 means a group of jointly operating centers or units, the
10 collective purpose of which is to provide a sequential series
11 of educational care, training, treatment, habilitation, and
12 rehabilitation services to persons who have developmental
13 disabilities, ~~as defined in subsection (12)~~, and who have
14 severe or moderate maladaptive behaviors. However, nothing in
15 this subsection shall require such ~~comprehensive transitional~~
16 ~~education~~ programs to provide services only to persons with
17 developmental disabilities, ~~as defined in subsection (12)~~. All
18 such services shall be temporary in nature and delivered in a
19 structured residential setting with the primary goal of
20 incorporating the normalization principle to establish
21 permanent residence for persons with maladaptive behaviors in
22 facilities not associated with the comprehensive transitional
23 education program. The staff shall include psychologists and
24 teachers who, ~~and such staff personnel~~ shall be available to
25 provide services in each component center or unit of the
26 program. The psychologists shall be individuals who are
27 licensed in this state and certified as behavior analysts in
28 this state, or individuals who ~~meet the professional~~
29 ~~requirements established by the department for district~~
30 ~~behavior analysts and~~ are certified as behavior analysts
31 pursuant to s. 393.17 in this state.

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

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

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

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

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

31

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

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

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

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

20 (e) This subsection shall authorize licensure for
21 comprehensive transitional education programs which by July 1,
22 1989:

- 23 1. Are in actual operation; or
24 2. Own a fee simple interest in real property for
25 which a county or city government has approved zoning allowing
26 for the placement of the facilities described in this
27 subsection, and have registered an intent with the department
28 to operate a comprehensive transitional education program.
29 However, nothing shall prohibit the assignment by such a
30 registrant to another entity at a different site within the
31 state, so long as there is compliance with all criteria of the

1 comprehensive transitional education program and local zoning
2 requirements and provided that each residential facility
3 within the component centers or units of the program
4 authorized under this subparagraph shall not exceed a capacity
5 of 15 persons.

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

11 ~~(8)(10)~~ "Day habilitation facility" means any
12 nonresidential facility which provides day habilitation
13 services.

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

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

25 ~~(10)(12)~~ "Developmental disability" means a disorder
26 or syndrome that is attributable to retardation, cerebral
27 palsy, autism, spina bifida, or Prader-Willi syndrome and that
28 constitutes a substantial handicap that can reasonably be
29 expected to continue indefinitely.

30 ~~(11)(13)~~ "Developmental disabilities services
31 institution" means a state-owned and state-operated facility,

1 formerly known as a "Sunland Center," providing for the care,
2 habilitation, and rehabilitation of clients with developmental
3 disabilities.

4 ~~(14) "Developmental training facility" means any~~
5 ~~nonresidential facility which provides basic training and~~
6 ~~habilitation to clients.~~

7 ~~(12),(15)~~ "Direct service provider," also known as
8 "caregiver" in chapters 39 and 415 or "caretaker" in
9 provisions relating to employment security checks, means a
10 person 18 years of age or older who has direct contact with
11 individuals with developmental disabilities, or has access to
12 a client's living areas or to a client's funds or personal
13 property, and is not a relative of such ~~unrelated to the~~
14 individuals ~~with developmental disabilities~~.

15 ~~(a) The term "direct service provider" also includes~~
16 ~~any person, including members of the direct service provider's~~
17 ~~family, over 12 years of age who resides with the direct~~
18 ~~service provider when:~~

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

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

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

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

31

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

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

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

16 ~~(16) "District" means a service district of the~~
17 ~~department.~~

18 (13)~~(17)~~ "Domicile" means the place where a client
19 legally resides, which place is his or her permanent home.
20 Domicile may be established as provided in s. 222.17.
21 Domicile may not be established in Florida by a minor who has
22 no parent domiciled in Florida, or by a minor who has no legal
23 guardian domiciled in Florida, or by any alien not classified
24 as a resident alien.

25 (14)~~(18)~~ "Enclave" means a work station in public or
26 private business or industry where a small group of persons
27 with developmental disabilities is employed and receives
28 training and support services or follow-along services among
29 nonhandicapped workers.

30 (15)~~(19)~~ "Epilepsy" means a chronic brain disorder of
31 various causes which is characterized by recurrent seizures

1 due to excessive discharge of cerebral neurons. When found
2 concurrently with retardation, autism, or cerebral palsy,
3 epilepsy is considered a secondary disability for which the
4 client is eligible to receive services to ameliorate this
5 condition pursuant ~~according to the provisions of this~~
6 chapter.

7 ~~(16)(20)~~ "Express and informed consent" means consent
8 voluntarily given in writing with sufficient knowledge and
9 comprehension of the subject matter involved to enable the
10 person giving consent to make an understanding and enlightened
11 decision without any element of force, fraud, deceit, duress,
12 or other form of constraint or coercion.

13 ~~(17)(21)~~ "Family care program" means the program
14 established in s. 393.068 ~~an alternative to residential~~
15 ~~placement, in which a direct service provider provides a home~~
16 ~~for a client and assists him or her to the extent necessary~~
17 ~~for the client to participate in normal activities and to meet~~
18 ~~the demands of daily living. The program provides the support~~
19 ~~needed by the client's family or caretaker to meet the~~
20 ~~individual needs of the client.~~

21 ~~(18)(22)~~ "Follow-along services" means those support
22 services ~~which shall be~~ provided to persons with developmental
23 disabilities in all supported employment programs and may
24 include, but are not limited to, family support, assistance in
25 meeting transportation and medical needs, employer
26 intervention, performance evaluation, advocacy, replacement,
27 retraining or promotional assistance, or other similar support
28 services.

29 ~~(19)(23)~~ "Foster care facility" means a residential
30 facility which provides a family living environment including
31 supervision and care necessary to meet the physical,

1 emotional, and social needs of its residents. The capacity of
2 such a facility shall not be more than three residents.

3 ~~(20)~~(24) "Group home facility" means a residential
4 facility which provides a family living environment including
5 supervision and care necessary to meet the physical,
6 emotional, and social needs of its residents. The capacity of
7 such a facility shall be at least 4 ~~residents~~ but not more
8 than 15 residents. For the purposes of this chapter, group
9 home facilities shall not be considered commercial
10 enterprises.

11 ~~(21)~~(25) "Guardian advocate" means a person appointed
12 by the circuit court to represent a person with developmental
13 disabilities in any proceedings brought pursuant to s. 393.12,
14 and excludes the use of the same term as applied to a guardian
15 advocate for mentally ill persons in chapter 394.

16 ~~(22)~~(26) "Habilitation" means the process by which a
17 client is assisted to acquire and maintain those life skills
18 which enable the client to cope more effectively with the
19 demands of his or her condition and environment and to raise
20 the level of his or her physical, mental, and social
21 efficiency. It includes, but is not limited to, programs of
22 formal structured education and treatment.

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

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

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

31

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

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

7 ~~(24)(28)~~ "Intermediate care facility for the
8 developmentally disabled" or "ICF/DD" means a residential
9 facility licensed and certified pursuant to part XI of chapter
10 400 in accordance with state law, and certified by the Federal
11 ~~Government pursuant to the Social Security Act, as a provider~~
12 ~~of Medicaid services to persons who are developmentally~~
13 ~~disabled. The capacity of such a facility shall not be more~~
14 ~~than 120 clients.~~

15 ~~(25)(29)~~ "Job coach" means a person who provides
16 employment-related training at a work site to individuals with
17 developmental disabilities.

18 ~~(26)(30)~~ "Medical/dental services" means medically
19 necessary ~~those~~ services which are provided or ordered for a
20 client by a person licensed pursuant to the provisions of
21 chapter 458, chapter 459, or chapter 466. Such services may
22 include, but are not limited to, prescription drugs,
23 specialized therapies, nursing supervision, hospitalization,
24 dietary services, prosthetic devices, surgery, specialized
25 equipment and supplies, adaptive equipment, and other services
26 as required to prevent or alleviate a medical or dental
27 condition.

28 ~~(27)(31)~~ "Mobile work crew" means a group of workers
29 employed by an agency that provides services outside the
30 agency, usually under service contracts.

31

1 ~~(28)(32)~~ "Normalization principle" means the principle
2 of letting the client obtain an existence as close to the
3 normal as possible, making available to the client patterns
4 and conditions of everyday life which are as close as possible
5 to the norm and patterns of the mainstream of society.

6 ~~(29)(33)~~ "Personal services" include, but are not
7 limited to, such services as: individual assistance with or
8 supervision of essential activities of daily living for
9 self-care, including ambulation, bathing, dressing, eating,
10 grooming, and toileting, and other similar services that ~~which~~
11 the agency ~~department~~ may define by rule. "Personal services"
12 shall not be construed to mean the provision of medical,
13 nursing, dental, or mental health services by the staff of a
14 facility, except as provided in this chapter. In addition, an
15 emergency response device installed in the apartment or living
16 area of a resident shall not be classified as a personal
17 service.

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

24 ~~(31)(35)~~ "Reassessment" means a process which
25 periodically develops, through annual review and revision of a
26 client's family or individual support plan, a knowledgeable
27 statement of current needs and past development for each
28 client.

29 ~~(36)~~ ~~"Rehabilitation workshop facility" means a place~~
30 ~~operated by a for profit or nonprofit agency engaged in the~~
31 ~~manufacture or production of products or provision of~~

1 ~~services, which provides gainful rehabilitation to severely~~
2 ~~handicapped persons until such persons can become employed or~~
3 ~~which provides gainful work to persons who are developmentally~~
4 ~~disabled.~~

5 ~~(32)(37)~~ "Relative" means an individual who is
6 connected by affinity or consanguinity to the client and who
7 is 18 years of age or more.

8 ~~(33)(38)~~ "Resident" means any person who is
9 developmentally disabled residing at a residential facility in
10 the state, whether or not such person is a client of the
11 agency department.

12 ~~(34)(39)~~ "Residential facility" means a facility
13 providing room and board and personal care for persons with
14 developmental disabilities.

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

22 ~~(36)(40)~~ "Residential habilitation center" means a
23 community residential facility that provides residential
24 habilitation. ~~operated primarily for the diagnosis, treatment,~~
25 ~~habilitation, or rehabilitation of its residents, which~~
26 ~~facility provides, in a structured residential setting,~~
27 ~~individualized continuing evaluation, planning, 24 hour~~
28 ~~supervision, and coordination and integration of health or~~
29 ~~rehabilitative services to help each resident reach his or her~~
30 ~~maximum functioning capabilities.~~ The capacity of such a
31 facility shall not be fewer less than nine residents. After

1 October 1, 1989, no new residential habilitation centers shall
2 be licensed and the licensed capacity shall not be increased
3 for any existing residential habilitation center.

4 ~~(37)(41)~~ "Respite service" means appropriate,
5 short-term, temporary care that is provided to a person with
6 developmental disabilities to meet the planned or emergency
7 needs of the person ~~with developmental disabilities~~ or the
8 family or other direct service provider.

9 ~~(38)(42)~~ "Retardation" means significantly subaverage
10 general intellectual functioning existing concurrently with
11 deficits in adaptive behavior and manifested during the period
12 from conception to age 18. "Significantly subaverage general
13 intellectual functioning," for the purpose of this definition,
14 means performance which is two or more standard deviations
15 from the mean score on a standardized intelligence test
16 specified in the rules of the agency ~~department~~. "Adaptive
17 behavior," for the purpose of this definition, means the
18 effectiveness or degree with which an individual meets the
19 standards of personal independence and social responsibility
20 expected of his or her age, cultural group, and community.

21 ~~(43)~~ ~~"Screening," for purposes of employment,~~
22 ~~contracting, or certification, means the act of assessing the~~
23 ~~background of direct service providers and independent support~~
24 ~~coordinators, who are not related to clients for whom they~~
25 ~~provide services, and includes, but is not limited to,~~
26 ~~employment history checks, local criminal records checks~~
27 ~~through local law enforcement agencies, fingerprinting for all~~
28 ~~purposes and checks in this subsection, statewide criminal~~
29 ~~records checks through the Department of Law Enforcement, and~~
30 ~~federal criminal records checks through the Federal Bureau of~~
31 ~~Investigation; except that screening for volunteers included~~

1 ~~under the definition of personnel includes only local criminal~~
2 ~~records checks through local law enforcement agencies for~~
3 ~~current residence and residence immediately prior to~~
4 ~~employment as a volunteer, if different; and statewide~~
5 ~~criminal records correspondence checks through the Department~~
6 ~~of Law Enforcement.~~

7 ~~(39)(44)~~ "Severe self-injurious behavior" means any
8 chronic behavior that results in injury to the person's own
9 body, which includes, but is not limited to, self-hitting,
10 head banging, self-biting, scratching, and the ingestion of
11 harmful or potentially harmful nutritive or nonnutritive
12 substances.

13 ~~(40)(45)~~ "Specialized therapies" means those
14 treatments or activities prescribed by and provided by an
15 appropriately trained, licensed, or certified professional or
16 staff person and may include, but are not limited to, physical
17 therapy, speech therapy, respiratory therapy, occupational
18 therapy, behavior therapy, physical management services, and
19 related specialized equipment and supplies.

20 ~~(41)(46)~~ "Spina bifida" means, for purposes of this
21 chapter, a person with a medical diagnosis of spina bifida
22 cystica or myelomeningocele.

23 ~~(42)(47)~~ "Support coordinator" means a person who is
24 designated by the agency ~~department~~ to assist individuals and
25 families in identifying their ~~desires~~, capacities, needs, and
26 resources, as well as finding and gaining access to necessary
27 supports and services; coordinating the delivery of supports
28 and services; advocating on behalf of the individual and
29 family; maintaining relevant records; and monitoring and
30 evaluating the delivery of supports and services to determine
31 the extent to which they meet the needs and expectations

1 identified by the individual, family, and others who
2 participated in the development of the support plan.

3 ~~(43)(48)~~ "Supported employee" means a person whose
4 ~~developmental disability has traditionally kept him or her~~
5 ~~from integrated, community based employment and~~ who requires
6 and receives supported employment ~~ongoing support or~~
7 ~~follow along~~ services in order to maintain community-based
8 employment.

9 ~~(44)(49)~~ "Supported employment" means employment
10 located or provided in a normal employment setting which
11 provides at least 20 hours employment per week in an
12 integrated work setting, with earnings paid on a commensurate
13 wage basis, and for which continued support ~~is or follow along~~
14 ~~services are~~ needed for ~~continuing~~ job maintenance.

15 ~~(45)(50)~~ "Supported living" means a category of
16 individually determined services designed and coordinated in
17 such a manner as to provide assistance to adult clients who
18 require ongoing supports to live as independently as possible
19 in their own homes, to be integrated into the community, and
20 to participate in community life to the fullest extent
21 possible.

22 ~~(46)(51)~~ "Training" means a planned approach to
23 assisting a client to attain or maintain his or her maximum
24 potential and includes services ranging from sensory
25 stimulation to instruction in skills for independent living
26 and employment.

27 ~~(47)(52)~~ "Treatment" means the prevention,
28 amelioration, or cure of a client's physical and mental
29 disabilities or illnesses.

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

1 393.064 Prevention.--
2 (1) The agency ~~Department of Children and Family~~
3 ~~Services~~ shall give priority to the development, planning, and
4 implementation of programs which have the potential to
5 prevent, correct, cure, or reduce the severity of
6 developmental disabilities. The agency ~~department~~ shall
7 direct an interagency ~~interdepartmental~~ and interprogram
8 effort for the continued development of a prevention plan and
9 program. The agency ~~department~~ shall identify, through
10 demonstration projects, through ~~departmental~~ program
11 evaluation, and through monitoring of programs and projects
12 conducted outside of the agency ~~department~~, any medical,
13 social, economic, or educational methods, techniques, or
14 procedures that ~~which~~ have the potential to effectively
15 ameliorate, correct, or cure developmental disabilities. The
16 program ~~department~~ shall determine the costs and benefits that
17 would be associated with such prevention efforts and shall
18 implement, or recommend the implementation of, those methods,
19 techniques, or procedures which are found likely to be
20 cost-beneficial. ~~The department in its legislative budget~~
21 ~~request shall identify funding needs for such prevention~~
22 ~~programs.~~
23 (3) Other agencies of state government shall cooperate
24 with and assist the agency ~~department~~, within available
25 resources, in implementing programs which have the potential
26 to prevent, or reduce the severity of, developmental
27 disabilities and shall consider the findings and
28 recommendations of the agency ~~department~~ in developing and
29 implementing agency programs and formulating agency budget
30 requests.
31

1 (4) There is created at the developmental services
2 institution in Gainesville a research and education unit.
3 Such unit shall be named the Raymond C. Philips Research and
4 Education Unit. The functions of such unit shall include:

5 (a) Research into the etiology of developmental
6 disabilities.

7 (b) Ensuring that new knowledge is rapidly
8 disseminated throughout the developmental services program of
9 the agency ~~Department of Children and Family Services~~.

10 (c) Diagnosis of unusual conditions and syndromes
11 associated with developmental disabilities in clients
12 identified throughout the developmental services programs.

13 (d) Evaluation of families of clients with
14 developmental disabilities of genetic origin in order to
15 provide them with genetic counseling aimed at preventing the
16 recurrence of the disorder in other family members.

17 (e) Ensuring that health professionals in the
18 developmental services institution at Gainesville have access
19 to information systems that will allow them to remain updated
20 on newer knowledge and maintain their postgraduate education
21 standards.

22 (f) Enhancing staff training for professionals
23 throughout the agency ~~department~~ in the areas of genetics and
24 developmental disabilities.

25 (5) The agency ~~Department of Children and Family~~
26 ~~Services~~ shall have the authority, within available resources,
27 to contract for the supervision and management of the Raymond
28 C. Philips Research and Education Unit, and such contract
29 shall include specific program objectives.

30 Section 5. Section 393.0655, Florida Statutes, is
31 amended to read:

1 393.0655 Screening of direct service providers.--
2 (1) MINIMUM STANDARDS.--The ~~agency department~~ shall
3 require level 2 employment screening pursuant to chapter 435,
4 ~~using the level 2 standards for screening set forth in that~~
5 ~~chapter,~~ for direct service providers who are unrelated to
6 their clients, including support coordinators, and managers
7 and supervisors of residential facilities or comprehensive
8 transitional education programs licensed under s. 393.067 and
9 any other person, including volunteers, who provide care or
10 services, who have access to a client's living areas, or who
11 have access to a client's funds or personal property.
12 Background screening shall include employment history checks
13 as provided in s. 435.03(1) and local criminal records checks
14 through local law enforcement agencies.

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

20 (b) Licensed physicians, nurses, or other
21 professionals licensed and regulated by the Department of
22 Health are not subject to background screening pursuant to
23 this section if they are providing a service that is within
24 their scope of licensed practice.

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

29 (d) Persons residing with the direct services
30 provider, including family members, are subject to background
31

1 screening; however, such persons who are 12 to 18 years of age
2 shall be screened for delinquency records only.

3 (2) EXEMPTIONS FROM DISQUALIFICATION.--The agency
4 ~~department~~ may grant exemptions from disqualification from
5 working with children or adults with developmental
6 disabilities ~~the developmentally disabled~~ as provided in s.
7 435.07.

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

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

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

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

28 (c) The procedures established for hearing under
29 chapter 120 shall be available to the employer and the direct
30 service provider in order to present evidence relating either
31

1 to the accuracy of the basis of exclusion or to the denial of
2 an exemption from disqualification.

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

10 Section 6. Section 393.066, Florida Statutes, is
11 amended to read:

12 393.066 Community services and treatment for persons
13 who are developmentally disabled.--

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

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

30 ~~(2)(3)~~ All services needed shall be purchased instead
31 of provided directly by the agency ~~department~~, when such

1 arrangement is more cost-efficient than having those services
2 provided directly ~~by the department~~.

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

6 (a) Day habilitation services, including developmental
7 training services.

8 (b) Family care services.

9 (c) Guardian advocate referral services.

10 (d) Medical/dental services, except that medical
11 services shall not be provided to clients with spina bifida
12 except as specifically appropriated by the Legislature.

13 (e) Parent training.

14 (f) Recreation.

15 (g) Residential services.

16 (h) Respite services.

17 (i) Social services.

18 (j) Specialized therapies.

19 (k) Supported employment, including enclave, job
20 coach, mobile work crew, and follow-along services.

21 (l) Supported living.

22 (m) Training, including behavioral programming.

23 (n) Transportation.

24 (o) Other habilitative and rehabilitative services as
25 needed.

26
27 ~~Services to clients with spina bifida shall not include~~
28 ~~medical services except as appropriated by the Legislature.~~

29 ~~(5) Provided it is consistent with the intent of the~~
30 ~~Legislature, the department shall prioritize increased~~
31 ~~appropriations provided for community based services for~~

1 ~~developmentally disabled individuals toward individualized,~~
2 ~~community based supports and services for consumers and their~~
3 ~~families. Further, the department's 5 year plan for~~
4 ~~Developmental Services shall reflect a priority toward~~
5 ~~individualized, community based supports and services for~~
6 ~~consumers and their families.~~

7 ~~(4)(6)~~ The agency department shall utilize the
8 services of private businesses, not-for-profit organizations,
9 and units of local government whenever such services are more
10 cost-efficient than such services provided directly by the
11 department, including arrangements for provision of
12 residential facilities.

13 ~~(5)(7)~~ In order to improve the potential for
14 utilization of more cost-effective, community-based
15 residential facilities, the agency department shall promote
16 the statewide development of day habilitation services for
17 clients who live with a direct service provider in a
18 community-based residential facility and who do not require
19 24-hour-a-day care in a hospital or other health care
20 institution, but who may, in the absence of day habilitation
21 services, require admission to a developmental disabilities
22 ~~services~~ institution. Each day service facility shall provide
23 a protective physical environment for clients, ensure that
24 direct service providers meet ~~the~~ minimum screening standards
25 ~~for good moral character~~ as required ~~contained~~ in s. 393.0655,
26 make available to all day habilitation service participants at
27 least one meal on each day of operation, provide facilities to
28 enable participants to obtain needed rest while attending the
29 program, as appropriate, and provide social and educational
30 activities designed to stimulate interest and provide
31 socialization skills.

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

5 ~~(7)(8)~~ For the purpose of making needed
6 community-based residential facilities available at the least
7 possible cost to the state, the agency ~~department~~ is
8 authorized to lease privately owned residential facilities
9 under long-term rental agreements, if such rental agreements
10 are projected to be less costly to the state over the useful
11 life of the facility than state purchase or state construction
12 of such a facility. ~~In addition, the department is authorized~~
13 ~~to permit, on any public land to which the department holds~~
14 ~~the lease, construction of a residential facility for which~~
15 ~~the department has entered into a long term rental agreement~~
16 ~~as specified in this subsection.~~

17 ~~(8)(9)~~ The agency ~~department~~ may adopt rules to ensure
18 compliance with federal laws or regulations that apply to
19 services provided pursuant to this section.

20 Section 7. Section 393.0661, Florida Statutes, is
21 amended to read:

22 393.0661 Home and community-based services delivery
23 system; comprehensive redesign.--The Legislature finds that
24 the home and community-based services delivery system for
25 persons with developmental disabilities and the availability
26 of appropriated funds are two of the critical elements in
27 making services available. Therefore, it is the intent of the
28 Legislature that the Agency for Persons with Disabilities
29 ~~Department of Children and Family Services~~ shall develop and
30 implement a comprehensive redesign of the system. The redesign
31 of the home and community-based services system shall include,

1 at a minimum, all actions necessary to achieve an appropriate
2 rate structure, client choice within a specified service
3 package, appropriate assessment strategies, an efficient
4 billing process that contains reconciliation and monitoring
5 components, a redefined role for support coordinators that
6 avoids potential conflicts of interest, and family/client
7 budgets linked to levels of need. ~~Prior to the release of~~
8 ~~funds in the lump sum appropriation, the department shall~~
9 ~~present a plan to the Executive Office of the Governor, the~~
10 ~~House Fiscal Responsibility Council, and the Senate~~
11 ~~Appropriations Committee. The plan must result in a full~~
12 ~~implementation of the redesigned system no later than July 1,~~
13 ~~2003. At a minimum, the plan must provide that the portions~~
14 ~~related to direct provider enrollment and billing will be~~
15 ~~operational no later than March 31, 2003. The plan must~~
16 ~~further provide that a more effective needs assessment~~
17 ~~instrument will be deployed by January 1, 2003, and that all~~
18 ~~clients will be assessed with this device by June 30, 2003.~~

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

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

4 (3) A provider of services rendered to persons with
5 developmental disabilities pursuant to a federally approved
6 waiver shall be reimbursed according to a rate methodology
7 based on an analysis of the expenditure history and
8 prospective costs of providers participating in the waiver
9 program, or under any other methodology developed by the
10 Agency for Health Care Administration, in consultation with
11 the Agency for Persons with Disabilities, and approved by the
12 federal government in accordance with the waiver.

13 (4) Pending the adoption of rate methodologies by
14 non-emergency rulemaking pursuant to s. 120.54, the Agency for
15 Health Care Administration may at any time adopt emergency
16 rules pursuant to s. 120.54(4) in order to comply with
17 subsection (5). In adopting such emergency rules, the agency
18 need not make the findings required by s. 120.54(4)(a), and
19 such rules shall be exempt from time limitations provided in
20 s. 120.54(4)(c) and remain in effect until replaced by another
21 emergency rule or the non-emergency adoption of the rate
22 methodology.

23 (5) Nothing in this section or rule shall be construed
24 to prevent or limit the Agency for Health Care Administration,
25 in consultation with the Agency for Persons with Disabilities,
26 from adjusting fees, limiting enrollment, reimbursement rates,
27 lengths of stay, number of visits, number of services, or
28 making any other adjustment necessary to comply with the
29 availability of moneys and any limitations or directions
30 provided for in the General Appropriations Act. If at any
31 time based upon an analysis by the Agency for Health Care

1 Administration, in consultation with the Agency for Persons
 2 with Disabilities, the cost of Home and Community-Based waiver
 3 services are expected to exceed the appropriated amount, the
 4 Agency for Health Care Administration may implement any
 5 adjustment, including provider rate reductions, within 30 days
 6 in order to remain within the appropriation.

7 Section 8. Section 393.068, Florida Statutes, is
 8 amended to read:

9 393.068 Family care program.--

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

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

31 (a) Attendant care.

- 1 (b) Barrier-free modifications to the home.
- 2 (c) Home visitation by agency workers.
- 3 (d) In-home subsidies.
- 4 (e) Low-interest loans.
- 5 ~~(f) Parent training.~~
- 6 ~~(g) Respite care.~~
- 7 (f)(h) Modifications for vehicles used to transport
- 8 the individual with a developmental disability.
- 9 (g)(i) Facilitated communication.
- 10 (h)(j) Family counseling.
- 11 (i)(k) Equipment and supplies.
- 12 (j)(l) Self-advocacy training.
- 13 (k)(m) Roommate services.
- 14 (l)(n) Integrated community activities.
- 15 (m)(o) Emergency services.
- 16 (n)(p) Support coordination.
- 17 (o) Supported employment.
- 18 (p)(q) Other support services as identified by the
- 19 family or individual.
- 20 ~~(2) Provided it is consistent with the intent of the~~
- 21 ~~Legislature, the department shall prioritize increased~~
- 22 ~~appropriations provided for family based services for~~
- 23 ~~developmentally disabled individuals toward individualized,~~
- 24 ~~family based supports and services for consumers and their~~
- 25 ~~families. Further, the department's 5 year plan for~~
- 26 ~~developmental services shall reflect a priority toward~~
- 27 ~~individualized, family based supports and services for~~
- 28 ~~consumers and their families.~~
- 29 (3) When it is determined by the agency department to
- 30 be more cost-effective and in the best interest of the client
- 31 to maintain such client in the home of a direct service

1 provider, the parent or guardian of the client or, if
2 competent, the client may enroll the client in the family care
3 program. The direct service provider of a client enrolled in
4 the family care program shall be reimbursed according to a
5 rate schedule set by the agency department. In-home subsidies
6 cited in paragraph (1)(d) shall be provided according to s.
7 393.0695 and are not subject to any other payment method or
8 rate schedule provided for in this section.

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

15 (5) The agency department may contract for the
16 provision of any portion of the services required by the
17 program, except for in-home subsidies cited in paragraph
18 ~~(2)(d)(1)(d)~~, which shall be provided pursuant to s.
19 393.0695. Otherwise, purchase of service contracts shall be
20 used whenever the services so provided are more cost-efficient
21 than those provided by the agency department.

22 (6) When possible, services shall be obtained under
23 the "Florida Comprehensive Annual Services Program Plan under
24 Title XX of the Social Security Act" and the "Florida Plan for
25 Medical Assistance under Title XIX of the Social Security
26 Act."

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

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

9 Section 9. Subsections (1) and (3) of section
10 393.0695, Florida Statutes, are amended to read:

11 393.0695 Provision of in-home subsidies.--

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

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

25 Section 10. Subsection (1), paragraph (a) of
26 subsection (2), paragraph (a) of subsection (4), paragraphs
27 (a), (d), and (h) of subsection (5), paragraph (a) of
28 subsection (6), paragraphs (d) and (e) of subsection (8), and
29 subsection (13) of section 393.11, Florida Statutes, are
30 amended to read:

31

1 393.11 Involuntary admission to residential
2 services.--

3 (1) JURISDICTION.--When a person is mentally retarded
4 and requires involuntary admission to residential services
5 provided by the agency ~~developmental services program of the~~
6 ~~Department of Children and Family Services~~, the circuit court
7 of the county in which the person resides shall have
8 jurisdiction to conduct a hearing and enter an order
9 involuntarily admitting the person in order that the person
10 may receive the care, treatment, habilitation, and
11 rehabilitation which the person needs. For the purpose of
12 identifying mental retardation, diagnostic capability shall be
13 established by ~~in every program function of the agency~~
14 ~~department in the districts, including, but not limited to,~~
15 ~~programs provided by children and families; delinquency~~
16 ~~services; alcohol, drug abuse, and mental health; and economic~~
17 ~~services, and by the Department of Labor and Employment~~
18 ~~Security~~. Except as otherwise specified, the proceedings under
19 this section shall be governed by the Florida Rules of Civil
20 Procedure.

21 (2) PETITION.--

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

29 (4) DEVELOPMENTAL SERVICES PARTICIPATION.--

30 (a) Upon receiving the petition, the court shall
31 immediately order the developmental services program of the

1 ~~agency department~~ to examine the person being considered for
2 involuntary admission to residential services.

3 (5) EXAMINING COMMITTEE.--

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

9 (d) Members of the committee shall not be employees of
10 the ~~agency department~~ or be associated with each other in
11 practice or in employer-employee relationships. Members of
12 the committee shall not have served as members of the
13 petitioning commission. Members of the committee shall not be
14 employees of the members of the petitioning commission or be
15 associated in practice with members of the commission.

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

19 (6) COUNSEL; GUARDIAN AD LITEM.--

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

30 (8) ORDER.--

31

1 (d) If an order of involuntary admission to
2 residential services provided by the developmental services
3 program of the agency department is entered by the court, a
4 copy of the written order shall be served upon the person, the
5 person's counsel, the agency department, and the state
6 attorney and the person's defense counsel, if applicable. The
7 order of involuntary admission sent to the agency department
8 shall also be accompanied by a copy of the examining
9 committee's report and other reports contained in the court
10 file.

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

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

1 Section 11. Paragraphs (a), (b), and (d) of subsection
2 (2), subsection (3), paragraphs (b), (g), (i), and (j) of
3 subsection (4), and subsection (6) of section 393.13, Florida
4 Statutes, are amended to read:

5 393.13 Personal treatment of persons who are
6 developmentally disabled.--

7 (2) LEGISLATIVE INTENT.--

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

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

20 1. Abate the use of large institutions.

21 2. Continue the development of community-based
22 services which provide reasonable alternatives to
23 institutionalization in settings that are least restrictive to
24 the client.

25 3. Provide training and education to individuals who
26 are developmentally disabled which will maximize their
27 potential to lead independent and productive lives and which
28 will afford opportunities for outward mobility from
29 institutions.

30 4. Reduce the use of sheltered workshops and other
31 noncompetitive employment day activities and promote

1 opportunities for gainful employment for persons with
2 developmental disabilities who choose to seek such employment.

3 (d) It is the intent of the Legislature:

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

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

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

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

21 ~~4.5. Once the plan developed under the provisions of~~
22 ~~subparagraph 4. is presented to the Legislature, To fund~~
23 improvements in the program in accordance with the
24 availability of state resources and yearly priorities
25 determined by the Legislature.

26 ~~5.6.~~ To ensure that persons with developmental
27 disabilities receive treatment and habilitation which fosters
28 the developmental potential of the individual.

29 ~~6.7.~~ To provide programs for the proper habilitation
30 and treatment of persons with developmental disabilities which
31 shall include, but not be limited to, comprehensive

1 | medical/dental care, education, recreation, specialized
2 | therapies, training, social services, transportation,
3 | guardianship, family care programs, day habilitation services,
4 | and habilitative and rehabilitative services suited to the
5 | needs of the individual regardless of age, degree of
6 | disability, or handicapping condition. No person with
7 | developmental disabilities shall be deprived of these
8 | enumerated services by reason of inability to pay.

9 | ~~7.8.~~ To fully effectuate the normalization principle
10 | through the establishment of community services for persons
11 | with developmental disabilities as a viable and practical
12 | alternative to institutional care at each stage of individual
13 | life development. If care in a residential facility becomes
14 | necessary, it shall be in the least restrictive setting.

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

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

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

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

31 |

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

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

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

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

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

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

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

29 (4) CLIENT RIGHTS.--For purposes of this subsection,
30 the term "client," as defined in s. 393.063, shall also
31

1 include any person served in a facility licensed pursuant to
2 s. 393.067.

3 (b) Each client has the right to the possession and
4 use of his or her own clothing and personal effects, except in
5 those specific instances where the use of some of these items
6 as reinforcers is essential for training the client as part of
7 an appropriately approved behavioral program. The chief
8 administrator of the facility may take temporary custody of
9 such effects when it is essential to do so for medical or
10 safety reasons. Custody of such personal effects shall be
11 promptly recorded in the client's record, and a receipt for
12 such effects shall be immediately given to the client, if
13 competent, or the client's parent or legal guardian.

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

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

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

28 (g) No client shall be subjected to a treatment
29 program to eliminate bizarre or unusual behaviors without
30 first being examined by a physician who in his or her best
31

1 judgment determines that such behaviors are not organically
2 caused.

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

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

15 3. The agency ~~department~~ shall adopt ~~promulgate~~ by
16 rule a system for the oversight of behavioral programs. Such
17 system shall establish guidelines and procedures governing the
18 design, approval, implementation, and monitoring of all
19 behavioral programs involving clients. The system shall
20 ensure statewide and local review by committees of
21 professionals certified as behavior analysts pursuant to s.
22 393.17. No behavioral program shall be implemented unless
23 reviewed according to the rules established by the agency
24 ~~department~~ under this section. Nothing stated in this section
25 shall prohibit the review of programs by the Florida statewide
26 or local advocacy councils.

27 (i) Clients shall have the right to be free from
28 unnecessary physical, chemical, or mechanical restraint.
29 Restraints shall be employed only in emergencies or to protect
30 the client from imminent injury to himself or herself or
31 others. Restraints shall not be employed as punishment, for

1 the convenience of staff, or as a substitute for a
2 habilitative plan. Restraints shall impose the least possible
3 restrictions consistent with their purpose and shall be
4 removed when the emergency ends. Restraints shall not cause
5 physical injury to the client and shall be designed to allow
6 the greatest possible comfort.

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

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

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

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

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

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

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

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

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

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

29 3. All central records for each client in residential
30 facilities shall be kept on uniform forms distributed by the
31

1 ~~agency department~~. The central record shall accurately
2 summarize each client's history and present condition.

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

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

16 Section 12. Section 393.17, Florida Statutes, is
17 amended to read:

18 393.17 Behavioral programs; certification of behavior
19 analysts; ~~fees~~.--The agency may recognize the certification of
20 behavior analysts awarded by a nonprofit corporation whose
21 mission is to meet professional credentialing needs identified
22 by behavior analysts, state governments, and consumers of
23 behavior analysis services and whose work has the support of
24 the Association for Behavior Analysis International. The
25 ~~department shall by rule implement a certification program to~~
26 ~~ensure that qualified persons oversee the design and~~
27 ~~implementation of behavioral programs for persons who are~~
28 ~~developmentally disabled. Certification and recertification~~
29 ~~minimum standards must comply with departmental rules and must~~
30 ~~include, for initial certification, examination of~~
31 ~~competencies in applying behavior analysis with persons who~~

1 ~~are developmentally disabled within established competency~~
2 ~~clusters. These competency clusters shall include, but not be~~
3 ~~limited to, behavioral assessments, observation and recording,~~
4 ~~behavioral program development and monitoring, and other areas~~
5 ~~as determined by professional practitioners of behavior~~
6 ~~analysis. Fees shall be charged for certification not to~~
7 ~~exceed the cost of development and administration of the~~
8 ~~examination and periodic renewal of certification. The~~
9 ~~department shall establish by rule the procedures for~~
10 ~~certification and certification renewal.~~

11 Section 13. Section 393.22, Florida Statutes, is
12 amended to read:

13 393.22 ~~Transfer of appropriations; barriers to~~
14 ~~services; Financial commitment to community services~~
15 ~~programs.--~~

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

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

26 (3) ~~In order to The Department of Children and Family~~
27 ~~Services and the Agency for Health Care Administration jointly~~
28 ~~shall ensure that whenever a number of persons move from an~~
29 ~~institution serving persons with developmental disabilities~~
30 ~~which is sufficient to allow an entire residential unit within~~
31 ~~that institution to be closed, no less than 80 percent of the~~

1 direct costs of providing services to persons who had resided
2 in that unit shall be reallocated for community services.

3 Section 14. Section 393.502, Florida Statutes, is
4 amended to read:

5 393.502 Family care councils.--

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

9 (2) MEMBERSHIP.--

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

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

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

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

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

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

1 (3) TERMS; VACANCIES.--

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

5 (b) A member who has served two consecutive terms
6 shall not be eligible to serve again until 12 months have
7 elapsed since ending his or her service on the local ~~district~~
8 council.

9 (c) Upon expiration of a term or in the case of any
10 other vacancy, the local ~~district~~ council shall, by majority
11 vote, recommend to the Governor for appointment a person for
12 each vacancy. ~~If the Governor does not act on the council's~~
13 ~~recommendations within 45 days after receiving them, the~~
14 ~~persons recommended shall be considered to be appointed.~~

15 (4) COMMITTEE APPOINTMENTS.--The chair of the local
16 ~~district~~ family care council may appoint persons to serve on
17 council committees. Such persons may include former members of
18 the council and persons not eligible to serve on the council.

19 (5) TRAINING.--

20 (a) The agency ~~department~~, in consultation with the
21 local ~~district~~ councils, shall establish a training program
22 for local ~~district~~ family care council members. Each local
23 area ~~district~~ shall provide the training program when new
24 persons are appointed to the local ~~district~~ council and at
25 other times as the secretary deems necessary.

26 (b) The training shall assist the council members to
27 understand the laws, rules, and policies applicable to their
28 duties and responsibilities.

29 (c) All persons appointed to a local ~~district~~ council
30 must complete this training within 90 days after their
31

1 appointment. A person who fails to meet this requirement shall
2 be considered to have resigned from the council.

3 (6) MEETINGS.--Council members shall serve on a
4 voluntary basis without payment for their services but shall
5 be reimbursed for per diem and travel expenses as provided for
6 in s. 112.061. The council shall meet at least six times per
7 year.

8 (7) PURPOSE.--The purpose of the local ~~district~~ family
9 care councils shall be to advise the agency ~~department and its~~
10 ~~district advisory boards~~, to develop a plan for the delivery
11 of ~~developmental services~~ family support services within the
12 local area ~~district~~, and to monitor the implementation and
13 effectiveness of services and support provided under the plan.
14 The primary functions of the local ~~district~~ family care
15 councils shall be to:

16 (a) Assist in providing information and outreach to
17 families.

18 (b) Review the effectiveness of service ~~developmental~~
19 ~~services~~ programs and make recommendations with respect to
20 program implementation.

21 (c) Advise the agency ~~district developmental services~~
22 ~~administrators~~ with respect to policy issues relevant to the
23 community and family support system in the local area
24 ~~district~~.

25 (d) Meet and share information with other local
26 ~~district~~ family care councils.

27 (8) NEW COUNCILS.--When a local ~~district~~ family care
28 council is established for the first time in a local area
29 ~~district~~, the Governor shall appoint the first four council
30 members, who shall serve 3-year terms. These members shall
31 submit to the Governor, within 90 days after their

1 appointment, recommendations for at least six additional
2 members, selected by majority vote. ~~If the Governor does not~~
3 ~~act on the recommendations within 45 days after receiving~~
4 ~~them, the persons recommended shall be considered to be~~
5 ~~appointed. Those members recommended for appointment by the~~
6 ~~Governor shall serve for 2 years.~~

7 (9) FUNDING; FINANCIAL REVIEW.--The local district
8 family care council may apply for, receive, and accept grants,
9 gifts, donations, bequests, and other payments from any public
10 or private entity or person. Each local district council is
11 ~~shall be~~ subject to an annual financial review by ~~district~~
12 staff assigned by the agency district administrator. Each
13 local district council shall exercise care and prudence in the
14 expenditure of funds. The local district family care councils
15 shall comply with state expenditure requirements.

16 Section 15. Section 408.301, Florida Statutes, is
17 amended to read:

18 408.301 Legislative findings.--The Legislature has
19 found that access to quality, affordable, health care for all
20 Floridians is an important goal for the state. The Legislature
21 recognizes that there are Floridians with special health care
22 and social needs which require particular attention. The
23 people served by the Department of Children and Family
24 Services, the Agency for Persons with Disabilities, and the
25 Department of Health, and the Department of Elderly Affairs
26 are examples of citizens with special needs. The Legislature
27 further recognizes that the Medicaid program is an intricate
28 part of the service delivery system for the special needs
29 citizens ~~served by or through the Department of Children and~~
30 ~~Family Services and the Department of Health. However, the~~
31 Agency for Health Care Administration is not a service

1 provider and does not develop or direct programs for the
2 special needs citizens ~~served by or through the Department of~~
3 ~~Children and Family Services and the Department of Health.~~
4 Therefore, it is the intent of the Legislature that the Agency
5 for Health Care Administration work closely with the
6 Department of Children and Family Services, the Agency for
7 Persons with Disabilities, ~~and~~ the Department of Health, and
8 the Department of Elderly Affairs in developing plans for
9 assuring access to all Floridians in order to assure that the
10 needs of special citizens are met.

11 Section 16. Section 408.302, Florida Statutes, is
12 amended to read:

13 408.302 Interagency agreement.--

14 (1) The Agency for Health Care Administration shall
15 enter into an interagency agreement with the Department of
16 Children and Family Services, the Agency for Persons with
17 Disabilities, ~~and~~ the Department of Health, and the Department
18 of Elderly Affairs to assure coordination and cooperation in
19 serving special needs citizens. The agreement shall include
20 the requirement that the secretaries or directors ~~secretary~~ of
21 the Department of Children and Family Services, the Agency for
22 Persons with Disabilities, ~~and the secretary of~~ the Department
23 of Health, and the Department of Elderly Affairs approve,
24 prior to adoption, any rule developed by the Agency for Health
25 Care Administration where such rule has a direct impact on the
26 mission of the respective state agencies ~~Department of~~
27 ~~Children and Family Services and the Department of Health,~~
28 their programs, or their budgets.

29 (2) For rules which indirectly impact on the mission
30 of the Department of Children and Family Services, the Agency
31 for Persons with Disabilities, ~~and~~ the Department of Health,

1 and the Department of Elderly Affairs, their programs, or
2 their budgets, the concurrence of the respective secretaries
3 or directors ~~secretary of the Department of Children and~~
4 ~~Family Services and the secretary of the Department of Health~~
5 on the rule is required.

6 (3) For all other rules developed by the Agency for
7 Health Care Administration, coordination with the Department
8 of Children and Family Services, the Agency for Persons with
9 Disabilities, ~~and~~ the Department of Health, and the Department
10 of Elderly Affairs is encouraged.

11 (4) The interagency agreement shall also include any
12 other provisions necessary to ensure a continued cooperative
13 working relationship between the Agency for Health Care
14 Administration and the Department of Children and Family
15 Services, the Agency for Persons with Disabilities, ~~and~~ the
16 Department of Health, and the Department of Elderly Affairs as
17 each strives to meet the needs of the citizens of Florida.

18 Section 17. Subsection (13) of section 409.906,
19 Florida Statutes, is amended to read:

20 409.906 Optional Medicaid services.--Subject to
21 specific appropriations, the agency may make payments for
22 services which are optional to the state under Title XIX of
23 the Social Security Act and are furnished by Medicaid
24 providers to recipients who are determined to be eligible on
25 the dates on which the services were provided. Any optional
26 service that is provided shall be provided only when medically
27 necessary and in accordance with state and federal law.
28 Optional services rendered by providers in mobile units to
29 Medicaid recipients may be restricted or prohibited by the
30 agency. Nothing in this section shall be construed to prevent
31 or limit the agency from adjusting fees, reimbursement rates,

1 lengths of stay, number of visits, or number of services, or
2 making any other adjustments necessary to comply with the
3 availability of moneys and any limitations or directions
4 provided for in the General Appropriations Act or chapter 216.
5 If necessary to safeguard the state's systems of providing
6 services to elderly and disabled persons and subject to the
7 notice and review provisions of s. 216.177, the Governor may
8 direct the Agency for Health Care Administration to amend the
9 Medicaid state plan to delete the optional Medicaid service
10 known as "Intermediate Care Facilities for the Developmentally
11 Disabled." Optional services may include:

12 (13) HOME AND COMMUNITY-BASED SERVICES.--The agency
13 may pay for home-based or community-based services that are
14 rendered to a recipient in accordance with a federally
15 approved waiver program. The agency may limit or eliminate
16 coverage for certain ~~Project AIDS Care Waiver~~ services,
17 preauthorize high-cost or highly utilized services, or make
18 any other adjustments necessary to comply with any limitations
19 or directions provided for in the General Appropriations Act.
20 If at any time, based upon an analysis by the agency, the cost
21 of waiver services are expected to exceed the appropriated
22 amount, the agency may implement any adjustment, including
23 provider rate reductions, within 30 days in order to remain
24 within the appropriation following publication of such
25 adjustment as provided in s. 120.55.

26 Section 18. Sections 393.14, 393.165, 393.166, and
27 393.505, Florida Statutes, are repealed.

28 Section 19. (1) Effective October 1, 2004, the
29 developmental disabilities program and the developmental
30 services institutions in the Department of Children and Family
31 Services shall be transferred to the Agency for Persons with

1 Disabilities by a type two transfer pursuant to section 20.06,
2 Florida Statutes. Prior to that date:

3 (a) The Agency for Persons with Disabilities and the
4 Department of Children and Family Services, in consultation
5 with the Department of Management Services, shall determine
6 the number of positions and resources within the department
7 dedicated to the developmental disabilities program which
8 shall be transferred to the agency and will develop an
9 agreement that delineates who within the department will
10 provide administrative support to the agency.

11 (b) The Director of the Agency for Persons with
12 Disabilities, in consultation with the Secretaries of the
13 Department of Children and Family Services and the Agency for
14 Health Care Administration or their designees, shall prepare a
15 transition plan that must address, at a minimum, building
16 leases, information support systems, cash ownership and
17 transfer, administrative support functions, inventory and
18 transfers of equipment and structures, expenditure transfers,
19 budget authority and positions, and certifications forward.
20 This plan shall be submitted by September 1, 2004, to the
21 Executive Office of the Governor, the President of the Senate,
22 and the Speaker of the House of Representatives.

23 (c) The Agency for Persons with Disabilities and the
24 Department of Children and Family Services shall work with the
25 Agency for Health Care Administration to develop a plan that
26 ensures that all of the necessary electronic and paper-based
27 data of the Developmental Disabilities program is accessible
28 to the Medicaid program and that all electronic records will
29 be migrated to a new data system that is compatible with the
30 Florida Medicaid Management Information System.

31

1 (d) The Agency for Persons with Disabilities and the
2 Agency for Health Care Administration shall develop a plan for
3 the orderly relocation of the noncentral-office staff of the
4 Agency for Persons with Disabilities to the area offices of
5 the Agency for Health Care Administration. Such plan shall
6 include a schedule that takes into consideration the
7 availability of space, the expiration of current leases, and
8 the initiation of new leases that can accommodate the
9 relocated staff, as well as appropriate reimbursement for
10 collocation costs, including office space and other operating
11 expenses.

12 (2) Effective October 1, 2004, the agency shall enter
13 into an interagency agreement with the Department of Children
14 and Family Services for the provision of the necessary
15 day-to-day administrative and operational needs of the agency,
16 including, but not limited to, personnel, purchasing,
17 information technology support, legal support, and other
18 related services. This interagency agreement shall continue
19 until the agency no longer requires the provision of services
20 through such agreement.

21 (3) This act does not affect the validity of any
22 judicial or administrative proceeding pending on October 30,
23 2004, and the Agency for Persons with Disabilities is
24 substituted as a real party in interest with respect to any
25 proceeding pending on that date which involves the
26 developmental services programs of the Department of Children
27 and Family Services.

28 Section 20. The Office of Program Policy Analysis and
29 Government Accountability shall identify and evaluate
30 statewide entities receiving state funding for the purpose of
31

1 addressing the interests of, but not directly providing
2 services for, persons with disabilities.

3 (1) The purpose of the analysis shall be to provide
4 information with respect to:

5 (a) The extent to which activities of these entities
6 are coordinated;

7 (b) The similarities and differences in the
8 organizational missions of these entities; and

9 (c) The amount of state funds provided to these
10 entities for the purpose of addressing the interests of
11 persons with disabilities, the uses of these funds, and
12 whether they duplicate the efforts of other private or
13 federally funded entities.

14 (2) The report shall be completed and provided to the
15 Governor and Legislature by December 2005.

16 Section 21. Subsection (1) of section 92.53, Florida
17 Statutes, is amended to read:

18 92.53 Videotaping of testimony of victim or witness
19 under age 16 or person with mental retardation.--

20 (1) On motion and hearing in camera and a finding that
21 there is a substantial likelihood that a victim or witness who
22 is under the age of 16 or who is a person with mental
23 retardation as defined in s. 393.063 ~~s. 393.063(42)~~ would
24 suffer at least moderate emotional or mental harm due to the
25 presence of the defendant if the child or person with mental
26 retardation is required to testify in open court, or that such
27 victim or witness is otherwise unavailable as defined in s.
28 90.804(1), the trial court may order the videotaping of the
29 testimony of the victim or witness in a case, whether civil or
30 criminal in nature, in which videotaped testimony is to be
31 utilized at trial in lieu of trial testimony in open court.

1 Section 22. Subsections (1), (2), and (3), paragraph
2 (i) of subsection (4), subsection (5), paragraphs (a), (b),
3 (c), (d), (f), and (g) of subsection (6), and subsections (8),
4 (9), (10), (11), (12), (13), (14), and (17) of section
5 393.067, Florida Statutes, are amended to read:

6 393.067 Licensure of residential facilities and
7 comprehensive transitional education programs.--

8 (1) The agency ~~department~~ shall provide through its
9 licensing authority a system of provider qualifications,
10 standards, training criteria for meeting standards, and
11 monitoring for residential facilities and comprehensive
12 transitional education programs.

13 (2) The agency ~~department~~ shall conduct inspections
14 and reviews of residential facilities and comprehensive
15 transitional education programs annually.

16 (3) An application for a license for a residential
17 facility or a comprehensive transitional education program
18 shall be made to the agency ~~Department of Children and Family~~
19 ~~Services~~ on a form furnished by it and shall be accompanied by
20 the appropriate license fee.

21 (4) The application shall be under oath and shall
22 contain the following:

23 (i) Such other information as the agency ~~department~~
24 determines is necessary to carry out the provisions of this
25 chapter.

26 (5) The applicant shall submit evidence which
27 establishes the good moral character of the manager or
28 supervisor of the facility or program and the direct service
29 providers in the facility or program and its component centers
30 or units. A license may be issued if all the screening
31 materials have been timely submitted; however, a license may

1 not be issued or renewed if any of the direct service
2 providers have failed the screening required by s. 393.0655.

3 (a)1. A licensed residential facility or comprehensive
4 transitional education program which applies for renewal of
5 its license shall submit to the agency department a list of
6 direct service providers who have worked on a continuous basis
7 at the applicant facility or program since submitting
8 fingerprints to the agency or the Department of Children and
9 Family Services, identifying those direct service providers
10 for whom a written assurance of compliance was provided by the
11 agency or department and identifying those direct service
12 providers who have recently begun working at the facility or
13 program and are awaiting the results of the required
14 fingerprint check along with the date of the submission of
15 those fingerprints for processing. The agency department shall
16 by rule determine the frequency of requests to the Department
17 of Law Enforcement to run state criminal records checks for
18 such direct service providers except for those direct service
19 providers awaiting the results of initial fingerprint checks
20 for employment at the applicant facility or program. The
21 agency department shall review the records of the direct
22 service providers at the applicant facility or program with
23 respect to the crimes specified in s. 393.0655 and shall
24 notify the facility or program of its findings. When
25 disposition information is missing on a criminal record, it is
26 ~~shall be~~ the responsibility of the person being screened, upon
27 request of the agency department, to obtain and supply within
28 30 days the missing disposition information to the agency
29 ~~department~~. Failure to supply the missing information within
30 30 days or to show reasonable efforts to obtain such
31 information shall result in automatic disqualification.

1 2. The applicant shall sign an affidavit under penalty
2 of perjury stating that all new direct service providers have
3 been fingerprinted and that the facility's or program's
4 remaining direct service providers have worked at the
5 applicant facility or program on a continuous basis since
6 being initially screened at that facility or program or have a
7 written assurance of compliance from the agency or department.

8 (b) As a prerequisite for issuance of the initial
9 license to a residential facility or comprehensive
10 transitional education program:

11 1. The applicant shall submit to the agency ~~department~~
12 a complete set of fingerprints, taken by an authorized law
13 enforcement agency or an employee of the agency ~~department~~ who
14 is trained to take fingerprints, for the manager, supervisor,
15 or direct service providers of the facility or program;

16 2. The agency ~~department~~ shall submit the fingerprints
17 to the Department of Law Enforcement for state processing and
18 for federal processing by the Federal Bureau of Investigation;
19 and

20 3. The agency ~~department~~ shall review the record of
21 the manager or supervisor with respect to the crimes specified
22 in s. 393.0655(1) and shall notify the applicant of its
23 findings. When disposition information is missing on a
24 criminal record, it is ~~shall be~~ the responsibility of the
25 manager or supervisor, upon request of the agency ~~department~~,
26 to obtain and supply within 30 days the missing disposition
27 information to the agency ~~department~~. Failure to supply the
28 missing information within 30 days or to show reasonable
29 efforts to obtain such information shall result in automatic
30 disqualification.

31

1 (c) The ~~agency department~~ or a residential facility or
2 comprehensive transitional education program may not use the
3 criminal records or juvenile records of a person obtained
4 under this subsection for any purpose other than determining
5 if that person meets the minimum standards for good moral
6 character for a manager or supervisor of, or direct service
7 provider in, such a facility or program. The criminal records
8 or juvenile records obtained by the ~~agency department~~ or a
9 residential facility or comprehensive transitional education
10 program for determining the moral character of a manager,
11 supervisor, or direct service provider are exempt from s.
12 119.07(1).

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

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

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

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

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

28 (f) Each applicant must submit to the agency a
29 description and explanation of any conviction of an offense
30 prohibited under the level 2 standards of chapter 435 by a
31 member of the board of directors of the applicant, its

1 officers, or any individual owning 5 percent or more of the
2 applicant. This requirement does not apply to a director of a
3 not-for-profit corporation or organization if the director
4 serves solely in a voluntary capacity for the corporation or
5 organization, does not regularly take part in the day-to-day
6 operational decisions of the corporation or organization,
7 receives no remuneration for his or her services on the
8 corporation or organization's board of directors, and has no
9 financial interest and has no family members with a financial
10 interest in the corporation or organization, provided that the
11 director and the not-for-profit corporation or organization
12 include in the application a statement affirming that the
13 director's relationship to the corporation satisfies the
14 requirements of this paragraph.

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

22 (8) The agency ~~department~~ shall adopt ~~promulgate~~ rules
23 establishing minimum standards for licensure of residential
24 facilities and comprehensive transitional education programs,
25 including rules requiring facilities and programs to train
26 staff to detect and prevent sexual abuse of residents and
27 clients, minimum standards of quality and adequacy of care,
28 and uniform firesafety standards established by the State Fire
29 Marshal which are appropriate to the size of the facility or
30 of the component centers or units of the program.

31

1 (9) The agency department and the Agency for Health
2 Care Administration, after consultation with the Department of
3 Community Affairs, shall adopt rules for residential
4 facilities under the respective regulatory jurisdiction of
5 each establishing minimum standards for the preparation and
6 annual update of a comprehensive emergency management plan. At
7 a minimum, the rules must provide for plan components that
8 address emergency evacuation transportation; adequate
9 sheltering arrangements; postdisaster activities, including
10 emergency power, food, and water; postdisaster transportation;
11 supplies; staffing; emergency equipment; individual
12 identification of residents and transfer of records; and
13 responding to family inquiries. The comprehensive emergency
14 management plan for all comprehensive transitional education
15 programs and for homes serving individuals who have complex
16 medical conditions is subject to review and approval by the
17 local emergency management agency. During its review, the
18 local emergency management agency shall ensure that the
19 following agencies, at a minimum, are given the opportunity to
20 review the plan: the Agency for Health Care Administration,
21 the Agency for Persons with Disabilities ~~Department of~~
22 ~~Children and Family Services~~, and the Department of Community
23 Affairs. Also, appropriate volunteer organizations must be
24 given the opportunity to review the plan. The local emergency
25 management agency shall complete its review within 60 days and
26 either approve the plan or advise the facility of necessary
27 revisions.

28 (10) The agency department may conduct unannounced
29 inspections to determine compliance by residential facilities
30 and comprehensive transitional education programs with the
31 applicable provisions of this chapter and the rules adopted

1 pursuant hereto, including the rules adopted for training
2 staff of a facility or a program to detect and prevent sexual
3 abuse of residents and clients. The facility or program shall
4 make copies of inspection reports available to the public upon
5 request.

6 (11) An alternative living center and an independent
7 living education center, as defined in s. 393.063 ~~s.~~
8 ~~393.063(8)~~, shall be subject to the provisions of s. 419.001,
9 except that such centers shall be exempt from the
10 1,000-foot-radius requirement of s. 419.001(2) if:

11 (a) Such centers are located on a site zoned in a
12 manner so that all the component centers of a comprehensive
13 transition education center may be located thereon; or

14 (b) There are no more than three such centers within
15 said radius of 1,000 feet.

16 (12) Each residential facility or comprehensive
17 transitional education program licensed by the agency
18 ~~department~~ shall forward annually to the agency ~~department~~ a
19 true and accurate sworn statement of its costs of providing
20 care to clients funded by the agency ~~department~~.

21 (13) The agency ~~department~~ may audit the records of
22 any residential facility or comprehensive transitional
23 education program ~~that~~ ~~which~~ it has reason to believe may not
24 be in full compliance with the provisions of this section;
25 provided that, any financial audit of such facility or program
26 shall be limited to the records of clients funded by the
27 agency ~~department~~.

28 (14) The agency ~~department~~ shall establish, for the
29 purpose of control of licensure costs, a uniform management
30 information system and a uniform reporting system with uniform
31 definitions and reporting categories.

1 (17) The agency ~~department~~ shall not be required to
2 contract with new facilities licensed after October 1, 1989,
3 pursuant to this chapter. Pursuant to chapter 287, the agency
4 ~~department~~ shall continue to contract within available
5 resources for residential services with facilities licensed
6 prior to October 1, 1989, if such facilities comply with the
7 provisions of this chapter and all other applicable laws and
8 regulations.

9 Section 23. Subsection (9) of section 397.405, Florida
10 Statutes, is amended to read:

11 397.405 Exemptions from licensure.--The following are
12 exempt from the licensing provisions of this chapter:

13 (9) Facilities licensed under s. 393.063 ~~s. 393.063(8)~~
14 that, in addition to providing services to persons who are
15 developmentally disabled as defined therein, also provide
16 services to persons developmentally at risk as a consequence
17 of exposure to alcohol or other legal or illegal drugs while
18 in utero.

19
20 The exemptions from licensure in this section do not apply to
21 any service provider that receives an appropriation, grant, or
22 contract from the state to operate as a service provider as
23 defined in this chapter or to any substance abuse program
24 regulated pursuant to s. 397.406. Furthermore, this chapter
25 may not be construed to limit the practice of a physician
26 licensed under chapter 458 or chapter 459, a psychologist
27 licensed under chapter 490, or a psychotherapist licensed
28 under chapter 491 who provides substance abuse treatment, so
29 long as the physician, psychologist, or psychotherapist does
30 not represent to the public that he or she is a licensed
31 service provider and does not provide services to clients

1 pursuant to part V of this chapter. Failure to comply with any
2 requirement necessary to maintain an exempt status under this
3 section is a misdemeanor of the first degree, punishable as
4 provided in s. 775.082 or s. 775.083.

5 Section 24. Paragraph (b) of subsection (5) of section
6 400.464, Florida Statutes, is amended to read:

7 400.464 Home health agencies to be licensed;
8 expiration of license; exemptions; unlawful acts; penalties.--

9 (5) The following are exempt from the licensure
10 requirements of this part:

11 (b) Home health services provided by a state agency,
12 either directly or through a contractor with:

13 1. The Department of Elderly Affairs.
14 2. The Department of Health, a community health
15 center, or a rural health network that furnishes home visits
16 for the purpose of providing environmental assessments, case
17 management, health education, personal care services, family
18 planning, or followup treatment, or for the purpose of
19 monitoring and tracking disease.

20 3. Services provided to persons who have developmental
21 disabilities, as defined in s. 393.063 ~~s. 393.063(12)~~.

22 4. Companion and sitter organizations that were
23 registered under s. 400.509(1) on January 1, 1999, and were
24 authorized to provide personal services under s. 393.063(33)
25 under a developmental services provider certificate on January
26 1, 1999, may continue to provide such services to past,
27 present, and future clients of the organization who need such
28 services, notwithstanding the provisions of this act.

29 5. The Department of Children and Family Services.

30 Section 25. Paragraph (d) of subsection (1) of section
31 419.001, Florida Statutes, is amended to read:

1 419.001 Site selection of community residential
2 homes.--

3 (1) For the purposes of this section, the following
4 definitions shall apply:

5 (d) "Resident" means any of the following: a frail
6 elder as defined in s. 400.618; a physically disabled or
7 handicapped person as defined in s. 760.22(7)(a); a
8 developmentally disabled person as defined in s. 393.063 ~~s.~~
9 ~~393.063(12)~~; a nondangerous mentally ill person as defined in
10 s. 394.455(18); or a child as defined in s. 39.01(14), s.
11 984.03(9) or (12), or s. 985.03(8).

12 Section 26. Section 914.16, Florida Statutes, is
13 amended to read:

14 914.16 Child abuse and sexual abuse of victims under
15 age 16 or persons with mental retardation; limits on
16 interviews.--The chief judge of each judicial circuit, after
17 consultation with the state attorney and the public defender
18 for the judicial circuit, the appropriate chief law
19 enforcement officer, and any other person deemed appropriate
20 by the chief judge, shall provide by order reasonable limits
21 on the number of interviews that a victim of a violation of s.
22 794.011, s. 800.04, or s. 827.03 who is under 16 years of age
23 or a victim of a violation of s. 794.011, s. 800.02, s.
24 800.03, or s. 825.102 who is a person with mental retardation
25 as defined in s. 393.063 ~~s. 393.063(42)~~ must submit to for law
26 enforcement or discovery purposes. The order shall, to the
27 extent possible, protect the victim from the psychological
28 damage of repeated interrogations while preserving the rights
29 of the public, the victim, and the person charged with the
30 violation.

31

1 Section 27. Subsection (2) of section 914.17, Florida
2 Statutes, is amended to read:

3 914.17 Appointment of advocate for victims or
4 witnesses who are minors or persons with mental retardation.--

5 (2) An advocate shall be appointed by the court to
6 represent a person with mental retardation as defined in s.
7 393.063 ~~s. 393.063(42)~~ in any criminal proceeding if the
8 person with mental retardation is a victim of or witness to
9 abuse or neglect, or if the person with mental retardation is
10 a victim of a sexual offense or a witness to a sexual offense
11 committed against a minor or person with mental retardation.
12 The court may appoint an advocate in any other criminal
13 proceeding in which a person with mental retardation is
14 involved as either a victim or a witness. The advocate shall
15 have full access to all evidence and reports introduced during
16 the proceedings, may interview witnesses, may make
17 recommendations to the court, shall be noticed and have the
18 right to appear on behalf of the person with mental
19 retardation at all proceedings, and may request additional
20 examinations by medical doctors, psychiatrists, or
21 psychologists. It is the duty of the advocate to perform the
22 following services:

23 (a) To explain, in language understandable to the
24 person with mental retardation, all legal proceedings in which
25 the person shall be involved;

26 (b) To act, as a friend of the court, to advise the
27 judge, whenever appropriate, of the person with mental
28 retardation's ability to understand and cooperate with any
29 court proceedings; and

30 (c) To assist the person with mental retardation and
31 the person's family in coping with the emotional effects of

1 the crime and subsequent criminal proceedings in which the
2 person with mental retardation is involved.

3 Section 28. Subsection (1) of section 918.16, Florida
4 Statutes, is amended to read:

5 918.16 Sex offenses; testimony of person under age 16
6 or person with mental retardation; testimony of victim;
7 courtroom cleared; exceptions.--

8 (1) Except as provided in subsection (2), in the trial
9 of any case, civil or criminal, when any person under the age
10 of 16 or any person with mental retardation as defined in s.
11 393.063 ~~s. 393.063(42)~~ is testifying concerning any sex
12 offense, the court shall clear the courtroom of all persons
13 except parties to the cause and their immediate families or
14 guardians, attorneys and their secretaries, officers of the
15 court, jurors, newspaper reporters or broadcasters, court
16 reporters, and, at the request of the victim, victim or
17 witness advocates designated by the state attorney's office.

18 Section 29. Subsections (3) and (4) of section
19 393.0641, Florida Statutes, are amended to read:

20 393.0641 Program for the prevention and treatment of
21 severe self-injurious behavior.--

22 (3) The agency ~~department~~ may contract for the
23 provision of any portion or all of the services required by
24 the program.

25 (4) The agency has ~~department shall have~~ the authority
26 to license this program and shall adopt ~~promulgate~~ rules to
27 implement the program.

28 Section 30. Section 393.065, Florida Statutes, is
29 amended to read:

30 393.065 Application and eligibility determination.--

31

1 (1) Application for services shall be made in writing
2 to the agency ~~Department of Children and Family Services~~, in
3 the district in which the applicant resides. Employees of the
4 agency's ~~department's~~ developmental services program shall
5 review each applicant for eligibility within 45 days after the
6 date the application is signed for children under 6 years of
7 age and within 60 days after the date the application is
8 signed for all other applicants. When necessary to
9 definitively identify individual conditions or needs, the
10 agency ~~department~~ shall provide a comprehensive assessment.
11 Only individuals whose domicile is in Florida are ~~shall be~~
12 eligible for services. Information accumulated by other
13 agencies, including professional reports and collateral data,
14 shall be considered in this process when available.

15 (2) In order to provide immediate services or crisis
16 intervention to applicants, the agency ~~department~~ shall
17 arrange for emergency eligibility determination, with a full
18 eligibility review to be accomplished within 45 days of the
19 emergency eligibility determination.

20 (3) The agency ~~department~~ shall notify each applicant,
21 in writing, of its eligibility decision. Any applicant
22 determined by the agency ~~department~~ to be ineligible for
23 developmental services has ~~shall have~~ the right to appeal this
24 decision pursuant to ss. 120.569 and 120.57.

25 (4) The agency ~~department~~ shall assess the level of
26 need and medical necessity for prospective residents of
27 intermediate-care facilities for the developmentally disabled
28 after October 1, 1999. The agency ~~department~~ may enter into an
29 agreement with the Department of Elderly Affairs for its
30 Comprehensive Assessment and Review for Long-Term-Care
31 Services (CARES) program to conduct assessments to determine

1 the level of need and medical necessity for long-term-care
2 services under this chapter. To the extent permissible under
3 federal law, the assessments must be funded under Title XIX of
4 the Social Security Act.

5 Section 31. Section 393.0651, Florida Statutes, is
6 amended to read:

7 393.0651 Family or individual support plan.--The
8 agency ~~department~~ shall provide for an appropriate family
9 support plan for children ages birth to 18 years of age and an
10 individual support plan for each client. The parent or
11 guardian of the client or, if competent, the client, or, when
12 appropriate, the client advocate, shall be consulted in the
13 development of the plan and shall receive a copy of the plan.
14 Each plan shall include the most appropriate, least
15 restrictive, and most cost-beneficial environment for
16 accomplishment of the objectives for client progress and a
17 specification of all services authorized. The plan shall
18 include provisions for the most appropriate level of care for
19 the client. Within the specification of needs and services for
20 each client, when residential care is necessary, the agency
21 ~~department~~ shall move toward placement of clients in
22 residential facilities based within the client's community.
23 The ultimate goal of each plan, whenever possible, shall be to
24 enable the client to live a dignified life in the least
25 restrictive setting, be that in the home or in the community.
26 For children under 6 years of age, the family support plan
27 shall be developed within the 45-day application period as
28 specified in s. 393.065(1); for all applicants 6 years of age
29 or older, the family or individual support plan shall be
30 developed within the 60-day period as specified in that
31 subsection.

1 (1) The agency ~~department~~ shall develop and specify by
2 rule the core components of support plans to be used by each
3 district.

4 (2)(a) The family or individual support plan shall be
5 integrated with the individual education plan (IEP) for all
6 clients who are public school students entitled to a free
7 appropriate public education under the Individuals with
8 Disabilities Education Act, I.D.E.A., as amended. The family
9 or individual support plan and IEP shall be implemented to
10 maximize the attainment of educational and habilitation goals.
11 If the IEP for a student enrolled in a public school program
12 indicates placement in a public or private residential program
13 is necessary to provide special education and related services
14 to a client, the local education agency shall provide for the
15 costs of that service in accordance with the requirements of
16 the Individuals with Disabilities Education Act, I.D.E.A., as
17 amended. This shall not preclude local education agencies and
18 the agency ~~department~~ from sharing the residential service
19 costs of students who are clients and require residential
20 placement. Under no circumstances shall clients entitled to a
21 public education or their parents be assessed a fee by the
22 agency ~~department~~ under s. 402.33 for placement in a
23 residential program.

24 (b) For clients who are entering or exiting the school
25 system, an interdepartmental staffing team composed of
26 representatives of the agency ~~department~~ and the local school
27 system shall develop a written transitional living and
28 training plan with the participation of the client or with the
29 parent or guardian of the client, or the client advocate, as
30 appropriate.

31

1 (3) Each family or individual support plan shall be
2 facilitated through case management designed solely to advance
3 the individual needs of the client.

4 (4) In the development of the family or individual
5 support plan, a client advocate may be appointed by the
6 support planning team for a client who is a minor or for a
7 client who is not capable of express and informed consent
8 when:

9 (a) The parent or guardian cannot be identified;

10 (b) The whereabouts of the parent or guardian cannot
11 be discovered; or

12 (c) The state is the only legal representative of the
13 client.

14
15 Such appointment shall not be construed to extend the powers
16 of the client advocate to include any of those powers
17 delegated by law to a legal guardian.

18 (5) The agency ~~department~~ shall place a client in the
19 most appropriate and least restrictive, and cost-beneficial,
20 residential facility according to his or her individual
21 habilitation plan. The parent or guardian of the client or, if
22 competent, the client, or, when appropriate, the client
23 advocate, and the administrator of the residential facility to
24 which placement is proposed shall be consulted in determining
25 the appropriate placement for the client. Considerations for
26 placement shall be made in the following order:

27 (a) Client's own home or the home of a family member
28 or direct service provider.

29 (b) Foster care facility.

30 (c) Group home facility.

31

1 (d) Intermediate care facility for the developmentally
2 disabled.

3 (e) Other facilities licensed by the agency ~~department~~
4 which offer special programs for people with developmental
5 disabilities.

6 (f) Developmental services institution.

7 (6) In developing a client's annual family or
8 individual support plan, the individual or family with the
9 assistance of the support planning team shall identify
10 measurable objectives for client progress and shall specify a
11 time period expected for achievement of each objective.

12 (7) The individual, family, and support coordinator
13 shall review progress in achieving the objectives specified in
14 each client's family or individual support plan, and shall
15 revise the plan annually, following consultation with the
16 client, if competent, or with the parent or guardian of the
17 client, or, when appropriate, the client advocate. The agency
18 ~~department~~ shall annually report in writing to the client, if
19 competent, or to the parent or guardian of the client, or to
20 the client advocate, when appropriate, with respect to the
21 client's habilitative and medical progress.

22 (8) Any client, or any parent of a minor client, or
23 guardian, authorized guardian advocate, or client advocate for
24 a client, who is substantially affected by the client's
25 initial family or individual support plan, or the annual
26 review thereof, shall have the right to file a notice to
27 challenge the decision pursuant to ss. 120.569 and 120.57.
28 Notice of such right to appeal shall be included in all
29 support plans provided by the agency ~~department~~.

30 Section 32. Section 393.0673, Florida Statutes, is
31 amended to read:

1 393.0673 Denial, suspension, revocation of license;
2 moratorium on admissions; administrative fines; procedures.--

3 (1) The agency ~~Department of Children and Family~~
4 ~~Services~~ may deny, revoke, or suspend a license or impose an
5 administrative fine, not to exceed \$1,000 per violation per
6 day, for a violation of any provision of s. 393.0655 or s.
7 393.067 or rules adopted pursuant thereto. All hearings shall
8 be held within the county in which the licensee or applicant
9 operates or applies for a license to operate a facility as
10 defined herein.

11 (2) The agency ~~department~~, as a part of any final
12 order issued by it under the provisions of this chapter, may
13 impose such fine as it deems proper, except that such fine may
14 not exceed \$1,000 for each violation. Each day a violation of
15 this chapter occurs constitutes a separate violation and is
16 subject to a separate fine, but in no event may the aggregate
17 amount of any fine exceed \$10,000. Fines paid by any facility
18 licensee under the provisions of this subsection shall be
19 deposited in the Resident Protection Trust Fund and expended
20 as provided in s. 400.063.

21 (3) The agency ~~department~~ may issue an order
22 immediately suspending or revoking a license when it
23 determines that any condition in the facility presents a
24 danger to the health, safety, or welfare of the residents in
25 the facility.

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

31

1 Section 33. Subsections (1) and (3) of section
2 393.0675, Florida Statutes, are amended to read:

3 393.0675 Injunctive proceedings authorized.--

4 (1) The agency ~~Department of Children and Family~~
5 ~~Services~~ may institute injunctive proceedings in a court of
6 competent jurisdiction to:

7 (a) Enforce the provisions of this chapter or any
8 minimum standard, rule, regulation, or order issued or entered
9 pursuant thereto; or

10 (b) Terminate the operation of facilities licensed
11 pursuant to this chapter when any of the following conditions
12 exist:

13 1. Failure by the facility to take preventive or
14 corrective measures in accordance with any order of the agency
15 ~~department~~.

16 2. Failure by the facility to abide by any final order
17 of the agency ~~department~~ once it has become effective and
18 binding.

19 3. Any violation by the facility constituting an
20 emergency requiring immediate action as provided in s.
21 393.0673.

22 (3) The agency ~~department~~ may institute proceedings
23 for an injunction in a court of competent jurisdiction to
24 terminate the operation of a provider of supports or services
25 if such provider has willfully and knowingly refused to comply
26 with the screening requirement for direct service providers or
27 has refused to terminate direct service providers found not to
28 be in compliance with the requirements for good moral
29 character.

30
31

1 Section 34. Subsection (1), paragraphs (b), (c), and
2 (d) of subsection (2), and paragraph (e) of subsection (3) of
3 section 393.0678, Florida Statutes, are amended to read:

4 393.0678 Receivership proceedings.--

5 (1) The agency ~~department~~ may petition a court of
6 competent jurisdiction for the appointment of a receiver for
7 an intermediate care facility for the developmentally
8 disabled, a residential habilitation center, or a group home
9 facility owned and operated by a corporation or partnership
10 when any of the following conditions exist:

11 (a) Any person is operating a facility without a
12 license and refuses to make application for a license as
13 required by s. 393.067 or, in the case of an intermediate care
14 facility for the developmentally disabled, as required by ss.
15 393.067 and 400.062.

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

21 (c) The agency ~~department~~ determines that conditions
22 exist in the facility which present an imminent danger to the
23 health, safety, or welfare of the residents of the facility or
24 which present a substantial probability that death or serious
25 physical harm would result therefrom. Whenever possible, the
26 agency ~~department~~ shall facilitate the continued operation of
27 the program.

28 (d) The licensee cannot meet its financial obligations
29 to provide food, shelter, care, and utilities. Evidence such
30 as the issuance of bad checks or the accumulation of
31 delinquent bills for such items as personnel salaries, food,

1 | drugs, or utilities constitutes prima facie evidence that the
2 | ownership of the facility lacks the financial ability to
3 | operate the home in accordance with the requirements of this
4 | chapter and all rules promulgated thereunder.

5 | (2)

6 | (b) A hearing shall be conducted within 5 days of the
7 | filing of the petition, at which time all interested parties
8 | shall have the opportunity to present evidence pertaining to
9 | the petition. The agency ~~department~~ shall notify the owner or
10 | operator of the facility named in the petition of its filing
11 | and the date set for the hearing.

12 | (c) The court shall grant the petition only upon
13 | finding that the health, safety, or welfare of residents of
14 | the facility would be threatened if a condition existing at
15 | the time the petition was filed is permitted to continue. A
16 | receiver may not be appointed ex parte unless the court
17 | determines that one or more of the conditions in subsection
18 | (1) exist; that the facility owner or operator cannot be
19 | found; that all reasonable means of locating the owner or
20 | operator and notifying him or her of the petition and hearing
21 | have been exhausted; or that the owner or operator after
22 | notification of the hearing chooses not to attend. After such
23 | findings, the court may appoint any person qualified by
24 | education, training, or experience to carry out the
25 | responsibilities of receiver pursuant to this section, except
26 | that the court may not appoint any owner or affiliate of the
27 | facility which is in receivership. Before the appointment as
28 | receiver of a person who is the operator, manager, or
29 | supervisor of another facility, the court shall determine that
30 | the person can reasonably operate, manage, or supervise more
31 | than one facility. The receiver may be appointed for up to 90

1 days with the option of petitioning the court for 30-day
2 extensions. The receiver may be selected from a list of
3 persons qualified to act as receivers developed by the agency
4 ~~department~~ and presented to the court with each petition for
5 receivership. Under no circumstances may the agency ~~department~~
6 or designated agency ~~departmental~~ employee be appointed as a
7 receiver for more than 60 days; however, the agency
8 ~~departmental~~ receiver may petition the court for 30-day
9 extensions. The court shall grant an extension upon a showing
10 of good cause. The agency ~~department~~ may petition the court
11 to appoint a substitute receiver.

12 (d) During the first 60 days of the receivership, the
13 agency ~~department~~ may not take action to decertify or revoke
14 the license of a facility unless conditions causing imminent
15 danger to the health and welfare of the residents exist and a
16 receiver has been unable to remove those conditions. After
17 the first 60 days of receivership, and every 60 days
18 thereafter until the receivership is terminated, the agency
19 ~~department~~ shall submit to the court the results of an
20 assessment of the ability of the facility to assure the safety
21 and care of the residents. If the conditions at the facility
22 or the intentions of the owner indicate that the purpose of
23 the receivership is to close the facility rather than to
24 facilitate its continued operation, the agency ~~department~~
25 shall place the residents in appropriate alternate residential
26 settings as quickly as possible. If, in the opinion of the
27 court, the agency ~~department~~ has not been diligent in its
28 efforts to make adequate arrangements for placement, the court
29 shall find the agency ~~department~~ to be in contempt and shall
30 order the agency ~~department~~ to submit its plans for moving the
31 residents.

1 (3) The receiver shall make provisions for the
2 continued health, safety, and welfare of all residents of the
3 facility and:

4 (e) May use the building, fixtures, furnishings, and
5 any accompanying consumable goods in the provision of care and
6 services to residents and to any other persons receiving
7 services from the facility at the time the petition for
8 receivership was filed. The receiver shall collect payments
9 for all goods and services provided to residents or others
10 during the period of the receivership at the same rate of
11 payment charged by the owner at the time the petition for
12 receivership was filed, or at a fair and reasonable rate
13 otherwise approved by the court for private, paying residents.
14 The receiver may apply to the agency ~~department~~ for a rate
15 increase for residents under Title XIX of the Social Security
16 Act if the facility is not receiving the state reimbursement
17 cap and if expenditures justify an increase in the rate.

18 Section 35. Section 393.071, Florida Statutes, is
19 amended to read:

20 393.071 Client fees.--The agency ~~Department of~~
21 ~~Children and Family Services~~ shall charge fees for services
22 provided to clients in accordance with s. 402.33.

23 Section 36. Subsection (2) of section 393.075, Florida
24 Statutes, is amended to read:

25 393.075 General liability coverage.--

26 (2) The Division of Risk Management of the Department
27 of Financial Services shall provide coverage through the
28 agency ~~Department of Children and Family Services~~ to any
29 person who owns or operates a foster care facility or group
30 home facility solely for the agency ~~Department of Children and~~
31 ~~Family Services~~, who cares for children placed by

1 developmental services staff of the agency ~~department~~, and who
2 is licensed pursuant to s. 393.067 to provide such supervision
3 and care in his or her place of residence. The coverage shall
4 be provided from the general liability account of the State
5 Risk Management Trust Fund. The coverage is limited to
6 general liability claims arising from the provision of
7 supervision and care of children in a foster care facility or
8 group home facility pursuant to an agreement with the agency
9 ~~department~~ and pursuant to guidelines established through
10 policy, rule, or statute. Coverage shall be subject to the
11 limits provided in ss. 284.38 and 284.385, and the exclusions
12 set forth therein, together with other exclusions as may be
13 set forth in the certificate of coverage issued by the trust
14 fund. A person covered under the general liability account
15 pursuant to this subsection shall immediately notify the
16 Division of Risk Management of the Department of Financial
17 Services of any potential or actual claim.

18 Section 37. Section 393.115, Florida Statutes, is
19 amended to read:

20 393.115 Discharge.--

21 (1) DISCHARGE AT THE AGE OF MAJORITY.--

22 (a) When any residential client reaches his or her
23 18th birthday, the agency ~~department~~ shall give the resident
24 or legal guardian the option to continue residential services
25 or to be discharged from residential services.

26 (b) If the resident appears to meet the criteria for
27 involuntary admission to residential services, as defined in
28 s. 393.11, the agency ~~department~~ shall file a petition to
29 determine the appropriateness of continued residential
30 placement on an involuntary basis. The agency ~~department~~ shall
31 file the petition for involuntary admission in the county in

1 which the client resides. If the resident was originally
 2 involuntarily admitted to residential services pursuant to s.
 3 393.11, then the agency ~~department~~ shall file the petition in
 4 the court having continuing jurisdiction over the case.

5 (c) Nothing in this section shall in any way limit or
 6 restrict the resident's right to a writ of habeas corpus or
 7 the right of the agency ~~department~~ to transfer a resident
 8 receiving residential care to a program of appropriate
 9 services provided by the agency ~~department~~ when such program
 10 is the appropriate habilitative setting for the resident.

11 (2) DISCHARGE AFTER CRIMINAL OR JUVENILE
 12 COMMITMENT.--Any person with developmental disabilities
 13 committed to the custody of the agency ~~department~~ pursuant to
 14 the provisions of the applicable criminal or juvenile court
 15 law shall be discharged in accordance with the requirements of
 16 the applicable criminal or juvenile court law.

17 Section 38. Subsection (3) of section 393.12, Florida
 18 Statutes, is amended to read:

19 393.12 Capacity; appointment of guardian advocate.--

20 (3) COURT COSTS.--In all proceedings under this
 21 section, no court costs shall be charged against the agency
 22 ~~department~~.

23 Section 39. Section 393.125, Florida Statutes, is
 24 amended to read:

25 393.125 Hearing rights.--

26 (1) REVIEW OF AGENCY ~~DEPARTMENT~~ DECISIONS.--

27 (a) Any developmental services applicant or client, or
 28 his or her parent, guardian, guardian advocate, or authorized
 29 representative, who has any substantial interest determined by
 30 the agency ~~department~~, has ~~shall have~~ the right to request an
 31 administrative hearing pursuant to ss. 120.569 and 120.57.

1 (b) Notice of the right to an administrative hearing
2 shall be given, both verbally and in writing, to the applicant
3 or client, and his or her parent, guardian, guardian advocate,
4 or authorized representative, at the same time that the agency
5 ~~department~~ gives the applicant or client notice of the
6 agency's ~~department's~~ action. The notice shall be given, both
7 verbally and in writing, in the language of the client or
8 applicant and in English.

9 (c) A request for a hearing under this section shall
10 be made to the agency ~~department~~, in writing, within 30 days
11 of the applicant's or client's receipt of the notice.

12 (2) REVIEW OF PROVIDER DECISIONS.--The agency
13 ~~department~~ shall adopt ~~promulgate~~ rules to establish uniform
14 guidelines for the agency ~~department~~ and service providers
15 relevant to termination, suspension, or reduction of client
16 services by the service provider. The rules shall ensure the
17 due process rights of service providers and clients.

18 Section 40. Subsections (3), (4), (5), and (6) of
19 section 393.15, Florida Statutes, are amended to read:

20 393.15 Legislative intent; Community Resources
21 Development Trust Fund.--

22 (3) There is created a Community Resources Development
23 Trust Fund in the State Treasury to be used by the agency
24 ~~Department of Children and Family Services~~ for the purpose of
25 granting loans to eligible programs for the initial costs of
26 development of the programs. Loans shall be made only to
27 those facilities which are in compliance with the zoning
28 regulations of the local community. Costs of development may
29 include structural modification, the purchase of equipment and
30 fire and safety devices, preoperational staff training, and
31

1 the purchase of insurance. Such costs shall not include the
2 actual construction of a facility.

3 (4) The agency ~~department~~ may grant to an eligible
4 program a lump-sum loan in one payment not to exceed the cost
5 to the program of providing 2 months' services, care, or
6 maintenance to each person who is developmentally disabled to
7 be placed in the program by the agency ~~department~~, or the
8 actual cost of firesafety renovations to a facility required
9 by the state, whichever is greater. Loans granted to programs
10 shall not be in lieu of payment for maintenance, services, or
11 care provided, but shall stand separate and distinct. The
12 agency ~~department~~ shall adopt ~~promulgate~~ rules, as provided in
13 chapter 120, to determine the standards under which a program
14 shall be eligible to receive a loan as provided in this
15 section and criteria for the equitable allocation of loan
16 trust funds when eligible applications exceed the funds
17 available.

18 (5) Any loan granted by the agency ~~department~~ under
19 this section shall be repaid by the program within 5 years. A
20 program that ~~which~~ operates as a nonprofit corporation meeting
21 the requirements of s. 501(c)(3) of the Internal Revenue Code,
22 and that ~~which~~ seeks forgiveness of its loan shall submit to
23 the agency ~~department~~ a statement setting forth the service it
24 has provided during the year together with such other
25 information as the agency ~~department~~ by rule shall require,
26 and, upon approval of each such annual statement, the agency
27 ~~department~~ shall forgive 20 percent of the principal of any
28 such loan granted after June 30, 1975.

29 (6) If any program that ~~which~~ has received a loan
30 under this section ceases to accept, or provide care,
31 services, or maintenance to persons placed in the program by

1 the department, or if such program files ~~shall file~~ papers of
 2 bankruptcy, at that point in time the loan shall become an
 3 interest-bearing loan at the rate of 5 percent per annum on
 4 the entire amount of the initial loan which shall be repaid
 5 within a 1-year period from the date on which the program
 6 ceases to provide care, services, or maintenance, or files
 7 papers in bankruptcy, and the amount of the loan due plus
 8 interest shall constitute a lien in favor of the state against
 9 all real and personal property of the program. The lien shall
 10 be perfected by the appropriate officer of the agency
 11 ~~department~~ by executing and acknowledging a statement of the
 12 name of the program and the amount due on the loan and a copy
 13 of the promissory note, which shall be recorded by the agency
 14 ~~department~~ with the clerk of the circuit court in the county
 15 wherein the program is located. If the program has filed a
 16 petition for bankruptcy, the agency ~~department~~ shall file and
 17 enforce the lien in the bankruptcy proceedings. Otherwise,
 18 the lien shall be enforced in the manner provided in s.
 19 85.011. All funds received by the agency ~~department~~ from the
 20 enforcement of the lien shall be deposited in the Community
 21 Resources Development Trust Fund.

22 Section 41. Subsection (1) of section 393.501, Florida
 23 Statutes, is amended to read:

24 393.501 Rulemaking.--

25 (1) The agency ~~department~~ shall adopt rules to carry
 26 out the provisions of this chapter.

27 Section 42. Section 393.503, Florida Statutes, is
 28 amended to read:

29 393.503 Respite and family care subsidy expenditures;
 30 funding.--The agency ~~Department of Children and Family~~
 31 ~~Services~~ shall determine the amount of expenditures per fiscal

1 year for the respite and family care subsidy to families and
 2 individuals with developmental disabilities living in their
 3 own homes. This information shall be made available to the
 4 family care councils and to others requesting the information.
 5 The family care councils shall review the expenditures and
 6 make recommendations to the ~~agency department~~ with respect to
 7 any new funds that are made available for family care.

8 Section 43. Subsection (2) of section 393.506, Florida
 9 Statutes, is amended to read:

10 393.506 Administration of medication.--

11 (2) Each facility, institution, or program must
 12 include in its policies and procedures a plan for training
 13 designated staff to ensure the safe handling, storage, and
 14 administration of prescription medication. These policies and
 15 procedures must be approved by the ~~agency department~~ before
 16 unlicensed direct care services staff assist with medication.

17 Section 44. Section 393.135, Florida Statutes, is
 18 created to read:

19 393.135 Sexual misconduct prohibited; reporting
 20 required; penalties.--

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

22 (a) "Employee" includes any paid staff member,
 23 volunteer, or intern of the agency or the Agency for Health
 24 Care Administration or any person under contract with the
 25 agency or the Agency for Health Care Administration or any
 26 person providing care or support to a client on behalf of the
 27 agency or the Agency for Health Care Administration or their
 28 providers.

29 (b) "Sexual activity" means:

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

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

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

8 4. Intentionally masturbating in the presence of
9 another person;

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

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

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

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

24 (a) Is in the custody of the agency;

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

30 (c) Receives services from a family care program
31

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

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

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

8 (a) Is legally married to the client; or

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

12 (5) An employee who witnesses sexual misconduct, or
13 who otherwise knows or has reasonable cause to suspect that a
14 person has engaged in sexual misconduct, shall immediately
15 report the incident to the Department of Children and Family
16 Services' central abuse hotline and to law enforcement. Such
17 employee shall also prepare, date, and sign an independent
18 report that specifically describes the nature of the sexual
19 misconduct, the location and time of the incident, and the
20 persons involved. The employee shall deliver the report to the
21 supervisor or program director, who is responsible for
22 providing copies to the agency's inspector general. The
23 inspector general shall immediately conduct an appropriate
24 administrative investigation, and, if there is probable cause
25 to believe that sexual misconduct has occurred, the inspector
26 general shall notify the state attorney in the circuit in
27 which the incident occurred.

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

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

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

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

17 Section 45. Section 394.4593, Florida Statutes, is
18 created to read:

19 394.4593 Sexual misconduct prohibited; reporting
20 required; penalties.--

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

22 (a) "Employee" includes any paid staff member,
23 volunteer, or intern of the department or any person under
24 contract with the department or any person providing care or
25 support to a patient on behalf of the department or its
26 providers.

27 (b) "Sexual activity" means:

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

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

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

8 4. Intentionally masturbating in the presence of
9 another person;

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

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

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

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

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

25 (b) Resides in a receiving facility as defined in s.
26 394.455(26) or a treatment facility as defined in s.
27 394.455(30),

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29 commits a felony of the second degree, punishable as provided
30 in s. 775.082, s. 775.083, or s. 775.084. An employee may be

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1 found guilty of violating this subsection without having
2 committed the crime of sexual battery.

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

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

6 (a) Is legally married to the patient; or

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

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

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

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

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

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

15 Section 46. Section 916.1075, Florida Statutes, is
16 created to read:

17 916.1075 Sexual misconduct prohibited; reporting
18 required; penalties.--

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

20 (a) "Employee" includes any paid staff member,
21 volunteer, or intern of the department or the Agency for
22 Persons with Disabilities or any person under contract with
23 the department or the Agency for Persons with Disabilities or
24 any person providing care or support to a client on behalf of
25 the department or the Agency for Persons with Disabilities or
26 their providers.

27 (b) "Sexual activity" means:

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

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

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

8 4. Intentionally masturbating in the presence of
9 another person;

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

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

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

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

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

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

1 (a) Is legally married to the client; or

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

5 (5) An employee who witnesses sexual misconduct, or
6 who otherwise knows or has reasonable cause to suspect that a
7 person has engaged in sexual misconduct, shall immediately
8 report the incident to the department's central abuse hotline
9 or law enforcement. Such employee shall also prepare, date,
10 and sign an independent report that specifically describes the
11 nature of the sexual misconduct, the location and time of the
12 incident, and the persons involved. The employee shall deliver
13 the report to the supervisor or program director, who is
14 responsible for providing copies to either the department's or
15 Agency for Persons with Disabilities' inspector general as
16 appropriate. The inspector general shall immediately conduct
17 an appropriate administrative investigation, and, if there is
18 probable cause to believe that sexual misconduct has occurred,
19 the inspector general shall notify the state attorney in the
20 circuit in which the incident occurred.

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

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

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

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

10 Section 47. Subsection (2) of section 435.03, Florida
11 Statutes, is amended to read:

12 435.03 Level 1 screening standards.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 Section 48. Subsection (2) of section 435.04, Florida
23 Statutes, is amended to read:

24 435.04 Level 2 screening standards.--

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

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

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

7 ~~(c)(a)~~ Section 415.111, relating to adult abuse,
8 neglect, or exploitation of aged persons or disabled adults.

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

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

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

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

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

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

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

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

25 ~~(l)(j)~~ Section 784.075, relating to battery on a
26 detention or commitment facility staff.

27 ~~(m)(k)~~ Section 787.01, relating to kidnapping.

28 ~~(n)(l)~~ Section 787.02, relating to false imprisonment.

29 ~~(o)(m)~~ Section 787.04(2), relating to taking,
30 enticing, or removing a child beyond the state limits with
31 criminal intent pending custody proceedings.

1 (p)~~(n)~~ Section 787.04(3), relating to carrying a child
2 beyond the state lines with criminal intent to avoid producing
3 a child at a custody hearing or delivering the child to the
4 designated person.

5 (q)~~(o)~~ Section 790.115(1), relating to exhibiting
6 firearms or weapons within 1,000 feet of a school.

7 (r)~~(p)~~ Section 790.115(2)(b), relating to possessing
8 an electric weapon or device, destructive device, or other
9 weapon on school property.

10 (s)~~(q)~~ Section 794.011, relating to sexual battery.

11 (t)~~(r)~~ Former s. 794.041, relating to prohibited acts
12 of persons in familial or custodial authority.

13 (u)~~(s)~~ Chapter 796, relating to prostitution.

14 (v)~~(t)~~ Section 798.02, relating to lewd and lascivious
15 behavior.

16 (w)~~(u)~~ Chapter 800, relating to lewdness and indecent
17 exposure.

18 (x)~~(v)~~ Section 806.01, relating to arson.

19 (y)~~(w)~~ Chapter 812, relating to theft, robbery, and
20 related crimes, if the offense is a felony.

21 (z)~~(x)~~ Section 817.563, relating to fraudulent sale of
22 controlled substances, only if the offense was a felony.

23 (aa)~~(y)~~ Section 825.102, relating to abuse, aggravated
24 abuse, or neglect of an elderly person or disabled adult.

25 (bb)~~(z)~~ Section 825.1025, relating to lewd or
26 lascivious offenses committed upon or in the presence of an
27 elderly person or disabled adult.

28 (cc)~~(aa)~~ Section 825.103, relating to exploitation of
29 an elderly person or disabled adult, if the offense was a
30 felony.

31 (dd)~~(bb)~~ Section 826.04, relating to incest.

1 ~~(ee)~~~~(cc)~~ Section 827.03, relating to child abuse,
2 aggravated child abuse, or neglect of a child.

3 ~~(ff)~~~~(dd)~~ Section 827.04, relating to contributing to
4 the delinquency or dependency of a child.

5 ~~(gg)~~~~(ee)~~ Former s. 827.05, relating to negligent
6 treatment of children.

7 ~~(hh)~~~~(ff)~~ Section 827.071, relating to sexual
8 performance by a child.

9 ~~(ii)~~~~(gg)~~ Section 843.01, relating to resisting arrest
10 with violence.

11 ~~(jj)~~~~(hh)~~ Section 843.025, relating to depriving a law
12 enforcement, correctional, or correctional probation officer
13 means of protection or communication.

14 ~~(kk)~~~~(ii)~~ Section 843.12, relating to aiding in an
15 escape.

16 ~~(ll)~~~~(jj)~~ Section 843.13, relating to aiding in the
17 escape of juvenile inmates in correctional institutions.

18 ~~(mm)~~~~(kk)~~ Chapter 847, relating to obscene literature.

19 ~~(nn)~~~~(ll)~~ Section 874.05(1), relating to encouraging or
20 recruiting another to join a criminal gang.

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

24 ~~(pp)~~ Section 916.0175, relating to sexual misconduct
25 with certain forensic clients and reporting of such sexual
26 misconduct.

27 ~~(qq)~~~~(nn)~~ Section 944.35(3), relating to inflicting
28 cruel or inhuman treatment on an inmate resulting in great
29 bodily harm.

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

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

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

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

7 Section 49. Section 943.0585, Florida Statutes, is
8 amended to read:

9 943.0585 Court-ordered expunction of criminal history
10 records.--The courts of this state have jurisdiction over
11 their own procedures, including the maintenance, expunction,
12 and correction of judicial records containing criminal history
13 information to the extent such procedures are not inconsistent
14 with the conditions, responsibilities, and duties established
15 by this section. Any court of competent jurisdiction may order
16 a criminal justice agency to expunge the criminal history
17 record of a minor or an adult who complies with the
18 requirements of this section. The court shall not order a
19 criminal justice agency to expunge a criminal history record
20 until the person seeking to expunge a criminal history record
21 has applied for and received a certificate of eligibility for
22 expunction pursuant to subsection (2). A criminal history
23 record that relates to a violation of s. 393.135, s. 394.4593,
24 s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s.
25 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,
26 s. 847.0145, s. 893.135, s. 916.1075, or a violation
27 enumerated in s. 907.041 may not be expunged, without regard
28 to whether adjudication was withheld, if the defendant was
29 found guilty of or pled guilty or nolo contendere to the
30 offense, or if the defendant, as a minor, was found to have
31 committed, or pled guilty or nolo contendere to committing,

1 the offense as a delinquent act. The court may only order
2 expunction of a criminal history record pertaining to one
3 arrest or one incident of alleged criminal activity, except as
4 provided in this section. The court may, at its sole
5 discretion, order the expunction of a criminal history record
6 pertaining to more than one arrest if the additional arrests
7 directly relate to the original arrest. If the court intends
8 to order the expunction of records pertaining to such
9 additional arrests, such intent must be specified in the
10 order. A criminal justice agency may not expunge any record
11 pertaining to such additional arrests if the order to expunge
12 does not articulate the intention of the court to expunge a
13 record pertaining to more than one arrest. This section does
14 not prevent the court from ordering the expunction of only a
15 portion of a criminal history record pertaining to one arrest
16 or one incident of alleged criminal activity. Notwithstanding
17 any law to the contrary, a criminal justice agency may comply
18 with laws, court orders, and official requests of other
19 jurisdictions relating to expunction, correction, or
20 confidential handling of criminal history records or
21 information derived therefrom. This section does not confer
22 any right to the expunction of any criminal history record,
23 and any request for expunction of a criminal history record
24 may be denied at the sole discretion of the court.

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

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

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

1 1. Has never, prior to the date on which the petition
2 is filed, been adjudicated guilty of a criminal offense or
3 comparable ordinance violation or adjudicated delinquent for
4 committing a felony or a misdemeanor specified in s.
5 943.051(3)(b).

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

10 3. Has never secured a prior sealing or expunction of
11 a criminal history record under this section, former s.
12 893.14, former s. 901.33, or former s. 943.058, or from any
13 jurisdiction outside the state.

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

18
19 Any person who knowingly provides false information on such
20 sworn statement to the court commits a felony of the third
21 degree, punishable as provided in s. 775.082, s. 775.083, or
22 s. 775.084.

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

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

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

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

12 3. That the criminal history record does not relate to
13 a violation of s. 393.135, s. 394.4593, s. 787.025, chapter
14 794, s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s.
15 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145,
16 s. 893.135, s. 916.1075, or a violation enumerated in s.
17 907.041, where the defendant was found guilty of, or pled
18 guilty or nolo contendere to any such offense, or that the
19 defendant, as a minor, was found to have committed, or pled
20 guilty or nolo contendere to committing, such an offense as a
21 delinquent act, without regard to whether adjudication was
22 withheld.

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

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

29 (d) Has never, prior to the date on which the
30 application for a certificate of eligibility is filed, been
31 adjudicated guilty of a criminal offense or comparable

1 ordinance violation or adjudicated delinquent for committing a
2 felony or a misdemeanor specified in s. 943.051(3)(b).

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

7 (f) Has never secured a prior sealing or expunction of
8 a criminal history record under this section, former s.
9 893.14, former s. 901.33, or former s. 943.058.

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

13 (h) Is not required to wait a minimum of 10 years
14 prior to being eligible for an expunction of such records
15 because all charges related to the arrest or criminal activity
16 to which the petition to expunge pertains were dismissed prior
17 to trial, adjudication, or the withholding of adjudication.
18 Otherwise, such criminal history record must be sealed under
19 this section, former s. 893.14, former s. 901.33, or former s.
20 943.058 for at least 10 years before such record is eligible
21 for expunction.

22 (3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.--

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

31

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

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

24 (d) On or after July 1, 1992, the department or any
25 other criminal justice agency is not required to act on an
26 order to expunge entered by a court when such order does not
27 comply with the requirements of this section. Upon receipt of
28 such an order, the department must notify the issuing court,
29 the appropriate state attorney or statewide prosecutor, the
30 petitioner or the petitioner's attorney, and the arresting
31 agency of the reason for noncompliance. The appropriate state

1 attorney or statewide prosecutor shall take action within 60
2 days to correct the record and petition the court to void the
3 order. No cause of action, including contempt of court, shall
4 arise against any criminal justice agency for failure to
5 comply with an order to expunge when the petitioner for such
6 order failed to obtain the certificate of eligibility as
7 required by this section or such order does not otherwise
8 comply with the requirements of this section.

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

23 (a) The person who is the subject of a criminal
24 history record that is expunged under this section or under
25 other provisions of law, including former s. 893.14, former s.
26 901.33, and former s. 943.058, may lawfully deny or fail to
27 acknowledge the arrests covered by the expunged record, except
28 when the subject of the record:

- 29 1. Is a candidate for employment with a criminal
30 justice agency;
31 2. Is a defendant in a criminal prosecution;

1 3. Concurrently or subsequently petitions for relief
2 under this section or s. 943.059;

3 4. Is a candidate for admission to The Florida Bar;

4 5. Is seeking to be employed or licensed by or to
5 contract with the Department of Children and Family Services
6 or the Department of Juvenile Justice or to be employed or
7 used by such contractor or licensee in a sensitive position
8 having direct contact with children, the developmentally
9 disabled, the aged, or the elderly as provided in s.

10 110.1127(3), s. 393.063 ~~s. 393.063(15)~~, s. 394.4572(1), s.
11 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s.
12 415.102(4), s. 916.106(10) and (13), s. 985.407, or chapter
13 400; or

14 6. Is seeking to be employed or licensed by the Office
15 of Teacher Education, Certification, Staff Development, and
16 Professional Practices of the Department of Education, any
17 district school board, or any local governmental entity that
18 licenses child care facilities.

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

26 (c) Information relating to the existence of an
27 expunged criminal history record which is provided in
28 accordance with paragraph (a) is confidential and exempt from
29 the provisions of s. 119.07(1) and s. 24(a), Art. I of the
30 State Constitution, except that the department shall disclose
31 the existence of a criminal history record ordered expunged to

1 the entities set forth in subparagraphs (a)1., 4., 5., and 6.
2 for their respective licensing and employment purposes, and to
3 criminal justice agencies for their respective criminal
4 justice purposes. It is unlawful for any employee of an entity
5 set forth in subparagraph (a)1., subparagraph (a)4.,
6 subparagraph (a)5., or subparagraph (a)6. to disclose
7 information relating to the existence of an expunged criminal
8 history record of a person seeking employment or licensure
9 with such entity or contractor, except to the person to whom
10 the criminal history record relates or to persons having
11 direct responsibility for employment or licensure decisions.
12 Any person who violates this paragraph commits a misdemeanor
13 of the first degree, punishable as provided in s. 775.082 or
14 s. 775.083.

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

19 Section 50. Section 943.059, Florida Statutes, is
20 amended to read:

21 943.059 Court-ordered sealing of criminal history
22 records.--The courts of this state shall continue to have
23 jurisdiction over their own procedures, including the
24 maintenance, sealing, and correction of judicial records
25 containing criminal history information to the extent such
26 procedures are not inconsistent with the conditions,
27 responsibilities, and duties established by this section. Any
28 court of competent jurisdiction may order a criminal justice
29 agency to seal the criminal history record of a minor or an
30 adult who complies with the requirements of this section. The
31 court shall not order a criminal justice agency to seal a

1 criminal history record until the person seeking to seal a
2 criminal history record has applied for and received a
3 certificate of eligibility for sealing pursuant to subsection
4 (2). A criminal history record that relates to a violation of
5 s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03,
6 s. 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839,
7 s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
8 916.1075, or a violation enumerated in s. 907.041 may not be
9 sealed, without regard to whether adjudication was withheld,
10 if the defendant was found guilty of or pled guilty or nolo
11 contendere to the offense, or if the defendant, as a minor,
12 was found to have committed or pled guilty or nolo contendere
13 to committing the offense as a delinquent act. The court may
14 only order sealing of a criminal history record pertaining to
15 one arrest or one incident of alleged criminal activity,
16 except as provided in this section. The court may, at its sole
17 discretion, order the sealing of a criminal history record
18 pertaining to more than one arrest if the additional arrests
19 directly relate to the original arrest. If the court intends
20 to order the sealing of records pertaining to such additional
21 arrests, such intent must be specified in the order. A
22 criminal justice agency may not seal any record pertaining to
23 such additional arrests if the order to seal does not
24 articulate the intention of the court to seal records
25 pertaining to more than one arrest. This section does not
26 prevent the court from ordering the sealing of only a portion
27 of a criminal history record pertaining to one arrest or one
28 incident of alleged criminal activity. Notwithstanding any law
29 to the contrary, a criminal justice agency may comply with
30 laws, court orders, and official requests of other
31 jurisdictions relating to sealing, correction, or confidential

1 handling of criminal history records or information derived
2 therefrom. This section does not confer any right to the
3 sealing of any criminal history record, and any request for
4 sealing a criminal history record may be denied at the sole
5 discretion of the court.

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

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

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

13 1. Has never, prior to the date on which the petition
14 is filed, been adjudicated guilty of a criminal offense or
15 comparable ordinance violation or adjudicated delinquent for
16 committing a felony or a misdemeanor specified in s.
17 943.051(3)(b).

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

22 3. Has never secured a prior sealing or expunction of
23 a criminal history record under this section, former s.
24 893.14, former s. 901.33, former s. 943.058, or from any
25 jurisdiction outside the state.

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

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

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

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

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

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

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

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1 (e) Has never secured a prior sealing or expunction of
2 a criminal history record under this section, former s.
3 893.14, former s. 901.33, or former s. 943.058.

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

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

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

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

28 (c) For an order to seal entered by a court prior to
29 July 1, 1992, the department shall notify the appropriate
30 state attorney or statewide prosecutor of any order to seal
31 which is contrary to law because the person who is the subject

1 of the record has previously been convicted of a crime or
2 comparable ordinance violation or has had a prior criminal
3 history record sealed or expunged. Upon receipt of such
4 notice, the appropriate state attorney or statewide prosecutor
5 shall take action, within 60 days, to correct the record and
6 petition the court to void the order to seal. The department
7 shall seal the record until such time as the order is voided
8 by the court.

9 (d) On or after July 1, 1992, the department or any
10 other criminal justice agency is not required to act on an
11 order to seal entered by a court when such order does not
12 comply with the requirements of this section. Upon receipt of
13 such an order, the department must notify the issuing court,
14 the appropriate state attorney or statewide prosecutor, the
15 petitioner or the petitioner's attorney, and the arresting
16 agency of the reason for noncompliance. The appropriate state
17 attorney or statewide prosecutor shall take action within 60
18 days to correct the record and petition the court to void the
19 order. No cause of action, including contempt of court, shall
20 arise against any criminal justice agency for failure to
21 comply with an order to seal when the petitioner for such
22 order failed to obtain the certificate of eligibility as
23 required by this section or when such order does not comply
24 with the requirements of this section.

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

30 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A
31 criminal history record of a minor or an adult which is

1 ordered sealed by a court of competent jurisdiction pursuant
 2 to this section is confidential and exempt from the provisions
 3 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution
 4 and is available only to the person who is the subject of the
 5 record, to the subject's attorney, to criminal justice
 6 agencies for their respective criminal justice purposes, or to
 7 those entities set forth in subparagraphs (a)1., 4., 5., and
 8 6. for their respective licensing and employment purposes.

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

- 14 1. Is a candidate for employment with a criminal
 15 justice agency;
- 16 2. Is a defendant in a criminal prosecution;
- 17 3. Concurrently or subsequently petitions for relief
 18 under this section or s. 943.0585;
- 19 4. Is a candidate for admission to The Florida Bar;
- 20 5. Is seeking to be employed or licensed by or to
 21 contract with the Department of Children and Family Services
 22 or the Department of Juvenile Justice or to be employed or
 23 used by such contractor or licensee in a sensitive position
 24 having direct contact with children, the developmentally
 25 disabled, the aged, or the elderly as provided in s.
 26 110.1127(3), s. 393.063 ~~s. 393.063(15)~~, s. 394.4572(1), s.
 27 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s.
 28 415.102(4), s. 415.103, s. 916.106(10) and (13), s. 985.407,
 29 or chapter 400; or
- 30 6. Is seeking to be employed or licensed by the Office
 31 of Teacher Education, Certification, Staff Development, and

1 Professional Practices of the Department of Education, any
2 district school board, or any local governmental entity which
3 licenses child care facilities.

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

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

29 (5) STATUTORY REFERENCES.--Any reference to any other
30 chapter, section, or subdivision of the Florida Statutes in
31

1 | this section constitutes a general reference under the
2 | doctrine of incorporation by reference.

3 | Section 51. Paragraph (a) of subsection (2) of section
4 | 400.215, Florida Statutes, is amended, and paragraphs (b) and
5 | (c) of subsection (2) and subsection (3) of that section are
6 | reenacted for the purpose of incorporating the amendments to
7 | sections 435.03 and 435.04, Florida Statutes, in references
8 | thereto, to read:

9 | 400.215 Personnel screening requirement.--

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

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

21 | (b) Employees qualified under the provisions of
22 | paragraph (a) who have not maintained continuous residency
23 | within the state for the 5 years immediately preceding the
24 | date of request for background screening must complete level 2
25 | screening, as provided in chapter 435. Such employees may work
26 | in a conditional status up to 180 days pending the receipt of
27 | written findings evidencing the completion of level 2
28 | screening. Level 2 screening shall not be required of
29 | employees or prospective employees who attest in writing under
30 | penalty of perjury that they meet the residency requirement.
31 | Completion of level 2 screening shall require the employee or

1 prospective employee to furnish to the nursing facility a full
2 set of fingerprints to enable a criminal background
3 investigation to be conducted. The nursing facility shall
4 submit the completed fingerprint card to the agency. The
5 agency shall establish a record of the request in the database
6 provided for in paragraph (c) and forward the request to the
7 Department of Law Enforcement, which is authorized to submit
8 the fingerprints to the Federal Bureau of Investigation for a
9 national criminal history records check. The results of the
10 national criminal history records check shall be returned to
11 the agency, which shall maintain the results in the database
12 provided for in paragraph (c). The agency shall notify the
13 administrator of the requesting nursing facility or the
14 administrator of any other facility licensed under chapter
15 393, chapter 394, chapter 395, chapter 397, or this chapter,
16 as requested by such facility, as to whether or not the
17 employee has qualified under level 1 or level 2 screening. An
18 employee or prospective employee who has qualified under level
19 2 screening and has maintained such continuous residency
20 within the state shall not be required to complete a
21 subsequent level 2 screening as a condition of employment at
22 another facility.

23 (c) The agency shall establish and maintain a database
24 of background screening information which shall include the
25 results of both level 1 and level 2 screening. The Department
26 of Law Enforcement shall timely provide to the agency,
27 electronically, the results of each statewide screening for
28 incorporation into the database. The agency shall, upon
29 request from any facility, agency, or program required by or
30 authorized by law to screen its employees or applicants,
31 notify the administrator of the facility, agency, or program

1 of the qualifying or disqualifying status of the employee or
2 applicant named in the request.

3 (3) The applicant is responsible for paying the fees
4 associated with obtaining the required screening. Payment for
5 the screening shall be submitted to the agency. The agency
6 shall establish a schedule of fees to cover the costs of level
7 1 and level 2 screening. Facilities may reimburse employees
8 for these costs. The Department of Law Enforcement shall
9 charge the agency for a level 1 or level 2 screening a rate
10 sufficient to cover the costs of such screening pursuant to s.
11 943.053(3). The agency shall, as allowable, reimburse nursing
12 facilities for the cost of conducting background screening as
13 required by this section. This reimbursement will not be
14 subject to any rate ceilings or payment targets in the
15 Medicaid Reimbursement plan.

16 Section 52. For the purpose of incorporating the
17 amendments to sections 435.03 and 435.04, Florida Statutes, in
18 references thereto, subsections (1) and (2) of section
19 400.964, Florida Statutes, are reenacted, and subsection (7)
20 of that section is amended and reenacted, to read:

21 400.964 Personnel screening requirement.--

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

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

30 (7) All employees must comply with the requirements of
31 this section by October 1, 2000. A person employed by a

1 facility licensed pursuant to this part as of the effective
2 date of this act is not required to submit to rescreening if
3 the facility has in its possession written evidence that the
4 person has been screened and qualified according to level 1
5 standards as specified in s. 435.03~~(1)~~. Any current employee
6 who meets the level 1 requirement but does not meet the 5-year
7 residency requirement must provide to the employing facility
8 written attestation under penalty of perjury that the employee
9 has not been convicted of a disqualifying offense in another
10 state or jurisdiction. All applicants hired on or after
11 October 1, 1999, must comply with the requirements of this
12 section.

13 Section 53. For the purposes of incorporating the
14 amendment to section 435.04, Florida Statutes, in references
15 thereto, paragraph (a) of subsection (1) of section 435.045,
16 Florida Statutes, is amended and reenacted to read:

17 435.045 Requirements for placement of dependent
18 children.--

19 (1)(a) Unless an election provided for in subsection
20 (2) is made with respect to the state, the department is
21 authorized to conduct criminal records checks equivalent to
22 the level 2 screening required in s. 435.04~~(1)~~ for any person
23 being considered by the department for placement of a child
24 subject to a placement decision pursuant to chapter 39.

25 Approval shall not be granted:

26 1. In any case in which a record check reveals a
27 felony conviction for child abuse, abandonment, or neglect;
28 for spousal abuse; for a crime against children, including
29 child pornography, or for a crime involving violence,
30 including rape, sexual assault, or homicide but not including
31 other physical assault or battery, if the department finds

1 that a court of competent jurisdiction has determined that the
2 felony was committed at any time; and

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

8 Section 54. For the purpose of incorporating the
9 amendment to sections 435.03 and 435.04, Florida Statutes, in
10 references thereto, paragraphs (f) and (g) of subsection (1)
11 of section 400.414, Florida Statutes, are reenacted to read:

12 400.414 Denial, revocation, or suspension of license;
13 imposition of administrative fine; grounds.--

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

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

28 (g) A determination that an employee, volunteer,
29 administrator, or owner, or person who otherwise has access to
30 the residents of a facility does not meet the criteria
31 specified in s. 435.03(2), and the owner or administrator has

1 not taken action to remove the person. Exemptions from
2 disqualification may be granted as set forth in s. 435.07. No
3 administrative action may be taken against the facility if the
4 person is granted an exemption.

5
6 Administrative proceedings challenging agency action under
7 this subsection shall be reviewed on the basis of the facts
8 and conditions that resulted in the agency action.

9 Section 55. For the purpose of incorporating the
10 amendment to sections 435.03 and 435.04, Florida Statutes, in
11 references thereto, section 400.4174, Florida Statutes, is
12 reenacted to read:

13 400.4174 Background screening; exemptions.--

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

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

20 2. An officer or board member if the facility owner is
21 a firm, corporation, partnership, or association, or any
22 person owning 5 percent or more of the facility if the agency
23 has probable cause to believe that such person has been
24 convicted of any offense prohibited by s. 435.04. For each
25 officer, board member, or person owning 5 percent or more who
26 has been convicted of any such offense, the facility shall
27 submit to the agency a description and explanation of the
28 conviction at the time of license application. This
29 subparagraph does not apply to a board member of a
30 not-for-profit corporation or organization if the board member
31 serves solely in a voluntary capacity, does not regularly take

1 part in the day-to-day operational decisions of the
2 corporation or organization, receives no remuneration for his
3 or her services, and has no financial interest and has no
4 family members with a financial interest in the corporation or
5 organization, provided that the board member and facility
6 submit a statement affirming that the board member's
7 relationship to the facility satisfies the requirements of
8 this subparagraph.

9 (b) Proof of compliance with level 2 screening
10 standards which has been submitted within the previous 5 years
11 to meet any facility or professional licensure requirements of
12 the agency or the Department of Health satisfies the
13 requirements of this subsection, provided that such proof is
14 accompanied, under penalty of perjury, by an affidavit of
15 compliance with the provisions of chapter 435. Proof of
16 compliance with the background screening requirements of the
17 Financial Services Commission and the Office of Insurance
18 Regulation for applicants for a certificate of authority to
19 operate a continuing care retirement community under chapter
20 651, submitted within the last 5 years, satisfies the
21 Department of Law Enforcement and Federal Bureau of
22 Investigation portions of a level 2 background check.

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

31

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

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

14 (b) The person required to be screened has been
15 continuously employed in the same type of occupation for which
16 the person is seeking employment without a breach in service
17 which exceeds 180 days, and proof of compliance with the level
18 1 screening requirement which is no more than 2 years old is
19 provided. Proof of compliance shall be provided directly from
20 one employer or contractor to another, and not from the person
21 screened. Upon request, a copy of screening results shall be
22 provided by the employer retaining documentation of the
23 screening to the person screened.

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

30 Section 56. For the purpose of incorporating the
31 amendment to sections 435.03 and 435.04, Florida Statutes, in

1 references thereto, paragraphs (a), (b), (c), (d), (f), and
2 (g) of subsection (4) of section 400.509, Florida Statutes,
3 are reenacted to read:

4 400.509 Registration of particular service providers
5 exempt from licensure; certificate of registration; regulation
6 of registrants.--

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

9 (a) Upon receipt of a completed, signed, and dated
10 application, the agency shall require background screening, in
11 accordance with the level 1 standards for screening set forth
12 in chapter 435, of every individual who will have contact with
13 the client. The agency shall require background screening of
14 the managing employee or other similarly titled individual who
15 is responsible for the operation of the entity, and of the
16 financial officer or other similarly titled individual who is
17 responsible for the financial operation of the entity,
18 including billings for client services in accordance with the
19 level 2 standards for background screening as set forth in
20 chapter 435.

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

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

1 (d) A provisional registration may be granted to an
2 applicant when each individual required by this section to
3 undergo background screening has met the standards for the
4 abuse-registry background check through the agency and the
5 Department of Law Enforcement background check, but the agency
6 has not yet received background screening results from the
7 Federal Bureau of Investigation. A standard registration may
8 be granted to the applicant upon the agency's receipt of a
9 report of the results of the Federal Bureau of Investigation
10 background screening for each individual required by this
11 section to undergo background screening which confirms that
12 all standards have been met, or upon the granting of a
13 disqualification exemption by the agency as set forth in
14 chapter 435. Any other person who is required to undergo level
15 2 background screening may serve in his or her capacity
16 pending the agency's receipt of the report from the Federal
17 Bureau of Investigation. However, the person may not continue
18 to serve if the report indicates any violation of background
19 screening standards and if a disqualification exemption has
20 not been requested of and granted by the agency as set forth
21 in chapter 435.

22 (f) Each applicant must submit to the agency a
23 description and explanation of any conviction of an offense
24 prohibited under the level 2 standards of chapter 435 which
25 was committed by a member of the board of directors of the
26 applicant, its officers, or any individual owning 5 percent or
27 more of the applicant. This requirement does not apply to a
28 director of a not-for-profit corporation or organization who
29 serves solely in a voluntary capacity for the corporation or
30 organization, does not regularly take part in the day-to-day
31 operational decisions of the corporation or organization,

1 receives no remuneration for his or her services on the
2 corporation's or organization's board of directors, and has no
3 financial interest and no family members having a financial
4 interest in the corporation or organization, if the director
5 and the not-for-profit corporation or organization include in
6 the application a statement affirming that the director's
7 relationship to the corporation satisfies the requirements of
8 this paragraph.

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

16 Section 57. For the purpose of incorporating the
17 amendment to sections 435.03 and 435.04, Florida Statutes, in
18 references thereto, paragraph (c) of subsection (2) of section
19 400.556, Florida Statutes, is reenacted to read:

20 400.556 Denial, suspension, revocation of license;
21 administrative fines; investigations and inspections.--

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

26 (c) A failure of persons subject to level 2 background
27 screening under s. 400.4174(1) to meet the screening standards
28 of s. 435.04, or the retention by the center of an employee
29 subject to level 1 background screening standards under s.
30 400.4174(2) who does not meet the screening standards of s.

31

1 435.03 and for whom exemptions from disqualification have not
2 been provided by the agency.

3 Section 58. For the purpose of incorporating the
4 amendment to sections 435.03 and 435.04, Florida Statutes, in
5 references thereto, subsections (1), (2), and (4) of section
6 400.6065, Florida Statutes, are reenacted to read:

7 400.6065 Background screening.--

8 (1) Upon receipt of a completed application under s.
9 400.606, the agency shall require level 2 background screening
10 on each of the following persons, who shall be considered
11 employees for the purposes of conducting screening under
12 chapter 435:

13 (a) The hospice administrator and financial officer.

14 (b) An officer or board member if the hospice is a
15 firm, corporation, partnership, or association, or any person
16 owning 5 percent or more of the hospice if the agency has
17 probable cause to believe that such officer, board member, or
18 owner has been convicted of any offense prohibited by s.
19 435.04. For each officer, board member, or person owning 5
20 percent or more who has been convicted of any such offense,
21 the hospice shall submit to the agency a description and
22 explanation of the conviction at the time of license
23 application. This paragraph does not apply to a board member
24 of a not-for-profit corporation or organization if the board
25 member serves solely in a voluntary capacity, does not
26 regularly take part in the day-to-day operational decisions of
27 the corporation or organization, receives no remuneration for
28 his or her services, and has no financial interest and has no
29 family members with a financial interest in the corporation or
30 organization, provided that the board member and the
31 corporation or organization submit a statement affirming that

1 the board member's relationship to the corporation or
2 organization satisfies the requirements of this paragraph.

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

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

12 Section 59. For the purpose of incorporating the
13 amendment to sections 435.03 and 435.04, Florida Statutes, in
14 references thereto, paragraphs (a), (b), (c), (d), (f), and
15 (g) of subsection (4) of section 400.980, Florida Statutes,
16 are reenacted to read:

17 400.980 Health care services pools.--

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

20 (a) Upon receipt of a completed, signed, and dated
21 application, the agency shall require background screening, in
22 accordance with the level 1 standards for screening set forth
23 in chapter 435, of every individual who will have contact with
24 patients. The agency shall require background screening of the
25 managing employee or other similarly titled individual who is
26 responsible for the operation of the entity, and of the
27 financial officer or other similarly titled individual who is
28 responsible for the financial operation of the entity,
29 including billings for services in accordance with the level 2
30 standards for background screening as set forth in chapter
31 435.

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

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

12 (d) A provisional registration may be granted to an
13 applicant when each individual required by this section to
14 undergo background screening has met the standards for the
15 Department of Law Enforcement background check but the agency
16 has not yet received background screening results from the
17 Federal Bureau of Investigation. A standard registration may
18 be granted to the applicant upon the agency's receipt of a
19 report of the results of the Federal Bureau of Investigation
20 background screening for each individual required by this
21 section to undergo background screening which confirms that
22 all standards have been met, or upon the granting of a
23 disqualification exemption by the agency as set forth in
24 chapter 435. Any other person who is required to undergo level
25 2 background screening may serve in his or her capacity
26 pending the agency's receipt of the report from the Federal
27 Bureau of Investigation. However, the person may not continue
28 to serve if the report indicates any violation of background
29 screening standards and if a disqualification exemption has
30 not been requested of and granted by the agency as set forth
31 in chapter 435.

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

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

26 Section 60. For the purpose of incorporating the
27 amendment to sections 435.03 and 435.04, Florida Statutes, in
28 references thereto, paragraph (k) of subsection (2) of section
29 409.175, Florida Statutes, is reenacted to read:

30
31

1 409.175 Licensure of family foster homes, residential
2 child-caring agencies, and child-placing agencies; public
3 records exemption.--

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

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

14 Section 61. For the purpose of incorporating the
15 amendment to sections 435.03 and 435.04, Florida Statutes, in
16 references thereto, paragraph (d) of subsection (8) of section
17 409.907, Florida Statutes, is reenacted to read:

18 409.907 Medicaid provider agreements.--The agency may
19 make payments for medical assistance and related services
20 rendered to Medicaid recipients only to an individual or
21 entity who has a provider agreement in effect with the agency,
22 who is performing services or supplying goods in accordance
23 with federal, state, and local law, and who agrees that no
24 person shall, on the grounds of handicap, race, color, or
25 national origin, or for any other reason, be subjected to
26 discrimination under any program or activity for which the
27 provider receives payment from the agency.

28 (8)

29 (d) Proof of compliance with the requirements of level
30 2 screening under s. 435.04 conducted within 12 months prior
31 to the date that the Medicaid provider application is

1 submitted to the agency shall fulfill the requirements of this
2 subsection. Proof of compliance with the requirements of level
3 1 screening under s. 435.03 conducted within 12 months prior
4 to the date that the Medicaid provider application is
5 submitted to the agency shall meet the requirement that the
6 Department of Law Enforcement conduct a state criminal history
7 record check.

8 Section 62. For the purpose of incorporating the
9 amendment to sections 435.03 and 435.04, Florida Statutes, in
10 references thereto, subsections (1) and (3) of section 435.05,
11 Florida Statutes, are reenacted to read:

12 435.05 Requirements for covered employees.--Except as
13 otherwise provided by law, the following requirements shall
14 apply to covered employees:

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

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

27 (c) For level 2 screening, the employer or licensing
28 agency must submit the information necessary for screening to
29 the Florida Department of Law Enforcement within 5 working
30 days after receiving it. The Florida Department of Law
31 Enforcement will conduct a search of its criminal and juvenile

1 records and will request that the Federal Bureau of
2 Investigation conduct a search of its records for each
3 employee for whom the request is made. The Florida Department
4 of Law Enforcement will respond to the employer or licensing
5 agency, and the employer or licensing agency will inform the
6 employee whether screening has revealed disqualifying
7 information.

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

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

18 Section 63. For the purpose of incorporating the
19 amendment to sections 435.03 and 435.04, Florida Statutes, in
20 references thereto, section 744.3135, Florida Statutes, as
21 amended by chapter 2003-402, Laws of Florida, is reenacted to
22 read:

23 744.3135 Credit and criminal investigation.--The court
24 may require a nonprofessional guardian and shall require a
25 professional or public guardian, and all employees of a
26 professional guardian who have a fiduciary responsibility to a
27 ward, to submit, at their own expense, to an investigation of
28 the guardian's credit history and to undergo level 2
29 background screening as required under s. 435.04. The clerk of
30 the court shall obtain fingerprint cards from the Federal
31 Bureau of Investigation and make them available to guardians.

1 Any guardian who is so required shall have his or her
2 fingerprints taken and forward the proper fingerprint card
3 along with the necessary fee to the Florida Department of Law
4 Enforcement for processing. The professional guardian shall
5 pay to the clerk of the court a fee of up to \$7.50 for
6 handling and processing professional guardian files. The
7 results of the fingerprint checks shall be forwarded to the
8 clerk of court who shall maintain the results in a guardian
9 file and shall make the results available to the court. If
10 credit or criminal investigations are required, the court must
11 consider the results of the investigations in appointing a
12 guardian. Professional guardians and all employees of a
13 professional guardian who have a fiduciary responsibility to a
14 ward, so appointed, must resubmit, at their own expense, to an
15 investigation of credit history, and undergo level 1
16 background screening as required under s. 435.03, at least
17 every 2 years after the date of their appointment. At any
18 time, the court may require guardians or their employees to
19 submit to an investigation of credit history and undergo level
20 1 background screening as required under s. 435.03. The court
21 must consider the results of these investigations in
22 reappointing a guardian. This section shall not apply to a
23 professional guardian, or to the employees of a professional
24 guardian, that is a trust company, a state banking corporation
25 or state savings association authorized and qualified to
26 exercise fiduciary powers in this state, or a national banking
27 association or federal savings and loan association authorized
28 and qualified to exercise fiduciary powers in this state

29 Section 64. For the purpose of incorporating the
30 amendment to sections 435.03 and 435.04, Florida Statutes, in
31

1 references thereto, subsection (2) of section 985.04, Florida
2 Statutes, is reenacted to read:

3 985.04 Oaths; records; confidential information.--
4 (2) Records maintained by the Department of Juvenile
5 Justice, including copies of records maintained by the court,
6 which pertain to a child found to have committed a delinquent
7 act which, if committed by an adult, would be a crime
8 specified in ss. 435.03 and 435.04 may not be destroyed
9 pursuant to this section for a period of 25 years after the
10 youth's final referral to the department, except in cases of
11 the death of the child. Such records, however, shall be sealed
12 by the court for use only in meeting the screening
13 requirements for personnel in s. 402.3055 and the other
14 sections cited above, or pursuant to departmental rule;
15 however, current criminal history information must be obtained
16 from the Department of Law Enforcement in accordance with s.
17 943.053. The information shall be released to those persons
18 specified in the above cited sections for the purposes of
19 complying with those sections. The court may punish by
20 contempt any person who releases or uses the records for any
21 unauthorized purpose.

22 Section 65. For the purpose of incorporating the
23 amendment to section 435.03, Florida Statutes, in references
24 thereto, section 400.512, Florida Statutes, is reenacted to
25 read:

26 400.512 Screening of home health agency personnel;
27 nurse registry personnel; and companions and homemakers.--The
28 agency shall require employment or contractor screening as
29 provided in chapter 435, using the level 1 standards for
30 screening set forth in that chapter, for home health agency
31 personnel; persons referred for employment by nurse

1 registries; and persons employed by companion or homemaker
2 services registered under s. 400.509.

3 (1)(a) The Agency for Health Care Administration may,
4 upon request, grant exemptions from disqualification from
5 employment or contracting under this section as provided in s.
6 435.07, except for health care practitioners licensed by the
7 Department of Health or a regulatory board within that
8 department.

9 (b) The appropriate regulatory board within the
10 Department of Health, or that department itself when there is
11 no board, may, upon request of the licensed health care
12 practitioner, grant exemptions from disqualification from
13 employment or contracting under this section as provided in s.
14 435.07.

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

25 (3) As a prerequisite to operating as a home health
26 agency, nurse registry, or companion or homemaker service
27 under s. 400.509, the administrator or managing employee,
28 respectively, must submit to the agency his or her name and
29 any other information necessary to conduct a complete
30 screening according to this section. The agency shall submit
31 the information to the Department of Law Enforcement for state

1 processing. The agency shall review the record of the
2 administrator or manager with respect to the offenses
3 specified in this section and shall notify the owner of its
4 findings. If disposition information is missing on a criminal
5 record, the administrator or manager, upon request of the
6 agency, must obtain and supply within 30 days the missing
7 disposition information to the agency. Failure to supply
8 missing information within 30 days or to show reasonable
9 efforts to obtain such information will result in automatic
10 disqualification.

11 (4) Proof of compliance with the screening
12 requirements of chapter 435 shall be accepted in lieu of the
13 requirements of this section if the person has been
14 continuously employed or registered without a breach in
15 service that exceeds 180 days, the proof of compliance is not
16 more than 2 years old, and the person has been screened by the
17 Department of Law Enforcement. A home health agency, nurse
18 registry, or companion or homemaker service registered under
19 s. 400.509 shall directly provide proof of compliance to
20 another home health agency, nurse registry, or companion or
21 homemaker service registered under s. 400.509. The recipient
22 home health agency, nurse registry, or companion or homemaker
23 service registered under s. 400.509 may not accept any proof
24 of compliance directly from the person who requires screening.
25 Proof of compliance with the screening requirements of this
26 section shall be provided upon request to the person screened
27 by the home health agencies; nurse registries; or companion or
28 homemaker services registered under s. 400.509.

29 (5) There is no monetary liability on the part of, and
30 no cause of action for damages arises against, a licensed home
31 health agency, licensed nurse registry, or companion or

1 homemaker service registered under s. 400.509, that, upon
2 notice that the employee or contractor has been found guilty
3 of, regardless of adjudication, or entered a plea of nolo
4 contendere or guilty to, any offense prohibited under s.
5 435.03 or under any similar statute of another jurisdiction,
6 terminates the employee or contractor, whether or not the
7 employee or contractor has filed for an exemption with the
8 agency in accordance with chapter 435 and whether or not the
9 time for filing has expired.

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

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

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

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

28 3. Use information from the criminal records obtained
29 under this section for any purpose other than screening that
30 person for employment as specified in this section or release
31

1 such information to any other person for any purpose other
2 than screening for employment under this section.

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

9 Section 66. For the purpose of incorporating the
10 amendment to section 435.03, Florida Statutes, in references
11 thereto, subsection (4) of section 400.619, Florida Statutes,
12 is reenacted to read:

13 400.619 Licensure application and renewal.--

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

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

29 (b) The person required to be screened must have been
30 continuously employed in the same type of occupation for which
31 the person is seeking employment without a breach in service

1 that exceeds 180 days, and proof of compliance with the level
2 1 screening requirement which is no more than 2 years old must
3 be provided. Proof of compliance shall be provided directly
4 from one employer or contractor to another, and not from the
5 person screened. Upon request, a copy of screening results
6 shall be provided to the person screened by the employer
7 retaining documentation of the screening.

8 Section 67. For the purpose of incorporating the
9 amendment to section 435.03, Florida Statutes, in references
10 thereto, subsection (1) of section 400.6194, Florida Statutes,
11 is reenacted to read:

12 400.6194 Denial, revocation, or suspension of a
13 license.--The agency may deny, suspend, or revoke a license
14 for any of the following reasons:

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

19 Section 68. For the purpose of incorporating the
20 amendment to section 435.03, Florida Statutes, in references
21 thereto, section 400.953, Florida Statutes, is reenacted to
22 read:

23 400.953 Background screening of home medical equipment
24 provider personnel.--The agency shall require employment
25 screening as provided in chapter 435, using the level 1
26 standards for screening set forth in that chapter, for home
27 medical equipment provider personnel.

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

31

1 (2) The general manager of each home medical equipment
2 provider must sign an affidavit annually, under penalty of
3 perjury, stating that all home medical equipment provider
4 personnel hired on or after July 1, 1999, who enter the home
5 of a patient in the capacity of their employment have been
6 screened and that its remaining personnel have worked for the
7 home medical equipment provider continuously since before July
8 1, 1999.

9 (3) Proof of compliance with the screening
10 requirements of s. 110.1127, s. 393.0655, s. 394.4572, s.
11 397.451, s. 402.305, s. 402.313, s. 409.175, s. 464.008, or s.
12 985.407 or this part must be accepted in lieu of the
13 requirements of this section if the person has been
14 continuously employed in the same type of occupation for which
15 he or she is seeking employment without a breach in service
16 that exceeds 180 days, the proof of compliance is not more
17 than 2 years old, and the person has been screened by the
18 Department of Law Enforcement. An employer or contractor shall
19 directly provide proof of compliance to another employer or
20 contractor, and a potential employer or contractor may not
21 accept any proof of compliance directly from the person
22 requiring screening. Proof of compliance with the screening
23 requirements of this section shall be provided, upon request,
24 to the person screened by the home medical equipment provider.

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

1 the employee has filed for an exemption with the agency and
2 whether or not the time for filing has expired.

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

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

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

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

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

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

30 (b) It is a felony of the third degree, punishable as
31 provided in s. 775.082, s. 775.083, or s. 775.084, for any

1 person willfully, knowingly, or intentionally to use
2 information from the juvenile records of a person obtained
3 under this section for any purpose other than screening for
4 employment under this section.

5 Section 69. For the purpose of incorporating the
6 amendment to section 435.03, Florida Statutes, in references
7 thereto, subsection (32) of section 409.912, Florida Statutes,
8 is reenacted to read:

9 409.912 Cost-effective purchasing of health care.--The
10 agency shall purchase goods and services for Medicaid
11 recipients in the most cost-effective manner consistent with
12 the delivery of quality medical care. The agency shall
13 maximize the use of prepaid per capita and prepaid aggregate
14 fixed-sum basis services when appropriate and other
15 alternative service delivery and reimbursement methodologies,
16 including competitive bidding pursuant to s. 287.057, designed
17 to facilitate the cost-effective purchase of a case-managed
18 continuum of care. The agency shall also require providers to
19 minimize the exposure of recipients to the need for acute
20 inpatient, custodial, and other institutional care and the
21 inappropriate or unnecessary use of high-cost services. The
22 agency may establish prior authorization requirements for
23 certain populations of Medicaid beneficiaries, certain drug
24 classes, or particular drugs to prevent fraud, abuse, overuse,
25 and possible dangerous drug interactions. The Pharmaceutical
26 and Therapeutics Committee shall make recommendations to the
27 agency on drugs for which prior authorization is required. The
28 agency shall inform the Pharmaceutical and Therapeutics
29 Committee of its decisions regarding drugs subject to prior
30 authorization.

31

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

11 Section 70. For the purpose of incorporating the
12 amendment to section 435.03, Florida Statutes, in references
13 thereto, subsection (4) of section 435.07, Florida Statutes,
14 is reenacted to read:

15 435.07 Exemptions from disqualification.--Unless
16 otherwise provided by law, the provisions of this section
17 shall apply to exemptions from disqualification.

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

25 Section 71. For the purpose of incorporating the
26 amendment to section 435.03, Florida Statutes, in references
27 thereto, paragraph (e) of subsection (1) of section 464.018,
28 Florida Statutes, is reenacted to read:

29 464.018 Disciplinary actions.--
30
31

1 (1) The following acts constitute grounds for denial
2 of a license or disciplinary action, as specified in s.
3 456.072(2):

4 (e) Having been found guilty of, regardless of
5 adjudication, or entered a plea of nolo contendere or guilty
6 to, any offense prohibited under s. 435.03 or under any
7 similar statute of another jurisdiction; or having committed
8 an act which constitutes domestic violence as defined in s.
9 741.28.

10 Section 72. For the purpose of incorporating the
11 amendment to section 435.03, Florida Statutes, in references
12 thereto, subsection (3) of section 744.309, Florida Statutes,
13 is reenacted to read:

14 744.309 Who may be appointed guardian of a resident
15 ward.--

16 (3) DISQUALIFIED PERSONS.--No person who has been
17 convicted of a felony or who, from any incapacity or illness,
18 is incapable of discharging the duties of a guardian, or who
19 is otherwise unsuitable to perform the duties of a guardian,
20 shall be appointed to act as guardian. Further, no person who
21 has been judicially determined to have committed abuse,
22 abandonment, or neglect against a child as defined in s. 39.01
23 or s. 984.03(1), (2), and (37), or who has been found guilty
24 of, regardless of adjudication, or entered a plea of nolo
25 contendere or guilty to, any offense prohibited under s.
26 435.03 or under any similar statute of another jurisdiction,
27 shall be appointed to act as a guardian. Except as provided in
28 subsection (5) or subsection (6), a person who provides
29 substantial services to the proposed ward in a professional or
30 business capacity, or a creditor of the proposed ward, may not
31 be appointed guardian and retain that previous professional or

1 business relationship. A person may not be appointed a
2 guardian if he or she is in the employ of any person, agency,
3 government, or corporation that provides service to the
4 proposed ward in a professional or business capacity, except
5 that a person so employed may be appointed if he or she is the
6 spouse, adult child, parent, or sibling of the proposed ward
7 or the court determines that the potential conflict of
8 interest is insubstantial and that the appointment would
9 clearly be in the proposed ward's best interest. The court may
10 not appoint a guardian in any other circumstance in which a
11 conflict of interest may occur.

12 Section 73. For the purpose of incorporating the
13 amendment to section 435.03, Florida Statutes, in references
14 thereto, subsection (12) of section 744.474, Florida Statutes,
15 is reenacted to read:

16 744.474 Reasons for removal of guardian.--A guardian
17 may be removed for any of the following reasons, and the
18 removal shall be in addition to any other penalties prescribed
19 by law:

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

24 Section 74. For the purpose of incorporating the
25 amendment to section 435.03, Florida Statutes, in references
26 thereto, subsection (4) of section 985.407, Florida Statutes,
27 is reenacted to read:

28 985.407 Departmental contracting powers; personnel
29 standards and screening.--

30 (4) The department shall require employment screening
31 pursuant to chapter 435, using the level 1 standards for

1 screening set forth in that chapter, for personnel in
2 delinquency facilities, services, and programs.

3 Section 75. For the purpose of incorporating the
4 amendment to section 435.04, Florida Statutes, in references
5 thereto, paragraph (b) of subsection (2) of section 39.001,
6 Florida Statutes, is reenacted to read:

7 39.001 Purposes and intent; personnel standards and
8 screening.--

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

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

20 Section 76. For the purpose of incorporating the
21 amendment to section 435.04, Florida Statutes, in references
22 thereto, subsection (1) of section 39.821, Florida Statutes,
23 is reenacted to read:

24 39.821 Qualifications of guardians ad litem.--

25 (1) Because of the special trust or responsibility
26 placed in a guardian ad litem, the Guardian Ad Litem Program
27 may use any private funds collected by the program, or any
28 state funds so designated, to conduct a security background
29 investigation before certifying a volunteer to serve. A
30 security background investigation must include, but need not
31 be limited to, employment history checks, checks of

1 references, local criminal records checks through local law
2 enforcement agencies, and statewide criminal records checks
3 through the Department of Law Enforcement. Upon request, an
4 employer shall furnish a copy of the personnel record for the
5 employee or former employee who is the subject of a security
6 background investigation conducted under this section. The
7 information contained in the personnel record may include, but
8 need not be limited to, disciplinary matters and the reason
9 why the employee was terminated from employment. An employer
10 who releases a personnel record for purposes of a security
11 background investigation is presumed to have acted in good
12 faith and is not liable for information contained in the
13 record without a showing that the employer maliciously
14 falsified the record. A security background investigation
15 conducted under this section must ensure that a person is not
16 certified as a guardian ad litem if the person has been
17 convicted of, regardless of adjudication, or entered a plea of
18 nolo contendere or guilty to, any offense prohibited under the
19 provisions of the Florida Statutes specified in s. 435.04(2)
20 or under any similar law in another jurisdiction. Before
21 certifying an applicant to serve as a guardian ad litem, the
22 chief judge of the circuit court may request a federal
23 criminal records check of the applicant through the Federal
24 Bureau of Investigation. In analyzing and evaluating the
25 information obtained in the security background investigation,
26 the program must give particular emphasis to past activities
27 involving children, including, but not limited to,
28 child-related criminal offenses or child abuse. The program
29 has the sole discretion in determining whether to certify a
30 person based on his or her security background investigation.
31

1 The information collected pursuant to the security background
2 investigation is confidential and exempt from s. 119.07(1).

3 Section 77. For the purpose of incorporating the
4 amendment to section 435.04, Florida Statutes, in references
5 thereto, paragraphs (a) and (c) of subsection (3) of section
6 110.1127, Florida Statutes, are reenacted to read:

7 110.1127 Employee security checks.--

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

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

24 Section 78. For the purpose of incorporating the
25 amendment to section 435.04, Florida Statutes, in references
26 thereto, paragraph (a) of subsection (12) of section 112.0455,
27 Florida Statutes, is reenacted to read:

28 112.0455 Drug-Free Workplace Act.--

29 (12) DRUG-TESTING STANDARDS; LABORATORIES.--

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

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

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

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

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

28 d. A provisional license may be granted to an
29 applicant when each individual required by this section to
30 undergo background screening has met the standards for the
31 Department of Law Enforcement background check, but the agency

1 has not yet received background screening results from the
2 Federal Bureau of Investigation, or a request for a
3 disqualification exemption has been submitted to the agency as
4 set forth in chapter 435, but a response has not yet been
5 issued. A license may be granted to the applicant upon the
6 agency's receipt of a report of the results of the Federal
7 Bureau of Investigation background screening for each
8 individual required by this section to undergo background
9 screening which confirms that all standards have been met, or
10 upon the granting of a disqualification exemption by the
11 agency as set forth in chapter 435. Any other person who is
12 required to undergo level 2 background screening may serve in
13 his or her capacity pending the agency's receipt of the report
14 from the Federal Bureau of Investigation. However, the person
15 may not continue to serve if the report indicates any
16 violation of background screening standards and a
17 disqualification exemption has not been requested of and
18 granted by the agency as set forth in chapter 435.

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

26 f. Each applicant must submit to the agency a
27 description and explanation of any conviction of an offense
28 prohibited under the level 2 standards of chapter 435 by a
29 member of the board of directors of the applicant, its
30 officers, or any individual owning 5 percent or more of the
31 applicant. This requirement does not apply to a director of a

1 not-for-profit corporation or organization if the director
2 serves solely in a voluntary capacity for the corporation or
3 organization, does not regularly take part in the day-to-day
4 operational decisions of the corporation or organization,
5 receives no remuneration for his or her services on the
6 corporation or organization's board of directors, and has no
7 financial interest and has no family members with a financial
8 interest in the corporation or organization, provided that the
9 director and the not-for-profit corporation or organization
10 include in the application a statement affirming that the
11 director's relationship to the corporation satisfies the
12 requirements of this sub-subparagraph.

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

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

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

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

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

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

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

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

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

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

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

17 Section 79. For the purpose of incorporating the
18 amendment to section 435.04, Florida Statutes, in references
19 thereto, subsections (1), (2), and (4) of section 381.0059,
20 Florida Statutes, are reenacted to read:

21 381.0059 Background screening requirements for school
22 health services personnel.--

23 (1) Pursuant to the provisions of chapter 435, any
24 person who provides services under a school health services
25 plan pursuant to s. 381.0056 must meet level 2 screening
26 requirements as described in s. 435.04. A person may satisfy
27 the requirements of this subsection by submitting proof of
28 compliance with the requirements of level 2 screening
29 conducted within 12 months before the date that person
30 initially provides services under a school health services
31 plan.

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

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

11 Section 80. For the purpose of incorporating the
12 amendment to section 435.04, Florida Statutes, in references
13 thereto, paragraphs (a), (b), (c), (d), (f), and (g) of
14 subsection (1) of section 381.60225, Florida Statutes, are
15 reenacted to read:

16 381.60225 Background screening.--

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

19 (a) Upon receipt of a completed, signed, and dated
20 application, the Agency for Health Care Administration shall
21 require background screening, in accordance with the level 2
22 standards for screening set forth in chapter 435, of the
23 managing employee, or other similarly titled individual
24 responsible for the daily operation of the organization,
25 agency, or entity, and financial officer, or other similarly
26 titled individual who is responsible for the financial
27 operation of the organization, agency, or entity, including
28 billings for services. The applicant must comply with the
29 procedures for level 2 background screening as set forth in
30 chapter 435, as well as the requirements of s. 435.03(3).
31

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

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

12 (d) A provisional certification may be granted to the
13 organization, agency, or entity when each individual required
14 by this section to undergo background screening has met the
15 standards for the Department of Law Enforcement background
16 check, but the agency has not yet received background
17 screening results from the Federal Bureau of Investigation, or
18 a request for a disqualification exemption has been submitted
19 to the agency as set forth in chapter 435, but a response has
20 not yet been issued. A standard certification may be granted
21 to the organization, agency, or entity upon the agency's
22 receipt of a report of the results of the Federal Bureau of
23 Investigation background screening for each individual
24 required by this section to undergo background screening which
25 confirms that all standards have been met, or upon the
26 granting of a disqualification exemption by the agency as set
27 forth in chapter 435. Any other person who is required to
28 undergo level 2 background screening may serve in his or her
29 capacity pending the agency's receipt of the report from the
30 Federal Bureau of Investigation. However, the person may not
31 continue to serve if the report indicates any violation of

1 background screening standards and a disqualification
2 exemption has not been requested of and granted by the agency
3 as set forth in chapter 435.

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

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

29 Section 81. For the purpose of incorporating the
30 amendment to section 435.04, Florida Statutes, in references
31 thereto, paragraphs (a), (b), (c), (d), (f), and (g) of

1 subsection (7) of section 383.305, Florida Statutes, are
2 reenacted to read:

3 383.305 Licensure; issuance, renewal, denial,
4 suspension, revocation; fees; background screening.--

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

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

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

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

28 (d) A provisional license may be granted to an
29 applicant when each individual required by this section to
30 undergo background screening has met the standards for the
31 Department of Law Enforcement background check, but the agency

1 has not yet received background screening results from the
2 Federal Bureau of Investigation, or a request for a
3 disqualification exemption has been submitted to the agency as
4 set forth in chapter 435 but a response has not yet been
5 issued. A standard license may be granted to the applicant
6 upon the agency's receipt of a report of the results of the
7 Federal Bureau of Investigation background screening for each
8 individual required by this section to undergo background
9 screening which confirms that all standards have been met, or
10 upon the granting of a disqualification exemption by the
11 agency as set forth in chapter 435. Any other person who is
12 required to undergo level 2 background screening may serve in
13 his or her capacity pending the agency's receipt of the report
14 from the Federal Bureau of Investigation. However, the person
15 may not continue to serve if the report indicates any
16 violation of background screening standards and a
17 disqualification exemption has not been requested of and
18 granted by the agency as set forth in chapter 435.

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

1 interest in the corporation or organization, provided that the
2 director and the not-for-profit corporation or organization
3 include in the application a statement affirming that the
4 director's relationship to the corporation satisfies the
5 requirements of this paragraph.

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

13 Section 82. For the purpose of incorporating the
14 amendment to section 435.04, Florida Statutes, in references
15 thereto, paragraphs (a), (b), (c), (d), (f), and (g) of
16 subsection (3) of section 390.015, Florida Statutes, are
17 reenacted to read:

18 390.015 Application for license.--

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

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

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

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

11 (d) A provisional license may be granted to an
12 applicant when each individual required by this section to
13 undergo background screening has met the standards for the
14 Department of Law Enforcement background check, but the agency
15 has not yet received background screening results from the
16 Federal Bureau of Investigation, or a request for a
17 disqualification exemption has been submitted to the agency as
18 set forth in chapter 435 but a response has not yet been
19 issued. A standard license may be granted to the applicant
20 upon the agency's receipt of a report of the results of the
21 Federal Bureau of Investigation background screening for each
22 individual required by this section to undergo background
23 screening which confirms that all standards have been met, or
24 upon the granting of a disqualification exemption by the
25 agency as set forth in chapter 435. Any other person who is
26 required to undergo level 2 background screening may serve in
27 his or her capacity pending the agency's receipt of the report
28 from the Federal Bureau of Investigation. However, the person
29 may not continue to serve if the report indicates any
30 violation of background screening standards and a
31

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

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

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

28 Section 83. Paragraph (a) of subsection (1) of section
29 394.4572, Florida Statutes, is amended to read:

30 394.4572 Screening of mental health personnel.--
31

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

12 Section 84. For the purpose of incorporating the
13 amendment to section 435.04, Florida Statutes, in references
14 thereto, paragraphs (a), (b), (c), (d), (f), and (g) of
15 subsection (13) of section 394.875, Florida Statutes, are
16 reenacted to read:

17 394.875 Crisis stabilization units, residential
18 treatment facilities, and residential treatment centers for
19 children and adolescents; authorized services; license
20 required; penalties.--

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

23 (a) Upon receipt of a completed, signed, and dated
24 application, the agency shall require background screening, in
25 accordance with the level 2 standards for screening set forth
26 in chapter 435, of the managing employee and financial
27 officer, or other similarly titled individual who is
28 responsible for the financial operation of the facility,
29 including billings for client care and services. The applicant
30 must comply with the procedures for level 2 background
31

1 screening as set forth in chapter 435, as well as the
2 requirements of s. 435.03(3).

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

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

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

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

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

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

29 Section 85. For the purpose of incorporating the
30 amendment to section 435.04, Florida Statutes, in references
31

1 thereto, subsections (1), (2), (3), (4), (6), and (8) of
2 section 395.0055, Florida Statutes, are reenacted to read:

3 395.0055 Background screening.--Each applicant for
4 licensure must comply with the following requirements:

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

10 (2) The agency may require background screening for a
11 member of the board of directors of the licensee, or an
12 officer or an individual owning 5 percent or more of the
13 licensee, if the agency has probable cause to believe that
14 such individual has been convicted of an offense prohibited
15 under the level 2 standards for screening set forth in chapter
16 435.

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

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

1 Federal Bureau of Investigation background screening for each
2 individual required by this section to undergo background
3 screening which confirms that all standards have been met, or
4 upon the granting of a disqualification exemption by the
5 agency as set forth in chapter 435. Any other person who is
6 required to undergo level 2 background screening may serve in
7 his or her capacity pending the agency's receipt of the report
8 from the Federal Bureau of Investigation; however, the person
9 may not continue to serve if the report indicates any
10 violation of background screening standards and a
11 disqualification exemption has not been requested of and
12 granted by the agency as set forth in chapter 435.

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

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

26 Section 86. For the purpose of incorporating the
27 amendment to section 435.04, Florida Statutes, in references
28 thereto, paragraphs (a), (b), (c), (d), (f), and (g) of
29 subsection (4) of section 395.0199, Florida Statutes, are
30 reenacted to read:

31 395.0199 Private utilization review.--

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

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

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

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

21 (d) A provisional registration may be granted to an
22 applicant when each individual required by this section to
23 undergo background screening has met the standards for the
24 Department of Law Enforcement background check, but the agency
25 has not yet received background screening results from the
26 Federal Bureau of Investigation, or a request for a
27 disqualification exemption has been submitted to the agency as
28 set forth in chapter 435 but a response has not yet been
29 issued. A standard registration may be granted to the
30 applicant upon the agency's receipt of a report of the results
31 of the Federal Bureau of Investigation background screening

1 for each individual required by this section to undergo
2 background screening which confirms that all standards have
3 been met, or upon the granting of a disqualification exemption
4 by the agency as set forth in chapter 435. Any other person
5 who is required to undergo level 2 background screening may
6 serve in his or her capacity pending the agency's receipt of
7 the report from the Federal Bureau of Investigation. However,
8 the person may not continue to serve if the report indicates
9 any violation of background screening standards and a
10 disqualification exemption has not been requested of and
11 granted by the agency as set forth in chapter 435.

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

30 (g) A registration may not be granted to an applicant
31 if the applicant or managing employee has been found guilty

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

6 Section 87. For the purpose of incorporating the
7 amendment to section 435.04, Florida Statutes, in references
8 thereto, paragraph (a) of subsection (1) of section 397.451,
9 Florida Statutes, is reenacted to read:

10 397.451 Background checks of service provider
11 personnel.--

12 (1) PERSONNEL BACKGROUND CHECKS; REQUIREMENTS AND
13 EXCEPTIONS.--

14 (a) Background checks shall apply as follows:

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

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

22 Section 88. For the purpose of incorporating the
23 amendment to section 435.04, Florida Statutes, in references
24 thereto, paragraphs (a), (b), (c), (d), and (f) of subsection
25 (4) of section 400.071, Florida Statutes, are reenacted to
26 read:

27 400.071 Application for license.--

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

30 (a) Upon receipt of a completed, signed, and dated
31 application, the agency shall require background screening of

1 the applicant, in accordance with the level 2 standards for
2 screening set forth in chapter 435. As used in this
3 subsection, the term "applicant" means the facility
4 administrator, or similarly titled individual who is
5 responsible for the day-to-day operation of the licensed
6 facility, and the facility financial officer, or similarly
7 titled individual who is responsible for the financial
8 operation of the licensed facility.

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

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

28 (d) A provisional license may be granted to an
29 applicant when each individual required by this section to
30 undergo background screening has met the standards for the
31 Department of Law Enforcement background check, but the agency

1 has not yet received background screening results from the
2 Federal Bureau of Investigation, or a request for a
3 disqualification exemption has been submitted to the agency as
4 set forth in chapter 435, but a response has not yet been
5 issued. A license may be granted to the applicant upon the
6 agency's receipt of a report of the results of the Federal
7 Bureau of Investigation background screening for each
8 individual required by this section to undergo background
9 screening which confirms that all standards have been met, or
10 upon the granting of a disqualification exemption by the
11 agency as set forth in chapter 435. Any other person who is
12 required to undergo level 2 background screening may serve in
13 his or her capacity pending the agency's receipt of the report
14 from the Federal Bureau of Investigation; however, the person
15 may not continue to serve if the report indicates any
16 violation of background screening standards and a
17 disqualification exemption has not been requested of and
18 granted by the agency as set forth in chapter 435.

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

1 interest in the corporation or organization, provided that the
2 director and the not-for-profit corporation or organization
3 include in the application a statement affirming that the
4 director's relationship to the corporation satisfies the
5 requirements of this paragraph.

6 Section 89. For the purpose of incorporating the
7 amendment to section 435.04, Florida Statutes, in references
8 thereto, paragraphs (a), (b), (c), (d), (f), and (g) of
9 subsection (4) of section 400.471, Florida Statutes, are
10 reenacted to read:

11 400.471 Application for license; fee; provisional
12 license; temporary permit.--

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

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

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

31

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

14 (d) A provisional license may be granted to an
15 applicant when each individual required by this section to
16 undergo background screening has met the standards for the
17 Department of Law Enforcement background check, but the agency
18 has not yet received background screening results from the
19 Federal Bureau of Investigation. A standard license may be
20 granted to the licensee upon the agency's receipt of a report
21 of the results of the Federal Bureau of Investigation
22 background screening for each individual required by this
23 section to undergo background screening which confirms that
24 all standards have been met, or upon the granting of a
25 disqualification exemption by the agency as set forth in
26 chapter 435. Any other person who is required to undergo level
27 2 background screening may serve in his or her capacity
28 pending the agency's receipt of the report from the Federal
29 Bureau of Investigation. However, the person may not continue
30 to serve if the report indicates any violation of background
31 screening standards and a disqualification exemption has not

1 | been requested of and granted by the agency as set forth in
2 | chapter 435.

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

21 | (g) A license may not be granted to an applicant if
22 | the applicant, administrator, or financial officer has been
23 | found guilty of, regardless of adjudication, or has entered a
24 | plea of nolo contendere or guilty to, any offense prohibited
25 | under the level 2 standards for screening set forth in chapter
26 | 435, unless an exemption from disqualification has been
27 | granted by the agency as set forth in chapter 435.

28 | Section 90. For the purpose of incorporating the
29 | amendment to section 435.04, Florida Statutes, in references
30 | thereto, paragraphs (a), (b), (c), (d), (f), and (g) of
31 |

1 subsection (2) of section 400.506, Florida Statutes, are
2 reenacted to read:

3 400.506 Licensure of nurse registries; requirements;
4 penalties.--

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

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

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

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

29 (d) A provisional license may be granted to an
30 applicant when each individual required by this section to
31 undergo background screening has met the standards for the

1 Department of Law Enforcement background check but the agency
2 has not yet received background screening results from the
3 Federal Bureau of Investigation. A standard license may be
4 granted to the applicant upon the agency's receipt of a report
5 of the results of the Federal Bureau of Investigation
6 background screening for each individual required by this
7 section to undergo background screening which confirms that
8 all standards have been met, or upon the granting of a
9 disqualification exemption by the agency as set forth in
10 chapter 435. Any other person who is required to undergo level
11 2 background screening may serve in his or her capacity
12 pending the agency's receipt of the report from the Federal
13 Bureau of Investigation. However, the person may not continue
14 to serve if the report indicates any violation of background
15 screening standards and a disqualification exemption has not
16 been requested of and granted by the agency as set forth in
17 chapter 435.

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

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

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

12 Section 91. For the purpose of incorporating the
13 amendment to section 435.04, Florida Statutes, in references
14 thereto, section 400.5572, Florida Statutes, is reenacted to
15 read:

16 400.5572 Background screening.--

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

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

23 2. An officer or board member if the owner of the
24 adult day care center is a firm, corporation, partnership, or
25 association, or any person owning 5 percent or more of the
26 facility, if the agency has probable cause to believe that
27 such person has been convicted of any offense prohibited by s.
28 435.04. For each officer, board member, or person owning 5
29 percent or more who has been convicted of any such offense,
30 the facility shall submit to the agency a description and
31 explanation of the conviction at the time of license

1 application. This subparagraph does not apply to a board
2 member of a not-for-profit corporation or organization if the
3 board member serves solely in a voluntary capacity, does not
4 regularly take part in the day-to-day operational decisions of
5 the corporation or organization, receives no remuneration for
6 his or her services, and has no financial interest and has no
7 family members with a financial interest in the corporation or
8 organization, provided that the board member and facility
9 submit a statement affirming that the board member's
10 relationship to the facility satisfies the requirements of
11 this subparagraph.

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

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

26 (2) The owner or administrator of an adult day care
27 center must conduct level 1 background screening as set forth
28 in chapter 435 on all employees hired on or after October 1,
29 1998, who provide basic services or supportive and optional
30 services to the participants. Such persons satisfy this
31 requirement if:

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

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

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

23 Section 92. For the purpose of incorporating the
24 amendment to section 435.04, Florida Statutes, in references
25 thereto, paragraph (a) of subsection (3) of section 400.607,
26 Florida Statutes, is reenacted to read:

27 400.607 Denial, suspension, or revocation of license;
28 imposition of administrative fine; grounds; injunctions.--

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

31

1 (a) Persons subject to level 2 background screening
2 under s. 400.6065 do not meet the screening standards of s.
3 435.04, and exemptions from disqualification have not been
4 provided by the agency.

5 Section 93. For the purpose of incorporating the
6 amendment to section 435.04, Florida Statutes, in references
7 thereto, paragraphs (a), (b), (c), (d), (f), and (g) of
8 subsection (4) of section 400.801, Florida Statutes, are
9 reenacted to read:

10 400.801 Homes for special services.--

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

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

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

30 (c) Proof of compliance with the level 2 background
31 screening requirements of chapter 435 which has been submitted

1 within the previous 5 years in compliance with any other
2 health care or assisted living licensure requirements of this
3 state is acceptable in fulfillment of the requirements of
4 paragraph (a).

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

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

1 applicant. This requirement does not apply to a director of a
2 not-for-profit corporation or organization if the director
3 serves solely in a voluntary capacity for the corporation or
4 organization, does not regularly take part in the day-to-day
5 operational decisions of the corporation or organization,
6 receives no remuneration for his or her services on the
7 corporation or organization's board of directors, and has no
8 financial interest and has no family members with a financial
9 interest in the corporation or organization, provided that the
10 director and the not-for-profit corporation or organization
11 include in the application a statement affirming that the
12 director's relationship to the corporation satisfies the
13 requirements of this paragraph.

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

21 Section 94. For the purpose of incorporating the
22 amendment to section 435.04, Florida Statutes, in references
23 thereto, paragraphs (a), (b), (c), (d), (f), and (g) of
24 subsection (3) of section 400.805, Florida Statutes, are
25 reenacted to read:

26 400.805 Transitional living facilities.--

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

29 (a) Upon receipt of a completed, signed, and dated
30 application, the agency shall require background screening, in
31 accordance with the level 2 standards for screening set forth

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

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

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

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

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

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

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

1 | contendere or guilty to, any offense prohibited under the
2 | level 2 standards for screening set forth in chapter 435,
3 | unless an exemption from disqualification has been granted by
4 | the agency as set forth in chapter 435.

5 | Section 95. For the purpose of incorporating the
6 | amendment to section 435.04, Florida Statutes, in references
7 | thereto, paragraphs (a), (b), (c), (d), (f), and (g) of
8 | subsection (5) of section 400.906, Florida Statutes, are
9 | reenacted to read:

10 | 400.906 Initial application for license.--

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

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

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

28 | (c) Proof of compliance with the level 2 background
29 | screening requirements of chapter 435 which has been submitted
30 | within the previous 5 years in compliance with any other
31 |

1 health care licensure requirements of this state is acceptable
2 in fulfillment of the requirements of paragraph (a).

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

25 (f) Each applicant must submit to the agency a
26 description and explanation of any conviction of an offense
27 prohibited under the level 2 standards of chapter 435 by a
28 member of the board of directors of the applicant, its
29 officers, or any individual owning 5 percent or more of the
30 applicant. This requirement does not apply to a director of a
31 not-for-profit corporation or organization if the director

1 serves solely in a voluntary capacity for the corporation or
2 organization, does not regularly take part in the day-to-day
3 operational decisions of the corporation or organization,
4 receives no remuneration for his or her services on the
5 corporation or organization's board of directors, and has no
6 financial interest and has no family members with a financial
7 interest in the corporation or organization, provided that the
8 director and the not-for-profit corporation or organization
9 include in the application a statement affirming that the
10 director's relationship to the corporation satisfies the
11 requirements of this paragraph.

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

19 Section 96. For the purpose of incorporating the
20 amendment to section 435.04, Florida Statutes, in references
21 thereto, paragraphs (a), (b), (c), (e), and (f) of subsection
22 (5) of section 400.931, Florida Statutes, are reenacted to
23 read:

24 400.931 Application for license; fee; provisional
25 license; temporary permit.--

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

28 (a) Upon receipt of a completed, signed, and dated
29 application, the agency shall require background screening of
30 the applicant, in accordance with the level 2 standards for
31 screening set forth in chapter 435. As used in this

1 subsection, the term "applicant" means the general manager and
2 the financial officer or similarly titled individual who is
3 responsible for the financial operation of the licensed
4 facility.

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

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

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

1 director's relationship to the corporation satisfies the
2 requirements of this provision.

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

10 Section 97. For the purpose of incorporating the
11 amendment to section 435.04, Florida Statutes, in references
12 thereto, paragraphs (a), (b), (c), (d), and (f) of subsection
13 (10) of section 400.962, Florida Statutes, are reenacted to
14 read:

15 400.962 License required; license application.--

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

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

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

14 (d) A provisional license may be granted to an
15 applicant when each individual required by this section to
16 undergo background screening has met the standards for the
17 Department of Law Enforcement background check, but the agency
18 has not yet received background screening results from the
19 Federal Bureau of Investigation, or a request for a
20 disqualification exemption has been submitted to the agency as
21 set forth in chapter 435, but a response has not yet been
22 issued. A license may be granted to the applicant upon the
23 agency's receipt of a report of the results of the Federal
24 Bureau of Investigation background screening for each
25 individual required by this section to undergo background
26 screening which confirms that all standards have been met, or
27 upon the granting of a disqualification exemption by the
28 agency as set forth in chapter 435. Any other person who is
29 required to undergo level 2 background screening may serve in
30 his or her capacity pending the agency's receipt of the report
31 from the Federal Bureau of Investigation; however, the person

1 | may not continue to serve if the report indicates any
2 | violation of background screening standards and a
3 | disqualification exemption has not been granted by the agency
4 | as set forth in chapter 435.

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

23 | Section 98. For the purpose of incorporating the
24 | amendment to section 435.04, Florida Statutes, in references
25 | thereto, paragraphs (b) and (d) of subsection (7) of section
26 | 400.991, Florida Statutes, are reenacted to read:

27 | 400.991 License requirements; background screenings;
28 | prohibitions.--

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

31 |

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

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

19 Section 99. For the purpose of incorporating the
20 amendment to section 435.04, Florida Statutes, in references
21 thereto, paragraph (e) of subsection (2) of section 402.302,
22 Florida Statutes, is reenacted to read:

23 402.302 Definitions.--

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

30 (e) Operators of transient establishments, as defined
31 in chapter 509, which provide child care services solely for

1 the guests of their establishment or resort, provided that all
2 child care personnel of the establishment are screened
3 according to the level 2 screening requirements of chapter
4 435.

5 Section 100. For the purpose of incorporating the
6 amendment to section 435.04, Florida Statutes, in references
7 thereto, paragraph (a) of subsection (2) of section 402.305,
8 Florida Statutes, is reenacted to read:

9 402.305 Licensing standards; child care facilities.--

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

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

15 Section 101. For the purpose of incorporating the
16 amendment to section 435.04, Florida Statutes, in references
17 thereto, subsection (3) of section 402.3054, Florida Statutes,
18 is reenacted to read:

19 402.3054 Child enrichment service providers.--

20 (3) A child enrichment service provider shall be of
21 good moral character based upon screening. This screening
22 shall be conducted as provided in chapter 435, using the level
23 2 standards for screening set forth in that chapter. A child
24 enrichment service provider must meet the screening
25 requirements prior to providing services to a child in a child
26 care facility. A child enrichment service provider who has met
27 the screening standards shall not be required to be under the
28 direct and constant supervision of child care personnel.

29 Section 102. For the purpose of incorporating the
30 amendment to section 435.04, Florida Statutes, in references
31 thereto, paragraphs (a), (b), (c), (d), (f), and (g) of

1 subsection (2) of section 483.30, Florida Statutes, are
2 reenacted to read:

3 483.30 Licensing of centers.--

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

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

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

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

27 (d) A provisional license may be granted to an
28 applicant when each individual required by this section to
29 undergo background screening has met the standards for the
30 Department of Law Enforcement background check, but the agency
31 has not yet received background screening results from the

1 Federal Bureau of Investigation, or a request for a
2 disqualification exemption has been submitted to the agency as
3 set forth in chapter 435 but a response has not yet been
4 issued. A license may be granted to the applicant upon the
5 agency's receipt of a report of the results of the Federal
6 Bureau of Investigation background screening for each
7 individual required by this section to undergo background
8 screening which confirms that all standards have been met, or
9 upon the granting of a disqualification exemption by the
10 agency as set forth in chapter 435. Any other person who is
11 required to undergo level 2 background screening may serve in
12 his or her capacity pending the agency's receipt of the report
13 from the Federal Bureau of Investigation. However, the person
14 may not continue to serve if the report indicates any
15 violation of background screening standards and a
16 disqualification exemption has not been requested of and
17 granted by the agency as set forth in chapter 435.

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

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

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

12 | Section 103. For the purpose of incorporating the
13 | amendment to section 435.04, Florida Statutes, in references
14 | thereto, paragraphs (a), (b), (c), (d), (f), and (g) of
15 | subsection (2) of section 483.101, Florida Statutes, are
16 | reenacted to read:

17 | 483.101 Application for clinical laboratory license.--

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

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

31 |

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

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

11 (d) A provisional license may be granted to an
12 applicant when each individual required by this section to
13 undergo background screening has met the standards for the
14 Department of Law Enforcement background check but the agency
15 has not yet received background screening results from the
16 Federal Bureau of Investigation, or a request for a
17 disqualification exemption has been submitted to the agency as
18 set forth in chapter 435 but a response has not yet been
19 issued. A license may be granted to the applicant upon the
20 agency's receipt of a report of the results of the Federal
21 Bureau of Investigation background screening for each
22 individual required by this section to undergo background
23 screening which confirms that all standards have been met, or
24 upon the granting of a disqualification exemption by the
25 agency as set forth in chapter 435. Any other person who is
26 required to undergo level 2 background screening may serve in
27 his or her capacity pending the agency's receipt of the report
28 from the Federal Bureau of Investigation. However, the person
29 may not continue to serve if the report indicates any
30 violation of background screening standards and a
31

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

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

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

28 Section 104. For the purpose of incorporating the
29 amendment to section 435.04, Florida Statutes, in references
30 thereto, subsection (5) of section 744.1085, Florida Statutes,
31 is reenacted to read:

1 744.1085 Regulation of professional guardians;
2 application; bond required; educational requirements.--

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

7 Section 105. For the purpose of incorporating the
8 amendment to section 435.04, Florida Statutes, in references
9 thereto, paragraph (b) of subsection (2) of section 984.01,
10 Florida Statutes, is reenacted to read:

11 984.01 Purposes and intent; personnel standards and
12 screening.--

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

20 (b) The Department of Juvenile Justice and the
21 Department of Children and Family Services shall require
22 employment screening pursuant to chapter 435, using the level
23 2 standards set forth in that chapter for personnel in
24 programs for children or youths.

25 Section 106. For the purpose of incorporating the
26 amendment to section 435.04, Florida Statutes, in references
27 thereto, paragraph (b) of subsection (2) of section 985.01,
28 Florida Statutes, is reenacted to read:

29 985.01 Purposes and intent; personnel standards and
30 screening.--

31

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

8 (b) The Department of Juvenile Justice and the
9 Department of Children and Family Services shall require
10 employment screening pursuant to chapter 435, using the level
11 2 standards set forth in that chapter for personnel in
12 programs for children or youths.

13 Section 107. For the purpose of incorporating the
14 amendment to section 435.04, Florida Statutes, in references
15 thereto, paragraphs (a) and (b) of subsection (7) of section
16 1002.36, Florida Statutes, are reenacted to read:

17 1002.36 Florida School for the Deaf and the Blind.--

18 (7) PERSONNEL SCREENING.--

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

31

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

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

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

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

21 3. The Florida School for the Deaf and the Blind shall
22 review the record of the applicant or employee with respect to
23 the crimes contained in s. 435.04 and shall notify the
24 applicant or employee of its findings. When disposition
25 information is missing on a criminal record, it shall be the
26 responsibility of the applicant or employee, upon request of
27 the Florida School for the Deaf and the Blind, to obtain and
28 supply within 30 days the missing disposition information to
29 the Florida School for the Deaf and the Blind. Failure to
30 supply missing information within 30 days or to show
31 reasonable efforts to obtain such information shall result in

1 automatic disqualification of an applicant and automatic
2 termination of an employee.

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

7 Section 108. For the purpose of incorporating the
8 amendments to sections 943.0585 and 943.059, Florida Statutes,
9 in references thereto, paragraph (a) of subsection (2) and
10 subsection (6) of section 943.0582, Florida Statutes, are
11 reenacted to read:

12 943.0582 Prearrest, postarrest, or teen court
13 diversion program expunction.--

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

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

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

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

6 Section 109. For the purpose of incorporating the
7 amendment to section 943.059, Florida Statutes, in references
8 thereto, subsections (7), (8), and (9) of section 943.053,
9 Florida Statutes, are reenacted to read:

10 943.053 Dissemination of criminal justice information;
11 fees.--

12 (7) Notwithstanding the provisions of s. 943.0525, and
13 any user agreements adopted pursuant thereto, and
14 notwithstanding the confidentiality of sealed records as
15 provided for in s. 943.059, the sheriff of any county that has
16 contracted with a private entity to operate a county detention
17 facility pursuant to the provisions of s. 951.062 shall
18 provide that private entity, in a timely manner, copies of the
19 Florida criminal history records for its inmates. The sheriff
20 may assess a charge for the Florida criminal history records
21 pursuant to the provisions of chapter 119. Sealed records
22 received by the private entity under this section remain
23 confidential and exempt from the provisions of s. 119.07(1).

24 (8) Notwithstanding the provisions of s. 943.0525, and
25 any user agreements adopted pursuant thereto, and
26 notwithstanding the confidentiality of sealed records as
27 provided for in s. 943.059, the Department of Corrections
28 shall provide, in a timely manner, copies of the Florida
29 criminal history records for inmates housed in a private state
30 correctional facility to the private entity under contract to
31 operate the facility pursuant to the provisions of s. 944.105

1 or s. 957.03. The department may assess a charge for the
2 Florida criminal history records pursuant to the provisions of
3 chapter 119. Sealed records received by the private entity
4 under this section remain confidential and exempt from the
5 provisions of s. 119.07(1).

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

27 Section 110. Sections 393.135, 394.4593, and 916.1075,
28 Florida Statutes, as created by this act, shall apply to
29 offenses committed on or after July 1, 2004.

30 Section 111. (1) In the Department of Children and
31 Family Services' Economic Self-Sufficiency Services program,

1 the department may provide its eligibility determination
2 functions either with department staff or through contract
3 with at least two private vendors or with a combination of at
4 least one private vendor and department employees, with the
5 following restrictions:
6 (a) With the exception of information technology, no
7 contract with a private vendor shall be for a geographic area
8 larger than a combined seven districts or combined three zones
9 without the prior approval of the Legislative Budget
10 Commission; and
11 (b) Department employees must provide the functions in
12 at least one zone or combined 3 districts of the state if the
13 department's proposed cost is competitive with private
14 vendors.
15 (2) This section shall take effect upon this act
16 becoming a law.
17 Section 112. Except as otherwise expressly provided in
18 this act, this act shall take effect July 1, 2004.
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