PART II
NURSING HOME ADMINISTRATION

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468.1635 Purpose.—The sole legislative purpose for enacting this chapter is to ensure that every nursing home administrator practicing in this state meets minimum requirements for safe practice. It is the legislative intent that nursing home administrators who fall below minimum competency or who otherwise present a danger to the public shall be prohibited from practicing in this state.

History.—ss. 1, 2, ch. 79-227; ss. 2, 3, ch. 81-318; ss. 1, 16, 17, ch. 86-223; s. 61, ch. 91-137; s. 10, ch. 91-156; s. 4, ch. 91-429.

468.1645 Administrator license required.—

(1) No nursing home in the state may operate unless it is under the management of a nursing home administrator who holds a currently valid license, provisional license, or temporary license.

(2) Nothing in this part or in the rules adopted hereunder shall require an administrator of any facility or institution operated by and for persons who rely exclusively upon treatment by spiritual means through prayer, in accordance with the creed or tenets of any organized church or religious denomination, to be licensed as a nursing home administrator if the administrator is employed only to administer in such facilities or institutions for the care and treatment of the sick.

History.—ss. 1, 2, ch. 79-227; ss. 2, 3, ch. 81-318; ss. 2, 16, 17, ch. 86-223; s. 2, ch. 88-411; s. 61, ch. 91-137; s. 10, ch. 91-156; s. 4, ch. 91-429; s. 108, ch. 97-261; s. 1, ch. 97-264.

468.1655 Definitions.—As used in this part:

(1) “Board” means the Board of Nursing Home Administrators.

(2) “Department” means the Department of Health.
(3) “Nursing home administrator” means a person who is licensed to engage in the practice of nursing home administration in this state under the authority of this part.

(4) “Practice of nursing home administration” means any service requiring nursing home administration education, training, or experience and the application of such to the planning, organizing, staffing, directing, and controlling of the total management of a nursing home. A person shall be construed to practice or to offer to practice nursing home administration who:

(a) Practices any of the above services.
(b) Holds himself or herself out as able to perform, or does perform, any form of nursing home administration by written or verbal claim, sign, advertisement, letterhead, or card; or in any other way represents himself or herself to be, or implies that he or she is, a nursing home administrator.

(5) “Nursing home” means an institution or facility licensed as such under part II of chapter 400.

History.—ss. 1, 2, ch. 79-227; ss. 2, 3, ch. 81-318; ss. 3, 16, 17, ch. 86-223; s. 61, ch. 91-137; s. 10, ch. 91-156; s. 4, ch. 91-429; s. 133, ch. 94-218; s. 272, ch. 97-103; s. 121, ch. 97-264; s. 124, ch. 2000-153.

468.1665 Board of Nursing Home Administrators; membership; appointment; terms.—

(1) The Board of Nursing Home Administrators is created within the department and shall consist of seven members, to be appointed by the Governor and confirmed by the Senate to a term of 4 years or for a term to complete an unexpired vacancy.

(2) Three members of the board must be licensed nursing home administrators. Two members of the board must be health care practitioners. The remaining two members of the board must be laypersons who are not, and have never been, nursing home administrators or members of any health care profession or occupation. At least one member of the board must be 60 years of age or older.

(3) Only board members who are nursing home administrators may have a direct financial interest in any nursing home.

(4) All provisions of chapter 456 relating to activities of regulatory boards shall apply.

History.—ss. 1, 2, ch. 79-227; ss. 2, 3, ch. 81-318; s. 36, ch. 83-329; ss. 4, 16, 17, ch. 86-223; s. 19, ch. 87-172; s. 61, ch. 91-137; s. 10, ch. 91-156; s. 4, ch. 91-429; s. 134, ch. 94-218; s. 137, ch. 98-166; s. 138, ch. 2000-160.

468.1675 Board headquarters.—The board shall maintain its official headquarters in the City of Tallahassee.

History.—ss. 1, 2, ch. 79-227; ss. 2, 3, ch. 81-318; ss. 16, 17, ch. 86-223; s. 61, ch. 91-137; s. 10, ch. 91-156; s. 4, ch. 91-429.

468.1685 Powers and duties of board and department.—It is the function and duty of the board, together with the department, to:

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

(2) Develop, impose, and enforce specific standards within the scope of the general qualifications established by this part which must be met by individuals in order to receive licenses as nursing home
administrators. These standards shall be designed to ensure that nursing home administrators are individuals of good character and otherwise suitable and, by training or experience in the field of institutional administration, qualified to serve as nursing home administrators.

(3) Develop by appropriate techniques, including examinations and investigations, a method for determining whether an individual meets such standards.

(4) Issue licenses to qualified individuals meeting the standards of the board and revoke or suspend licenses previously issued by the board when the individual holding such license is determined to have failed to conform substantially to the requirements of such standards.

(5) Establish and carry out procedures, by rule, designed to ensure that licensed nursing home administrators will comply with standards adopted by the board.

(6) Receive, investigate, and take appropriate action with respect to any charge or complaint filed with the department to the effect that a licensed nursing home administrator has failed to comply with the requirements or standards adopted by the board.

(7) Conduct a continuing study and investigation of nursing homes and administrators of nursing homes in order to improve the standards imposed for the licensing of such administrators and the procedures and methods for enforcing such standards with respect to administrators of nursing homes who have been licensed as such.

(8) Set up procedures by rule for advising and acting together with the Department of Health and other boards of other health professions in matters affecting procedures and methods for effectively enforcing the purpose of this part and the administration of chapters 400 and 429.

History.—ss. 1, 2, ch. 79-227; ss. 2, 3, ch. 81-318; ss. 5, 16, 17, ch. 86-223; s. 61, ch. 91-137; s. 10, ch. 91-156; s. 61, ch. 91-137; s. 4, ch. 91-429; s. 132, ch. 98-200; s. 228, ch. 99-8; s. 93, ch. 2006-197.

468.1695 Licensure by examination.—

(1) Any person desiring to be licensed as a nursing home administrator shall apply to the department to take the licensure examination. The examination shall be given at least two times a year and shall include, but not be limited to, questions on the subjects of nursing home administration such as:

(a) Applicable standards of nursing home health and safety;
(b) Federal, state, and local health and safety laws and rules;
(c) General administration;
(d) Psychology of patient care;
(e) Principles of medical care;
(f) Personal and social care;
(g) Therapeutic and supportive care and services in long-term care;
(h) Departmental organization and management;
(i) Community interrelationships; and
(j) Terminology.

The board may, by rule, adopt use of a national examination in lieu of part or all of the examination required by this part.

(2) The department shall examine each applicant who the board certifies has completed the application form and remitted an examination fee set by the board not to exceed $250 and who:

(a)1. Holds a baccalaureate degree from an accredited college or university and majored in health care administration or has credit for at least 60 semester hours in subjects, as prescribed by rule of the board, which prepare the applicant for total management of a nursing home; and

  2. Has fulfilled the requirements of a college-affiliated or university-affiliated internship in nursing home administration or of a 1,000-hour nursing home administrator-in-training program prescribed by the board; or

(b)1. Holds a baccalaureate degree from an accredited college or university; and

  2.a. Has fulfilled the requirements of a 2,000-hour nursing home administrator-in-training program prescribed by the board; or

  b. Has 1 year of management experience allowing for the application of executive duties and skills, including the staffing, budgeting, and directing of resident care, dietary, and bookkeeping departments within a skilled nursing facility, hospital, hospice, assisted living facility with a minimum of 60 licensed beds, or geriatric residential treatment program and, if such experience is not in a skilled nursing facility, has fulfilled the requirements of a 1,000-hour nursing home administrator-in-training program prescribed by the board.

(3) The department shall issue a license to practice nursing home administration to any applicant who successfully completes the examination in accordance with this section and otherwise meets the requirements of this part. The department shall not issue a license to any applicant who is under investigation in this state or another jurisdiction for an offense which would constitute a violation of s. 468.1745 or s. 468.1755. Upon completion of the investigation, the provisions of s. 468.1755 shall apply.

(4) The board may by rule establish a preceptor certification and recertification fee not to exceed $100 which shall be remitted by those individuals seeking board approval to act as preceptors in administrator-in-training programs as prescribed by the board. Said fee may be charged at the time of application for initial certification and at the time of application for recertification. The board may by rule establish a trainee application fee not to exceed $500 to defray the costs of the board’s supervision of the administrator-in-training program, to be remitted by those individuals seeking to undergo a board prescribed administrator-in-training program.

History.—ss. 1, 2, ch. 79-227; ss. 2, 3, ch. 81-318; ss. 6, 13, 14, 16, 17, ch. 86-223; s. 17, ch. 88-205; s. 68, ch. 89-374; s. 23, ch. 90-134; s. 3, ch. 90-345; s. 61, ch. 91-137; s. 10, ch. 91-156; s. 4, ch. 91-429; s. 31, ch. 92-173; s. 5, ch.
468.1705 Licensure by endorsement; temporary license.—

(1) The department shall issue a license by endorsement to any applicant who, upon applying to the department and remitting a fee set by the board not to exceed $500, demonstrates to the board that he or she:

(a) Meets one of the following requirements:
   1. Holds a valid active license to practice nursing home administration in another state of the United States, provided that the current requirements for licensure in that state are substantially equivalent to, or more stringent than, current requirements in this state; or
   2. Meets the qualifications for licensure in s. 468.1695; and

(b)1. Has successfully completed a national examination which is substantially equivalent to, or more stringent than, the examination given by the department;
   2. Has passed an examination on the laws and rules of this state governing the administration of nursing homes; and
   3. Has worked as a fully licensed nursing home administrator for 2 years within the 5-year period immediately preceding the application by endorsement.

(2) National examinations for licensure as a nursing home administrator shall be presumed to be substantially equivalent to, or more stringent than, the examination and requirements in this state, unless found otherwise by rule of the board.

(3) The department shall not issue a license by endorsement or a temporary license to any applicant who is under investigation in this or another state for any act which would constitute a violation of this part until such time as the investigation is complete and disciplinary proceedings have been terminated.

(4) A temporary license may be issued one time only to an applicant who has filed an application for licensure by endorsement and has paid the fee for the next laws and rules examination offered in this state, and who meets all of the following requirements:

(a) Has filed an application for a temporary license and paid a fee not to exceed $750.

(b) Meets the requirements of subsection (1) or s. 468.1695.

(c) Has worked as a fully licensed nursing home administrator for 2 years within the 5-year period immediately preceding application for a temporary license.

A temporary license shall be valid for the nursing home administrator applicant only at the facility for which it is issued and shall not be transferred to another facility or to another applicant. An applicant shall not be eligible to reapply for a temporary license or an extension of a temporary license. The applicant must take and pass the next laws and rules examination offered in this state following
issuance of a temporary license. The temporary license is valid until the results of the examination are
certified by the board and the applicant is notified.

History.—ss. 1, 2, ch. 79-227; ss. 2, 3, ch. 81-318; ss. 9, 42, ch. 82-179; s. 91, ch. 83-218; ss. 37, 119, ch. 83-329; ss.
7, 16, 17, ch. 86-223; s. 39, ch. 89-162; s. 24, ch. 90-134; s. 4, ch. 90-345; s. 61, ch. 91-137; s. 10, ch. 91-156; s. 4, ch.
91-429; s. 273, ch. 97-103.

468.1715 Renewal of license.—
(1) The department shall renew a license upon receipt of the renewal application and fee.
(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.
(3) The board may by rule prescribe continuing education, not to exceed 40 hours biennially, as a
condition for renewal of a license or certificate. The board shall by rule establish criteria for the
approval of such programs or courses. The programs or courses approved by the board shall include
correspondence courses that meet the criteria for continuing education courses held in a classroom
setting. The board may establish by rule an application fee not to exceed $100 for anyone seeking
approval to provide continuing education courses and may provide by rule a fee not to exceed $50 for
renewal of providership.

History.—ss. 1, 2, ch. 79-227; s. 2, ch. 80-291; ss. 2, 3, ch. 81-318; ss. 8, 16, 17, ch. 86-223; s. 69, ch. 89-374; s. 61,
ch. 91-137; s. 10, ch. 91-156; s. 4, ch. 91-429; s. 190, ch. 94-119.

468.1725 Inactive status.—
(1) The board shall prescribe by rule continuing education requirements as a condition of
reactivating a license. The continuing education requirements for reactivating a license may not
exceed 20 classroom hours for each year the license was inactive, in addition to completion of the
number of hours required for renewal on the date the license became inactive.
(2) The board shall adopt rules relating to application procedures for inactive status, for the
renewal of inactive licenses, and for the reactivation of licenses. The board shall prescribe by rule an
application fee for inactive status, a renewal fee for inactive status, a delinquency fee, and a fee for
the reactivation of a license. None of these fees may exceed the biennial renewal fee established by
the board for an active license.
(3) The department may not reactivate a license unless the inactive or delinquent licensee has paid
any applicable biennial renewal or delinquency fee, or both, and a reactivation fee.

History.—ss. 1, 2, ch. 79-227; s. 331, ch. 81-259; ss. 2, 3, ch. 81-318; s. 102, ch. 83-329; ss. 9, 16, 17, ch. 86-223; s.
61, ch. 91-137; s. 10, ch. 91-156; s. 4, ch. 91-429; s. 191, ch. 94-119.

468.1735 Provisional license.—The board may establish by rule requirements for issuance of a
provisional license. A provisional license shall be issued only to fill a position of nursing home
administrator that unexpectedly becomes vacant due to illness, sudden death of the administrator, or
abandonment of position and shall be issued for one single period as provided by rule not to exceed 6
months. The department shall not issue a provisional license to any applicant who is under
investigation in this state or another jurisdiction for an offense which would constitute a violation of s. 468.1745 or s. 468.1755. Upon completion of the investigation, the provisions of s. 468.1755 shall apply. The provisional license may be issued to a person who does not meet all of the licensing requirements established by this part, but the board shall by rule establish minimal requirements to ensure protection of the public health, safety, and welfare. The provisional license shall be issued to the person who is designated as the responsible person next in command in the event of the administrator’s departure. The board may set an application fee not to exceed $500 for a provisional license.

History.—ss. 1, 2, ch. 79-227; s. 332, ch. 81-259; ss. 2, 3, ch. 81-318; ss. 10, 42, ch. 82-179; ss. 10, 16, 17, ch. 86-223; s. 40, ch. 89-162; s. 61, ch. 91-137; s. 10, ch. 91-156; s. 4, ch. 91-429; s. 193, ch. 94-119; s. 25, ch. 99-394; s. 84, ch. 2001-277.

468.1745 Prohibitions; penalties.—

(1) No person shall:
   (a) Practice nursing home administration unless the person holds an active license to practice nursing home administration.
   (b) Use the name or title “nursing home administrator” when the person has not been licensed pursuant to this act.
   (c) Present as his or her own the license of another.
   (d) Give false or forged evidence to the board or a member thereof for the purpose of obtaining a license.
   (e) Use or attempt to use a nursing home administrator’s license which has been suspended or revoked.
   (f) Knowingly employ unlicensed persons in the practice of nursing home administration.
   (g) Knowingly conceal information relative to violations of this part.

(2) Any person who violates the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1, 2, ch. 79-227; ss. 2, 3, ch. 81-318; ss. 16, 17, ch. 86-223; ss. 61, ch. 91-137; s. 10, ch. 91-156; s. 97, ch. 91-224; s. 4, ch. 91-429; s. 274, ch. 97-103.

468.1755 Disciplinary proceedings.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):
   (a) Violation of any provision of s. 456.072(1) or s. 468.1745(1).
   (b) Attempting to procure a license to practice nursing home administration by bribery, by fraudulent misrepresentation, or through an error of the department or the board.
(c) Having a license to practice nursing home administration revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country.

(d) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which relates to the practice of nursing home administration or the ability to practice nursing home administration. Any plea of nolo contendere shall be considered a conviction for purposes of this part.

(e) Making or filing a report or record which the licensee knows to be false, intentionally failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing, or inducing another person to impede or obstruct such filing. Such reports or records shall include only those which are signed in the capacity of a licensed nursing home administrator.

(f) Authorizing the discharge or transfer of a resident for a reason other than those provided in ss. 400.022 and 400.0255.

(g) Advertising goods or services in a manner which is fraudulent, false, deceptive, or misleading in form or content.

(h) Fraud or deceit, negligence, incompetence, or misconduct in the practice of nursing home administration.

(i) Violation of a lawful order of the board or department previously entered in a disciplinary hearing or failing to comply with a lawfully issued subpoena of the board or department.

(j) Practicing with a revoked, suspended, inactive, or delinquent license.

(k) Repeatedly acting in a manner inconsistent with the health, safety, or welfare of the patients of the facility in which he or she is the administrator.

(l) Being unable to practice nursing home administration with reasonable skill and safety to patients by reason of illness, drunkenness, use of drugs, narcotics, chemicals, or any other material or substance or as a result of any mental or physical condition. In enforcing this paragraph, upon a finding of the State Surgeon General or his or her designee that probable cause exists to believe that the licensee is unable to serve as a nursing home administrator due to the reasons stated in this paragraph, the department shall have the authority to issue an order to compel the licensee to submit to a mental or physical examination by a physician designated by the department. If the licensee refuses to comply with such order, the department’s order directing such examination may be enforced by filing a petition for enforcement in the circuit court where the licensee resides or serves as a nursing home administrator. The licensee against whom the petition is filed shall not be named or identified by initials in any public court records or documents, and the proceedings shall be closed to the public. The department shall be entitled to the summary procedure provided in s. 51.011. A licensee affected under this paragraph shall have the opportunity, at reasonable intervals, to demonstrate that he or she can resume the competent practice of nursing home administration with reasonable skill and safety to patients.
(m) Willfully or repeatedly violating any of the provisions of the law, code, or rules of the licensing or supervising authority or agency of the state or political subdivision thereof having jurisdiction of the operation and licensing of nursing homes.

(n) Paying, giving, causing to be paid or given, or offering to pay or to give to any person a commission or other valuable consideration for the solicitation or procurement, either directly or indirectly, of nursing home usage.

(o) Willfully permitting unauthorized disclosure of information relating to a patient or his or her records.

(p) Discriminating with respect to patients, employees, or staff on account of race, religion, color, sex, or national origin.

(q) Failing to implement an ongoing quality assurance program directed by an interdisciplinary team that meets at least every other month.

(r) Violating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto.

(2) The board may enter an order denying licensure or imposing any of the penalties in s. 456.072(2) against any applicant for licensure or licensee who is found guilty of violating any provision of subsection (1) of this section or who is found guilty of violating any provision of s. 456.072(1).

(3) The department shall reissue the license of a disciplined licensee upon certification by the board that the disciplined licensee has complied with all of the terms and conditions set forth in the final order.

History.—ss. 1, 2, ch. 79-227; ss. 2, 3, ch. 81-318; ss. 11, 16, 17, ch. 86-223; s. 61, ch. 91-137; s. 10, ch. 91-156; s. 4, ch. 91-429; ss. 10, 192, ch. 94-119; s. 275, ch. 97-103; s. 80, ch. 98-166; s. 21, ch. 99-394; s. 138, ch. 2000-160; s. 27, ch. 2000-318; ss. 38, 83, ch. 2001-277; s. 14, ch. 2005-240; s. 90, ch. 2008-6.

468.1756 Statute of limitations.—An administrative complaint may only be filed pursuant to s. 456.073 for an act listed in s. 468.1755(1)(c)-(q) within 4 years from the time of the incident giving rise to the complaint, or within 4 years from the time the incident is discovered or should have been discovered.

History.—ss. 12, 17, ch. 86-223; s. 61, ch. 91-137; s. 10, ch. 91-156; s. 4, ch. 91-429; s. 193, ch. 94-119; s. 81, ch. 98-166; s. 26, ch. 99-394; s. 139, ch. 2000-160.

CHAPTER 456

HEALTH PROFESSIONS AND OCCUPATIONS: GENERAL PROVISIONS

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

(1) “Board” means any board or commission, or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rulemaking functions, within the department, except that, for ss. 456.003-456.018, 456.022, 456.023, 456.025-456.034, and 456.039-456.082, “board” means only a board, or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rulemaking functions, within the Division of Medical Quality Assurance.

(2) “Consumer member” means a person appointed to serve on a specific board or who has served on a specific board, who is not, and never has been, a member or practitioner of the profession, or of any closely related profession, regulated by such board.

(3) “Department” means the Department of Health.

(4) “Health care practitioner” means any person licensed under chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 462; chapter 463; chapter 464; chapter 465; chapter 466; chapter 467; part I, part II, part III, part V, part X, part XIII, or part XIV of chapter 468; chapter 478; chapter 480; part III or part IV of chapter 483; chapter 484; chapter 486; chapter 490; or chapter 491.

(5) “License” means any permit, registration, certificate, or license, including a provisional license, issued by the department.

(6) “Licensee” means any person or entity issued a permit, registration, certificate, or license, including a provisional license, by the department.

(7) “Profession” means any activity, occupation, profession, or vocation regulated by the department in the Division of Medical Quality Assurance.

History.—s. 33, ch. 97-261; s. 72, ch. 99-397; s. 36, ch. 2000-160; s. 2, ch. 2002-199.
**456.002 Applicability.**—This chapter applies only to the regulation by the department of professions.

**History.**—s. 34, ch. 97-261; s. 37, ch. 2000-160.

**Note.**—Former s. 455.504.

**456.003 Legislative intent; requirements.**—

(1) It is the intent of the Legislature that persons desiring to engage in any lawful profession regulated by the department shall be entitled to do so as a matter of right if otherwise qualified.

(2) The Legislature further believes that such professions shall be regulated only for the preservation of the health, safety, and welfare of the public under the police powers of the state. Such professions shall be regulated when:

(a) Their unregulated practice can harm or endanger the health, safety, and welfare of the public, and when the potential for such harm is recognizable and clearly outweighs any anticompetitive impact which may result from regulation.

(b) The public is not effectively protected by other means, including, but not limited to, other state statutes, local ordinances, or federal legislation.

(c) Less restrictive means of regulation are not available.

(3) It is further legislative intent that the use of the term “profession” with respect to those activities licensed and regulated by the department shall not be deemed to mean that such activities are not occupations for other purposes in state or federal law.

(4)(a) Neither the department nor any board may create unreasonably restrictive and extraordinary standards that deter qualified persons from entering the various professions. Neither the department nor any board may take any action that tends to create or maintain an economic condition that unreasonably restricts competition, except as specifically provided by law.

(b) Neither the department nor any board may create a regulation that has an unreasonable effect on job creation or job retention in the state or that places unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a profession or occupation to find employment.

(c) The Legislature shall evaluate proposals to increase the regulation of regulated professions or occupations to determine the effect of increased regulation on job creation or retention and employment opportunities.

(5) Policies adopted by the department shall ensure that all expenditures are made in the most cost-effective manner to maximize competition, minimize licensure costs, and maximize public access to meetings conducted for the purpose of professional regulation. The long-range planning function of the department shall be implemented to facilitate effective operations and to eliminate inefficiencies.

(6) Unless expressly and specifically granted in statute, the duties conferred on the boards do not include the enlargement, modification, or contravention of the lawful scope of practice of the
profession regulated by the boards. This subsection shall not prohibit the boards, or the department when there is no board, from taking disciplinary action or issuing a declaratory statement.


Note.—Former s. 455.517.

456.004 Department; powers and duties.—The department, for the professions under its jurisdiction, shall:

(1) Adopt rules establishing a procedure for the biennial renewal of licenses; however, the department may issue up to a 4-year license to selected licensees notwithstanding any other provisions of law to the contrary. The rules shall specify the expiration dates of licenses and the process for tracking compliance with continuing education requirements, financial responsibility requirements, and any other conditions of renewal set forth in statute or rule. Fees for such renewal shall not exceed the fee caps for individual professions on an annualized basis as authorized by law.

(2) Appoint the executive director of each board, subject to the approval of the board.

(3) Submit an annual budget to the Legislature at a time and in the manner provided by law.

(4) Develop a training program for persons newly appointed to membership on any board. The program shall familiarize such persons with the substantive and procedural laws and rules and fiscal information relating to the regulation of the appropriate profession and with the structure of the department.

(5) Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter.

(6) Establish by rules procedures by which the department shall use the expert or technical advice of the appropriate board for the purposes of investigation, inspection, evaluation of applications, other duties of the department, or any other areas the department may deem appropriate.

(7) Require all proceedings of any board or panel thereof and all formal or informal proceedings conducted by the department, an administrative law judge, or a hearing officer with respect to licensing or discipline to be electronically recorded in a manner sufficient to assure the accurate transcription of all matters so recorded.

(8) Select only those investigators, or consultants who undertake investigations, who meet criteria established with the advice of the respective boards.

(9) Work cooperatively with the Department of Revenue to establish an automated method for periodically disclosing information relating to current licensees to the Department of Revenue, the state’s Title IV-D agency. The purpose of this subsection is to promote the public policy of this state relating to child support as established in s. 409.2551. The department shall, when directed by the court or the Department of Revenue pursuant to s. 409.2598, suspend or deny the license of any licensee found not to be in compliance with a support order, a subpoena, an order to show cause, or a written agreement with the Department of Revenue. The department shall issue or reinstate the license without additional charge to the licensee when notified by the court or the Department of Revenue.
Revenue that the licensee has complied with the terms of the support order. The department is not liable for any license denial or suspension resulting from the discharge of its duties under this subsection.

(10) Set an examination fee that includes all costs to develop, purchase, validate, administer, and defend the examination and is an amount certain to cover all administrative costs plus the actual per-applicant cost of the examination.

(11) Work cooperatively with the Agency for Health Care Administration and the judicial system to recover Medicaid overpayments by the Medicaid program. The department shall investigate and prosecute health care practitioners who have not remitted amounts owed to the state for an overpayment from the Medicaid program pursuant to a final order, judgment, or stipulation or settlement.

History.—s. 39, ch. 97-261; s. 118, ch. 98-200; s. 74, ch. 99-397; s. 39, ch. 2000-160; s. 52, ch. 2001-158; s. 5, ch. 2001-277; s. 6, ch. 2008-92; s. 21, ch. 2009-223.

Note.—Former s. 455.521.

456.005 Long-range policy planning.—To facilitate efficient and cost-effective regulation, the department and the board, if appropriate, shall develop and implement a long-range policy planning and monitoring process that includes recommendations specific to each profession. The process shall include estimates of revenues, expenditures, cash balances, and performance statistics for each profession. The period covered may not be less than 5 years. The department, with input from the boards and licensees, shall develop and adopt the long-range plan. The department shall monitor compliance with the plan and, with input from the boards and licensees, shall annually update the plans. The department shall provide concise management reports to the boards quarterly. As part of the review process, the department shall evaluate:

(1) Whether the department, including the boards and the various functions performed by the department, is operating efficiently and effectively and if there is a need for a board or council to assist in cost-effective regulation.

(2) How and why the various professions are regulated.

(3) Whether there is a need to continue regulation, and to what degree.

(4) Whether or not consumer protection is adequate, and how it can be improved.

(5) Whether there is consistency between the various practice acts.

(6) Whether unlicensed activity is adequately enforced.

The plans shall include conclusions and recommendations on these and other issues as appropriate.

History.—s. 40, ch. 97-261; s. 40, ch. 2000-160; s. 61, ch. 2008-6; s. 148, ch. 2010-102.

Note.—Former s. 455.524.
456.006 Contacting boards through department.—Each board under the jurisdiction of the department may be contacted through the headquarters of the department in the City of Tallahassee.

History.—s. 41, ch. 97-261; s. 40, ch. 2000-160.

Note.—Former s. 455.527.

456.007 Board members.—Notwithstanding any provision of law to the contrary, any person who otherwise meets the requirements of law for board membership and who is connected in any way with any medical college, dental college, or community college may be appointed to any board so long as that connection does not result in a relationship wherein such college represents the person's principal source of income. However, this section shall not apply to the physicians required by s. 458.307(2) to be on the faculty of a medical school in this state or on the full-time staff of a teaching hospital in this state.

History.—s. 2, ch. 84-161; s. 1, ch. 84-271; s. 3, ch. 88-392; s. 42, ch. 97-261; s. 17, ch. 97-264; s. 40, ch. 2000-160.

Note.—Former s. 455.206; s. 455.531.

456.008 Accountability and liability of board members.—

1. Each board member shall be accountable to the Governor for the proper performance of duties as a member of the board. The Governor shall investigate any legally sufficient complaint or unfavorable written report received by the Governor or by the department or a board concerning the actions of the board or its individual members. The Governor may suspend from office any board member for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform his or her official duties, or commission of a felony.

2. Each board member and each former board member serving on a probable cause panel shall be exempt from civil liability for any act or omission when acting in the member's official capacity, and the department shall defend any such member in any action against any board or member of a board arising from any such act or omission. In addition, the department may defend the member's company or business in any action against the company or business if the department determines that the actions from which the suit arises are actions taken by the member in the member's official capacity and were not beyond the member's statutory authority. In providing such defense, the department may employ or utilize the legal services of the Department of Legal Affairs or outside counsel retained pursuant to s. 287.059. Fees and costs of providing legal services provided under this subsection shall be paid from a trust fund used by the department to implement this chapter, subject to the provisions of s. 456.025.

History.—s. 45, ch. 97-261; s. 21, ch. 99-7; s. 153, ch. 99-251; s. 41, ch. 2000-160.

Note.—Former s. 455.541.

456.009 Legal and investigative services.—

1. The department shall provide board counsel for boards within the department by contracting with the Department of Legal Affairs, by retaining private counsel pursuant to s. 287.059, or by
providing department staff counsel. The primary responsibility of board counsel shall be to represent the interests of the citizens of the state. A board shall provide for the periodic review and evaluation of the services provided by its board counsel. Fees and costs of such counsel shall be paid from a trust fund used by the department to implement this chapter, subject to the provisions of s. 456.025. All contracts for independent counsel shall provide for periodic review and evaluation by the board and the department of services provided.

(2) The department may employ or use the legal services of outside counsel and the investigative services of outside personnel. However, no attorney employed or utilized by the department shall prosecute a matter and provide legal services to the board with respect to the same matter.

(3) Any person retained by the department under contract to review materials, make site visits, or provide expert testimony regarding any complaint or application filed with the department relating to a profession under the jurisdiction of the department shall be considered an agent of the department in determining the state insurance coverage and sovereign immunity protection applicability of ss. 284.31 and 768.28.

History.—s. 60, ch. 97-261; s. 154, ch. 99-251; s. 42, ch. 2000-160.

Note.—Former s. 455.594.

456.011 Boards; organization; meetings; compensation and travel expenses.—

(1) Each board within the department shall comply with the provisions of this chapter.

(2) The board shall annually elect from among its number a chairperson and vice chairperson.

(3) The board shall meet at least once annually and may meet as often as is necessary. Meetings shall be conducted through teleconferencing or other technological means, unless disciplinary hearings involving standard of care, sexual misconduct, fraud, impairment, or felony convictions; licensure denial hearings; or controversial rule hearings are being conducted; or unless otherwise approved in advance of the meeting by the director of the Division of Medical Quality Assurance. The chairperson or a quorum of the board shall have the authority to call meetings, except as provided above relating to in-person meetings. A quorum shall be necessary for the conduct of official business by the board or any committee thereof. Unless otherwise provided by law, 51 percent or more of the appointed members of the board or any committee, when applicable, shall constitute a quorum. The membership of committees of the board, except as otherwise authorized pursuant to this chapter or the applicable practice act, shall be composed of currently appointed members of the board. The vote of a majority of the members of the quorum shall be necessary for any official action by the board or committee. Three consecutive unexcused absences or absences constituting 50 percent or more of the board’s meetings within any 12-month period shall cause the board membership of the member in question to become void, and the position shall be considered vacant. The board, or the department when there is no board, shall, by rule, define unexcused absences.
(4) Unless otherwise provided by law, a board member or former board member serving on a probable cause panel shall be compensated $50 for each day in attendance at an official meeting of the board and for each day of participation in any other business involving the board. Each board shall adopt rules defining the phrase “other business involving the board,” but the phrase may not routinely be defined to include telephone conference calls that last less than 4 hours. A board member also shall be entitled to reimbursement for expenses pursuant to s. 112.061. Travel out of state shall require the prior approval of the State Surgeon General.

(5) When two or more boards have differences between them, the boards may elect to, or the State Surgeon General may request that the boards, establish a special committee to settle those differences. The special committee shall consist of three members designated by each board, who may be members of the designating board or other experts designated by the board, and of one additional person designated and agreed to by the members of the special committee. In the event the special committee cannot agree on the additional designee, upon request of the special committee, the State Surgeon General may select the designee. The committee shall recommend rules necessary to resolve the differences. If a rule adopted pursuant to this provision is challenged, the participating boards shall share the costs associated with defending the rule or rules. The department shall provide legal representation for any special committee established pursuant to this section.

History.—s. 43, ch. 97-261; s. 43, ch. 2000-160; s. 10, ch. 2001-277; s. 62, ch. 2008-6.

Note.—Former s. 455.534.

456.012 Board rules; final agency action; challenges.—

(1) The State Surgeon General shall have standing to challenge any rule or proposed rule of a board under its jurisdiction pursuant to s. 120.56. In addition to challenges for any invalid exercise of delegated legislative authority, the administrative law judge, upon such a challenge by the State Surgeon General, may declare all or part of a rule or proposed rule invalid if it:

(a) Does not protect the public from any significant and discernible harm or damages;

(b) Unreasonably restricts competition or the availability of professional services in the state or in a significant part of the state; or

(c) Unnecessarily increases the cost of professional services without a corresponding or equivalent public benefit.

However, there shall not be created a presumption of the existence of any of the conditions cited in this subsection in the event that the rule or proposed rule is challenged.

(2) In addition, either the State Surgeon General or the board shall be a substantially interested party for purposes of s. 120.54(7). The board may, as an adversely affected party, initiate and maintain an action pursuant to s. 120.68 challenging the final agency action.
(3) No board created within the department shall have standing to challenge a rule or proposed rule of another board. However, if there is a dispute between boards concerning a rule or proposed rule, the boards may avail themselves of the provisions of s. 456.011(5).

History.—s. 46, ch. 97-261; s. 44, ch. 2000-160; s. 63, ch. 2008-6.

Note.—Former s. 455.544.

456.013 Department; general licensing provisions.—

(1)(a) Any person desiring to be licensed in a profession within the jurisdiction of the department shall apply to the department in writing to take the licensure examination. The application shall be made on a form prepared and furnished by the department. The application form must be available on the World Wide Web and the department may accept electronically submitted applications beginning July 1, 2001. The application shall require the social security number of the applicant, except as provided in paragraph (b). The form shall be supplemented as needed to reflect any material change in any circumstance or condition stated in the application which takes place between the initial filing of the application and the final grant or denial of the license and which might affect the decision of the department. If an application is submitted electronically, the department may require supplemental materials, including an original signature of the applicant and verification of credentials, to be submitted in a nonelectronic format. An incomplete application shall expire 1 year after initial filing.

In order to further the economic development goals of the state, and notwithstanding any law to the contrary, the department may enter into an agreement with the county tax collector for the purpose of appointing the county tax collector as the department’s agent to accept applications for licenses and applications for renewals of licenses. The agreement must specify the time within which the tax collector must forward any applications and accompanying application fees to the department.

(b) If an applicant has not been issued a social security number by the Federal Government at the time of application because the applicant is not a citizen or resident of this country, the department may process the application using a unique personal identification number. If such an applicant is otherwise eligible for licensure, the board, or the department when there is no board, may issue a temporary license to the applicant, which shall expire 30 days after issuance unless a social security number is obtained and submitted in writing to the department. Upon receipt of the applicant’s social security number, the department shall issue a new license, which shall expire at the end of the current biennium.

(2) Before the issuance of any license, the department shall charge an initial license fee as determined by the applicable board or, if there is no board, by rule of the department. Upon receipt of the appropriate license fee, the department shall issue a license to any person certified by the appropriate board, or its designee, as having met the licensure requirements imposed by law or rule. The license shall consist of a wallet-size identification card and a wall card measuring 6 1/2 inches by 5
inches. The licensee shall surrender to the department the wallet-size identification card and the wall card if the licensee's license is issued in error or is revoked.

(3)(a) The board, or the department when there is no board, may refuse to issue an initial license to any applicant who is under investigation or prosecution in any jurisdiction for an action that would constitute a violation of this chapter or the professional practice acts administered by the department and the boards, until such time as the investigation or prosecution is complete, and the time period in which the licensure application must be granted or denied shall be tolled until 15 days after the receipt of the final results of the investigation or prosecution.

(b) If an applicant has been convicted of a felony related to the practice or ability to practice any health care profession, the board, or the department when there is no board, may require the applicant to prove that his or her civil rights have been restored.

(c) In considering applications for licensure, the board, or the department when there is no board, may require a personal appearance of the applicant. If the applicant is required to appear, the time period in which a licensure application must be granted or denied shall be tolled until such time as the applicant appears. However, if the applicant fails to appear before the board at either of the next two regularly scheduled board meetings, or fails to appear before the department within 30 days if there is no board, the application for licensure shall be denied.

(4) When any administrative law judge conducts a hearing pursuant to the provisions of chapter 120 with respect to the issuance of a license by the department, the administrative law judge shall submit his or her recommended order to the appropriate board, which shall thereupon issue a final order. The applicant for licensure may appeal the final order of the board in accordance with the provisions of chapter 120.

(5) A privilege against civil liability is hereby granted to any witness for any information furnished by the witness in any proceeding pursuant to this section, unless the witness acted in bad faith or with malice in providing such information.

(6) As a condition of renewal of a license, the Board of Medicine, the Board of Osteopathic Medicine, the Board of Chiropractic Medicine, and the Board of Podiatric Medicine shall each require licensees which they respectively regulate to periodically demonstrate their professional competency by completing at least 40 hours of continuing education every 2 years. The boards may require by rule that up to 1 hour of the required 40 or more hours be in the area of risk management or cost containment. This provision shall not be construed to limit the number of hours that a licensee may obtain in risk management or cost containment to be credited toward satisfying the 40 or more required hours. This provision shall not be construed to require the boards to impose any requirement on licensees except for the completion of at least 40 hours of continuing education every 2 years. Each of such boards shall determine whether any specific continuing education requirements not otherwise mandated by law shall be mandated and shall approve criteria for, and the content of, any continuing
education mandated by such board. Notwithstanding any other provision of law, the board, or the department when there is no board, may approve by rule alternative methods of obtaining continuing education credits in risk management. The alternative methods may include attending a board meeting at which another licensee is disciplined, serving as a volunteer expert witness for the department in a disciplinary case, or serving as a member of a probable cause panel following the expiration of a board member’s term. Other boards within the Division of Medical Quality Assurance, or the department if there is no board, may adopt rules granting continuing education hours in risk management for attending a board meeting at which another licensee is disciplined, for serving as a volunteer expert witness for the department in a disciplinary case, or for serving as a member of a probable cause panel following the expiration of a board member’s term.

(7) The boards, or the department when there is no board, shall require the completion of a 2-hour course relating to prevention of medical errors as part of the licensure and renewal process. The 2-hour course shall count towards the total number of continuing education hours required for the profession. The course shall be approved by the board or department, as appropriate, and shall include a study of root-cause analysis, error reduction and prevention, and patient safety. In addition, the course approved by the Board of Medicine and the Board of Osteopathic Medicine shall include information relating to the five most misdiagnosed conditions during the previous biennium, as determined by the board. If the course is being offered by a facility licensed pursuant to chapter 395 for its employees, the board may approve up to 1 hour of the 2-hour course to be specifically related to error reduction and prevention methods used in that facility.

(8) The respective boards within the jurisdiction of the department, or the department when there is no board, may adopt rules to provide for the use of approved videocassette courses, not to exceed 5 hours per subject, to fulfill the continuing education requirements of the professions they regulate. Such rules shall provide for prior approval of the board, or the department when there is no board, of the criteria for and content of such courses and shall provide for a videocassette course validation form to be signed by the vendor and the licensee and submitted to the department, along with the license renewal application, for continuing education credit.

(9) Any board that currently requires continuing education for renewal of a license, or the department if there is no board, shall adopt rules to establish the criteria for continuing education courses. The rules may provide that up to a maximum of 25 percent of the required continuing education hours can be fulfilled by the performance of pro bono services to the indigent or to underserved populations or in areas of critical need within the state where the licensee practices. The board, or the department if there is no board, must require that any pro bono services be approved in advance in order to receive credit for continuing education under this subsection. The standard for determining indigency shall be that recognized by the Federal Poverty Income Guidelines produced by the United States Department of Health and Human Services. The rules may provide for approval by the
board, or the department if there is no board, that a part of the continuing education hours can be fulfilled by performing research in critical need areas or for training leading to advanced professional certification. The board, or the department if there is no board, may make rules to define underserved and critical need areas. The department shall adopt rules for administering continuing education requirements adopted by the boards or the department if there is no board.

(10) Notwithstanding any law to the contrary, an elected official who is licensed under a practice act administered by the Division of Medical Quality Assurance may hold employment for compensation with any public agency concurrent with such public service. Such dual service must be disclosed according to any disclosure required by applicable law.

(11) In any instance in which a licensee or applicant to the department is required to be in compliance with a particular provision by, on, or before a certain date, and if that date occurs on a Saturday, Sunday, or a legal holiday, then the licensee or applicant is deemed to be in compliance with the specific date requirement if the required action occurs on the first succeeding day which is not a Saturday, Sunday, or legal holiday.

(12) Pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, each party is required to provide his or her social security number in accordance with this section. Disclosure of social security numbers obtained through this requirement shall be limited to the purpose of administration of the Title IV-D program for child support enforcement.

History.—s. 44, ch. 92-33; s. 1, ch. 93-27; s. 23, ch. 93-129; s. 27, ch. 95-144; s. 2, ch. 96-309; s. 209, ch. 96-410; s. 1079, ch. 97-103; s. 64, ch. 97-170; s. 51, ch. 97-261; s. 54, ch. 97-278; ss. 7, 237, 262, ch. 98-166; s. 145, ch. 99-251; ss. 7, 237, 262, ch. 98-166; s. 145, ch. 99-251; s. 76, ch. 99-397; s. 45, ch. 2000-160; s. 20, ch. 2000-318; ss. 11, 68, ch. 2001-277; s. 11, ch. 2003-416; s. 1, ch. 2005-62.

Note.—Former s. 455.2141; s. 455.564.

456.014 Public inspection of information required from applicants; exceptions; examination hearing.—

(1) All information required by the department of any applicant shall be a public record and shall be open to public inspection pursuant to s. 119.07, except financial information, medical information, school transcripts, examination questions, answers, papers, grades, and grading keys, which are confidential and exempt from s. 119.07(1) and shall not be discussed with or made accessible to anyone except the program director of an approved program or accredited program as provided in s. 464.019(7), members of the board, the department, and staff thereof, who have a bona fide need to know such information. Any information supplied to the department by any other agency which is exempt from the provisions of chapter 119 or is confidential shall remain exempt or confidential pursuant to applicable law while in the custody of the department or the agency.

(2) The department shall establish by rule the procedure by which an applicant, and the applicant’s attorney, may review examination questions and answers. Examination questions and answers are not subject to discovery but may be introduced into evidence and considered only in camera in any
administrative proceeding under chapter 120. If an administrative hearing is held, the department shall provide challenged examination questions and answers to the administrative law judge. The examination questions and answers provided at the hearing are confidential and exempt from s. 119.07(1), unless invalidated by the administrative law judge.

(3) Unless an applicant notifies the department at least 5 days prior to an examination hearing of the applicant’s inability to attend, or unless an applicant can demonstrate an extreme emergency for failing to attend, the department may require an applicant who fails to attend to pay reasonable attorney’s fees, costs, and court costs of the department for the examination hearing.

History.—s. 76, ch. 97-261; s. 46, ch. 2000-160; s. 1, ch. 2010-37.

Note.—Former s. 455.647.

456.015 Limited licenses.—

(1) It is the intent of the Legislature that, absent a threat to the health, safety, and welfare of the public, the use of retired professionals in good standing to serve the indigent, underserved, or critical need populations of this state should be encouraged. To that end, the board, or the department when there is no board, may adopt rules to permit practice by retired professionals as limited licensees under this section.

(2) Any person desiring to obtain a limited license, when permitted by rule, shall submit to the board, or the department when there is no board, an application and fee, not to exceed $300, and an affidavit stating that the applicant has been licensed to practice in any jurisdiction in the United States for at least 10 years in the profession for which the applicant seeks a limited license. The affidavit shall also state that the applicant has retired or intends to retire from the practice of that profession and intends to practice only pursuant to the restrictions of the limited license granted pursuant to this section. If the applicant for a limited license submits a notarized statement from the employer stating that the applicant will not receive monetary compensation for any service involving the practice of her or his profession, the application and all licensure fees shall be waived.

(3) The board, or the department when there is no board, may deny limited licensure to an applicant who has committed, or is under investigation or prosecution for, any act which would constitute the basis for discipline pursuant to the provisions of this chapter or the applicable practice act.

(4) The recipient of a limited license may practice only in the employ of public agencies or institutions or nonprofit agencies or institutions which meet the requirements of s. 501(c)(3) of the Internal Revenue Code, and which provide professional liability coverage for acts or omissions of the limited licensee. A limited licensee may provide services only to the indigent, underserved, or critical need populations within the state. The standard for determining indigency shall be that recognized by the Federal Poverty Income Guidelines produced by the United States Department of Health and
Human Services. The board, or the department when there is no board, may adopt rules to define underserved and critical need areas and to ensure implementation of this section.

(5) A board, or the department when there is no board, may provide by rule for supervision of limited licensees to protect the health, safety, and welfare of the public.

(6) Each applicant granted a limited license is subject to all the provisions of this chapter and the respective practice act under which the limited license is issued which are not in conflict with this section.

(7) This section does not apply to chapter 458 or chapter 459.

History.—s. 50, ch. 97-261; s. 22, ch. 99-7; s. 47, ch. 2000-160.

Note.—Former s. 455.561.

456.016 Use of professional testing services.—Notwithstanding any other provision of law to the contrary, the department may use a professional testing service to prepare, administer, grade, and evaluate any computerized examination, when that service is available and approved by the board, or the department if there is no board.

History.—s. 53, ch. 97-261; s. 48, ch. 2000-160.

Note.—Former s. 455.571.

456.017 Examinations.—

(1)(a) The department shall provide, contract, or approve services for the development, preparation, administration, scoring, score reporting, and evaluation of all examinations, in consultation with the appropriate board. The department shall certify that examinations developed and approved by the department adequately and reliably measure an applicant’s ability to practice the profession regulated by the department. After an examination developed or approved by the department has been administered, the board, or the department when there is no board, may reject any question which does not reliably measure the general areas of competency specified in the rules of the board. The department may contract for the preparation, administration, scoring, score reporting, and evaluation of examinations, when such services are available and approved by the board.

(b) For each examination developed by the department or contracted vendor, to the extent not otherwise specified by statute, the board, or the department when there is no board, shall by rule specify the general areas of competency to be covered by each examination, the relative weight to be assigned in grading each area tested, and the score necessary to achieve a passing grade. The department shall assess fees to cover the actual cost for any purchase, development, validation, administration, and defense of required examinations. This subsection does not apply to national examinations approved and administered pursuant to paragraph (c). If a practical examination is deemed to be necessary, the rules shall specify the criteria by which examiners are to be selected, the grading criteria to be used by the examiner, the relative weight to be assigned in grading each criterion, and the score necessary to achieve a passing grade. When a mandatory standardization
exercise for a practical examination is required by law, the board, or the department when there is no board, may conduct such exercise. Therefore, board members, or employees of the department when there is no board, may serve as examiners at a practical examination with the consent of the board or department, as appropriate.

(c) The board, or the department when there is no board, shall approve by rule the use of one or more national examinations that the department has certified as meeting requirements of national examinations and generally accepted testing standards pursuant to department rules.

1. Providers of examinations seeking certification shall pay the actual costs incurred by the department in making a determination regarding the certification. The name and number of a candidate may be provided to a national contractor for the limited purpose of preparing the grade tape and information to be returned to the board or department; or, to the extent otherwise specified by rule, the candidate may apply directly to the vendor of the national examination and supply test score information to the department. The department may delegate to the board the duty to provide and administer the examination. Any national examination approved by a board, or the department when there is no board, prior to October 1, 1997, is deemed certified under this paragraph.

2. Neither the board nor the department may administer a state-developed written examination if a national examination has been certified by the department. The examination may be administered electronically if adequate security measures are used, as determined by rule of the department.

3. The board, or the department when there is no board, may administer a state-developed practical or clinical examination, as required by the applicable practice act, if all costs of development, purchase, validation, administration, review, and defense are paid by the examination candidate prior to the administration of the examination. If a national practical or clinical examination is available and certified by the department pursuant to this section, the board, or the department when there is no board, may administer the national examination.

4. It is the intent of the Legislature to reduce the costs associated with state examinations and to encourage the use of national examinations whenever possible.

(d) Each board, or the department when there is no board, shall adopt rules regarding the security and monitoring of examinations. The department shall implement those rules adopted by the respective boards. In order to maintain the security of examinations, the department may employ the procedures set forth in s. 456.065 to seek fines and injunctive relief against an examinee who violates the provisions of s. 456.018 or the rules adopted pursuant to this paragraph. The department, or any agent thereof, may, for the purposes of investigation, confiscate any written, photographic, or recording material or device in the possession of the examinee at the examination site which the department deems necessary to enforce such provisions or rules. The scores of candidates who have taken state-developed examinations shall be provided to the candidates electronically using a
candidate identification number, and the department shall post the aggregate scores on the department’s website without identifying the names of the candidates.

(e) If the professional board with jurisdiction over an examination concurs, the department may, for a fee, share with any other state’s licensing authority or a national testing entity an examination or examination item bank developed by or for the department unless prohibited by a contract entered into by the department for development or purchase of the examination. The department, with the concurrence of the appropriate board, shall establish guidelines that ensure security of a shared exam and shall require that any other state’s licensing authority comply with those guidelines. Those guidelines shall be approved by the appropriate professional board. All fees paid by the user shall be applied to the department’s examination and development program for professions regulated by this chapter.

(f) The department may adopt rules necessary to administer this subsection.

(2) For each examination developed by the department or a contracted vendor, the board, or the department when there is no board, shall adopt rules providing for reexamination of any applicants who failed an examination developed by the department or a contracted vendor. If both a written and a practical examination are given, an applicant shall be required to retake only the portion of the examination on which the applicant failed to achieve a passing grade, if the applicant successfully passes that portion within a reasonable time, as determined by rule of the board, or the department when there is no board, of passing the other portion. Except for national examinations approved and administered pursuant to this section, the department shall provide procedures for applicants who fail an examination developed by the department or a contracted vendor to review their examination questions, answers, papers, grades, and grading key for the questions the candidate answered incorrectly or, if not feasible, the parts of the examination failed. Applicants shall bear the actual cost for the department to provide examination review pursuant to this subsection. An applicant may waive in writing the confidentiality of the applicant’s examination grades. Notwithstanding any other provisions, only candidates who fail an examination with a score that is less than 10 percent below the minimum score required to pass the examination shall be entitled to challenge the validity of the examination at hearing.

(3) For each examination developed or administered by the department or a contracted vendor, an accurate record of each applicant’s examination questions, answers, papers, grades, and grading key shall be kept for a period of not less than 2 years immediately following the examination, and such record shall thereafter be maintained or destroyed as provided in chapters 119 and 257. This subsection does not apply to national examinations approved and administered pursuant to this section.

(4) Meetings of any member of the department or of any board within the department held for the exclusive purpose of creating or reviewing licensure examination questions or proposed examination
questions are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution. Any public records, such as tape recordings, minutes, or notes, generated during or as a result of such meetings are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, these exemptions shall not affect the right of any person to review an examination as provided in subsection (2).

(5) For examinations developed by the department or a contracted vendor, each board, or the department when there is no board, may provide licensure examinations in an applicant’s native language. Notwithstanding any other provision of law, applicants for examination or reexamination pursuant to this subsection shall bear the full cost for the department’s development, preparation, validation, administration, grading, and evaluation of any examination in a language other than English prior to the examination being administered. Requests for translated examinations must be on file in the board office at least 6 months prior to the scheduled examination. When determining whether it is in the public interest to allow the examination to be translated into a language other than English, the board shall consider the percentage of the population who speak the applicant’s native language. Applicants must apply for translation to the applicable board at least 6 months prior to the scheduled examination.

(6) In addition to meeting any other requirements for licensure by examination or by endorsement, and notwithstanding the provisions in paragraph (1)(c), an applicant may be required by a board, or the department when there is no board, to certify competency in state laws and rules relating to the applicable practice act. Beginning October 1, 2001, all laws and rules examinations shall be administered electronically unless the laws and rules examination is administered concurrently with another written examination for that profession or unless the electronic administration would be substantially more expensive.

(7) The department may post examination scores electronically on the Internet in lieu of mailing the scores to each applicant. The electronic posting of the examination scores meets the requirements of chapter 120 if the department also posts along with the examination scores a notification of the rights set forth in chapter 120. The date of receipt for purposes of chapter 120 is the date the examination scores are posted electronically. The department shall also notify the applicant when scores are posted electronically of the availability of postexamination review, if applicable.

History.—s. 46, ch. 92-33; s. 23, ch. 93-129; s. 1, ch. 95-367; s. 304, ch. 96-406; s. 1081, ch. 97-103; s. 54, ch. 97-261; s. 238, ch. 98-166; s. 79, ch. 99-397; s. 49, ch. 2000-160; s. 46, ch. 2000-318; s. 12, ch. 2001-277; s. 2, ch. 2005-62.

Note.—Former s. 455.2173; s. 455.574.

456.018 Penalty for theft or reproduction of an examination.—In addition to, or in lieu of, any other discipline imposed pursuant to s. 456.072, the theft of an examination in whole or in part or the act of reproducing or copying any examination administered by the department, whether such
examination is reproduced or copied in part or in whole and by any means, constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 55, ch. 97-261; s. 50, ch. 2000-160; s. 27, ch. 2000-318.

Note.—Former s. 455.577.

456.019 Restriction on requirement of citizenship.—A person is not disqualified from practicing an occupation or profession regulated by the state solely because she or he is not a United States citizen.

History.—s. 36, ch. 97-261; s. 20, ch. 99-7; s. 51, ch. 2000-160.

Note.—Former s. 455.511.

456.021 Qualification of immigrants for examination to practice a licensed profession or occupation.—

(1) It is the declared purpose of this section to encourage the use of foreign-speaking Florida residents duly qualified to become actively qualified in their professions so that all people of this state may receive better services.

(2) Any person who has successfully completed, or is currently enrolled in, an approved course of study created pursuant to chapters 74-105 and 75-177, Laws of Florida, shall be deemed qualified for examination and reexaminations for a professional or occupational license which shall be administered in the English language unless 15 or more such applicants request that the reexamination be administered in their native language. In the event that such reexamination is administered in a foreign language, the full cost to the board of preparing and administering it shall be borne by the applicants.

(3) Each board within the department shall adopt and implement programs designed to qualify for examination all persons who were resident nationals of the Republic of Cuba and who, on July 1, 1977, were residents of this state.

History.—s. 37, ch. 97-261; s. 51, ch. 2000-160.

Note.—Former s. 455.514.

456.022 Foreign-trained professionals; special examination and license provisions.—

(1) When not otherwise provided by law, within its jurisdiction, the department shall by rule provide procedures under which exiled professionals may be examined within each practice act. A person shall be eligible for such examination if the person:

(a) Immigrated to the United States after leaving the person’s home country because of political reasons, provided such country is located in the Western Hemisphere and lacks diplomatic relations with the United States;

(b) Applies to the department and submits a fee;

(c) Was a Florida resident immediately preceding the person’s application;

(d) Demonstrates to the department, through submission of documentation verified by the applicant’s respective professional association in exile, that the applicant was graduated with an
appropriate professional or occupational degree from a college or university; however, the department may not require receipt of any documentation from the Republic of Cuba as a condition of eligibility under this section;

(e) Lawfully practiced the profession for at least 3 years;

(f) Prior to 1980, successfully completed an approved course of study pursuant to chapters 74-105 and 75-177, Laws of Florida; and

(g) Presents a certificate demonstrating the successful completion of a continuing education program which offers a course of study that will prepare the applicant for the examination offered under subsection (2). The department shall develop rules for the approval of such programs for its boards.

(2) Upon request of a person who meets the requirements of subsection (1) and submits an examination fee, the department, for its boards, shall provide a written practical examination which tests the person's current ability to practice the profession competently in accordance with the actual practice of the profession. Evidence of meeting the requirements of subsection (1) shall be treated by the department as evidence of the applicant's preparation in the academic and preprofessional fundamentals necessary for successful professional practice, and the applicant shall not be examined by the department on such fundamentals.

(3) The fees charged for the examinations offered under subsection (2) shall be established by the department, for its boards, by rule and shall be sufficient to develop or to contract for the development of the examination and its administration, grading, and grade reviews.

(4) The department shall examine any applicant who meets the requirements of subsections (1) and (2). Upon passing the examination and the issuance of the license, a licensee is subject to the administrative requirements of this chapter and the respective practice act under which the license is issued. Each applicant so licensed is subject to all provisions of this chapter and the respective practice act under which the license was issued.

(5) Upon a request by an applicant otherwise qualified under this section, the examinations offered under subsection (2) may be given in the applicant's native language, provided that any translation costs are borne by the applicant.

(6) The department, for its boards, shall not issue an initial license to, or renew a license of, any applicant or licensee who is under investigation or prosecution in any jurisdiction for an action which would constitute a violation of this chapter or the professional practice acts administered by the department and the boards until such time as the investigation or prosecution is complete, at which time the provisions of the professional practice acts shall apply.

History.—s. 56, ch. 97-261; s. 52, ch. 2000-160.

Note.—Former s. 455.581.
456.023 Exemption for certain out-of-state or foreign professionals; limited practice permitted.—

(1) A professional of any other state or of any territory or other jurisdiction of the United States or of any other nation or foreign jurisdiction is exempt from the requirements of licensure under this chapter and the applicable professional practice act under the agency with regulatory jurisdiction over the profession if that profession is regulated in this state under the agency with regulatory jurisdiction over the profession and if that person:

(a) Holds, if so required in the jurisdiction in which that person practices, an active license to practice that profession.
(b) Engages in the active practice of that profession outside the state.
(c) Is employed or designated in that professional capacity by a sports entity visiting the state for a specific sporting event.

(2) A professional’s practice under this section is limited to the members, coaches, and staff of the team for which that professional is employed or designated and to any animals used if the sporting event for which that professional is employed or designated involves animals. A professional practicing under authority of this section shall not have practice privileges in any licensed health care facility or veterinary facility without the approval of that facility.

History.—s. 57, ch. 97-261; s. 53, ch. 2000-160.

Note.—Former s. 455.584.

456.024 Members of Armed Forces in good standing with administrative boards or the department; spouses.—

(1) Any member of the Armed Forces of the United States now or hereafter on active duty who, at the time of becoming such a member, was in good standing with any administrative board of the state, or the department when there is no board, and was entitled to practice or engage in his or her profession or vocation in the state shall be kept in good standing by such administrative board, or the department when there is no board, without registering, paying dues or fees, or performing any other act on his or her part to be performed, as long as he or she is a member of the Armed Forces of the United States on active duty and for a period of 6 months after discharge from active duty as a member of the Armed Forces of the United States, provided he or she is not engaged in his or her licensed profession or vocation in the private sector for profit.

(2) The boards listed in s. 20.43, or the department when there is no board, shall adopt rules exempting the spouses of members of the Armed Forces of the United States from licensure renewal provisions, but only in cases of absence from the state because of their spouses’ duties with the Armed Forces.

History.—s. 35, ch. 97-261; s. 19, ch. 99-7; s. 73, ch. 99-397; s. 54, ch. 2000-160.

Note.—Former s. 455.507.
456.025 Fees; receipts; disposition.—

(1) It is the intent of the Legislature that all costs of regulating health care professions and practitioners shall be borne solely by licensees and licensure applicants. It is also the intent of the Legislature that fees should be reasonable and not serve as a barrier to licensure. Moreover, it is the intent of the Legislature that the department operate as efficiently as possible and regularly report to the Legislature additional methods to streamline operational costs. Therefore, the boards in consultation with the department, or the department if there is no board, shall, by rule, set renewal fees which:
   
   (a) Shall be based on revenue projections prepared using generally accepted accounting procedures;
   
   (b) Shall be adequate to cover all expenses relating to that board identified in the department’s long-range policy plan, as required by s. 456.005;
   
   (c) Shall be reasonable, fair, and not serve as a barrier to licensure;
   
   (d) Shall be based on potential earnings from working under the scope of the license;
   
   (e) Shall be similar to fees imposed on similar licensure types;
   
   (f) Shall not be more than 10 percent greater than the actual cost to regulate that profession for the previous biennium; and
   
   (g) Shall be subject to challenge pursuant to chapter 120.

(2) The chairpersons of the boards and councils listed in s. 20.43(3)(g) shall meet annually at division headquarters to review the long-range policy plan required by s. 456.005 and current and proposed fee schedules. The chairpersons shall make recommendations for any necessary statutory changes relating to fees and fee caps. Such recommendations shall be compiled by the Department of Health and be included in the annual report to the Legislature required by s. 456.026 as well as be included in the long-range policy plan required by s. 456.005.

(3) Each board within the jurisdiction of the department, or the department when there is no board, shall determine by rule the amount of license fees for the profession it regulates, based upon long-range estimates prepared by the department of the revenue required to implement laws relating to the regulation of professions by the department and the board. Each board, or the department if there is no board, shall ensure that license fees are adequate to cover all anticipated costs and to maintain a reasonable cash balance, as determined by rule of the agency, with advice of the applicable board. If sufficient action is not taken by a board within 1 year after notification by the department that license fees are projected to be inadequate, the department shall set license fees on behalf of the applicable board to cover anticipated costs and to maintain the required cash balance. The department shall include recommended fee cap increases in its annual report to the Legislature. Further, it is the legislative intent that no regulated profession operate with a negative cash balance. The department may provide by rule for advancing sufficient funds to any profession operating with a negative cash balance.
balance. The advancement may be for a period not to exceed 2 consecutive years, and the regulated profession must pay interest. Interest shall be calculated at the current rate earned on investments of a trust fund used by the department to implement this chapter. Interest earned shall be allocated to the various funds in accordance with the allocation of investment earnings during the period of the advance.

(4) Each board, or the department if there is no board, may charge a fee not to exceed $25, as determined by rule, for the issuance of a wall certificate pursuant to s. 456.013(2) requested by a licensee who was licensed prior to July 1, 1998, or for the issuance of a duplicate wall certificate requested by any licensee.

(5) Each board, or the department if there is no board, may, by rule, assess and collect a one-time fee from each active status licensee and each inactive status licensee in an amount necessary to eliminate a cash deficit or, if there is not a cash deficit, in an amount sufficient to maintain the financial integrity of the professions as required in this section. Not more than one such assessment may be made in any 4-year period without specific legislative authorization.

(6) If the cash balance of the trust fund at the end of any fiscal year exceeds the total appropriation provided for the regulation of the health care professions in the prior fiscal year, the boards, in consultation with the department, may lower the license renewal fees.

(7) Each board, or the department if there is no board, shall establish, by rule, a fee not to exceed $250 for anyone seeking approval to provide continuing education courses or programs and shall establish by rule a biennial renewal fee not to exceed $250 for the renewal of providership of such courses. The fees collected from continuing education providers shall be used for the purposes of reviewing course provider applications, monitoring the integrity of the courses provided, covering legal expenses incurred as a result of not granting or renewing a providership, and developing and maintaining an electronic continuing education tracking system. The department shall implement an electronic continuing education tracking system for each new biennial renewal cycle for which electronic renewals are implemented after the effective date of this act and shall integrate such system into the licensure and renewal system. All approved continuing education providers shall provide information on course attendance to the department necessary to implement the electronic tracking system. The department shall, by rule, specify the form and procedures by which the information is to be submitted.

(8) All moneys collected by the department from fees or fines or from costs awarded to the agency by a court shall be paid into a trust fund used by the department to implement this chapter. The Legislature shall appropriate funds from this trust fund sufficient to carry out this chapter and the provisions of law with respect to professions regulated by the Division of Medical Quality Assurance within the department and the boards. The department may contract with public and private entities to receive and deposit revenue pursuant to this section. The department shall maintain separate
accounts in the trust fund used by the department to implement this chapter for every profession within the department. To the maximum extent possible, the department shall directly charge all expenses to the account of each regulated profession. For the purpose of this subsection, direct charge expenses include, but are not limited to, costs for investigations, examinations, and legal services. For expenses that cannot be charged directly, the department shall provide for the proportionate allocation among the accounts of expenses incurred by the department in the performance of its duties with respect to each regulated profession. The regulation by the department of professions, as defined in this chapter, shall be financed solely from revenue collected by it from fees and other charges and deposited in the Medical Quality Assurance Trust Fund, and all such revenue is hereby appropriated to the department. However, it is legislative intent that each profession shall operate within its anticipated fees. The department may not expend funds from the account of a profession to pay for the expenses incurred on behalf of another profession, except that the Board of Nursing must pay for any costs incurred in the regulation of certified nursing assistants. The department shall maintain adequate records to support its allocation of agency expenses. The department shall provide any board with reasonable access to these records upon request. On or before October 1 of each year, the department shall provide each board an annual report of revenue and direct and allocated expenses related to the operation of that profession. The board shall use these reports and the department’s adopted long-range plan to determine the amount of license fees. A condensed version of this information, with the department’s recommendations, shall be included in the annual report to the Legislature prepared under s. 456.026.

(9) The department shall provide a management report of revenues and expenditures, performance measures, and recommendations to each board at least once a quarter.

(10) If a duplicate license is required or requested by the licensee, the board or, if there is no board, the department may charge a fee as determined by rule not to exceed $25 before issuance of the duplicate license.

(11) The department or the appropriate board shall charge a fee not to exceed $25 for the certification of a public record. The fee shall be determined by rule of the department. The department or the appropriate board shall assess a fee for duplicating a public record as provided in s. 119.07(4).

History.—s. 49, ch. 92-33; s. 23, ch. 93-129; s. 58, ch. 97-261; s. 80, ch. 99-397; s. 55, ch. 2000-160; ss. 32, 164, ch. 2000-318; s. 73, ch. 2001-62; s. 6, ch. 2001-277; s. 12, ch. 2003-416; s. 45, ch. 2004-335; s. 149, ch. 2010-102.

Note.—Former s. 455.220; s. 455.587.

456.026 Annual report concerning finances, administrative complaints, disciplinary actions, and recommendations.—The department is directed to prepare and submit a report to the President of the Senate and the Speaker of the House of Representatives by November 1 of each year. In addition to
finances and any other information the Legislature may require, the report shall include statistics and relevant information, profession by profession, detailing:

1. The revenues, expenditures, and cash balances for the prior year, and a review of the adequacy of existing fees.
2. The number of complaints received and investigated.
3. The number of findings of probable cause made.
4. The number of findings of no probable cause made.
5. The number of administrative complaints filed.
6. The disposition of all administrative complaints.
7. A description of disciplinary actions taken.
8. A description of any effort by the department to reduce or otherwise close any investigation or disciplinary proceeding not before the Division of Administrative Hearings under chapter 120 or otherwise not completed within 1 year after the initial filing of a complaint under this chapter.
9. The status of the development and implementation of rules providing for disciplinary guidelines pursuant to s. 456.079.
10. Such recommendations for administrative and statutory changes necessary to facilitate efficient and cost-effective operation of the department and the various boards.

History.—s. 75, ch. 97-261; s. 56, ch. 2000-160; s. 4, ch. 2002-254.

Note.—Former s. 455.644.

456.027 Education; accreditation.—Notwithstanding any other provision of law, educational programs and institutions which are required by statute to be accredited, but which were accredited by an agency that has since ceased to perform an accrediting function, shall be recognized until such programs and institutions are accredited by a qualified successor to the original accrediting agency, an accrediting agency recognized by the United States Department of Education, or an accrediting agency recognized by the board, or the department when there is no board.

History.—s. 48, ch. 97-261; s. 57, ch. 2000-160.

Note.—Former s. 455.551.

456.028 Consultation with postsecondary education boards prior to adoption of changes to training requirements.—Any state agency or board that has jurisdiction over the regulation of a profession or occupation shall consult with the Commission for Independent Education, the Board of Governors of the State University System, and the State Board of Education prior to adopting any changes to training requirements relating to entry into the profession or occupation. This consultation must allow the educational board to provide advice regarding the impact of the proposed changes in terms of the length of time necessary to complete the training program and the fiscal impact of the changes. The educational board must be consulted only when an institution offering the training program falls under its jurisdiction.
456.029 Education; substituting demonstration of competency for clock-hour requirements.— Any board, or the department when there is no board, that requires student completion of a specific number of clock hours of classroom instruction for initial licensure purposes shall establish the minimal competencies that such students must demonstrate in order to be licensed. The demonstration of such competencies may be substituted for specific classroom clock-hour requirements established in statute or rule which are related to instructional programs for licensure purposes. Student demonstration of the established minimum competencies shall be certified by the educational institution. The provisions of this section shall not apply to boards for which federal licensure standards are more restrictive or stringent than the standards prescribed in statute.

History.—s. 49, ch. 97-261; s. 35, ch. 98-421; s. 57, ch. 2000-160; s. 72, ch. 2004-5; s. 14, ch. 2004-41; s. 54, ch. 2007-217.

Note.—Former s. 455.554.

456.031 Requirement for instruction on domestic violence.—

(1)(a) The appropriate board shall require each person licensed or certified under chapter 458, chapter 459, part I of chapter 464, chapter 466, chapter 467, chapter 490, or chapter 491 to complete a 2-hour continuing education course, approved by the board, on domestic violence, as defined in s. 741.28, as part of every third biennial relicensure or recertification. The course shall consist of information on the number of patients in that professional’s practice who are likely to be victims of domestic violence and the number who are likely to be perpetrators of domestic violence, screening procedures for determining whether a patient has any history of being either a victim or a perpetrator of domestic violence, and instruction on how to provide such patients with information on, or how to refer such patients to, resources in the local community, such as domestic violence centers and other advocacy groups, that provide legal aid, shelter, victim counseling, batterer counseling, or child protection services.

(b) Each such licensee or certificateholder shall submit confirmation of having completed such course, on a form provided by the board, when submitting fees for every third biennial renewal.

(c) The board may approve additional equivalent courses that may be used to satisfy the requirements of paragraph (a). Each licensing board that requires a licensee to complete an educational course pursuant to this subsection may include the hour required for completion of the course in the total hours of continuing education required by law for such profession unless the continuing education requirements for such profession consist of fewer than 30 hours biennially.

(d) Any person holding two or more licenses subject to the provisions of this subsection shall be permitted to show proof of having taken one board-approved course on domestic violence, for purposes of relicensure or recertification for additional licenses.
(e) Failure to comply with the requirements of this subsection shall constitute grounds for disciplinary action under each respective practice act and under s. 456.072(1)(k). In addition to discipline by the board, the licensee shall be required to complete such course.

(2) Each board may adopt rules to carry out the provisions of this section.

History.—s. 4, ch. 95-187; s. 61, ch. 97-261; s. 58, ch. 2000-160; s. 6, ch. 2000-295; s. 112, ch. 2000-318; s. 1, ch. 2001-176; s. 105, ch. 2001-277; s. 1, ch. 2006-251.

Note.—Former s. 455.222; s. 455.597.

456.032 Hepatitis B or HIV carriers.—

(1) The department and each appropriate board within the Division of Medical Quality Assurance shall have the authority to establish procedures to handle, counsel, and provide other services to health care professionals within their respective boards who are infected with hepatitis B or the human immunodeficiency virus.

(2) Any person licensed by the department and any other person employed by a health care facility who contracts a blood-borne infection shall have a rebuttable presumption that the illness was contracted in the course and scope of his or her employment, provided that the person, as soon as practicable, reports to the person’s supervisor or the facility’s risk manager any significant exposure, as that term is defined in s. 381.004(2)(c), to blood or body fluids. The employer may test the blood or body fluid to determine if it is infected with the same disease contracted by the employee. The employer may rebut the presumption by the preponderance of the evidence. Except as expressly provided in this subsection, there shall be no presumption that a blood-borne infection is a job-related injury or illness.

History.—s. 75, ch. 91-297; s. 76, ch. 94-218; s. 62, ch. 97-261; s. 81, ch. 99-397; s. 59, ch. 2000-160.

Note.—Former s. 455.2224; s. 455.601.

456.033 Requirement for instruction for certain licensees on HIV and AIDS.—The following requirements apply to each person licensed or certified under chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 463; part I of chapter 464; chapter 465; chapter 466; part II, part III, part V, or part X of chapter 468; or chapter 486:

(1) Each person shall be required by the appropriate board to complete no later than upon first renewal a continuing educational course, approved by the board, on human immunodeficiency virus and acquired immune deficiency syndrome as part of biennial relicensure or recertification. The course shall consist of education on the modes of transmission, infection control procedures, clinical management, and prevention of human immunodeficiency virus and acquired immune deficiency syndrome. Such course shall include information on current Florida law on acquired immune deficiency syndrome and its impact on testing, confidentiality of test results, treatment of patients, and any protocols and procedures applicable to human immunodeficiency virus counseling and testing,
reporting, the offering of HIV testing to pregnant women, and partner notification issues pursuant to ss. 381.004 and 384.25.

(2) Each person shall submit confirmation of having completed the course required under subsection (1), on a form as provided by the board, when submitting fees for first renewal.

(3) The board shall have the authority to approve additional equivalent courses that may be used to satisfy the requirements in subsection (1). Each licensing board that requires a licensee to complete an educational course pursuant to this section may count the hours required for completion of the course included in the total continuing educational requirements as required by law.

(4) Any person holding two or more licenses subject to the provisions of this section shall be permitted to show proof of having taken one board-approved course on human immunodeficiency virus and acquired immune deficiency syndrome, for purposes of relicensure or recertification for additional licenses.

(5) Failure to comply with the above requirements shall constitute grounds for disciplinary action under each respective licensing chapter and s. 456.072(1)(e). In addition to discipline by the board, the licensee shall be required to complete the course.


Note.---Former s. 455.604.

456.034 Athletic trainers and massage therapists; requirement for instruction on HIV and AIDS.

(1) The board, or the department where there is no board, shall require each person licensed or certified under part XIII of chapter 468 or chapter 480 to complete a continuing educational course approved by the board, or the department where there is no board, on human immunodeficiency virus and acquired immune deficiency syndrome as part of biennial relicensure or recertification. The course shall consist of education on modes of transmission, infection control procedures, clinical management, and prevention of human immunodeficiency virus and acquired immune deficiency syndrome, with an emphasis on appropriate behavior and attitude change.

(2) When filing fees for each biennial renewal, each licensee shall submit confirmation of having completed the course, on a form provided by the board or by the department if there is no board. At the time of the subsequent biennial renewal when coursework is to be completed, if the licensee has not submitted confirmation which has been received and recorded by the board, or department if there is no board, the department shall not renew the license.

(3) The board, or the department where there is no board, shall have the authority to approve additional equivalent courses that may be used to satisfy the requirements in subsection (1).

(4) The board, or the department where there is no board, shall require, as a condition of granting a license under any of the chapters or parts thereof specified in subsection (1), that an applicant
making initial application for licensure complete an educational course acceptable to the board, or the
department where there is no board, on human immunodeficiency virus and acquired immune
deficiency syndrome. An applicant who has not taken a course at the time of licensure shall, upon an
affidavit showing good cause, be allowed 6 months to complete this requirement.

(5) The board, or the department where there is no board, shall have the authority to adopt rules
to carry out the provisions of this section.

(6) Any professional holding two or more licenses subject to the provisions of this section shall be
permitted to show proof of having taken one board-approved course, or one department-approved
course where there is no board, on human immunodeficiency virus and acquired immune deficiency
syndrome, for purposes of relicensure or recertification for additional licenses.

History.—s. 64, ch. 97-261; s. 11, ch. 99-349; s. 83, ch. 99-397; s. 61, ch. 2000-160; s. 150, ch. 2010-102.

Note.—Former s. 455.607.

456.035 Address of record.—

(1) Each licensee of the department is solely responsible for notifying the department in writing of
the licensee’s current mailing address and place of practice, as defined by rule of the board or the
department if there is no board. Electronic notification shall be allowed by the department; however,
it shall be the responsibility of the licensee to ensure that the electronic notification was received by
the department. A licensee’s failure to notify the department of a change of address constitutes a
violation of this section, and the licensee may be disciplined by the board or the department if there is
no board.

(2) Notwithstanding any other law, service by regular mail to a licensee’s last known address of
record with the department constitutes adequate and sufficient notice to the licensee for any official
communication to the licensee by the board or the department except when other service is required
under s. 456.076.

History.—s. 97, ch. 97-261; s. 39, ch. 98-166; s. 62, ch. 2000-160; s. 13, ch. 2001-277.

Note.—Former s. 455.717.

456.036 Licenses; active and inactive status; delinquency.—

(1) A licensee may practice a profession only if the licensee has an active status license. A licensee
who practices a profession with an inactive status license, a retired status license, or a delinquent
license is in violation of this section and s. 456.072, and the board, or the department if there is no
board, may impose discipline on the licensee.

(2) Each board, or the department if there is no board, shall permit a licensee to choose, at the
time of licensure renewal, an active, inactive, or retired status.

(3) Each board, or the department if there is no board, shall by rule impose a fee for renewal of an
active or inactive status license. The renewal fee for an inactive status license may not exceed the fee
for an active status license.
(4) Notwithstanding any other provision of law to the contrary, a licensee may change licensure status at any time.

(a) Active status licensees choosing inactive status at the time of license renewal must pay the inactive status renewal fee, and, if applicable, the delinquency fee and the fee to change licensure status. Active status licensees choosing inactive status at any other time than at the time of license renewal must pay the fee to change licensure status.

(b) An active status licensee or an inactive status licensee who chooses retired status at the time of license renewal must pay the retired status fee, which may not exceed $50 as established by rule of the board or the department if there is no board. An active status licensee or inactive status licensee who chooses retired status at any time other than at the time of license renewal must pay the retired status fee plus a change-of-status fee.

(c) An inactive status licensee may change to active status at any time, if the licensee meets all requirements for active status. Inactive status licensees choosing active status at the time of license renewal must pay the active status renewal fee, any applicable reactivation fees as set by the board, or the department if there is no board, and, if applicable, the delinquency fee and the fee to change licensure status. Inactive status licensees choosing active status at any other time than at the time of license renewal must pay the difference between the inactive status renewal fee and the active status renewal fee, if any exists, any applicable reactivation fees as set by the board, or the department if there is no board, and the fee to change licensure status.

(5) A licensee must apply with a complete application, as defined by rule of the board, or the department if there is no board, to renew an active or inactive status license before the license expires. If a licensee fails to renew before the license expires, the license becomes delinquent in the license cycle following expiration.

(6) A delinquent licensee must affirmatively apply with a complete application, as defined by rule of the board, or the department if there is no board, for active or inactive status during the licensure cycle in which a licensee becomes delinquent. Failure by a delinquent licensee to become active or inactive before the expiration of the current licensure cycle renders the license null without any further action by the board or the department. Any subsequent licensure shall be as a result of applying for and meeting all requirements imposed on an applicant for new licensure.

(7) Each board, or the department if there is no board, shall by rule impose an additional delinquency fee, not to exceed the biennial renewal fee for an active status license, on a delinquent licensee when such licensee applies for active or inactive status.

(8) Each board, or the department if there is no board, shall by rule impose an additional fee, not to exceed the biennial renewal fee for an active status license, for processing a licensee’s request to change licensure status at any time other than at the beginning of a licensure cycle.
Each board, or the department if there is no board, may by rule impose reasonable conditions, excluding full reexamination but including part of a national examination or a special purpose examination to assess current competency, necessary to ensure that a licensee who has been on inactive status for more than two consecutive biennial licensure cycles and who applies for active status can practice with the care and skill sufficient to protect the health, safety, and welfare of the public. Reactivation requirements may differ depending on the length of time licensees are inactive. The costs to meet reactivation requirements shall be borne by licensees requesting reactivation.

Each board, or the department if there is no board, may by rule impose reasonable conditions, including full reexamination to assess current competency, in order to ensure that a licensee who has been on retired status for more than 5 years, or a licensee from another state who has not been in active practice within the past 5 years, and who applies for active status is able to practice with the care and skill sufficient to protect the health, safety, and welfare of the public. Requirements for reactivation of a license may differ depending on the length of time a licensee has been retired.

Before reactivation, an inactive status licensee or a delinquent licensee who was inactive prior to becoming delinquent must meet the same continuing education requirements, if any, imposed on an active status licensee for all biennial licensure periods in which the licensee was inactive or delinquent.

Before the license of a retired status licensee is reactivated, the licensee must meet the same requirements for continuing education, if any, and pay any renewal fees imposed on an active status licensee for all biennial licensure periods during which the licensee was on retired status.

The status or a change in status of a licensee does not alter in any way the right of the board, or of the department if there is no board, to impose discipline or to enforce discipline previously imposed on a licensee for acts or omissions committed by the licensee while holding a license, whether active, inactive, retired, or delinquent.

This section does not apply to a business establishment registered, permitted, or licensed by the department to do business.

The board, or the department when there is no board, may adopt rules pursuant to ss. 120.536(1) and 120.54 as necessary to implement this section.


Note.—Former s. 455.711.

456.037 Business establishments; requirements for active status licenses; delinquency; discipline; applicability.—

A business establishment regulated by the Division of Medical Quality Assurance pursuant to this chapter may provide regulated services only if the business establishment has an active status license. A business establishment that provides regulated services without an active status license is in violation
of this section and s. 456.072, and the board, or the department if there is no board, may impose
discipline on the business establishment.

(2) A business establishment must apply with a complete application, as defined by rule of the
board, or the department if there is no board, to renew an active status license before the license
expires. If a business establishment fails to renew before the license expires, the license becomes
delinquent, except as otherwise provided in statute, in the license cycle following expiration.

(3) A delinquent business establishment must apply with a complete application, as defined by rule
of the board, or the department if there is no board, to renew an active status license within 6 months after becoming
delinquent. Failure of a delinquent business establishment to renew the license within the 6 months
after the expiration date of the license renders the license null without any further action by the board
or the department. Any subsequent licensure shall be as a result of applying for and meeting all
requirements imposed on a business establishment for new licensure.

(4) The status or a change in status of a business establishment license does not alter in any way
the right of the board, or of the department if there is no board, to impose discipline or to enforce
discipline previously imposed on a business establishment for acts or omissions committed by the
business establishment while holding a license, whether active or null.

(5) This section applies to any business establishment registered, permitted, or licensed by the
department to do business. Business establishments include, but are not limited to, dental
laboratories, electrology facilities, massage establishments, pharmacies, and pain-management clinics
required to be registered under s. 458.3265 or s. 459.0137.

History.—s. 89, ch. 99-397; s. 64, ch. 2000-160; s. 27, ch. 2000-318; s. 102, ch. 2000-349; s. 1, ch. 2010-211.

Note.—Former s. 455.712.

456.038 Renewal and cancellation notices.—

(1) At least 90 days before the end of a licensure cycle, the department shall:

(a) Forward a licensure renewal notification to an active or inactive status licensee at the
licensee’s last known address of record with the department.

(b) Forward a notice of pending cancellation of licensure to a delinquent licensee at the licensee’s
last known address of record with the department.

(2) Each licensure renewal notification and each notice of pending cancellation of licensure must
state conspicuously that a licensee who remains on inactive status for more than two consecutive
biennial licensure cycles and who wishes to reactivate the license may be required to demonstrate the
competency to resume active practice by sitting for a special purpose examination or by completing
other reactivation requirements, as defined by rule of the board or the department if there is no
board.

History.—s. 96, ch. 97-261; s. 65, ch. 2000-160; s. 33, ch. 2000-318.

Note.—Former s. 455.714.
456.039 Designated health care professionals; information required for licensure.—

(1) Each person who applies for initial licensure as a physician under chapter 458, chapter 459, chapter 460, or chapter 461, except a person applying for registration pursuant to ss. 458.345 and 459.021, must, at the time of application, and each physician who applies for license renewal under chapter 458, chapter 459, chapter 460, or chapter 461, except a person registered pursuant to ss. 458.345 and 459.021, must, in conjunction with the renewal of such license and under procedures adopted by the Department of Health, and in addition to any other information that may be required from the applicant, furnish the following information to the Department of Health:

(a) 1. The name of each medical school that the applicant has attended, with the dates of attendance and the date of graduation, and a description of all graduate medical education completed by the applicant, excluding any coursework taken to satisfy medical licensure continuing education requirements.

2. The name of each hospital at which the applicant has privileges.

3. The address at which the applicant will primarily conduct his or her practice.

4. Any certification that the applicant has received from a specialty board that is recognized by the board to which the applicant is applying.

5. The year that the applicant began practicing medicine.

6. Any appointment to the faculty of a medical school which the applicant currently holds and an indication as to whether the applicant has had the responsibility for graduate medical education within the most recent 10 years.

7. A description of any criminal offense of which the applicant has been found guilty, regardless of whether adjudication of guilt was withheld, or to which the applicant has pled guilty or nolo contendere. A criminal offense committed in another jurisdiction which would have been a felony or misdemeanor if committed in this state must be reported. If the applicant indicates that a criminal offense is under appeal and submits a copy of the notice for appeal of that criminal offense, the department must state that the criminal offense is under appeal if the criminal offense is reported in the applicant’s profile. If the applicant indicates to the department that a criminal offense is under appeal, the applicant must, upon disposition of the appeal, submit to the department a copy of the final written order of disposition.

8. A description of any final disciplinary action taken within the previous 10 years against the applicant by the agency regulating the profession that the applicant is or has been licensed to practice, whether in this state or in any other jurisdiction, by a specialty board that is recognized by the American Board of Medical Specialties, the American Osteopathic Association, or a similar national organization, or by a licensed hospital, health maintenance organization, prepaid health clinic, ambulatory surgical center, or nursing home. Disciplinary action includes resignation from or nonrenewal of medical staff membership or the restriction of privileges at a licensed hospital, health
maintenance organization, prepaid health clinic, ambulatory surgical center, or nursing home taken in lieu of or in settlement of a pending disciplinary case related to competence or character. If the applicant indicates that the disciplinary action is under appeal and submits a copy of the document initiating an appeal of the disciplinary action, the department must state that the disciplinary action is under appeal if the disciplinary action is reported in the applicant's profile.

9. Relevant professional qualifications as defined by the applicable board.

(b) In addition to the information required under paragraph (a), each applicant who seeks licensure under chapter 458, chapter 459, or chapter 461, and who has practiced previously in this state or in another jurisdiction or a foreign country must provide the information required of licensees under those chapters pursuant to s. 456.049. An applicant for licensure under chapter 460 who has practiced previously in this state or in another jurisdiction or a foreign country must provide the same information as is required of licensees under chapter 458, pursuant to s. 456.049.

(2) Before the issuance of the licensure renewal notice required by s. 456.038, the Department of Health shall send a notice to each person licensed under chapter 458, chapter 459, chapter 460, or chapter 461, at the licensee's last known address of record with the department, regarding the requirements for information to be submitted by those practitioners pursuant to this section in conjunction with the renewal of such license and under procedures adopted by the department.

(3) Each person who has submitted information pursuant to subsection (1) must update that information in writing by notifying the Department of Health within 45 days after the occurrence of an event or the attainment of a status that is required to be reported by subsection (1). Failure to comply with the requirements of this subsection to update and submit information constitutes a ground for disciplinary action under each respective licensing chapter and s. 456.072(1)(k). For failure to comply with the requirements of this subsection to update and submit information, the department or board, as appropriate, may:

(a) Refuse to issue a license to any person applying for initial licensure who fails to submit and update the required information.

(b) Issue a citation to any licensee who fails to submit and update the required information and may fine the licensee up to $50 for each day that the licensee is not in compliance with this subsection. The citation must clearly state that the licensee may choose, in lieu of accepting the citation, to follow the procedure under s. 456.073. If the licensee disputes the matter in the citation, the procedures set forth in s. 456.073 must be followed. However, if the licensee does not dispute the matter in the citation with the department within 30 days after the citation is served, the citation becomes a final order and constitutes discipline. Service of a citation may be made by personal service or certified mail, restricted delivery, to the subject at the licensee’s last known address.
An applicant for initial licensure must submit a set of fingerprints to the Department of Health in accordance with s. 458.311, s. 458.3115, s. 458.3124, s. 458.313, s. 459.0055, s. 460.406, or s. 461.006.

(b) An applicant for renewed licensure must submit a set of fingerprints for the initial renewal of his or her license after January 1, 2000, to the agency regulating that profession in accordance with procedures established under s. 458.319, s. 459.008, s. 460.407, or s. 461.007.

(c) The Department of Health shall submit the fingerprints provided by an applicant for initial licensure to the Florida Department of Law Enforcement for a statewide criminal history check, and the Florida Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check of the applicant. The department shall submit the fingerprints provided by an applicant for a renewed license to the Florida Department of Law Enforcement for a statewide criminal history check, and the Florida Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check for the initial renewal of the applicant’s license after January 1, 2000; for any subsequent renewal of the applicant’s license, the department shall submit the required information for a statewide criminal history check of the applicant.

(5) Each person who is required to submit information pursuant to this section may submit additional information. Such information may include, but is not limited to:

(a) Information regarding publications in peer-reviewed medical literature within the previous 10 years.
(b) Information regarding professional or community service activities or awards.
(c) Languages, other than English, used by the applicant to communicate with patients and identification of any translating service that may be available at the place where the applicant primarily conducts his or her practice.
(d) An indication of whether the person participates in the Medicaid program.

History.—s. 127, ch. 97-237; s. 3, ch. 97-273; ss. 8, 34, ch. 98-166; s. 60, ch. 99-397; s. 66, ch. 2000-160; s. 21, ch. 2000-318; s. 74, ch. 2001-62; s. 13, ch. 2003-416; s. 57, ch. 2010-114.

Note.—Section 58, ch. 2010-114, provides that “[t]he changes made by this act are intended to be prospective in nature. It is not intended that persons who are employed or licensed on the effective date of this act be rescreened until such time as they are otherwise required to be rescreened pursuant to law, at which time they must meet the requirements for screening as set forth in this act.”

Note.—Former s. 455.565.

456.0391 Advanced registered nurse practitioners; information required for certification.—

(1)(a) Each person who applies for initial certification under s. 464.012 must, at the time of application, and each person certified under s. 464.012 who applies for certification renewal must, in conjunction with the renewal of such certification and under procedures adopted by the Department of
Health, and in addition to any other information that may be required from the applicant, furnish the following information to the Department of Health:

1. The name of each school or training program that the applicant has attended, with the months and years of attendance and the month and year of graduation, and a description of all graduate professional education completed by the applicant, excluding any coursework taken to satisfy continuing education requirements.

2. The name of each location at which the applicant practices.

3. The address at which the applicant will primarily conduct his or her practice.

4. Any certification or designation that the applicant has received from a specialty or certification board that is recognized or approved by the regulatory board or department to which the applicant is applying.

5. The year that the applicant received initial certification and began practicing the profession in any jurisdiction and the year that the applicant received initial certification in this state.

6. Any appointment which the applicant currently holds to the faculty of a school related to the profession and an indication as to whether the applicant has had the responsibility for graduate education within the most recent 10 years.

7. A description of any criminal offense of which the applicant has been found guilty, regardless of whether adjudication of guilt was withheld, or to which the applicant has pled guilty or nolo contendere. A criminal offense committed in another jurisdiction which would have been a felony or misdemeanor if committed in this state must be reported. If the applicant indicates that a criminal offense is under appeal and submits a copy of the notice for appeal of that criminal offense, the department must state that the criminal offense is under appeal if the criminal offense is reported in the applicant’s profile. If the applicant indicates to the department that a criminal offense is under appeal, the applicant must, within 15 days after the disposition of the appeal, submit to the department a copy of the final written order of disposition.

8. A description of any final disciplinary action taken within the previous 10 years against the applicant by a licensing or regulatory body in any jurisdiction, by a specialty board that is recognized by the board or department, or by a licensed hospital, health maintenance organization, prepaid health clinic, ambulatory surgical center, or nursing home. Disciplinary action includes resignation from or nonrenewal of staff membership or the restriction of privileges at a licensed hospital, health maintenance organization, prepaid health clinic, ambulatory surgical center, or nursing home taken in lieu of or in settlement of a pending disciplinary case related to competence or character. If the applicant indicates that the disciplinary action is under appeal and submits a copy of the document initiating an appeal of the disciplinary action, the department must state that the disciplinary action is under appeal if the disciplinary action is reported in the applicant’s profile.
(b) In addition to the information required under paragraph (a), each applicant for initial certification or certification renewal must provide the information required of licensees pursuant to s. 456.049.

(2) The Department of Health shall send a notice to each person certified under s. 464.012 at the certificateholder’s last known address of record regarding the requirements for information to be submitted by advanced registered nurse practitioners pursuant to this section in conjunction with the renewal of such certificate.

(3) Each person certified under s. 464.012 who has submitted information pursuant to subsection (1) must update that information in writing by notifying the Department of Health within 45 days after the occurrence of an event or the attainment of a status that is required to be reported by subsection (1). Failure to comply with the requirements of this subsection to update and submit information constitutes a ground for disciplinary action under chapter 464 and s. 456.072(1)(k). For failure to comply with the requirements of this subsection to update and submit information, the department or board, as appropriate, may:

   (a) Refuse to issue a certificate to any person applying for initial certification who fails to submit and update the required information.

   (b) Issue a citation to any certificateholder who fails to submit and update the required information and may fine the certificateholder up to $50 for each day that the certificateholder is not in compliance with this subsection. The citation must clearly state that the certificateholder may choose, in lieu of accepting the citation, to follow the procedure under s. 456.073. If the certificateholder disputes the matter in the citation, the procedures set forth in s. 456.073 must be followed. However, if the certificateholder does not dispute the matter in the citation with the department within 30 days after the citation is served, the citation becomes a final order and constitutes discipline. Service of a citation may be made by personal service or certified mail, restricted delivery, to the subject at the certificateholder’s last known address.

(4)(a) An applicant for initial certification under s. 464.012 must submit a set of fingerprints to the Department of Health on a form and under procedures specified by the department, along with payment in an amount equal to the costs incurred by the Department of Health for a national criminal history check of the applicant.

(b) An applicant for renewed certification who has not previously submitted a set of fingerprints to the Department of Health for purposes of certification must submit a set of fingerprints to the department as a condition of the initial renewal of his or her certificate after the effective date of this section. The applicant must submit the fingerprints on a form and under procedures specified by the department, along with payment in an amount equal to the costs incurred by the Department of Health for a national criminal history check. For subsequent renewals, the applicant for renewed certification must only submit information necessary to conduct a statewide criminal history check, along with
payment in an amount equal to the costs incurred by the Department of Health for a statewide
criminal history check.

(c)1. The Department of Health shall submit the fingerprints provided by an applicant for initial
certification to the Florida Department of Law Enforcement for a statewide criminal history check, and
the Florida Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of
Investigation for a national criminal history check of the applicant.

2. The department shall submit the fingerprints provided by an applicant for the initial renewal of
certification to the Florida Department of Law Enforcement for a statewide criminal history check, and
the Florida Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of
Investigation for a national criminal history check for the initial renewal of the applicant’s certificate
after the effective date of this section.

3. For any subsequent renewal of the applicant’s certificate, the department shall submit the
required information for a statewide criminal history check of the applicant to the Florida Department
of Law Enforcement.

(d) Any applicant for initial certification or renewal of certification as an advanced registered nurse
practitioner who submits to the Department of Health a set of fingerprints and information required for
the criminal history check required under this section shall not be required to provide a subsequent set
of fingerprints or other duplicate information required for a criminal history check to the Agency for
Health Care Administration, the Department of Juvenile Justice, or the Department of Children and
Family Services for employment or licensure with such agency or department, if the applicant has
undergone a criminal history check as a condition of initial certification or renewal of certification as
an advanced registered nurse practitioner with the Department of Health, notwithstanding any other
provision of law to the contrary. In lieu of such duplicate submission, the Agency for Health Care
Administration, the Department of Juvenile Justice, and the Department of Children and Family
Services shall obtain criminal history information for employment or licensure of persons certified
under s. 464.012 by such agency or department from the Department of Health’s health care
practitioner credentialing system.

(5) Each person who is required to submit information pursuant to this section may submit
additional information to the Department of Health. Such information may include, but is not limited
to:

(a) Information regarding publications in peer-reviewed professional literature within the previous
10 years.

(b) Information regarding professional or community service activities or awards.

(c) Languages, other than English, used by the applicant to communicate with patients or clients
and identification of any translating service that may be available at the place where the applicant
primarily conducts his or her practice.
(d) An indication of whether the person participates in the Medicaid program.

History.—s. 152, ch. 2000-318.

456.0392 Prescription labeling.—

(1) A prescription written by a practitioner who is authorized under the laws of this state to write prescriptions for drugs that are not listed as controlled substances in chapter 893 but who is not eligible for a federal Drug Enforcement Administration number shall include that practitioner’s name and professional license number. The pharmacist or dispensing practitioner must include the practitioner’s name on the container of the drug that is dispensed. A pharmacist shall be permitted, upon verification by the prescriber, to document any information required by this section.

(2) A prescription for a drug that is not listed as a controlled substance in chapter 893 which is written by an advanced registered nurse practitioner certified under s. 464.012 is presumed, subject to rebuttal, to be valid and within the parameters of the prescriptive authority delegated by a practitioner licensed under chapter 458, chapter 459, or chapter 466.

(3) A prescription for a drug that is not listed as a controlled substance in chapter 893 which is written by a physician assistant licensed under chapter 458 or chapter 459 is presumed, subject to rebuttal, to be valid and within the parameters of the prescriptive authority delegated by the physician assistant’s supervising physician.

History.—s. 1, ch. 2004-8.

456.041 Practitioner profile; creation.—

(1)(a) The Department of Health shall compile the information submitted pursuant to s. 456.039 into a practitioner profile of the applicant submitting the information, except that the Department of Health shall develop a format to compile uniformly any information submitted under s. 456.039(4)(b). Beginning July 1, 2001, the Department of Health may compile the information submitted pursuant to s. 456.0391 into a practitioner profile of the applicant submitting the information. The protocol submitted pursuant to s. 464.012(3) must be included in the practitioner profile of the advanced registered nurse practitioner.

(b) Beginning July 1, 2005, the department shall verify the information submitted by the applicant under s. 456.039 concerning disciplinary history and medical malpractice claims at the time of initial licensure and license renewal using the National Practitioner Data Bank. The physician profiles shall reflect the disciplinary action and medical malpractice claims as reported by the National Practitioner Data Bank, and shall include information relating to liability and disciplinary actions obtained as a result of a search of the National Practitioner Data Bank.

(c) Within 30 calendar days after receiving an update of information required for the practitioner’s profile, the department shall update the practitioner’s profile in accordance with the requirements of subsection (8).
On the profile published under subsection (1), the department shall indicate if the information provided under s. 456.039(1)(a)7. or s. 456.0391(1)(a)7. is or is not corroborated by a criminal history check conducted according to this subsection. The department, or the board having regulatory authority over the practitioner acting on behalf of the department, shall investigate any information received by the department or the board.

The Department of Health shall include in each practitioner’s practitioner profile that criminal information that directly relates to the practitioner’s ability to competently practice his or her profession. The department must include in each practitioner’s practitioner profile the following statement: “The criminal history information, if any exists, may be incomplete; federal criminal history information is not available to the public.” The department shall provide in each practitioner profile, for every final disciplinary action taken against the practitioner, an easy-to-read narrative description that explains the administrative complaint filed against the practitioner and the final disciplinary action imposed on the practitioner. The department shall include a hyperlink to each final order listed in its website report of dispositions of recent disciplinary actions taken against practitioners.

The Department of Health shall include, with respect to a practitioner licensed under chapter 458 or chapter 459, a statement of how the practitioner has elected to comply with the financial responsibility requirements of s. 458.320 or s. 459.0085. The department shall include, with respect to practitioners subject to s. 456.048, a statement of how the practitioner has elected to comply with the financial responsibility requirements of that section. The department shall include, with respect to practitioners licensed under chapter 461, information relating to liability actions which has been reported under s. 456.049 or s. 627.912 within the previous 10 years for any paid claim that exceeds $5,000. The department shall include, with respect to practitioners licensed under chapter 458 or chapter 459, information relating to liability actions which has been reported under ss. 456.049 and 627.912 within the previous 10 years for any paid claim that exceeds $100,000. Such claims information shall be reported in the context of comparing an individual practitioner’s claims to the experience of other practitioners within the same specialty, or profession if the practitioner is not a specialist. The department must provide a hyperlink in such practitioner’s profile to all such comparison reports. If information relating to a liability action is included in a practitioner’s practitioner profile, the profile must also include the following statement: “Settlement of a claim may occur for a variety of reasons that do not necessarily reflect negatively on the professional competence or conduct of the practitioner. A payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred.”

The Department of Health shall include the date of a hospital or ambulatory surgical center disciplinary action taken by a licensed hospital or an ambulatory surgical center, in accordance with the requirements of s. 395.0193, in the practitioner profile. The department shall state whether the
action related to professional competence and whether it related to the delivery of services to a patient.

(6) The Department of Health shall provide in each practitioner profile for every physician or advanced registered nurse practitioner terminated for cause from participating in the Medicaid program, pursuant to s. 409.913, or sanctioned by the Medicaid program a statement that the practitioner has been terminated from participating in the Florida Medicaid program or sanctioned by the Medicaid program.

(7) The Department of Health may include in the practitioner’s practitioner profile any other information that is a public record of any governmental entity and that relates to a practitioner’s ability to competently practice his or her profession.

(8) Upon the completion of a practitioner profile under this section, the Department of Health shall furnish the practitioner who is the subject of the profile a copy of it for review and verification. The practitioner has a period of 30 days in which to review and verify the contents of the profile and to correct any factual inaccuracies in it. The Department of Health shall make the profile available to the public at the end of the 30-day period regardless of whether the practitioner has provided verification of the profile content. A practitioner shall be subject to a fine of up to $100 per day for failure to verify the profile contents and to correct any factual errors in his or her profile within the 30-day period. The department shall make the profiles available to the public through the World Wide Web and other commonly used means of distribution. The department must include the following statement, in boldface type, in each profile that has not been reviewed by the practitioner to which it applies: “The practitioner has not verified the information contained in this profile.”

(9) The Department of Health must provide in each profile an easy-to-read explanation of any disciplinary action taken and the reason the sanction or sanctions were imposed.

(10) The Department of Health may provide one link in each profile to a practitioner’s professional website if the practitioner requests that such a link be included in his or her profile.

(11) Making a practitioner profile available to the public under this section does not constitute agency action for which a hearing under s. 120.57 may be sought.


Note.—Former s. 455.5651.

456.042 Practitioner profiles; update.—A practitioner must submit updates of required information within 15 days after the final activity that renders such information a fact. The Department of Health shall update each practitioner’s practitioner profile periodically. An updated profile is subject to the same requirements as an original profile.

History.—s. 129, ch. 97-237; s. 5, ch. 97-273; s. 68, ch. 2000-160; s. 15, ch. 2003-416.
Note.—Former s. 455.5652.

456.043 Practitioner profiles; data storage.—Effective upon this act becoming a law, the Department of Health must develop or contract for a computer system to accommodate the new data collection and storage requirements under this act pending the development and operation of a computer system by the Department of Health for handling the collection, input, revision, and update of data submitted by physicians as a part of their initial licensure or renewal to be compiled into individual practitioner profiles. The Department of Health must incorporate any data required by this act into the computer system used in conjunction with the regulation of health care professions under its jurisdiction. The Department of Health is authorized to contract with and negotiate any interagency agreement necessary to develop and implement the practitioner profiles. The Department of Health shall have access to any information or record maintained by the Agency for Health Care Administration, including any information or record that is otherwise confidential and exempt from the provisions of chapter 119 and s. 24(a), Art. I of the State Constitution, so that the Department of Health may corroborate any information that practitioners are required to report under s. 456.039 or s. 456.0391.

History.—s. 130, ch. 97-237; s. 6, ch. 97-273; s. 112, ch. 2000-153; s. 69, ch. 2000-160; ss. 23, 154, ch. 2000-318.

Note.—Former s. 455.5653.

456.044 Practitioner profiles; rules; workshops.—Effective upon this act becoming a law, the Department of Health shall adopt rules for the form of a practitioner profile that the agency is required to prepare. The Department of Health, pursuant to chapter 120, must hold public workshops for purposes of rule development to implement this section. An agency to which information is to be submitted under this act may adopt by rule a form for the submission of the information required under s. 456.039 or s. 456.0391.


Note.—Former s. 455.5654.

456.045 Practitioner profiles; maintenance of superseded information.—Information in superseded practitioner profiles must be maintained by the Department of Health, in accordance with general law and the rules of the Department of State.

History.—s. 132, ch. 97-237; s. 8, ch. 97-273; s. 71, ch. 2000-160.

Note.—Former s. 455.5655.

456.046 Practitioner profiles; confidentiality.—Any patient name or other information that identifies a patient which is in a record obtained by the Department of Health or its agent for the purpose of compiling a practitioner profile pursuant to s. 456.041 is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Other data received by the department or its agent as a result of its duty to compile and promulgate practitioner profiles are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.
until the profile into which the data are incorporated or with respect to which the data are submitted is made public pursuant to the requirements of s. 456.041. Any information or record that the Department of Health obtains from the Agency for Health Care Administration or any other governmental entity for the purpose of compiling a practitioner profile or substantiating other information or records submitted for that purpose which is otherwise exempt from public disclosure shall remain exempt as otherwise provided by law.

History.—s. 1, ch. 97-175; s. 71, ch. 2000-160; s. 1, ch. 2002-198.

Note.—Former s. 455.5656.

456.048 Financial responsibility requirements for certain health care practitioners.—

(1) As a prerequisite for licensure or license renewal, the Board of Acupuncture, the Board of Chiropractic Medicine, the Board of Podiatric Medicine, and the Board of Dentistry shall, by rule, require that all health care practitioners licensed under the respective board, and the Board of Medicine and the Board of Osteopathic Medicine shall, by rule, require that all anesthesiologist assistants licensed pursuant to s. 458.3475 or s. 459.023, and the Board of Nursing shall, by rule, require that advanced registered nurse practitioners certified under s. 464.012, and the department shall, by rule, require that midwives maintain medical malpractice insurance or provide proof of financial responsibility in an amount and in a manner determined by the board or department to be sufficient to cover claims arising out of the rendering of or failure to render professional care and services in this state.

(2) The board or department may grant exemptions upon application by practitioners meeting any of the following criteria:

(a) Any person licensed under chapter 457, s. 458.3475, s. 459.023, chapter 460, chapter 461, s. 464.012, chapter 466, or chapter 467 who practices exclusively as an officer, employee, or agent of the Federal Government or of the state or its agencies or its subdivisions. For the purposes of this subsection, an agent of the state, its agencies, or its subdivisions is a person who is eligible for coverage under any self-insurance or insurance program authorized by the provisions of s. 768.28(16) or who is a volunteer under s. 110.501(1).

(b) Any person whose license or certification has become inactive under chapter 457, s. 458.3475, s. 459.023, chapter 460, chapter 461, part I of chapter 464, chapter 466, or chapter 467 and who is not practicing in this state. Any person applying for reactivation of a license must show either that such licensee maintained tail insurance coverage which provided liability coverage for incidents that occurred on or after October 1, 1993, or the initial date of licensure in this state, whichever is later, and incidents that occurred before the date on which the license became inactive; or such licensee must submit an affidavit stating that such licensee has no unsatisfied medical malpractice judgments or settlements at the time of application for reactivation.
(c) Any person holding a limited license pursuant to s. 456.015, and practicing under the scope of such limited license.

(d) Any person licensed or certified under chapter 457, s. 458.3475, s. 459.023, chapter 460, chapter 461, s. 464.012, chapter 466, or chapter 467 who practices only in conjunction with his or her teaching duties at an accredited school or in its main teaching hospitals. Such person may engage in the practice of medicine to the extent that such practice is incidental to and a necessary part of duties in connection with the teaching position in the school.

(e) Any person holding an active license or certification under chapter 457, s. 458.3475, s. 459.023, chapter 460, chapter 461, s. 464.012, chapter 466, or chapter 467 who is not practicing in this state. If such person initiates or resumes practice in this state, he or she must notify the department of such activity.

(f) Any person who can demonstrate to the board or department that he or she has no malpractice exposure in the state.

(3) Notwithstanding the provisions of this section, the financial responsibility requirements of ss. 458.320 and 459.0085 shall continue to apply to practitioners licensed under those chapters, except for anesthesiologist assistants licensed pursuant to s. 458.3475 or s. 459.023 who must meet the requirements of this section.

History.—s. 1, ch. 93-41; s. 193, ch. 97-103; s. 90, ch. 97-261; s. 266, ch. 98-166; s. 88, ch. 99-397; s. 73, ch. 2000-160; s. 116, ch. 2000-318; s. 73, ch. 2004-5; s. 1, ch. 2004-303.

Note.—Former s. 455.2456; s. 455.694.

456.049 Health care practitioners; reports on professional liability claims and actions.—Any practitioner of medicine licensed pursuant to the provisions of chapter 458, practitioner of osteopathic medicine licensed pursuant to the provisions of chapter 459, podiatric physician licensed pursuant to the provisions of chapter 461, or dentist licensed pursuant to the provisions of chapter 466 shall report to the Office of Insurance Regulation any claim or action for damages for personal injury alleged to have been caused by error, omission, or negligence in the performance of such licensee’s professional services or based on a claimed performance of professional services without consent pursuant to s. 627.912.

History.—s. 13, ch. 88-1; s. 7, ch. 91-140; s. 309, ch. 96-406; s. 91, ch. 97-261; s. 193, ch. 98-166; s. 74, ch. 2000-160; s. 16, ch. 2003-416.

Note.—Former s. 455.247; s. 455.697.

456.051 Reports of professional liability actions; bankruptcies; Department of Health’s responsibility to provide.—

(1) The report of a claim or action for damages for personal injury which is required to be provided to the Department of Health under s. 456.049 or s. 627.912 is public information except for the name of the claimant or injured person, which remains confidential as provided in s. 627.912(2)(e). The
Department of Health shall, upon request, make such report available to any person. The department shall make such report available as a part of the practitioner’s profile within 30 calendar days after receipt.

(2) Any information in the possession of the Department of Health which relates to a bankruptcy proceeding by a practitioner of medicine licensed under chapter 458, a practitioner of osteopathic medicine licensed under chapter 459, a podiatric physician licensed under chapter 461, or a dentist licensed under chapter 466 is public information. The Department of Health shall, upon request, make such information available to any person. The department shall make such report available as a part of the practitioner’s profile within 30 calendar days after receipt.

History.—s. 146, ch. 97-237; s. 22, ch. 97-273; ss. 38, 194, ch. 98-166; s. 75, ch. 2000-160; s. 17, ch. 2003-416; s. 74, ch. 2004-5.

Note.—Former s. 455.698.

456.052 Disclosure of financial interest by production.—

(1) A health care provider shall not refer a patient to an entity in which such provider is an investor unless, prior to the referral, the provider furnishes the patient with a written disclosure form, informing the patient of:

(a) The existence of the investment interest.

(b) The name and address of each applicable entity in which the referring health care provider is an investor.

(c) The patient’s right to obtain the items or services for which the patient has been referred at the location or from the provider or supplier of the patient’s choice, including the entity in which the referring provider is an investor.

(d) The names and addresses of at least two alternative sources of such items or services available to the patient.

(2) The physician or health care provider shall post a copy of the disclosure forms in a conspicuous public place in his or her office.

(3) A violation of this section shall constitute a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. In addition to any other penalties or remedies provided, a violation of this section shall be grounds for disciplinary action by the respective board.

History.—s. 1, ch. 86-31; s. 84, ch. 91-224; s. 13, ch. 92-178; s. 92, ch. 97-261; s. 76, ch. 2000-160.

Note.—Former s. 455.25; s. 455.701.

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

(1) SHORT TITLE.—This section may be cited as the “Patient Self-Referral Act of 1992.”

(2) LEGISLATIVE INTENT.—It is recognized by the Legislature that the referral of a patient by a health care provider to a provider of health care services in which the referring health care provider
has an investment interest represents a potential conflict of interest. The Legislature finds these referral practices may limit or eliminate competitive alternatives in the health care services market, may result in overutilization of health care services, may increase costs to the health care system, and may adversely affect the quality of health care. The Legislature also recognizes, however, that it may be appropriate for providers to own entities providing health care services, and to refer patients to such entities, as long as certain safeguards are present in the arrangement. It is the intent of the Legislature to provide guidance to health care providers regarding prohibited patient referrals between health care providers and entities providing health care services and to protect the people of Florida from unnecessary and costly health care expenditures.

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

(a) “Board” means any of the following boards relating to the respective professions: the Board of Medicine as created in s. 458.307; the Board of Osteopathic Medicine as created in s. 459.004; the Board of Chiropractic Medicine as created in s. 460.404; the Board of Podiatric Medicine as created in s. 461.004; the Board of Optometry as created in s. 463.003; the Board of Pharmacy as created in s. 465.004; and the Board of Dentistry as created in s. 466.004.

(b) “Comprehensive rehabilitation services” means services that are provided by health care professionals licensed under part I or part III of chapter 468 or chapter 486 to provide speech, occupational, or physical therapy services on an outpatient or ambulatory basis.

(c) “Designated health services” means, for purposes of this section, clinical laboratory services, physical therapy services, comprehensive rehabilitative services, diagnostic-imaging services, and radiation therapy services.

(d) “Diagnostic imaging services” means magnetic resonance imaging, nuclear medicine, angiography, arteriography, computed tomography, positron emission tomography, digital vascular imaging, bronchography, lymphangiography, splenography, ultrasound, EEG, EKG, nerve conduction studies, and evoked potentials.

(e) “Direct supervision” means supervision by a physician who is present in the office suite and immediately available to provide assistance and direction throughout the time services are being performed.

(f) “Entity” means any individual, partnership, firm, corporation, or other business entity.

(g) “Fair market value” means value in arms length transactions, consistent with the general market value, and, with respect to rentals or leases, the value of rental property for general commercial purposes, not taking into account its intended use, and, in the case of a lease of space, not adjusted to reflect the additional value the prospective lessee or lessor would attribute to the proximity or convenience to the lessor where the lessor is a potential source of patient referrals to the lessee.
(h) “Group practice” means a group of two or more health care providers legally organized as a partnership, professional corporation, or similar association:

1. In which each health care provider who is a member of the group provides substantially the full range of services which the health care provider routinely provides, including medical care, consultation, diagnosis, or treatment, through the joint use of shared office space, facilities, equipment, and personnel;

2. For which substantially all of the services of the health care providers who are members of the group are provided through the group and are billed in the name of the group and amounts so received are treated as receipts of the group; and

3. In which the overhead expenses of and the income from the practice are distributed in accordance with methods previously determined by members of the group.

(i) “Health care provider” means any physician licensed under chapter 458, chapter 459, chapter 460, or chapter 461, or any health care provider licensed under chapter 463 or chapter 466.

(j) “Immediate family member” means a health care provider’s spouse, child, child’s spouse, grandchild, grandchild’s spouse, parent, parent-in-law, or sibling.

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

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

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

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

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

(l) “Investor” means a person or entity owning a legal or beneficial ownership or investment interest, directly or indirectly, including, without limitation, through an immediate family member, trust, or another entity related to the investor within the meaning of 42 C.F.R. s. 413.17, in an entity.
(m) “Outside referral for diagnostic imaging services” means a referral of a patient to a group practice or sole provider for diagnostic imaging services by a physician who is not a member of the group practice or of the sole provider’s practice and who does not have an investment interest in the group practice or sole provider’s practice, for which the group practice or sole provider billed for both the technical and the professional fee for the patient, and the patient did not become a patient of the group practice or sole provider’s practice.

(n) “Patient of a group practice” or “patient of a sole provider” means a patient who receives a physical examination, evaluation, diagnosis, and development of a treatment plan if medically necessary by a physician who is a member of the group practice or the sole provider’s practice.

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

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

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

3. The following orders, recommendations, or plans of care shall not constitute a referral by a health care provider:
   a. By a radiologist for diagnostic-imaging services.
   b. By a physician specializing in the provision of radiation therapy services for such services.
   c. By a medical oncologist for drugs and solutions to be prepared and administered intravenously to such oncologist’s patient, as well as for the supplies and equipment used in connection therewith to treat such patient for cancer and the complications thereof.
   d. By a cardiologist for cardiac catheterization services.
   e. By a pathologist for diagnostic clinical laboratory tests and pathological examination services, if furnished by or under the supervision of such pathologist pursuant to a consultation requested by another physician.
   f. By a health care provider who is the sole provider or member of a group practice for designated health services or other health care items or services that are prescribed or provided solely for such referring health care provider’s or group practice’s own patients, and that are provided or performed by or under the direct supervision of such referring health care provider or group practice; provided, however, that effective July 1, 1999, a physician licensed pursuant to chapter 458, chapter 459, chapter 460, or chapter 461 may refer a patient to a sole provider or group practice for diagnostic imaging services, excluding radiation therapy services, for which the sole provider or group practice billed both the technical and the professional fee for or on behalf of the patient, if the referring physician has no investment interest in the practice. The diagnostic imaging service referred to a group
practice or sole provider must be a diagnostic imaging service normally provided within the scope of practice to the patients of the group practice or sole provider. The group practice or sole provider may accept no more than 15 percent of their patients receiving diagnostic imaging services from outside referrals, excluding radiation therapy services.

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

h. By a urologist for lithotripsy services.

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

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

k. By a nephrologist for renal dialysis services and supplies, except laboratory services.

l. By a health care provider whose principal professional practice consists of treating patients in their private residences for services to be rendered in such private residences, except for services rendered by a home health agency licensed under chapter 400. For purposes of this sub-subparagraph, the term “private residences” includes patients’ private homes, independent living centers, and assisted living facilities, but does not include skilled nursing facilities.

m. By a health care provider for sleep-related testing.

(p) “Present in the office suite” means that the physician is actually physically present; provided, however, that the health care provider is considered physically present during brief unexpected absences as well as during routine absences of a short duration if the absences occur during time periods in which the health care provider is otherwise scheduled and ordinarily expected to be present and the absences do not conflict with any other requirement in the Medicare program for a particular level of health care provider supervision.

(q) “Rural area” means a county with a population density of no greater than 100 persons per square mile, as defined by the United States Census.

(r) “Sole provider” means one health care provider licensed under chapter 458, chapter 459, chapter 460, or chapter 461, who maintains a separate medical office and a medical practice separate from any other health care provider and who bills for his or her services separately from the services provided by any other health care provider. A sole provider shall not share overhead expenses or professional income with any other person or group practice.

(4) REQUIREMENTS FOR ACCEPTING OUTSIDE REFERRALS FOR DIAGNOSTIC IMAGING.—

(a) A group practice or sole provider accepting outside referrals for diagnostic imaging services is required to comply with the following conditions:

1. Diagnostic imaging services must be provided exclusively by a group practice physician or by a full-time or part-time employee of the group practice or of the sole provider’s practice.
2. All equity in the group practice or sole provider’s practice accepting outside referrals for diagnostic imaging must be held by the physicians comprising the group practice or the sole provider’s practice, each of whom must provide at least 75 percent of his or her professional services to the group. Alternatively, the group must be incorporated under chapter 617 and must be exempt under the provisions of s. 501(c)(3) of the Internal Revenue Code and be part of a foundation in existence prior to January 1, 1999, that is created for the purpose of patient care, medical education, and research.

3. A group practice or sole provider may not enter into, extend or renew any contract with a practice management company that provides any financial incentives, directly or indirectly, based on an increase in outside referrals for diagnostic imaging services from any group or sole provider managed by the same practice management company.

4. The group practice or sole provider accepting outside referrals for diagnostic imaging services must bill for both the professional and technical component of the service on behalf of the patient, and no portion of the payment, or any type of consideration, either directly or indirectly, may be shared with the referring physician.

5. Group practices or sole providers that have a Medicaid provider agreement with the Agency for Health Care Administration must furnish diagnostic imaging services to their Medicaid patients and may not refer a Medicaid recipient to a hospital for outpatient diagnostic imaging services unless the physician furnishes the hospital with documentation demonstrating the medical necessity for such a referral. If necessary, the Agency for Health Care Administration may apply for a federal waiver to implement this subparagraph.

6. All group practices and sole providers accepting outside referrals for diagnostic imaging shall report annually to the Agency for Health Care Administration providing the number of outside referrals accepted for diagnostic imaging services and the total number of all patients receiving diagnostic imaging services.

(b) If a group practice or sole provider accepts an outside referral for diagnostic imaging services in violation of this subsection or if a group practice or sole provider accepts outside referrals for diagnostic imaging services in excess of the percentage limitation established in subparagraph (a)2., the group practice or the sole provider shall be subject to the penalties in subsection (5).

(c) Each managing physician member of a group practice and each sole provider who accepts outside referrals for diagnostic imaging services shall submit an annual attestation signed under oath to the Agency for Health Care Administration which shall include the annual report required under subparagraph (a)6. and which shall further confirm that each group practice or sole provider is in compliance with the percentage limitations for accepting outside referrals and the requirements for accepting outside referrals listed in paragraph (a). The agency may verify the report submitted by group practices and sole providers.

(5) PROHIBITED REFERRALS AND CLAIMS FOR PAYMENT.—Except as provided in this section:
(a) A health care provider may not refer a patient for the provision of designated health services to an entity in which the health care provider is an investor or has an investment interest.

(b) A health care provider may not refer a patient for the provision of any other health care item or service to an entity in which the health care provider is an investor unless:

1. The provider’s investment interest is in registered securities purchased on a national exchange or over-the-counter market and issued by a publicly held corporation:
   a. Whose shares are traded on a national exchange or on the over-the-counter market; and
   b. Whose total assets at the end of the corporation’s most recent fiscal quarter exceeded $50 million; or

2. With respect to an entity other than a publicly held corporation described in subparagraph 1., and a referring provider’s investment interest in such entity, each of the following requirements are met:
   a. No more than 50 percent of the value of the investment interests are held by investors who are in a position to make referrals to the entity.
   b. The terms under which an investment interest is offered to an investor who is in a position to make referrals to the entity are no different from the terms offered to investors who are not in a position to make such referrals.
   c. The terms under which an investment interest is offered to an investor who is in a position to make referrals to the entity are not related to the previous or expected volume of referrals from that investor to the entity.
   d. There is no requirement that an investor make referrals or be in a position to make referrals to the entity as a condition for becoming or remaining an investor.

3. With respect to either such entity or publicly held corporation:
   a. The entity or corporation does not loan funds to or guarantee a loan for an investor who is in a position to make referrals to the entity or corporation if the investor uses any part of such loan to obtain the investment interest.
   b. The amount distributed to an investor representing a return on the investment interest is directly proportional to the amount of the capital investment, including the fair market value of any preoperational services rendered, invested in the entity or corporation by that investor.

4. Each board and, in the case of hospitals, the Agency for Health Care Administration, shall encourage the use by licensees of the declaratory statement procedure to determine the applicability of this section or any rule adopted pursuant to this section as it applies solely to the licensee. Boards shall submit to the Agency for Health Care Administration the name of any entity in which a provider investment interest has been approved pursuant to this section, and the Agency for Health Care Administration shall adopt rules providing for periodic quality assurance and utilization review of such entities.
(c) No claim for payment may be presented by an entity to any individual, third-party payor, or other entity for a service furnished pursuant to a referral prohibited under this section.

(d) If an entity collects any amount that was billed in violation of this section, the entity shall refund such amount on a timely basis to the payor or individual, whichever is applicable.

(e) Any person that presents or causes to be presented a bill or a claim for service that such person knows or should know is for a service for which payment may not be made under paragraph (c), or for which a refund has not been made under paragraph (d), shall be subject to a civil penalty of not more than $15,000 for each such service to be imposed and collected by the appropriate board.

(f) Any health care provider or other entity that enters into an arrangement or scheme, such as a cross-referral arrangement, which the physician or entity knows or should know has a principal purpose of assuring referrals by the physician to a particular entity which, if the physician directly made referrals to such entity, would be in violation of this section, shall be subject to a civil penalty of not more than $100,000 for each such circumvention arrangement or scheme to be imposed and collected by the appropriate board.

(g) A violation of this section by a health care provider shall constitute grounds for disciplinary action to be taken by the applicable board pursuant to s. 458.331(2), s. 459.015(2), s. 460.413(2), s. 461.013(2), s. 463.016(2), or s. 466.028(2). Any hospital licensed under chapter 395 found in violation of this section shall be subject to the rules adopted by the Agency for Health Care Administration pursuant to s. 395.0185(2).

(h) Any hospital licensed under chapter 395 that discriminates against or otherwise penalizes a health care provider for compliance with this act.

(i) The provision of paragraph (a) shall not apply to referrals to the offices of radiation therapy centers managed by an entity or subsidiary or general partner thereof, which performed radiation therapy services at those same offices prior to April 1, 1991, and shall not apply also to referrals for radiation therapy to be performed at no more than one additional office of any entity qualifying for the foregoing exception which, prior to February 1, 1992, had a binding purchase contract on and a nonrefundable deposit paid for a linear accelerator to be used at the additional office. The physical site of the radiation treatment centers affected by this provision may be relocated as a result of the following factors: acts of God; fire; strike; accident; war; eminent domain actions by any governmental body; or refusal by the lessor to renew a lease. A relocation for the foregoing reasons is limited to relocation of an existing facility to a replacement location within the county of the existing facility upon written notification to the Office of Licensure and Certification.

(j) A health care provider who meets the requirements of paragraphs (b) and (i) must disclose his or her investment interest to his or her patients as provided in s. 456.052.
456.054 Kickbacks prohibited.—

(1) As used in this section, the term “kickback” means a remuneration or payment, by or on behalf of a provider of health care services or items, to any person as an incentive or inducement to refer patients for past or future services or items, when the payment is not tax deductible as an ordinary and necessary expense.

(2) It is unlawful for any health care provider or any provider of health care services to offer, pay, solicit, or receive a kickback, directly or indirectly, overtly or covertly, in cash or in kind, for referring or soliciting patients.

(3) Violations of this section shall be considered patient brokering and shall be punishable as provided in s. 817.505.

456.055 Chiropractic and podiatric health care; denial of payment; limitation.—A chiropractic physician licensed under chapter 460 or a podiatric physician licensed under chapter 461 shall not be denied payment for treatment rendered solely on the basis that the chiropractic physician or podiatric physician is not a member of a particular preferred provider organization or exclusive provider organization which is composed only of physicians licensed under the same chapter.

456.056 Treatment of Medicare beneficiaries; refusal, emergencies, consulting physicians.—

(1) Effective as of January 1, 1993, as used in this section, the term:

(a) “Physician” means a physician licensed under chapter 458, an osteopathic physician licensed under chapter 459, a chiropractic physician licensed under chapter 460, a podiatric physician licensed under chapter 461, or an optometrist licensed under chapter 463.

(b) “Beneficiary” means a beneficiary of health insurance under Title XVIII of the federal Social Security Act.

(c) “Consulting physician” means any physician to whom a primary physician refers a Medicare beneficiary for treatment.

(2) A physician may refuse to treat a beneficiary. However, nothing contained in this section shall be construed to limit a physician’s obligation under state or federal law to treat a patient for an emergency medical condition, regardless of the patient’s ability to pay.
(3) If treatment is provided to a beneficiary for an emergency medical condition as defined in s. 395.0142(2)(c), the physician must accept Medicare assignment provided that the requirement to accept Medicare assignment for an emergency medical condition shall not apply to treatment rendered after the patient is stabilized, or the treatment is unrelated to the original emergency medical condition. For the purpose of this subsection “stabilized” is defined to mean with respect to an emergency medical condition, that no material deterioration of the condition is likely within reasonable medical probability.

(4) If treatment provided to a beneficiary is not for such emergency medical condition, and the primary physician accepts assignment, all consulting physicians must accept assignment unless the patient agrees in writing, before receiving the treatment, that the physician need not accept assignment.

(5) Any attempt by a primary physician or a consulting physician to collect from a Medicare beneficiary any amount of charges for medical services in excess of those authorized under this section, other than the unmet deductible and the 20 percent of charges that Medicare does not pay, shall be deemed null, void, and of no merit.

History.—s. 1, ch. 92-118; s. 160, ch. 92-149; s. 89, ch. 97-261; ss. 192, 265, ch. 98-166; s. 78, ch. 2000-160.

Note.—“Emergency medical condition” is no longer defined in s. 395.0142, which was amended and transferred to s. 395.1041 by s. 24, ch. 92-289.

Note.—Former s. 455.2455; s. 455.691.

456.057 Ownership and control of patient records; report or copies of records to be furnished.—

(1) As used in this section, the term “records owner” means any health care practitioner who generates a medical record after making a physical or mental examination of, or administering treatment or dispensing legend drugs to, any person; any health care practitioner to whom records are transferred by a previous records owner; or any health care practitioner’s employer, including, but not limited to, group practices and staff-model health maintenance organizations, provided the employment contract or agreement between the employer and the health care practitioner designates the employer as the records owner.

(2) As used in this section, the terms “records owner,” “health care practitioner,” and “health care practitioner’s employer” do not include any of the following persons or entities; furthermore, the following persons or entities are not authorized to acquire or own medical records, but are authorized under the confidentiality and disclosure requirements of this section to maintain those documents required by the part or chapter under which they are licensed or regulated:

(a) Certified nursing assistants regulated under part II of chapter 464.

(b) Pharmacists and pharmacies licensed under chapter 465.

(c) Dental hygienists licensed under s. 466.023.
(d) Nursing home administrators licensed under part II of chapter 468.
(e) Respiratory therapists regulated under part V of chapter 468.
(f) Athletic trainers licensed under part XIII of chapter 468.
(g) Electrologists licensed under chapter 478.
(h) Clinical laboratory personnel licensed under part III of chapter 483.
(i) Medical physicists licensed under part IV of chapter 483.
(j) Opticians and optical establishments licensed or permitted under part I of chapter 484.
(k) Persons or entities practicing under s. 627.736(7).

(3) As used in this section, the term “records custodian” means any person or entity that:
   (a) Maintains documents that are authorized in subsection (2); or
   (b) Obtains medical records from a records owner.

(4) Any health care practitioner’s employer who is a records owner and any records custodian shall maintain records or documents as provided under the confidentiality and disclosure requirements of this section.

(5) This section does not apply to facilities licensed under chapter 395.

(6) Any health care practitioner licensed by the department or a board within the department who makes a physical or mental examination of, or administers treatment or dispenses legend drugs to, any person shall, upon request of such person or the person’s legal representative, furnish, in a timely manner, without delays for legal review, copies of all reports and records relating to such examination or treatment, including X rays and insurance information. However, when a patient’s psychiatric, chapter 490 psychological, or chapter 491 psychotherapeutic records are requested by the patient or the patient’s legal representative, the health care practitioner may provide a report of examination and treatment in lieu of copies of records. Upon a patient’s written request, complete copies of the patient’s psychiatric records shall be provided directly to a subsequent treating psychiatrist. The furnishing of such report or copies shall not be conditioned upon payment of a fee for services rendered.

(7)(a) Except as otherwise provided in this section and in s. 440.13(4)(c), such records may not be furnished to, and the medical condition of a patient may not be discussed with, any person other than the patient or the patient’s legal representative or other health care practitioners and providers involved in the care or treatment of the patient, except upon written authorization of the patient. However, such records may be furnished without written authorization under the following circumstances:
   1. To any person, firm, or corporation that has procured or furnished such examination or treatment with the patient’s consent.
2. When compulsory physical examination is made pursuant to Rule 1.360, Florida Rules of Civil Procedure, in which case copies of the medical records shall be furnished to both the defendant and the plaintiff.

3. In any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the patient or the patient’s legal representative by the party seeking such records.

4. For statistical and scientific research, provided the information is abstracted in such a way as to protect the identity of the patient or provided written permission is received from the patient or the patient’s legal representative.

5. To a regional poison control center for purposes of treating a poison episode under evaluation, case management of poison cases, or compliance with data collection and reporting requirements of s. 395.1027 and the professional organization that certifies poison control centers in accordance with federal law.

(b) Absent a specific written release or authorization permitting utilization of patient information for solicitation or marketing the sale of goods or services, any use of that information for those purposes is prohibited.

8. Except in a medical negligence action or administrative proceeding when a health care practitioner or provider is or reasonably expects to be named as a defendant, information disclosed to a health care practitioner by a patient in the course of the care and treatment of such patient is confidential and may be disclosed only to other health care practitioners and providers involved in the care or treatment of the patient, or if permitted by written authorization from the patient or compelled by subpoena at a deposition, evidentiary hearing, or trial for which proper notice has been given.

9(a)1. The department may obtain patient records pursuant to a subpoena without written authorization from the patient if the department and the probable cause panel of the appropriate board, if any, find reasonable cause to believe that a health care practitioner has excessively or inappropriately prescribed any controlled substance specified in chapter 893 in violation of this chapter or any professional practice act or that a health care practitioner has practiced his or her profession below that level of care, skill, and treatment required as defined by this chapter or any professional practice act and also find that appropriate, reasonable attempts were made to obtain a patient release. Notwithstanding the foregoing, the department need not attempt to obtain a patient release when investigating an offense involving the inappropriate prescribing, overprescribing, or diversion of controlled substances and the offense involves a pain-management clinic. The department may obtain patient records without patient authorization or subpoena from any pain-management clinic required to be licensed if the department has probable cause to believe that a violation of any provision of s. 458.3265 or s. 459.0137 is occurring or has occurred and reasonably believes that obtaining such
authorization is not feasible due to the volume of the dispensing and prescribing activity involving controlled substances and that obtaining patient authorization or the issuance of a subpoena would jeopardize the investigation.

2. The department may obtain patient records and insurance information pursuant to a subpoena without written authorization from the patient if the department and the probable cause panel of the appropriate board, if any, find reasonable cause to believe that a health care practitioner has provided inadequate medical care based on termination of insurance and also find that appropriate, reasonable attempts were made to obtain a patient release.

3. The department may obtain patient records, billing records, insurance information, provider contracts, and all attachments thereto pursuant to a subpoena without written authorization from the patient if the department and probable cause panel of the appropriate board, if any, find reasonable cause to believe that a health care practitioner has submitted a claim, statement, or bill using a billing code that would result in payment greater in amount than would be paid using a billing code that accurately describes the services performed, requested payment for services that were not performed by that health care practitioner, used information derived from a written report of an automobile accident generated pursuant to chapter 316 to solicit or obtain patients personally or through an agent regardless of whether the information is derived directly from the report or a summary of that report or from another person, solicited patients fraudulently, received a kickback as defined in s. 456.054, violated the patient brokering provisions of s. 817.505, or presented or caused to be presented a false or fraudulent insurance claim within the meaning of s. 817.234(1)(a), and also find that, within the meaning of s. 817.234(1)(a), patient authorization cannot be obtained because the patient cannot be located or is deceased, incapacitated, or suspected of being a participant in the fraud or scheme, and if the subpoena is issued for specific and relevant records.

4. Notwithstanding subparagraphs 1.-3., when the department investigates a professional liability claim or undertakes action pursuant to s. 456.049 or s. 627.912, the department may obtain patient records pursuant to a subpoena without written authorization from the patient if the patient refuses to cooperate or if the department attempts to obtain a patient release and the failure to obtain the patient records would be detrimental to the investigation.

(b) Patient records, billing records, insurance information, provider contracts, and all attachments thereto obtained by the department pursuant to this subsection shall be used solely for the purpose of the department and the appropriate regulatory board in disciplinary proceedings. This section does not limit the assertion of the psychotherapist-patient privilege under s. 90.503 in regard to records of treatment for mental or nervous disorders by a medical practitioner licensed pursuant to chapter 458 or chapter 459 who has primarily diagnosed and treated mental and nervous disorders for a period of not less than 3 years, inclusive of psychiatric residency. However, the health care practitioner shall release records of treatment for medical conditions even if the health care practitioner has also
treated the patient for mental or nervous disorders. If the department has found reasonable cause under this section and the psychotherapist-patient privilege is asserted, the department may petition the circuit court for an in camera review of the records by expert medical practitioners appointed by the court to determine if the records or any part thereof are protected under the psychotherapist-patient privilege.

(10)(a) All patient records obtained by the department and any other documents maintained by the department which identify the patient by name are confidential and exempt from s. 119.07(1) and shall be used solely for the purpose of the department and the appropriate regulatory board in its investigation, prosecution, and appeal of disciplinary proceedings. The records shall not be available to the public as part of the record of investigation for and prosecution in disciplinary proceedings made available to the public by the department or the appropriate board.

(b) Notwithstanding paragraph (a), all patient records obtained by the department and any other documents maintained by the department which relate to a current or former Medicaid recipient shall be provided to the Medicaid Fraud Control Unit in the Department of Legal Affairs, upon request.

(11) All records owners shall develop and implement policies, standards, and procedures to protect the confidentiality and security of the medical record. Employees of records owners shall be trained in these policies, standards, and procedures.

(12) Records owners are responsible for maintaining a record of all disclosures of information contained in the medical record to a third party, including the purpose of the disclosure request. The record of disclosure may be maintained in the medical record. The third party to whom information is disclosed is prohibited from further disclosing any information in the medical record without the expressed written consent of the patient or the patient’s legal representative.

(13) Notwithstanding the provisions of s. 456.058, records owners shall place an advertisement in the local newspaper or notify patients, in writing, when they are terminating practice, retiring, or relocating, and no longer available to patients, and offer patients the opportunity to obtain a copy of their medical record.

(14) Notwithstanding the provisions of s. 456.058, records owners shall notify the appropriate board office when they are terminating practice, retiring, or relocating, and no longer available to patients, specifying who the new records owner is and where medical records can be found.

(15) Whenever a records owner has turned records over to a new records owner, the new records owner shall be responsible for providing a copy of the complete medical record, upon written request, of the patient or the patient’s legal representative.

(16) Licensees in violation of the provisions of this section shall be disciplined by the appropriate licensing authority.
(17) The Attorney General is authorized to enforce the provisions of this section for records owners not otherwise licensed by the state, through injunctive relief and fines not to exceed $5,000 per violation.

(18) A health care practitioner or records owner furnishing copies of reports or records or making the reports or records available for digital scanning pursuant to this section shall charge no more than the actual cost of copying, including reasonable staff time, or the amount specified in administrative rule by the appropriate board, or the department when there is no board.

(19) Nothing in this section shall be construed to limit health care practitioner consultations, as necessary.

(20) A records owner shall release to a health care practitioner who, as an employee of the records owner, previously provided treatment to a patient, those records that the health care practitioner actually created or generated when the health care practitioner treated the patient. Records released pursuant to this subsection shall be released only upon written request of the health care practitioner and shall be limited to the notes, plans of care, and orders and summaries that were actually generated by the health care practitioner requesting the record.

(21) The board, or department when there is no board, may temporarily or permanently appoint a person or entity as a custodian of medical records in the event of the death of a practitioner, the mental or physical incapacitation of the practitioner, or the abandonment of medical records by a practitioner. The custodian appointed shall comply with all provisions of this section, including the release of patient records.

History.—s. 1, ch. 79-302; s. 1, ch. 82-22; s. 1, ch. 83-108; s. 81, ch. 83-218; ss. 14, 119, ch. 83-329; s. 2, ch. 84-15; s. 14, ch. 84-15; s. 1, ch. 85-175; s. 4, ch. 87-333; s. 9, ch. 88-1; s. 2, ch. 88-208; s. 14, ch. 88-219; s. 6, ch. 88-277; s. 10, ch. 88-392; s. 2, ch. 89-85; s. 14, ch. 89-124; s. 28, ch. 89-289; s. 1, ch. 90-263; s. 11, ch. 91-137; s. 6, ch. 91-140; s. 12, ch. 91-176; s. 4, ch. 91-269; s. 62, ch. 92-33; s. 32, ch. 92-149; s. 23, ch. 93-129; s. 315, ch. 94-119; ss. 90, 91, ch. 94-218; s. 308, ch. 96-406; s. 1084, ch. 97-103; s. 82, ch. 97-261; s. 6, ch. 98-166; s. 12, ch. 99-349; s. 86, ch. 99-397; s. 79, ch. 2000-160; s. 9, ch. 2000-163; s. 114, ch. 2000-318; s. 9, ch. 2001-222; ss. 69, 140, ch. 2001-277; s. 18, ch. 2003-416; s. 4, ch. 2005-256; s. 1, ch. 2006-271; s. 2, ch. 2010-211.

Note.—Former s. 455.241; s. 455.667.

456.0575 Duty to notify patients.—Every licensed health care practitioner shall inform each patient, or an individual identified pursuant to s. 765.401(1), in person about adverse incidents that result in serious harm to the patient. Notification of outcomes of care that result in harm to the patient under this section shall not constitute an acknowledgment of admission of liability, nor can such notifications be introduced as evidence.

History.—s. 8, ch. 2003-416.

456.058 Disposition of records of deceased practitioners or practitioners relocating or terminating practice.—Each board created under the provisions of chapter 457, chapter 458, chapter
459, chapter 460, chapter 461, chapter 463, part I of chapter 464, chapter 465, chapter 466, part I of chapter 484, chapter 486, chapter 490, or chapter 491, and the department under the provisions of chapter 462, shall provide by rule for the disposition, under that chapter, of the medical records or records of a psychological nature of practitioners which are in existence at the time the practitioner dies, terminates practice, or relocates and is no longer available to patients and which records pertain to the practitioner’s patients. The rules shall provide that the records be retained for at least 2 years after the practitioner’s death, termination of practice, or relocation. In the case of the death of the practitioner, the rules shall provide for the disposition of such records by the estate of the practitioner.

History.—s. 85, ch. 97-261; s. 80, ch. 2000-160; s. 115, ch. 2000-318.

Note.—Former s. 455.677.

456.059 Communications confidential; exceptions.—Communications between a patient and a psychiatrist, as defined in s. 394.455, shall be held confidential and shall not be disclosed except upon the request of the patient or the patient’s legal representative. Provision of psychiatric records and reports shall be governed by s. 456.057. Notwithstanding any other provision of this section or s. 90.503, where:

(1) A patient is engaged in a treatment relationship with a psychiatrist;

(2) Such patient has made an actual threat to physically harm an identifiable victim or victims; and

(3) The treating psychiatrist makes a clinical judgment that the patient has the apparent capability to commit such an act and that it is more likely than not that in the near future the patient will carry out that threat,

the psychiatrist may disclose patient communications to the extent necessary to warn any potential victim or to communicate the threat to a law enforcement agency. No civil or criminal action shall be instituted, and there shall be no liability on account of disclosure of otherwise confidential communications by a psychiatrist in disclosing a threat pursuant to this section.

History.—s. 10, ch. 88-1; s. 33, ch. 92-149; s. 43, ch. 96-169; s. 83, ch. 97-261; s. 81, ch. 2000-160.

Note.—Former s. 455.2415; s. 455.671.

456.061 Practitioner disclosure of confidential information; immunity from civil or criminal liability.—

(1) A practitioner regulated through the Division of Medical Quality Assurance of the department shall not be civilly or criminally liable for the disclosure of otherwise confidential information to a sexual partner or a needle-sharing partner under the following circumstances:

(a) If a patient of the practitioner who has tested positive for human immunodeficiency virus discloses to the practitioner the identity of a sexual partner or a needle-sharing partner;
(b) The practitioner recommends the patient notify the sexual partner or the needle-sharing partner of the positive test and refrain from engaging in sexual or drug activity in a manner likely to transmit the virus and the patient refuses, and the practitioner informs the patient of his or her intent to inform the sexual partner or needle-sharing partner; and

(c) If pursuant to a perceived civil duty or the ethical guidelines of the profession, the practitioner reasonably and in good faith advises the sexual partner or the needle-sharing partner of the patient of the positive test and facts concerning the transmission of the virus.

However, any notification of a sexual partner or a needle-sharing partner pursuant to this section shall be done in accordance with protocols developed pursuant to rule of the Department of Health.

(2) Notwithstanding the foregoing, a practitioner regulated through the Division of Medical Quality Assurance of the department shall not be civilly or criminally liable for failure to disclose information relating to a positive test result for human immunodeficiency virus of a patient to a sexual partner or a needle-sharing partner.

History.—s. 43, ch. 88-380; s. 12, ch. 89-350; s. 191, ch. 97-103; s. 84, ch. 97-261; s. 220, ch. 99-8; s. 82, ch. 2000-160.

Note.—Former s. 455.2416; s. 455.674.

456.062 Advertisement by a health care practitioner of free or discounted services; required statement.—In any advertisement for a free, discounted fee, or reduced fee service, examination, or treatment by a health care practitioner licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 464, chapter 465, chapter 466, chapter 467, chapter 478, chapter 483, part I of chapter 484, chapter 486, chapter 490, or chapter 491, the following statement shall appear in capital letters clearly distinguishable from the rest of the text: THE PATIENT AND ANY OTHER PERSON RESPONSIBLE FOR PAYMENT HAS A RIGHT TO REFUSE TO PAY, CANCEL PAYMENT, OR BE REIMBURSED FOR PAYMENT FOR ANY OTHER SERVICE, EXAMINATION, OR TREATMENT THAT IS PERFORMED AS A RESULT OF AND WITHIN 72 HOURS OF RESPONDING TO THE ADVERTISEMENT FOR THE FREE, DISCOUNTED FEE, OR REDUCED FEE SERVICE, EXAMINATION, OR TREATMENT. However, the required statement shall not be necessary as an accompaniment to an advertisement of a licensed health care practitioner defined by this section if the advertisement appears in a classified directory the primary purpose of which is to provide products and services at free, reduced, or discounted prices to consumers and in which the statement prominently appears in at least one place.

History.—s. 81, ch. 97-261; s. 85, ch. 99-397; s. 82, ch. 2000-160; s. 1, ch. 2006-215.

Note.—Former s. 455.664.

456.063 Sexual misconduct; disqualification for license, certificate, or registration.—

(1) Sexual misconduct in the practice of a health care profession means violation of the professional relationship through which the health care practitioner uses such relationship to engage or attempt to
engage the patient or client, or an immediate family member, guardian, or representative of the patient or client in, or to induce or attempt to induce such person to engage in, verbal or physical sexual activity outside the scope of the professional practice of such health care profession. Sexual misconduct in the practice of a health care profession is prohibited.

(2) Each board within the jurisdiction of the department, or the department if there is no board, shall refuse to admit a candidate to any examination and refuse to issue a license, certificate, or registration to any applicant if the candidate or applicant has:

(a) Had any license, certificate, or registration to practice any profession or occupation revoked or surrendered based on a violation of sexual misconduct in the practice of that profession under the laws of any other state or any territory or possession of the United States and has not had that license, certificate, or registration reinstated by the licensing authority of the jurisdiction that revoked the license, certificate, or registration; or

(b) Committed any act in any other state or any territory or possession of the United States which if committed in this state would constitute sexual misconduct.

For purposes of this subsection, a licensing authority's acceptance of a candidate’s relinquishment of a license which is offered in response to or in anticipation of the filing of administrative charges against the candidate’s license constitutes the surrender of the license.

(3) Licensed health care practitioners shall report allegations of sexual misconduct to the department, regardless of the practice setting in which the alleged sexual misconduct occurred.

History.—s. 1, ch. 95-183; s. 52, ch. 97-261; s. 78, ch. 99-397; s. 82, ch. 2000-160; s. 25, ch. 2000-318; s. 70, ch. 2001-277.

Note.—Former s. 455.2142; s. 455.567.

456.0635 Medicaid fraud; disqualification for license, certificate, or registration.—

(1) Medicaid fraud in the practice of a health care profession is prohibited.

(2) Each board within the jurisdiction of the department, or the department if there is no board, shall refuse to admit a candidate to any examination and refuse to issue or renew a license, certificate, or registration to any applicant if the candidate or applicant or any principal, officer, agent, managing employee, or affiliated person of the applicant, has been:

(a) Convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under chapter 409, chapter 817, chapter 893, 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396, unless the sentence and any subsequent period of probation for such conviction or pleas ended more than 15 years prior to the date of the application;

(b) Terminated for cause from the Florida Medicaid program pursuant to s. 409.913, unless the applicant has been in good standing with the Florida Medicaid program for the most recent 5 years;
(c) Terminated for cause, pursuant to the appeals procedures established by the state or Federal Government, from any other state Medicaid program or the federal Medicare program, unless the applicant has been in good standing with a state Medicaid program or the federal Medicare program for the most recent 5 years and the termination occurred at least 20 years prior to the date of the application.

(3) Licensed health care practitioners shall report allegations of Medicaid fraud to the department, regardless of the practice setting in which the alleged Medicaid fraud occurred.

(4) The acceptance by a licensing authority of a candidate’s relinquishment of a license which is offered in response to or anticipation of the filing of administrative charges alleging Medicaid fraud or similar charges constitutes the permanent revocation of the license.

History.—s. 24, ch. 2009-223.

456.065 Unlicensed practice of a health care profession; intent; cease and desist notice; penalties; enforcement; citations; fees; allocation and disposition of moneys collected.—

(1) It is the intent of the Legislature that vigorous enforcement of licensure regulation for all health care professions is a state priority in order to protect Florida residents and visitors from the potentially serious and dangerous consequences of receiving medical and health care services from unlicensed persons whose professional education and training and other relevant qualifications have not been approved through the issuance of a license by the appropriate regulatory board or the department when there is no board. The unlicensed practice of a health care profession or the performance or delivery of medical or health care services to patients in this state without a valid, active license to practice that profession, regardless of the means of the performance or delivery of such services, is strictly prohibited.

(2) The penalties for unlicensed practice of a health care profession shall include the following:

(a) When the department has probable cause to believe that any person not licensed by the department, or the appropriate regulatory board within the department, has violated any provision of this chapter or any statute that relates to the practice of a profession regulated by the department, or any rule adopted pursuant thereto, the department may issue and deliver to such person a notice to cease and desist from such violation. In addition, the department may issue and deliver a notice to cease and desist to any person who aids and abets the unlicensed practice of a profession by employing such unlicensed person. The issuance of a notice to cease and desist shall not constitute agency action for which a hearing under ss. 120.569 and 120.57 may be sought. For the purpose of enforcing a cease and desist order, the department may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person who violates any provisions of such order.

(b) In addition to the remedies under paragraph (a), the department may impose by citation an administrative penalty not to exceed $5,000 per incident. The citation shall be issued to the subject and shall contain the subject’s name and any other information the department determines to be
necessary to identify the subject, a brief factual statement, the sections of the law allegedly violated, and the penalty imposed. If the subject does not dispute the matter in the citation with the department within 30 days after the citation is served, the citation shall become a final order of the department. The department may adopt rules to implement this section. The penalty shall be a fine of not less than $500 nor more than $5,000 as established by rule of the department. Each day that the unlicensed practice continues after issuance of a notice to cease and desist constitutes a separate violation. The department shall be entitled to recover the costs of investigation and prosecution in addition to the fine levied pursuant to the citation. Service of a citation may be made by personal service or by mail to the subject at the subject’s last known address or place of practice. If the department is required to seek enforcement of the cease and desist or agency order, it shall be entitled to collect its attorney’s fees and costs.

(c) In addition to or in lieu of any other administrative remedy, the department may seek the imposition of a civil penalty through the circuit court for any violation for which the department may issue a notice to cease and desist. The civil penalty shall be no less than $500 and no more than $5,000 for each offense. The court may also award to the prevailing party court costs and reasonable attorney fees and, in the event the department prevails, may also award reasonable costs of investigation and prosecution.

(d) In addition to the administrative and civil remedies under paragraphs (b) and (c) and in addition to the criminal violations and penalties listed in the individual health care practice acts:

1. It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, to practice, attempt to practice, or offer to practice a health care profession without an active, valid Florida license to practice that profession. Practicing without an active, valid license also includes practicing on a suspended, revoked, or void license, but does not include practicing, attempting to practice, or offering to practice with an inactive or delinquent license for a period of up to 12 months which is addressed in subparagraph 3. Applying for employment for a position that requires a license without notifying the employer that the person does not currently possess a valid, active license to practice that profession shall be deemed to be an attempt or offer to practice that health care profession without a license. Holding oneself out, regardless of the means of communication, as able to practice a health care profession or as able to provide services that require a health care license shall be deemed to be an attempt or offer to practice such profession without a license. The minimum penalty for violating this subparagraph shall be a fine of $1,000 and a minimum mandatory period of incarceration of 1 year.

2. It is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, to practice a health care profession without an active, valid Florida license to practice that profession when such practice results in serious bodily injury. For purposes of this section, “serious bodily injury” means death; brain or spinal damage; disfigurement; fracture or dislocation of bones or
joints; limitation of neurological, physical, or sensory function; or any condition that required subsequent surgical repair. The minimum penalty for violating this subparagraph shall be a fine of $1,000 and a minimum mandatory period of incarceration of 1 year.

3. It is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, to practice, attempt to practice, or offer to practice a health care profession with an inactive or delinquent license for any period of time up to 12 months. However, practicing, attempting to practice, or offering to practice a health care profession when that person’s license has been inactive or delinquent for a period of time of 12 months or more shall be a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The minimum penalty for violating this subparagraph shall be a term of imprisonment of 30 days and a fine of $500.

(3) Because all enforcement costs should be covered by professions regulated by the department, the department shall impose, upon initial licensure and each licensure renewal, a special fee of $5 per licensee to fund efforts to combat unlicensed activity. Such fee shall be in addition to all other fees collected from each licensee. The department shall make direct charges to the Medical Quality Assurance Trust Fund by profession. The department shall seek board advice regarding enforcement methods and strategies. The department shall directly credit the Medical Quality Assurance Trust Fund, by profession, with the revenues received from the department’s efforts to enforce licensure provisions. The department shall include all financial and statistical data resulting from unlicensed activity enforcement as a separate category in the quarterly management report provided for in s. 456.025. For an unlicensed activity account, a balance which remains at the end of a renewal cycle may, with concurrence of the applicable board and the department, be transferred to the operating fund account of that profession. The department shall also use these funds to inform and educate consumers generally on the importance of using licensed health care practitioners.

(4) The provisions of this section apply only to health care professional practice acts administered by the department.

(5) Nothing herein shall be construed to limit or restrict the sale, use, or recommendation of the use of a dietary supplement, as defined by the Food, Drug, and Cosmetic Act, 21 U.S.C. s. 321, so long as the person selling, using, or recommending the dietary supplement does so in compliance with federal and state law.

History.—s. 73, ch. 97-261; s. 84, ch. 2000-160; s. 35, ch. 2000-318; s. 54, ch. 2001-277.

Note.—Former s. 455.637.

456.066 Prosecution of criminal violations.—The department or the appropriate board shall report any criminal violation of any statute relating to the practice of a profession regulated by the department or appropriate board to the proper prosecuting authority for prompt prosecution.

History.—s. 72, ch. 97-261; s. 85, ch. 2000-160.

Note.—Former s. 455.634.
456.067 Penalty for giving false information.—In addition to, or in lieu of, any other discipline imposed pursuant to s. 456.072, the act of knowingly giving false information in the course of applying for or obtaining a license from the department, or any board thereunder, with intent to mislead a public servant in the performance of his or her official duties, or the act of attempting to obtain or obtaining a license from the department, or any board thereunder, to practice a profession by knowingly misleading statements or knowing misrepresentations constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 71, ch. 97-261; s. 24, ch. 99-7; s. 86, ch. 2000-160; s. 27, ch. 2000-318.

Note.—Former s. 455.631.

456.068 Toll-free telephone number for reporting of complaints.—The Agency for Health Care Administration shall establish a toll-free telephone number for public reporting of complaints relating to medical treatment or services provided by health care professionals.

History.—s. 148, ch. 97-237; s. 24, ch. 97-273; s. 87, ch. 2000-160.

Note.—Former s. 455.699.

456.069 Authority to inspect.—In addition to the authority specified in s. 465.017, duly authorized agents and employees of the department shall have the power to inspect in a lawful manner at all reasonable hours:

(1) Any pharmacy; or

(2) Any establishment at which the services of a licensee authorized to prescribe controlled substances specified in chapter 893 are offered,

for the purpose of determining if any of the provisions of this chapter or any practice act of a profession or any rule adopted thereunder is being violated; or for the purpose of securing such other evidence as may be needed for prosecution.

History.—s. 86, ch. 97-261; s. 88, ch. 2000-160.

Note.—Former s. 455.681.

456.071 Power to administer oaths, take depositions, and issue subpoenas.—For the purpose of any investigation or proceeding conducted by the department, the department shall have the power to administer oaths, take depositions, make inspections when authorized by statute, issue subpoenas which shall be supported by affidavit, serve subpoenas and other process, and compel the attendance of witnesses and the production of books, papers, documents, and other evidence. The department shall exercise this power on its own initiative or whenever requested by a board or the probable cause panel of any board. Challenges to, and enforcement of, the subpoenas and orders shall be handled as provided in s. 120.569.

History.—s. 65, ch. 97-261; s. 89, ch. 2000-160.

Note.—Former s. 455.611.
456.072 Grounds for discipline; penalties; enforcement.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(a) Making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee’s profession.

(b) Intentionally violating any rule adopted by the board or the department, as appropriate.

(c) Being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee’s profession.

(d) Using a Class III or a Class IV laser device or product, as defined by federal regulations, without having complied with the rules adopted under s. 501.122(2) governing the registration of the devices.

(e) Failing to comply with the educational course requirements for human immunodeficiency virus and acquired immune deficiency syndrome.

(f) Having a license or the authority to practice any regulated profession revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of any jurisdiction, including its agencies or subdivisions, for a violation that would constitute a violation under Florida law. The licensing authority’s acceptance of a relinquishment of licensure, stipulation, consent order, or other settlement, offered in response to or in anticipation of the filing of charges against the license, shall be construed as action against the license.

(g) Having been found liable in a civil proceeding for knowingly filing a false report or complaint with the department against another licensee.

(h) Attempting to obtain, obtaining, or renewing a license to practice a profession by bribery, by fraudulent misrepresentation, or through an error of the department or the board.

(i) Except as provided in s. 465.016, failing to report to the department any person who the licensee knows is in violation of this chapter, the chapter regulating the alleged violator, or the rules of the department or the board.

(j) Aiding, assisting, procuring, employing, or advising any unlicensed person or entity to practice a profession contrary to this chapter, the chapter regulating the profession, or the rules of the department or the board.

(k) Failing to perform any statutory or legal obligation placed upon a licensee. For purposes of this section, failing to repay a student loan issued or guaranteed by the state or the Federal Government in accordance with the terms of the loan or failing to comply with service scholarship obligations shall be considered a failure to perform a statutory or legal obligation, and the minimum disciplinary action imposed shall be a suspension of the license until new payment terms are agreed upon or the scholarship obligation is resumed, followed by probation for the duration of the student loan or
remaining scholarship obligation period, and a fine equal to 10 percent of the defaulted loan amount. Fines collected shall be deposited into the Medical Quality Assurance Trust Fund.

(l) Making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, or willfully impeding or obstructing another person to do so. Such reports or records shall include only those that are signed in the capacity of a licensee.

(m) Making deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession.

(n) Exercising influence on the patient or client for the purpose of financial gain of the licensee or a third party.

(o) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities the licensee knows, or has reason to know, the licensee is not competent to perform.

(p) Delegating or contracting for the performance of professional responsibilities by a person when the licensee delegating or contracting for performance of the responsibilities knows, or has reason to know, the person is not qualified by training, experience, and authorization when required to perform them.

(q) Violating a lawful order of the department or the board, or failing to comply with a lawfully issued subpoena of the department.

(r) Improperly interfering with an investigation or inspection authorized by statute, or with any disciplinary proceeding.

(s) Failing to comply with the educational course requirements for domestic violence.

(t) Failing to identify through written notice, which may include the wearing of a name tag, or orally to a patient the type of license under which the practitioner is practicing. Any advertisement for health care services naming the practitioner must identify the type of license the practitioner holds. This paragraph does not apply to a practitioner while the practitioner is providing services in a facility licensed under chapter 394, chapter 395, chapter 400, or chapter 429. Each board, or the department where there is no board, is authorized by rule to determine how its practitioners may comply with this disclosure requirement.

(u) Failing to comply with the requirements of ss. 381.026 and 381.0261 to provide patients with information about their patient rights and how to file a patient complaint.

(v) Engaging or attempting to engage in sexual misconduct as defined and prohibited in s. 456.063(1).

(w) Failing to comply with the requirements for profiling and credentialing, including, but not limited to, failing to provide initial information, failing to timely provide updated information, or
making misleading, untrue, deceptive, or fraudulent representations on a profile, credentialing, or initial or renewal licensure application.

(x) Failing to report to the board, or the department if there is no board, in writing within 30 days after the licensee has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction. Convictions, findings, adjudications, and pleas entered into prior to the enactment of this paragraph must be reported in writing to the board, or department if there is no board, on or before October 1, 1999.

(y) Using information about people involved in motor vehicle accidents which has been derived from accident reports made by law enforcement officers or persons involved in accidents under s. 316.066, or using information published in a newspaper or other news publication or through a radio or television broadcast that has used information gained from such reports, for the purposes of commercial or any other solicitation whatsoever of the people involved in the accidents.

(z) Being unable to practice with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. In enforcing this paragraph, the department shall have, upon a finding of the State Surgeon General or the State Surgeon General’s designee that probable cause exists to believe that the licensee is unable to practice because of the reasons stated in this paragraph, the authority to issue an order to compel a licensee to submit to a mental or physical examination by physicians designated by the department. If the licensee refuses to comply with the order, the department’s order directing the examination may be enforced by filing a petition for enforcement in the circuit court where the licensee resides or does business. The department shall be entitled to the summary procedure provided in s. 51.011. A licensee or certificateholder affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he or she can resume the competent practice of his or her profession with reasonable skill and safety to patients.

(aa) Testing positive for any drug, as defined in s. 112.0455, on any confirmed preemployment or employer-ordered drug screening when the practitioner does not have a lawful prescription and legitimate medical reason for using the drug.

(bb) Performing or attempting to perform health care services on the wrong patient, a wrong-site procedure, a wrong procedure, or an unauthorized procedure or a procedure that is medically unnecessary or otherwise unrelated to the patient’s diagnosis or medical condition. For the purposes of this paragraph, performing or attempting to perform health care services includes the preparation of the patient.

(cc) Leaving a foreign body in a patient, such as a sponge, clamp, forceps, surgical needle, or other paraphernalia commonly used in surgical, examination, or other diagnostic procedures. For the purposes of this paragraph, it shall be legally presumed that retention of a foreign body is not in the
best interest of the patient and is not within the standard of care of the profession, regardless of the intent of the professional.

(dd) Violating any provision of this chapter, the applicable practice act, or any rules adopted pursuant thereto.

(ee) With respect to making a personal injury protection claim as required by s. 627.736, intentionally submitting a claim, statement, or bill that has been “upcoded” as defined in s. 627.732.

(ff) With respect to making a personal injury protection claim as required by s. 627.736, intentionally submitting a claim, statement, or bill for payment of services that were not rendered.

(gg) Engaging in a pattern of practice when prescribing medicinal drugs or controlled substances which demonstrates a lack of reasonable skill or safety to patients, a violation of any provision of this chapter, a violation of the applicable practice act, or a violation of any rules adopted under this chapter or the applicable practice act of the prescribing practitioner. Notwithstanding s. 456.073(13), the department may initiate an investigation and establish such a pattern from billing records, data, or any other information obtained by the department.

(hh) Being terminated from a treatment program for impaired practitioners, which is overseen by an impaired practitioner consultant as described in s. 456.076, for failure to comply, without good cause, with the terms of the monitoring or treatment contract entered into by the licensee, or for not successfully completing any drug treatment or alcohol treatment program.

(ii) Being convicted of, or entering a plea of guilty or nolo contendere to, any misdemeanor or felony, regardless of adjudication, under 18 U.S.C. s. 669, ss. 285-287, s. 371, s. 1001, s. 1035, s. 1341, s. 1343, s. 1347, s. 1349, or s. 1518, or 42 U.S.C. ss. 1320a-7b, relating to the Medicaid program.

(jj) Failing to remit the sum owed to the state for an overpayment from the Medicaid program pursuant to a final order, judgment, or stipulation or settlement.

(kk) Being terminated from the state Medicaid program pursuant to s. 409.913, any other state Medicaid program, or the federal Medicare program, unless eligibility to participate in the program from which the practitioner was terminated has been restored.

(ll) Being convicted of, or entering a plea of guilty or nolo contendere to, any misdemeanor or felony, regardless of adjudication, a crime in any jurisdiction which relates to health care fraud.

(2) When the board, or the department when there is no board, finds any person guilty of the grounds set forth in subsection (1) or of any grounds set forth in the applicable practice act, including conduct constituting a substantial violation of subsection (1) or a violation of the applicable practice act which occurred prior to obtaining a license, it may enter an order imposing one or more of the following penalties:

(a) Refusal to certify, or to certify with restrictions, an application for a license.

(b) Suspension or permanent revocation of a license.
(c) Restriction of practice or license, including, but not limited to, restricting the licensee from practicing in certain settings, restricting the licensee to work only under designated conditions or in certain settings, restricting the licensee from performing or providing designated clinical and administrative services, restricting the licensee from practicing more than a designated number of hours, or any other restriction found to be necessary for the protection of the public health, safety, and welfare.

(d) Imposition of an administrative fine not to exceed $10,000 for each count or separate offense. If the violation is for fraud or making a false or fraudulent representation, the board, or the department if there is no board, must impose a fine of $10,000 per count or offense.

(e) Issuance of a reprimand or letter of concern.

(f) Placement of the licensee on probation for a period of time and subject to such conditions as the board, or the department when there is no board, may specify. Those conditions may include, but are not limited to, requiring the licensee to undergo treatment, attend continuing education courses, submit to be reexamined, work under the supervision of another licensee, or satisfy any terms which are reasonably tailored to the violations found.

(g) Corrective action.

(h) Imposition of an administrative fine in accordance with s. 381.0261 for violations regarding patient rights.

(i) Refund of fees billed and collected from the patient or a third party on behalf of the patient.

(j) Requirement that the practitioner undergo remedial education.

In determining what action is appropriate, the board, or department when there is no board, must first consider what sanctions are necessary to protect the public or to compensate the patient. Only after those sanctions have been imposed may the disciplining authority consider and include in the order requirements designed to rehabilitate the practitioner. All costs associated with compliance with orders issued under this subsection are the obligation of the practitioner.

(3)(a) Notwithstanding subsection (2), if the ground for disciplinary action is the first-time failure of the licensee to satisfy continuing education requirements established by the board, or by the department if there is no board, the board or department, as applicable, shall issue a citation in accordance with s. 456.077 and assess a fine, as determined by the board or department by rule. In addition, for each hour of continuing education not completed or completed late, the board or department, as applicable, may require the licensee to take 1 additional hour of continuing education for each hour not completed or completed late.

(b) Notwithstanding subsection (2), if the ground for disciplinary action is the first-time violation of a practice act for unprofessional conduct, as used in ss. 464.018(1)(h), 467.203(1)(f), 468.365(1)(f), and 478.52(1)(f), and no actual harm to the patient occurred, the board or department, as applicable, shall
issue a citation in accordance with s. 456.077 and assess a penalty as determined by rule of the board or department.

(4) In addition to any other discipline imposed through final order, or citation, entered on or after July 1, 2001, under this section or discipline imposed through final order, or citation, entered on or after July 1, 2001, for a violation of any practice act, the board, or the department when there is no board, shall assess costs related to the investigation and prosecution of the case. The costs related to the investigation and prosecution include, but are not limited to, salaries and benefits of personnel, costs related to the time spent by the attorney and other personnel working on the case, and any other expenses incurred by the department for the case. The board, or the department when there is no board, shall determine the amount of costs to be assessed after its consideration of an affidavit of itemized costs and any written objections thereto. In any case where the board or the department imposes a fine or assessment and the fine or assessment is not paid within a reasonable time, the reasonable time to be prescribed in the rules of the board, or the department when there is no board, or in the order assessing the fines or costs, the department or the Department of Legal Affairs may contract for the collection of, or bring a civil action to recover, the fine or assessment.

(5) In addition to, or in lieu of, any other remedy or criminal prosecution, the department may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person who violates any of the provisions of this chapter, or any provision of law with respect to professions regulated by the department, or any board therein, or the rules adopted pursuant thereto.

(6) If the board, or the department when there is no board, determines that revocation of a license is the appropriate penalty, the revocation shall be permanent. However, the board may establish by rule requirements for reapplication by applicants whose licenses have been permanently revoked. The requirements may include, but are not limited to, satisfying current requirements for an initial license.

(7) The purpose of this section is to facilitate uniform discipline for those actions made punishable under this section and, to this end, a reference to this section constitutes a general reference under the doctrine of incorporation by reference.


Note.—Former s. 455.624.

456.0721 Practitioners in default on student loan or scholarship obligations; investigation; report.—The Department of Health shall obtain from the United States Department of Health and Human Services information necessary to investigate and prosecute health care practitioners for failing to repay a student loan or comply with scholarship service obligations pursuant to s. 456.072(1)(k). The department shall obtain from the United States Department of Health and Human Services a list of default health care practitioners each month, along with the information necessary to investigate a
complaint in accordance with s. 456.073. The department may obtain evidence to support the investigation and prosecution from any financial institution or educational institution involved in providing the loan or education to the practitioner. The department shall report to the Legislature as part of the annual report required by s. 456.026, the number of practitioners in default, along with the results of the department’s investigations and prosecutions, and the amount of fines collected from practitioners prosecuted for violating s. 456.072(1)(k).

History.—s. 3, ch. 2002-254.

456.073 Disciplinary proceedings.—Disciplinary proceedings for each board shall be within the jurisdiction of the department.

(1) The department, for the boards under its jurisdiction, shall cause to be investigated any complaint that is filed before it if the complaint is in writing, signed by the complainant, and legally sufficient. A complaint filed by a state prisoner against a health care practitioner employed by or otherwise providing health care services within a facility of the Department of Corrections is not legally sufficient unless there is a showing that the prisoner complainant has exhausted all available administrative remedies within the state correctional system before filing the complaint. However, if the Department of Health determines after a preliminary inquiry of a state prisoner’s complaint that the practitioner may present a serious threat to the health and safety of any individual who is not a state prisoner, the Department of Health may determine legal sufficiency and proceed with discipline. The Department of Health shall be notified within 15 days after the Department of Corrections disciplines or allows a health care practitioner to resign for an offense related to the practice of his or her profession. A complaint is legally sufficient if it contains ultimate facts that show that a violation of this chapter, of any of the practice acts relating to the professions regulated by the department, or of any rule adopted by the department or a regulatory board in the department has occurred. In order to determine legal sufficiency, the department may require supporting information or documentation. The department may investigate, and the department or the appropriate board may take appropriate final action on, a complaint even though the original complainant withdraws it or otherwise indicates a desire not to cause the complaint to be investigated or prosecuted to completion. The department may investigate an anonymous complaint if the complaint is in writing and is legally sufficient, if the alleged violation of law or rules is substantial, and if the department has reason to believe, after preliminary inquiry, that the violations alleged in the complaint are true. The department may investigate a complaint made by a confidential informant if the complaint is legally sufficient, if the alleged violation of law or rule is substantial, and if the department has reason to believe, after preliminary inquiry, that the allegations of the complainant are true. The department may initiate an investigation if it has reasonable cause to believe that a licensee or a group of licensees has violated a Florida statute, a rule of the department, or a rule of a board. Notwithstanding subsection (13), the department may investigate information filed pursuant to s. 456.041(4) relating to liability actions with
respect to practitioners licensed under chapter 458 or chapter 459 which have been reported under s. 456.049 or s. 627.912 within the previous 6 years for any paid claim that exceeds $50,000. Except as provided in ss. 458.331(9), 459.015(9), 460.413(5), and 461.013(6), when an investigation of any subject is undertaken, the department shall promptly furnish to the subject or the subject’s attorney a copy of the complaint or document that resulted in the initiation of the investigation. The subject may submit a written response to the information contained in such complaint or document within 20 days after service to the subject of the complaint or document. The subject’s written response shall be considered by the probable cause panel. The right to respond does not prohibit the issuance of a summary emergency order if necessary to protect the public. However, if the State Surgeon General, or the State Surgeon General’s designee, and the chair of the respective board or the chair of its probable cause panel agree in writing that such notification would be detrimental to the investigation, the department may withhold notification. The department may conduct an investigation without notification to any subject if the act under investigation is a criminal offense.

(2) The department shall allocate sufficient and adequately trained staff to expeditiously and thoroughly determine legal sufficiency and investigate all legally sufficient complaints. For purposes of this section, it is the intent of the Legislature that the term “expeditiously” means that the department complete the report of its initial investigative findings and recommendations concerning the existence of probable cause within 6 months after its receipt of the complaint. The failure of the department, for disciplinary cases under its jurisdiction, to comply with the time limits of this section while investigating a complaint against a licensee constitutes harmless error in any subsequent disciplinary action unless a court finds that either the fairness of the proceeding or the correctness of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure. When its investigation is complete and legally sufficient, the department shall prepare and submit to the probable cause panel of the appropriate regulatory board the investigative report of the department. The report shall contain the investigative findings and the recommendations of the department concerning the existence of probable cause. The department shall not recommend a letter of guidance in lieu of finding probable cause if the subject has already been issued a letter of guidance for a related offense. At any time after legal sufficiency is found, the department may dismiss any case, or any part thereof, if the department determines that there is insufficient evidence to support the prosecution of allegations contained therein. The department shall provide a detailed report to the appropriate probable cause panel prior to dismissal of any case or part thereof, and to the subject of the complaint after dismissal of any case or part thereof, under this section. For cases dismissed prior to a finding of probable cause, such report is confidential and exempt from s. 119.07(1). The probable cause panel shall have access, upon request, to the investigative files pertaining to a case prior to dismissal of such case. If the department dismisses a case, the probable cause panel may retain
independent legal counsel, employ investigators, and continue the investigation and prosecution of the case as it deems necessary.

(3) As an alternative to the provisions of subsections (1) and (2), when a complaint is received, the department may provide a licensee with a notice of noncompliance for an initial offense of a minor violation. Each board, or the department if there is no board, shall establish by rule those minor violations under this provision which do not endanger the public health, safety, and welfare and which do not demonstrate a serious inability to practice the profession. Failure of a licensee to take action in correcting the violation within 15 days after notice may result in the institution of regular disciplinary proceedings.

(4) The determination as to whether probable cause exists shall be made by majority vote of a probable cause panel of the board, or by the department, as appropriate. Each regulatory board shall provide by rule that the determination of probable cause shall be made by a panel of its members or by the department. Each board may provide by rule for multiple probable cause panels composed of at least two members. Each board may provide by rule that one or more members of the panel or panels may be a former board member. The length of term or repetition of service of any such former board member on a probable cause panel may vary according to the direction of the board when authorized by board rule. Any probable cause panel must include one of the board’s former or present consumer members, if one is available, is willing to serve, and is authorized to do so by the board chair. Any probable cause panel must include a present board member. Any probable cause panel must include a former or present professional board member. However, any former professional board member serving on the probable cause panel must hold an active valid license for that profession. All proceedings of the panel are exempt from s. 286.011 until 10 days after probable cause has been found to exist by the panel or until the subject of the investigation waives his or her privilege of confidentiality. The probable cause panel may make a reasonable request, and upon such request the department shall provide such additional investigative information as is necessary to the determination of probable cause. A request for additional investigative information shall be made within 15 days from the date of receipt by the probable cause panel of the investigative report of the department or the agency. The probable cause panel or the department, as may be appropriate, shall make its determination of probable cause within 30 days after receipt by it of the final investigative report of the department. The State Surgeon General may grant extensions of the 15-day and the 30-day time limits. In lieu of a finding of probable cause, the probable cause panel, or the department if there is no board, may issue a letter of guidance to the subject. If, within the 30-day time limit, as may be extended, the probable cause panel does not make a determination regarding the existence of probable cause or does not issue a letter of guidance in lieu of a finding of probable cause, the department must make a determination regarding the existence of probable cause within 10 days after the expiration of the time limit. If the probable cause panel finds that probable cause exists, it shall direct the department to file a formal
complaint against the licensee. The department shall follow the directions of the probable cause panel regarding the filing of a formal complaint. If directed to do so, the department shall file a formal complaint against the subject of the investigation and prosecute that complaint pursuant to chapter 120. However, the department may decide not to prosecute the complaint if it finds that probable cause has been improvidently found by the panel. In such cases, the department shall refer the matter to the board. The board may then file a formal complaint and prosecute the complaint pursuant to chapter 120. The department shall also refer to the board any investigation or disciplinary proceeding not before the Division of Administrative Hearings pursuant to chapter 120 or otherwise completed by the department within 1 year after the filing of a complaint. The department, for disciplinary cases under its jurisdiction, must establish a uniform reporting system to quarterly refer to each board the status of any investigation or disciplinary proceeding that is not before the Division of Administrative Hearings or otherwise completed by the department within 1 year after the filing of the complaint. A probable cause panel or a board may retain independent legal counsel, employ investigators, and continue the investigation as it deems necessary; all costs thereof shall be paid from a trust fund used by the department to implement this chapter. All proceedings of the probable cause panel are exempt from s. 120.525.

(5) A formal hearing before an administrative law judge from the Division of Administrative Hearings shall be held pursuant to chapter 120 if there are any disputed issues of material fact. The determination of whether or not a licensee has violated the laws and rules regulating the profession, including a determination of the reasonable standard of care, is a conclusion of law to be determined by the board, or department when there is no board, and is not a finding of fact to be determined by an administrative law judge. The administrative law judge shall issue a recommended order pursuant to chapter 120. Notwithstanding s. 120.569(2), the department shall notify the division within 45 days after receipt of a petition or request for a formal hearing.

(6) The appropriate board, with those members of the panel, if any, who reviewed the investigation pursuant to subsection (4) being excused, or the department when there is no board, shall determine and issue the final order in each disciplinary case. Such order shall constitute final agency action. Any consent order or agreed-upon settlement shall be subject to the approval of the department.

(7) The department shall have standing to seek judicial review of any final order of the board, pursuant to s. 120.68.

(8) Any proceeding for the purpose of summary suspension of a license, or for the restriction of the license, of a licensee pursuant to s. 120.60(6) shall be conducted by the State Surgeon General or his or her designee, as appropriate, who shall issue the final summary order.
(9)(a) The department shall periodically notify the person who filed the complaint, as well as the patient or the patient’s legal representative, of the status of the investigation, indicating whether probable cause has been found and the status of any civil action or administrative proceeding or appeal.

(b) In any disciplinary case for which probable cause has been found, the department shall provide to the person who filed the complaint a copy of the administrative complaint and:

1. A written explanation of how an administrative complaint is resolved by the disciplinary process.
2. A written explanation of how and when the person may participate in the disciplinary process.
3. A written notice of any hearing before the Division of Administrative Hearings or the regulatory board at which final agency action may be taken.

(c) In any disciplinary case for which probable cause is not found, the department shall so inform the person who filed the complaint and notify that person that he or she may, within 60 days, provide any additional information to the department which may be relevant to the decision. To facilitate the provision of additional information, the person who filed the complaint may receive, upon request, a copy of the department’s expert report that supported the recommendation for closure, if such a report was relied upon by the department. In no way does this require the department to procure an expert opinion or report if none was used. Additionally, the identity of the expert shall remain confidential. In any administrative proceeding under s. 120.57, the person who filed the disciplinary complaint shall have the right to present oral or written communication relating to the alleged disciplinary violations or to the appropriate penalty.

(10) The complaint and all information obtained pursuant to the investigation by the department are confidential and exempt from s. 119.07(1) until 10 days after probable cause has been found to exist by the probable cause panel or by the department, or until the regulated professional or subject of the investigation waives his or her privilege of confidentiality, whichever occurs first. Upon completion of the investigation and a recommendation by the department to find probable cause, and pursuant to a written request by the subject or the subject’s attorney, the department shall provide the subject an opportunity to inspect the investigative file or, at the subject’s expense, forward to the subject a copy of the investigative file. Notwithstanding s. 456.057, the subject may inspect or receive a copy of any expert witness report or patient record connected with the investigation if the subject agrees in writing to maintain the confidentiality of any information received under this subsection until 10 days after probable cause is found and to maintain the confidentiality of patient records pursuant to s. 456.057. The subject may file a written response to the information contained in the investigative file. Such response must be filed within 20 days of mailing by the department, unless an extension of time has been granted by the department. This subsection does not prohibit the department from providing such information to any law enforcement agency or to any other regulatory agency.
(11) A privilege against civil liability is hereby granted to any complainant or any witness with regard to information furnished with respect to any investigation or proceeding pursuant to this section, unless the complainant or witness acted in bad faith or with malice in providing such information.

(12)(a) No person who reports in any capacity, whether or not required by law, information to the department with regard to the incompetence, impairment, or unprofessional conduct of any health care provider licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 464, chapter 465, or chapter 466 shall be held liable in any civil action for reporting against such health care provider if such person acts without intentional fraud or malice.

(b) No facility licensed under chapter 395, health maintenance organization certificated under part I of chapter 641, physician licensed under chapter 458, or osteopathic physician licensed under chapter 459 shall discharge, threaten to discharge, intimidate, or coerce any employee or staff member by reason of such employee’s or staff member’s report to the department about a physician licensed under chapter 458, chapter 459, chapter 460, chapter 461, or chapter 466 who may be guilty of incompetence, impairment, or unprofessional conduct so long as such report is given without intentional fraud or malice.

(c) In any civil suit brought outside the protections of paragraphs (a) and (b) in which intentional fraud or malice is alleged, the person alleging intentional fraud or malice shall be liable for all court costs and for the other party’s reasonable attorney’s fees if intentional fraud or malice is not proved.

(13) Notwithstanding any provision of law to the contrary, an administrative complaint against a licensee shall be filed within 6 years after the time of the incident or occurrence giving rise to the complaint against the licensee. If such incident or occurrence involved criminal actions, diversion of controlled substances, sexual misconduct, or impairment by the licensee, this subsection does not apply to bar initiation of an investigation or filing of an administrative complaint beyond the 6-year timeframe. In those cases covered by this subsection in which it can be shown that fraud, concealment, or intentional misrepresentation of fact prevented the discovery of the violation of law, the period of limitations is extended forward, but in no event to exceed 12 years after the time of the incident or occurrence.


Note.—Former s. 455.621.

456.074 Certain health care practitioners; immediate suspension of license.—

(1) The department shall issue an emergency order suspending the license of any person licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 464, chapter 465, chapter 466, or chapter 484 who pleads guilty to, is convicted or found guilty of, or who enters a plea of nolo contendere to, regardless of adjudication, to:
(a) A felony under chapter 409, chapter 817, or chapter 893 or under 21 U.S.C. ss. 801-970 or under 42 U.S.C. ss. 1395-1396; or

(b) A misdemeanor or felony under 18 U.S.C. s. 669, ss. 285-287, s. 371, s. 1001, s. 1035, s. 1341, s. 1343, s. 1347, s. 1349, or s. 1518 or 42 U.S.C. ss. 1320a-7b, relating to the Medicaid program.

(2) If the board has previously found any physician or osteopathic physician in violation of the provisions of s. 458.331(1)(t) or s. 459.015(1)(x), in regard to her or his treatment of three or more patients, and the probable cause panel of the board finds probable cause of an additional violation of that section, then the State Surgeon General shall review the matter to determine if an emergency suspension or restriction order is warranted. Nothing in this section shall be construed so as to limit the authority of the State Surgeon General to issue an emergency order.

(3) The department may issue an emergency order suspending or restricting the license of any health care practitioner as defined in s. 456.001(4) who tests positive for any drug on any government or private sector preemployment or employer-ordered confirmed drug test, as defined in s. 112.0455, when the practitioner does not have a lawful prescription and legitimate medical reason for using such drug. The practitioner shall be given 48 hours from the time of notification to the practitioner of the confirmed test result to produce a lawful prescription for the drug before an emergency order is issued.

(4) Upon receipt of information that a Florida-licensed health care practitioner has defaulted on a student loan issued or guaranteed by the state or the Federal Government, the department shall notify the licensee by certified mail that he or she shall be subject to immediate suspension of license unless, within 45 days after the date of mailing, the licensee provides proof that new payment terms have been agreed upon by all parties to the loan. The department shall issue an emergency order suspending the license of any licensee who, after 45 days following the date of mailing from the department, has failed to provide such proof. Production of such proof shall not prohibit the department from proceeding with disciplinary action against the licensee pursuant to s. 456.073.

History.—s. 88, ch. 97-261; s. 25, ch. 99-7; s. 87, ch. 99-397; s. 92, ch. 2000-160; s. 73, ch. 2001-277; s. 1, ch. 2002-254; s. 66, ch. 2008-6; s. 26, ch. 2009-223.

Note.—Former s. 455.687.

456.075 Criminal proceedings against licensees; appearances by department representatives.—In any criminal proceeding against a person licensed by the department to practice a health care profession in this state, a representative of the department may voluntarily appear and furnish pertinent information, make recommendations regarding specific conditions of probation, or provide any other assistance necessary to promote justice or protect the public. The court may order a representative of the department to appear in any criminal proceeding if the crime charged is substantially related to the qualifications, functions, or duties of a health care professional licensed by the department.
456.076 Treatment programs for impaired practitioners.—

(1) For professions that do not have impaired practitioner programs provided for in their practice acts, the department shall, by rule, designate approved impaired practitioner programs under this section. The department may adopt rules setting forth appropriate criteria for approval of treatment providers. The rules may specify the manner in which the consultant, retained as set forth in subsection (2), works with the department in intervention, requirements for evaluating and treating a professional, requirements for continued care of impaired professionals by approved treatment providers, continued monitoring by the consultant of the care provided by approved treatment providers regarding the professionals under their care, and requirements related to the consultant’s expulsion of professionals from the program.

(2) The department shall retain one or more impaired practitioner consultants. The consultant shall be a licensee under the jurisdiction of the Division of Medical Quality Assurance within the department who must be a practitioner or recovered practitioner licensed under chapter 458, chapter 459, or part I of chapter 464, or an entity employing a medical director who must be a practitioner or recovered practitioner licensed under chapter 458, chapter 459, or part I of chapter 464. The consultant shall assist the probable cause panel and department in carrying out the responsibilities of this section. This shall include working with department investigators to determine whether a practitioner is, in fact, impaired. The consultant may contract for services to be provided, for appropriate compensation, if requested by the school, for students enrolled in schools for licensure as allopathic physicians or physician assistants under chapter 458, osteopathic physicians or physician assistants under chapter 459, nurses under chapter 464, or pharmacists under chapter 465 who are alleged to be impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition. The department is not responsible under any circumstances for paying the costs of care provided by approved treatment providers, and the department is not responsible for paying the costs of consultants’ services provided for students. A medical school accredited by the Liaison Committee on Medical Education of the Commission on Osteopathic College Accreditation, or other school providing for the education of students enrolled in preparation for licensure as allopathic physicians under chapter 458 or osteopathic physicians under chapter 459, which is governed by accreditation standards requiring notice and the provision of due process procedures to students, is not liable in any civil action for referring a student to the consultant retained by the department or for disciplinary actions that adversely affect the status of a student when the disciplinary actions are instituted in reasonable reliance on the recommendations, reports, or conclusions provided by such consultant, if the school, in referring the student or taking disciplinary action, adheres to the due process procedures adopted by the applicable accreditation entities and if the school committed no intentional fraud in carrying out the provisions of this section.
Whenever the department receives a written or oral legally sufficient complaint alleging that a licensee under the jurisdiction of the Division of Medical Quality Assurance within the department is impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition which could affect the licensee's ability to practice with skill and safety, and no complaint against the licensee other than impairment exists, the reporting of such information shall not constitute grounds for discipline pursuant to s. 456.072 or the corresponding grounds for discipline within the applicable practice act if the probable cause panel of the appropriate board, or the department when there is no board, finds:

1. The licensee has acknowledged the impairment problem.
2. The licensee has voluntarily enrolled in an appropriate, approved treatment program.
3. The licensee has voluntarily withdrawn from practice or limited the scope of practice as required by the consultant, in each case, until such time as the panel, or the department when there is no board, is satisfied the licensee has successfully completed an approved treatment program.
4. The licensee has executed releases for medical records, authorizing the release of all records of evaluations, diagnoses, and treatment of the licensee, including records of treatment for emotional or mental conditions, to the consultant. The consultant shall make no copies or reports of records that do not regard the issue of the licensee's impairment and his or her participation in a treatment program.

(b) If, however, the department has not received a legally sufficient complaint and the licensee agrees to withdraw from practice until such time as the consultant determines the licensee has satisfactorily completed an approved treatment program or evaluation, the probable cause panel, or the department when there is no board, shall not become involved in the licensee's case.

(c) Inquiries related to impairment treatment programs designed to provide information to the licensee and others and which do not indicate that the licensee presents a danger to the public shall not constitute a complaint within the meaning of s. 456.073 and shall be exempt from the provisions of this subsection.

(d) Whenever the department receives a legally sufficient complaint alleging that a licensee is impaired as described in paragraph (a) and no complaint against the licensee other than impairment exists, the department shall forward all information in its possession regarding the impaired licensee to the consultant. For the purposes of this section, a suspension from hospital staff privileges due to the impairment does not constitute a complaint.

(e) The probable cause panel, or the department when there is no board, shall work directly with the consultant, and all information concerning a practitioner obtained from the consultant by the panel, or the department when there is no board, shall remain confidential and exempt from the provisions of s. 119.07(1), subject to the provisions of subsections (5) and (6).

(f) A finding of probable cause shall not be made as long as the panel, or the department when there is no board, is satisfied, based upon information it receives from the consultant and the
department, that the licensee is progressing satisfactorily in an approved impaired practitioner program and no other complaint against the licensee exists.

(4) In any disciplinary action for a violation other than impairment in which a licensee establishes the violation for which the licensee is being prosecuted was due to or connected with impairment and further establishes the licensee is satisfactorily progressing through or has successfully completed an approved treatment program pursuant to this section, such information may be considered by the board, or the department when there is no board, as a mitigating factor in determining the appropriate penalty. This subsection does not limit mitigating factors the board may consider.

(5)(a) An approved treatment provider shall, upon request, disclose to the consultant all information in its possession regarding the issue of a licensee's impairment and participation in the treatment program. All information obtained by the consultant and department pursuant to this section is confidential and exempt from the provisions of s. 119.07(1), subject to the provisions of this subsection and subsection (6). Failure to provide such information to the consultant is grounds for withdrawal of approval of such program or provider.

(b) If in the opinion of the consultant, after consultation with the treatment provider, an impaired licensee has not progressed satisfactorily in a treatment program, all information regarding the issue of a licensee's impairment and participation in a treatment program in the consultant's possession shall be disclosed to the department. Such disclosure shall constitute a complaint pursuant to the general provisions of s. 456.073. Whenever the consultant concludes that impairment affects a licensee's practice and constitutes an immediate, serious danger to the public health, safety, or welfare, that conclusion shall be communicated to the State Surgeon General.

(6) A consultant, licensee, or approved treatment provider who makes a disclosure pursuant to this section is not subject to civil liability for such disclosure or its consequences. The provisions of s. 766.101 apply to any officer, employee, or agent of the department or the board and to any officer, employee, or agent of any entity with which the department has contracted pursuant to this section.

(7)(a) A consultant retained pursuant to subsection (2), a consultant’s officers and employees, and those acting at the direction of the consultant for the limited purpose of an emergency intervention on behalf of a licensee or student as described in subsection (2) when the consultant is unable to perform such intervention shall be considered agents of the department for purposes of s. 768.28 while acting within the scope of the consultant’s duties under the contract with the department if the contract complies with the requirements of this section. The contract must require that:

1. The consultant indemnify the state for any liabilities incurred up to the limits set out in chapter 768.

2. The consultant establish a quality assurance program to monitor services delivered under the contract.
3. The consultant’s quality assurance program, treatment, and monitoring records be evaluated quarterly.

4. The consultant’s quality assurance program be subject to review and approval by the department.

5. The consultant operate under policies and procedures approved by the department.

6. The consultant provide to the department for approval a policy and procedure manual that comports with all statutes, rules, and contract provisions approved by the department.

7. The department be entitled to review the records relating to the consultant’s performance under the contract for the purpose of management audits, financial audits, or program evaluation.

8. All performance measures and standards be subject to verification and approval by the department.

9. The department be entitled to terminate the contract with the consultant for noncompliance with the contract.

(b) In accordance with s. 284.385, the Department of Financial Services shall defend any claim, suit, action, or proceeding against the consultant, the consultant’s officers or employees, or those acting at the direction of the consultant for the limited purpose of an emergency intervention on behalf of a licensee or student as described in subsection (2) when the consultant is unable to perform such intervention which is brought as a result of any act or omission by any of the consultant’s officers and employees and those acting under the direction of the consultant for the limited purpose of an emergency intervention on behalf of a licensee or student as described in subsection (2) when the consultant is unable to perform such intervention when such act or omission arises out of and in the scope of the consultant’s duties under its contract with the department.

(c) If the consultant retained pursuant to subsection (2) is retained by any other state agency, and if the contract between such state agency and the consultant complies with the requirements of this section, the consultant, the consultant’s officers and employees, and those acting under the direction of the consultant for the limited purpose of an emergency intervention on behalf of a licensee or student as described in subsection (2) when the consultant is unable to perform such intervention shall be considered agents of the state for the purposes of this section while acting within the scope of and pursuant to guidelines established in the contract between such state agency and the consultant.

History.—s. 38, ch. 92-149; s. 1, ch. 95-139; s. 310, ch. 96-406; s. 1085, ch. 97-103; s. 3, ch. 97-209; s. 94, ch. 97-261; s. 2, ch. 98-130; s. 94, ch. 2000-160; ss. 29, 117, ch. 2000-318; s. 67, ch. 2008-6; s. 1, ch. 2008-63.

Note.—Former s. 455.261; s. 455.707.

456.077 Authority to issue citations.—

(1) Notwithstanding s. 456.073, the board, or the department if there is no board, shall adopt rules to permit the issuance of citations. The citation shall be issued to the subject and shall contain the subject’s name and address, the subject’s license number if applicable, a brief factual statement, the
sections of the law allegedly violated, and the penalty imposed. The citation must clearly state that
the subject may choose, in lieu of accepting the citation, to follow the procedure under s. 456.073. If
the subject disputes the matter in the citation, the procedures set forth in s. 456.073 must be
followed. However, if the subject does not dispute the matter in the citation with the department
within 30 days after the citation is served, the citation becomes a public final order and does not
constitute discipline for a first offense, but does constitute discipline for a second or subsequent
offense. The penalty shall be a fine or other conditions as established by rule.

(2) The board, or the department if there is no board, shall adopt rules designating violations for
which a citation may be issued. Such rules shall designate as citation violations those violations for
which there is no substantial threat to the public health, safety, and welfare or no violation of
standard of care involving injury to a patient. Violations for which a citation may be issued shall
include violations of continuing education requirements; failure to timely pay required fees and fines;
failure to comply with the requirements of ss. 381.026 and 381.0261 regarding the dissemination of
information regarding patient rights; failure to comply with advertising requirements; failure to timely
update practitioner profile and credentialing files; failure to display signs, licenses, and permits;
failure to have required reference books available; and all other violations that do not pose a direct
and serious threat to the health and safety of the patient or involve a violation of standard of care that
has resulted in injury to a patient.

(3) The department shall be entitled to recover the costs of investigation, in addition to any
penalty provided according to board or department rule, as part of the penalty levied pursuant to the
citation.

(4) A citation must be issued within 6 months after the filing of the complaint that is the basis for
the citation.

(5) Service of a citation may be made by personal service or certified mail, restricted delivery, to
the subject at the subject’s last known address.

(6) A board has 6 months in which to enact rules designating violations and penalties appropriate
for citation offenses. Failure to enact such rules gives the department exclusive authority to adopt
rules as required for implementing this section. A board has continuous authority to amend its rules
adopted pursuant to this section.

History.—s. 67, ch. 97-261; s. 95, ch. 2000-160; s. 74, ch. 2001-277; s. 21, ch. 2003-416.

Note.—Former s. 455.617.

456.078  Mediation.—

(1) Notwithstanding the provisions of s. 456.073, the board, or the department when there is no
board, shall adopt rules to designate which violations of the applicable professional practice act are
appropriate for mediation. The board, or the department when there is no board, shall designate as
mediation offenses those complaints where harm caused by the licensee:
(a) Is economic in nature except any act or omission involving intentional misconduct;
(b) Can be remedied by the licensee;
(c) Is not a standard of care violation involving any type of injury to a patient; or
(d) Does not result in an adverse incident.
(2) For the purposes of this section, an “adverse incident” means an event that results in:
(a) The death of a patient;
(b) Brain or spinal damage to a patient;
(c) The performance of a surgical procedure on the wrong patient;
(d) The performance of a wrong-site surgical procedure;
(e) The performance of a surgical procedure that is medically unnecessary or otherwise unrelated to the patient’s diagnosis or medical condition;
(f) The surgical repair of damage to a patient resulting from a planned surgical procedure, which damage is not a recognized specific risk as disclosed to the patient and documented through the informed-consent process;
(g) The performance of a procedure to remove unplanned foreign objects remaining from a surgical procedure; or
(h) The performance of any other surgical procedure that breached the standard of care.
(3) After the department determines a complaint is legally sufficient and the alleged violations are defined as mediation offenses, the department or any agent of the department may conduct informal mediation to resolve the complaint. If the complainant and the subject of the complaint agree to a resolution of a complaint within 14 days after contact by the mediator, the mediator shall notify the department of the terms of the resolution. The department or board shall take no further action unless the complainant and the subject each fail to record with the department an acknowledgment of satisfaction of the terms of mediation within 60 days of the mediator’s notification to the department. A successful mediation shall not constitute discipline. In the event the complainant and subject fail to reach settlement terms or to record the required acknowledgment, the department shall process the complaint according to the provisions of s. 456.073.
(4) Conduct or statements made during mediation are inadmissible in any proceeding pursuant to s. 456.073. Further, any information relating to the mediation of a case shall be subject to the confidentiality provisions of s. 456.073.
(5) No licensee shall go through the mediation process more than three times without approval of the department. The department may consider the subject and dates of the earlier complaints in rendering its decision. Such decision shall not be considered a final agency action for purposes of chapter 120.
(6) Any board created on or after January 1, 1995, shall have 6 months to adopt rules designating which violations are appropriate for mediation, after which time the department shall have exclusive
authority to adopt rules pursuant to this section. A board shall have continuing authority to amend its rules adopted pursuant to this section.

**History.**—s. 66, ch. 97-261; s. 96, ch. 2000-160; s. 22, ch. 2003-416.

**Note.**—Former s. 455.614.

456.079 Disciplinary guidelines.—

(1) Each board, or the department if there is no board, shall adopt by rule and periodically review the disciplinary guidelines applicable to each ground for disciplinary action which may be imposed by the board, or the department if there is no board, pursuant to this chapter, the respective practice acts, and any rule of the board or department.

(2) The disciplinary guidelines shall specify a meaningful range of designated penalties based upon the severity and repetition of specific offenses, it being the legislative intent that minor violations be distinguished from those which endanger the public health, safety, or welfare; that such guidelines provide reasonable and meaningful notice to the public of likely penalties which may be imposed for proscribed conduct; and that such penalties be consistently applied by the board.

(3) A specific finding in the final order of mitigating or aggravating circumstances shall allow the board to impose a penalty other than that provided for in such guidelines. If applicable, the board, or the department if there is no board, shall adopt by rule disciplinary guidelines to designate possible mitigating and aggravating circumstances and the variation and range of penalties permitted for such circumstances.

(4) The department must review such disciplinary guidelines for compliance with the legislative intent as set forth herein to determine whether the guidelines establish a meaningful range of penalties and may also challenge such rules pursuant to s. 120.56.

(5) The administrative law judge, in recommending penalties in any recommended order, must follow the penalty guidelines established by the board or department and must state in writing the mitigating or aggravating circumstances upon which the recommended penalty is based.

**History.**—s. 70, ch. 97-261; s. 97, ch. 2000-160; s. 16, ch. 2001-277.

**Note.**—Former s. 455.627.

456.081 Publication of information.—The department and the boards shall have the authority to advise licensees periodically, through the publication of a newsletter on the department’s website, about information that the department or the board determines is of interest to the industry. The department and the boards shall maintain a website which contains copies of the newsletter; information relating to adverse incident reports without identifying the patient, practitioner, or facility in which the adverse incident occurred until 10 days after probable cause is found, at which time the name of the practitioner and facility shall become public as part of the investigative file; information about error prevention and safety strategies; and information concerning best practices. Unless otherwise prohibited by law, the department and the boards shall publish on the website a summary of
final orders entered after July 1, 2001, resulting in disciplinary action, and any other information the department or the board determines is of interest to the public. In order to provide useful and timely information at minimal cost, the department and boards may consult with, and include information provided by, professional associations and national organizations.

History.—s. 44, ch. 97-261; s. 98, ch. 2000-160; ss. 15, 75, ch. 2001-277.

Note.—Former s. 455.537.

456.082 Disclosure of confidential information.—

(1) No officer, employee, or person under contract with the department, or any board therein, or any subject of an investigation shall convey knowledge or information to any person who is not lawfully entitled to such knowledge or information about any public meeting or public record, which at the time such knowledge or information is conveyed is exempt from the provisions of s. 119.01, s. 119.07(1), or s. 286.011.

(2) Any person who willfully violates any provision of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and may be subject to discipline pursuant to s. 456.072, and, if applicable, shall be removed from office, employment, or the contractual relationship.

(3) Any person injured as a result of a willful violation of this section shall have a civil cause of action for treble damages, reasonable attorney fees, and costs.

History.—s. 77, ch. 97-261; s. 37, ch. 98-166; s. 7, ch. 99-356; s. 188, ch. 99-397; s. 99, ch. 2000-160; s. 27, ch. 2000-318.

Note.—Former s. 455.651.

456.36 Health care professionals; exemption from disqualification from employment or contracting.—Any other provision of law to the contrary notwithstanding, only the appropriate regulatory board, or the department when there is no board, may grant an exemption from disqualification from employment or contracting as provided in s. 435.07 to a person under the licensing jurisdiction of that board or the department, as applicable.

History.—s. 34, ch. 2000-318.

456.38 Practitioner registry for disasters and emergencies.—The Department of Health may include on its forms for the licensure or certification of health care practitioners, as defined in s. 456.001, who could assist the department in the event of a disaster a question asking if the practitioner would be available to provide health care services in special needs shelters or to help staff disaster medical assistance teams during times of emergency or major disaster. The names of practitioners who answer affirmatively shall be maintained by the department as a health care practitioner registry for disasters and emergencies.

History.—s. 20, ch. 2000-140.

456.41 Complementary or alternative health care treatments.—
(1) LEGISLATIVE INTENT.—It is the intent of the Legislature that citizens be able to make informed choices for any type of health care they deem to be an effective option for treating human disease, pain, injury, deformity, or other physical or mental condition. It is the intent of the Legislature that citizens be able to choose from all health care options, including the prevailing or conventional treatment methods as well as other treatments designed to complement or substitute for the prevailing or conventional treatment methods. It is the intent of the Legislature that health care practitioners be able to offer complementary or alternative health care treatments with the same requirements, provisions, and liabilities as those associated with the prevailing or conventional treatment methods.

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

(a) “Complementary or alternative health care treatment” means any treatment that is designed to provide patients with an effective option to the prevailing or conventional treatment methods associated with the services provided by a health care practitioner. Such a treatment may be provided in addition to or in place of other treatment options.

(b) “Health care practitioner” means any health care practitioner as defined in s. 456.001(4).

(3) COMMUNICATION OF TREATMENT ALTERNATIVES.—A health care practitioner who offers to provide a patient with a complementary or alternative health care treatment must inform the patient of the nature of the treatment and must explain the benefits and risks associated with the treatment to the extent necessary for the patient to make an informed and prudent decision regarding such treatment option. In compliance with this subsection:

(a) The health care practitioner must inform the patient of the practitioner’s education, experience, and credentials in relation to the complementary or alternative health care treatment option.

(b) The health care practitioner may, in his or her discretion, communicate the information orally or in written form directly to the patient or to the patient’s legal representative.

(c) The health care practitioner may, in his or her discretion and without restriction, recommend any mode of treatment that is, in his or her judgment, in the best interests of the patient, including complementary or alternative health care treatments, in accordance with the provisions of his or her license.

(4) RECORDS.—Every health care practitioner providing a patient with a complementary or alternative health care treatment must indicate in the patient’s care record the method by which the requirements of subsection (3) were met.

(5) EFFECT.—This section does not modify or change the scope of practice of any licensees of the department, nor does it alter in any way the provisions of the individual practice acts for those licensees, which require licensees to practice within their respective standards of care and which prohibit fraud and exploitation of patients.

History.—s. 1, ch. 2001-116.
456.42 Written prescriptions for medicinal drugs.—A written prescription for a medicinal drug issued by a health care practitioner licensed by law to prescribe such drug must be legibly printed or typed so as to be capable of being understood by the pharmacist filling the prescription; must contain the name of the prescribing practitioner, the name and strength of the drug prescribed, the quantity of the drug prescribed, and the directions for use of the drug; must be dated; and must be signed by the prescribing practitioner on the day when issued. A written prescription for a controlled substance listed in chapter 893 must have the quantity of the drug prescribed in both textual and numerical formats and must be dated with the abbreviated month written out on the face of the prescription. However, a prescription that is electronically generated and transmitted must contain the name of the prescribing practitioner, the name and strength of the drug prescribed, the quantity of the drug prescribed in numerical format, and the directions for use of the drug and must be dated and signed by the prescribing practitioner only on the day issued, which signature may be in an electronic format as defined in s. 668.003(4).


456.43 Electronic prescribing for medicinal drugs.—
(1) Electronic prescribing shall not interfere with a patient’s freedom to choose a pharmacy.

(2) Electronic prescribing software shall not use any means or permit any other person to use any means, including, but not limited to, advertising, instant messaging, and pop-up ads, to influence or attempt to influence, through economic incentives or otherwise, the prescribing decision of a prescribing practitioner at the point of care. Such means shall not be triggered or in specific response to the input, selection, or act of a prescribing practitioner or his or her agent in prescribing a certain pharmaceutical or directing a patient to a certain pharmacy.

(a) The term “prescribing decision” means a prescribing practitioner’s decision to prescribe a certain pharmaceutical.

(b) The term “point of care” means the time that a prescribing practitioner or his or her agent is in the act of prescribing a certain pharmaceutical.

(3) Electronic prescribing software may show information regarding a payor’s formulary as long as nothing is designed to preclude or make more difficult the act of a prescribing practitioner or patient selecting any particular pharmacy or pharmaceutical.

History.—s. 3, ch. 2006-271.

456.50 Repeated medical malpractice.—
(1) For purposes of s. 26, Art. X of the State Constitution and ss. 458.331(1)(t), (4), and (5) and 459.015(1)(x), (4), and (5):

(a) “Board” means the Board of Medicine, in the case of a physician licensed pursuant to chapter 458, or the Board of Osteopathic Medicine, in the case of an osteopathic physician licensed pursuant to chapter 459.
(b) “Final administrative agency decision” means a final order of the licensing board following a hearing as provided in s. 120.57(1) or (2) or s. 120.574 finding that the licensee has violated s. 458.331(1)(t) or s. 459.015(1)(x).

(c) “Found to have committed” means the malpractice has been found in a final judgment of a court of law, final administrative agency decision, or decision of binding arbitration.

(d) “Incident” means the wrongful act or occurrence from which the medical malpractice arises, regardless of the number of claimants or findings. For purposes of this section:

1. A single act of medical malpractice, regardless of the number of claimants, shall count as only one incident.

2. Multiple findings of medical malpractice arising from the same wrongful act or series of wrongful acts associated with the treatment of the same patient shall count as only one incident.

(e) “Level of care, skill, and treatment recognized in general law related to health care licensure” means the standard of care specified in s. 766.102.

(f) “Medical doctor” means a physician licensed pursuant to chapter 458 or chapter 459.

(g) “Medical malpractice” means the failure to practice medicine in accordance with the level of care, skill, and treatment recognized in general law related to health care licensure. Only for the purpose of finding repeated medical malpractice pursuant to this section, any similar wrongful act, neglect, or default committed in another state or country which, if committed in this state, would have been considered medical malpractice as defined in this paragraph, shall be considered medical malpractice if the standard of care and burden of proof applied in the other state or country equaled or exceeded that used in this state.

(h) “Repeated medical malpractice” means three or more incidents of medical malpractice found to have been committed by a medical doctor. Only an incident occurring on or after November 2, 2004, shall be considered an incident for purposes of finding repeated medical malpractice under this section.

(2) For purposes of implementing s. 26, Art. X of the State Constitution, the board shall not license or continue to license a medical doctor found to have committed repeated medical malpractice, the finding of which was based upon clear and convincing evidence. In order to rely on an incident of medical malpractice to determine whether a license must be denied or revoked under this section, if the facts supporting the finding of the incident of medical malpractice were determined on a standard less stringent than clear and convincing evidence, the board shall review the record of the case and determine whether the finding would be supported under a standard of clear and convincing evidence. Section 456.073 applies. The board may verify on a biennial basis an out-of-state licensee’s medical malpractice history using federal, state, or other databases. The board may require licensees and applicants for licensure to provide a copy of the record of the trial of any medical malpractice judgment, which may be required to be in an electronic format, involving an incident that occurred on
or after November 2, 2004. For purposes of implementing s. 26, Art. X of the State Constitution, the 90-day requirement for granting or denying a complete allopathic or osteopathic licensure application in s. 120.60(1) is extended to 180 days.

History.—s. 2, ch. 2005-266.

PART II
NURSING HOMES

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400.011 Purpose.—The purpose of this part is to provide for the development, establishment, and enforcement of basic standards for:

(1) The health, care, and treatment of persons in nursing homes and related health care facilities; and

(2) The maintenance and operation of such institutions that will ensure safe, adequate, and appropriate care, treatment, and health of persons in such facilities.
400.021 Definitions.—When used in this part, unless the context otherwise requires, the term:

1. “Administrator” means the licensed individual who has the general administrative charge of a facility.

2. “Agency” means the Agency for Health Care Administration, which is the licensing agency under this part.

3. “Bed reservation policy” means the number of consecutive days and the number of days per year that a resident may leave the nursing home facility for overnight therapeutic visits with family or friends or for hospitalization for an acute condition before the licensee may discharge the resident due to his or her absence from the facility.

4. “Board” means the Board of Nursing Home Administrators.

5. “Custodial service” means care for a person which entails observation of diet and sleeping habits and maintenance of a watchfulness over the general health, safety, and well-being of the aged or infirm.


7. “Facility” means any institution, building, residence, private home, or other place, whether operated for profit or not, including a place operated by a county or municipality, which undertakes through its ownership or management to provide for a period exceeding 24-hour nursing care, personal care, or custodial care for three or more persons not related to the owner or manager by blood or marriage, who by reason of illness, physical infirmity, or advanced age require such services, but does not include any place providing care and treatment primarily for the acutely ill. A facility offering services for fewer than three persons is within the meaning of this definition if it holds itself out to the public to be an establishment which regularly provides such services.

8. “Geriatric outpatient clinic” means a site for providing outpatient health care to persons 60 years of age or older, which is staffed by a registered nurse or a physician assistant.

9. “Geriatric patient” means any patient who is 60 years of age or older.

10. “Local ombudsman council” means a local long-term care ombudsman council established pursuant to s. 400.0069, located within the Older Americans Act planning and service areas.

11. “Nursing home bed” means an accommodation which is ready for immediate occupancy, or is capable of being made ready for occupancy within 48 hours, excluding provision of staffing; and which conforms to minimum space requirements, including the availability of appropriate equipment and furnishings within the 48 hours, as specified by rule of the agency, for the provision of services specified in this part to a single resident.

12. “Nursing home facility” means any facility which provides nursing services as defined in part I of chapter 464 and which is licensed according to this part.
(13) “Nursing service” means such services or acts as may be rendered, directly or indirectly, to and in behalf of a person by individuals as defined in s. 464.003.

(14) “Planning and service area” means the geographic area in which the Older Americans Act programs are administered and services are delivered by the Department of Elderly Affairs.

(15) “Respite care” means admission to a nursing home for the purpose of providing a short period of rest or relief or emergency alternative care for the primary caregiver of an individual receiving care at home who, without home-based care, would otherwise require institutional care.

(16) “Resident care plan” means a written plan developed, maintained, and reviewed not less than quarterly by a registered nurse, with participation from other facility staff and the resident or his or her designee or legal representative, which includes a comprehensive assessment of the needs of an individual resident; the type and frequency of services required to provide the necessary care for the resident to attain or maintain the highest practicable physical, mental, and psychosocial well-being; a listing of services provided within or outside the facility to meet those needs; and an explanation of service goals. The resident care plan must be signed by the director of nursing or another registered nurse employed by the facility to whom institutional responsibilities have been delegated and by the resident, the resident’s designee, or the resident’s legal representative. The facility may not use an agency or temporary registered nurse to satisfy the foregoing requirement and must document the institutional responsibilities that have been delegated to the registered nurse.

(17) “Resident designee” means a person, other than the owner, administrator, or employee of the facility, designated in writing by a resident or a resident’s guardian, if the resident is adjudicated incompetent, to be the resident’s representative for a specific, limited purpose.

(18) “State ombudsman council” means the State Long-Term Care Ombudsman Council established pursuant to s. 400.0067.

History.—s. 2, ch. 69-309; ss. 19, 35, ch. 69-106; s. 2, ch. 70-361; s. 1, ch. 70-439; ss. 21, 25, ch. 75-233; s. 3, ch. 76-168; s. 234, ch. 77-147; s. 1, ch. 77-457; ss. 1, 18, ch. 80-186; ss. 1, 12, ch. 80-198; s. 249, ch. 81-259; ss. 2, 3, ch. 81-318; ss. 4, 79, 83, ch. 83-181; s. 1, ch. 90-330; ss. 20, 30, ch. 93-177; ss. 2, 49, ch. 93-217; s. 763, ch. 95-148; s. 117, ch. 99-8; s. 94, ch. 2000-318; s. 136, ch. 2000-349; s. 1, ch. 2000-350; s. 56, ch. 2000-367; s. 2, ch. 2001-45; s. 3, ch. 2004-298; s. 55, ch. 2007-230.

400.022 Residents’ rights.—

(1) All licensees of nursing home facilities shall adopt and make public a statement of the rights and responsibilities of the residents of such facilities and shall treat such residents in accordance with the provisions of that statement. The statement shall assure each resident the following:

(a) The right to civil and religious liberties, including knowledge of available choices and the right to independent personal decision, which will not be infringed upon, and the right to encouragement and assistance from the staff of the facility in the fullest possible exercise of these rights.
(b) The right to private and uncensored communication, including, but not limited to, receiving and sending unopened correspondence, access to a telephone, visiting with any person of the resident's choice during visiting hours, and overnight visitation outside the facility with family and friends in accordance with facility policies, physician orders, and Title XVIII (Medicare) and Title XIX (Medicaid) of the Social Security Act regulations, without the resident's losing his or her bed. Facility visiting hours shall be flexible, taking into consideration special circumstances such as, but not limited to, out-of-town visitors and working relatives or friends. Unless otherwise indicated in the resident care plan, the licensee shall, with the consent of the resident and in accordance with policies approved by the agency, permit recognized volunteer groups, representatives of community-based legal, social, mental health, and leisure programs, and members of the clergy access to the facility during visiting hours for the purpose of visiting with and providing services to any resident.

(c) Any entity or individual that provides health, social, legal, or other services to a resident has the right to have reasonable access to the resident. The resident has the right to deny or withdraw consent to access at any time by any entity or individual. Notwithstanding the visiting policy of the facility, the following individuals must be permitted immediate access to the resident:

1. Any representative of the federal or state government, including, but not limited to, representatives of the Department of Children and Family Services, the Department of Health, the Agency for Health Care Administration, the Office of the Attorney General, and the Department of Elderly Affairs; any law enforcement officer; members of the state or local ombudsman council; and the resident's individual physician.

2. Subject to the resident's right to deny or withdraw consent, immediate family or other relatives of the resident.

The facility must allow representatives of the State Long-Term Care Ombudsman Council to examine a resident’s clinical records with the permission of the resident or the resident's legal representative and consistent with state law.

(d) The right to present grievances on behalf of himself or herself or others to the staff or administrator of the facility, to governmental officials, or to any other person; to recommend changes in policies and services to facility personnel; and to join with other residents or individuals within or outside the facility to work for improvements in resident care, free from restraint, interference, coercion, discrimination, or reprisal. This right includes access to ombudsmen and advocates and the right to be a member of, to be active in, and to associate with advocacy or special interest groups. The right also includes the right to prompt efforts by the facility to resolve resident grievances, including grievances with respect to the behavior of other residents.

(e) The right to organize and participate in resident groups in the facility and the right to have the resident’s family meet in the facility with the families of other residents.
(f) The right to participate in social, religious, and community activities that do not interfere with the rights of other residents.

(g) The right to examine, upon reasonable request, the results of the most recent inspection of the facility conducted by a federal or state agency and any plan of correction in effect with respect to the facility.

(h) The right to manage his or her own financial affairs or to delegate such responsibility to the licensee, but only to the extent of the funds held in trust by the licensee for the resident. A quarterly accounting of any transactions made on behalf of the resident shall be furnished to the resident or the person responsible for the resident. The facility may not require a resident to deposit personal funds with the facility. However, upon written authorization of a resident, the facility must hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility as follows:

1. The facility must establish and maintain a system that ensures a full, complete, and separate accounting, according to generally accepted accounting principles, of each resident’s personal funds entrusted to the facility on the resident’s behalf.

2. The accounting system established and maintained by the facility must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.

3. A quarterly accounting of any transaction made on behalf of the resident shall be furnished to the resident or the person responsible for the resident.

4. Upon the death of a resident with personal funds deposited with the facility, the facility must convey within 30 days the resident’s funds, including interest, and a final accounting of those funds, to the individual or probate jurisdiction administering the resident’s estate, or, if a personal representative has not been appointed within 30 days, to the resident’s spouse or adult next of kin named in the beneficiary designation form provided for in s. 400.162(6).

5. The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Title XVIII or Title XIX of the Social Security Act.

(i) The right to be fully informed, in writing and orally, prior to or at the time of admission and during his or her stay, of services available in the facility and of related charges for such services, including any charges for services not covered under Title XVIII or Title XIX of the Social Security Act or not covered by the basic per diem rates and of bed reservation and refund policies of the facility.

(j) The right to be adequately informed of his or her medical condition and proposed treatment, unless the resident is determined to be unable to provide informed consent under Florida law, or the right to be fully informed in advance of any nonemergency changes in care or treatment that may affect the resident’s well-being; and, except with respect to a resident adjudged incompetent, the right to participate in the planning of all medical treatment, including the right to refuse medication
and treatment, unless otherwise indicated by the resident’s physician; and to know the consequences of such actions.

(k) The right to refuse medication or treatment and to be informed of the consequences of such decisions, unless determined unable to provide informed consent under state law. When the resident refuses medication or treatment, the nursing home facility must notify the resident or the resident’s legal representative of the consequences of such decision and must document the resident’s decision in his or her medical record. The nursing home facility must continue to provide other services the resident agrees to in accordance with the resident’s care plan.

(l) The right to receive adequate and appropriate health care and protective and support services, including social services; mental health services, if available; planned recreational activities; and therapeutic and rehabilitative services consistent with the resident care plan, with established and recognized practice standards within the community, and with rules as adopted by the agency.

(m) The right to have privacy in treatment and in caring for personal needs; to close room doors and to have facility personnel knock before entering the room, except in the case of an emergency or unless medically contraindicated; and to security in storing and using personal possessions. Privacy of the resident’s body shall be maintained during, but not limited to, toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance. Residents’ personal and medical records shall be confidential and exempt from the provisions of s. 119.07(1).

(n) The right to be treated courteously, fairly, and with the fullest measure of dignity and to receive a written statement and an oral explanation of the services provided by the licensee, including those required to be offered on an as-needed basis.

(o) The right to be free from mental and physical abuse, corporal punishment, extended involuntary seclusion, and from physical and chemical restraints, except those restraints authorized in writing by a physician for a specified and limited period of time or as are necessitated by an emergency. In case of an emergency, restraint may be applied only by a qualified licensed nurse who shall set forth in writing the circumstances requiring the use of restraint, and, in the case of use of a chemical restraint, a physician shall be consulted immediately thereafter. Restraints may not be used in lieu of staff supervision or merely for staff convenience, for punishment, or for reasons other than resident protection or safety.

(p) The right to be transferred or discharged only for medical reasons or for the welfare of other residents, and the right to be given reasonable advance notice of no less than 30 days of any involuntary transfer or discharge, except in the case of an emergency as determined by a licensed professional on the staff of the nursing home, or in the case of conflicting rules and regulations which govern Title XVIII or Title XIX of the Social Security Act. For nonpayment of a bill for care received, the resident shall be given 30 days’ advance notice. A licensee certified to provide services under Title XIX of the Social Security Act may not transfer or discharge a resident solely because the source of
payment for care changes. Admission to a nursing home facility operated by a licensee certified to provide services under Title XIX of the Social Security Act may not be conditioned upon a waiver of such right, and any document or provision in a document which purports to waive or preclude such right is void and unenforceable. Any licensee certified to provide services under Title XIX of the Social Security Act that obtains or attempts to obtain such a waiver from a resident or potential resident shall be construed to have violated the resident’s rights as established herein and is subject to disciplinary action as provided in subsection (3). The resident and the family or representative of the resident shall be consulted in choosing another facility.

(q) The right to freedom of choice in selecting a personal physician; to obtain pharmaceutical supplies and services from a pharmacy of the resident’s choice, at the resident’s own expense or through Title XIX of the Social Security Act; and to obtain information about, and to participate in, community-based activities programs, unless medically contraindicated as documented by a physician in the resident’s medical record. If a resident chooses to use a community pharmacy and the facility in which the resident resides uses a unit-dose system, the pharmacy selected by the resident shall be one that provides a compatible unit-dose system, provides service delivery, and stocks the drugs normally used by long-term care residents. If a resident chooses to use a community pharmacy and the facility in which the resident resides does not use a unit-dose system, the pharmacy selected by the resident shall be one that provides service delivery and stocks the drugs normally used by long-term care residents.

(r) The right to retain and use personal clothing and possessions as space permits, unless to do so would infringe upon the rights of other residents or unless medically contraindicated as documented in the resident’s medical record by a physician. If clothing is provided to the resident by the licensee, it shall be of reasonable fit.

(s) The right to have copies of the rules and regulations of the facility and an explanation of the responsibility of the resident to obey all reasonable rules and regulations of the facility and to respect the personal rights and private property of the other residents.

(t) The right to receive notice before the room of the resident in the facility is changed.

(u) The right to be informed of the bed reservation policy for a hospitalization. The nursing home shall inform a private-pay resident and his or her responsible party that his or her bed will be reserved for any single hospitalization for a period up to 30 days provided the nursing home receives reimbursement. Any resident who is a recipient of assistance under Title XIX of the Social Security Act, or the resident’s designee or legal representative, shall be informed by the licensee that his or her bed will be reserved for any single hospitalization for the length of time for which Title XIX reimbursement is available, up to 15 days; but that the bed will not be reserved if it is medically determined by the agency that the resident will not need it or will not be able to return to the nursing home, or if the
agency determines that the nursing home’s occupancy rate ensures the availability of a bed for the resident. Notice shall be provided within 24 hours of the hospitalization.

(v) For residents of Medicaid or Medicare certified facilities, the right to challenge a decision by the facility to discharge or transfer the resident, as required under Title 42 C.F.R. part 483.13.

(2) The licensee for each nursing home shall orally inform the resident of the resident’s rights and provide a copy of the statement required by subsection (1) to each resident or the resident’s legal representative at or before the resident’s admission to a facility. The licensee shall provide a copy of the resident’s rights to each staff member of the facility. Each such licensee shall prepare a written plan and provide appropriate staff training to implement the provisions of this section. The written statement of rights must include a statement that a resident may file a complaint with the agency or local ombudsman council. The statement must be in boldfaced type and shall include the name, address, and telephone numbers of the local ombudsman council and central abuse hotline where complaints may be lodged.

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

(4) Any person who submits or reports a complaint concerning a suspected violation of the resident’s rights or concerning services or conditions in a facility or who testifies in any administrative or judicial proceeding arising from such complaint shall have immunity from any criminal or civil liability therefor, unless that person has acted in bad faith, with malicious purpose, or if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party.

History.—s. 8, ch. 76-201; s. 1, ch. 77-174; ss. 1, 9, ch. 79-268; ss. 2, 18, ch. 80-186; s. 2, ch. 81-318; ss. 11, 19, ch. 82-148; ss. 5, 79, 83, ch. 83-181; s. 1, ch. 84-144; s. 15, ch. 90-347; s. 30, ch. 93-177; ss. 3, 49, ch. 93-217; s. 764, ch. 95-148; s. 118, ch. 99-8; s. 5, ch. 99-394; ss. 70, 137, ch. 2000-349; s. 57, ch. 2000-367; s. 33, ch. 2001-62; s. 56, ch. 2007-230.

400.023 Civil enforcement.—

(1) Any resident whose rights as specified in this part are violated shall have a cause of action. The action may be brought by the resident or his or her guardian, by a person or organization acting on behalf of a resident with the consent of the resident or his or her guardian, or by the personal representative of the estate of a deceased resident regardless of the cause of death. If the action alleges a claim for the resident’s rights or for negligence that caused the death of the resident, the
claimant shall be required to elect either survival damages pursuant to s. 46.021 or wrongful death damages pursuant to s. 768.21. If the action alleges a claim for the resident’s rights or for negligence that did not cause the death of the resident, the personal representative of the estate may recover damages for the negligence that caused injury to the resident. The action may be brought in any court of competent jurisdiction to enforce such rights and to recover actual and punitive damages for any violation of the rights of a resident or for negligence. Any resident who prevails in seeking injunctive relief or a claim for an administrative remedy is entitled to recover the costs of the action, and a reasonable attorney’s fee assessed against the defendant not to exceed $25,000. Fees shall be awarded solely for the injunctive or administrative relief and not for any claim or action for damages whether such claim or action is brought together with a request for an injunction or administrative relief or as a separate action, except as provided under s. 768.79 or the Florida Rules of Civil Procedure. Sections 400.023-400.0238 provide the exclusive remedy for a cause of action for recovery of damages for the personal injury or death of a nursing home resident arising out of negligence or a violation of rights specified in s. 400.022. This section does not preclude theories of recovery not arising out of negligence or s. 400.022 which are available to a resident or to the agency. The provisions of chapter 766 do not apply to any cause of action brought under ss. 400.023-400.0238.

(2) In any claim brought pursuant to this part alleging a violation of resident’s rights or negligence causing injury to or the death of a resident, the claimant shall have the burden of proving, by a preponderance of the evidence, that:

(a) The defendant owed a duty to the resident;
(b) The defendant breached the duty to the resident;
(c) The breach of the duty is a legal cause of loss, injury, death, or damage to the resident; and
(d) The resident sustained loss, injury, death, or damage as a result of the breach.

Nothing in this part shall be interpreted to create strict liability. A violation of the rights set forth in s. 400.022 or in any other standard or guidelines specified in this part or in any applicable administrative standard or guidelines of this state or a federal regulatory agency shall be evidence of negligence but shall not be considered negligence per se.

(3) In any claim brought pursuant to this section, a licensee, person, or entity shall have a duty to exercise reasonable care. Reasonable care is that degree of care which a reasonably careful licensee, person, or entity would use under like circumstances.

(4) In any claim for resident’s rights violation or negligence by a nurse licensed under part I of chapter 464, such nurse shall have the duty to exercise care consistent with the prevailing professional standard of care for a nurse. The prevailing professional standard of care for a nurse shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar nurses.
(5) A licensee shall not be liable for the medical negligence of any physician rendering care or treatment to the resident except for the administrative services of a medical director as required in this part. Nothing in this subsection shall be construed to protect a licensee, person, or entity from liability for failure to provide a resident with appropriate observation, assessment, nursing diagnosis, planning, intervention, and evaluation of care by nursing staff.

(6) The resident or the resident’s legal representative shall serve a copy of any complaint alleging in whole or in part a violation of any rights specified in this part to the Agency for Health Care Administration at the time of filing the initial complaint with the clerk of the court for the county in which the action is pursued. The requirement of providing a copy of the complaint to the agency does not impair the resident’s legal rights or ability to seek relief for his or her claim.

(7) An action under this part for a violation of rights or negligence recognized herein is not a claim for medical malpractice, and the provisions of s. 768.21(8) do not apply to a claim alleging death of the resident.

History.—ss. 3, 18, ch. 80-186; s. 2, ch. 81-318; ss. 6, 79, 83, ch. 83-181; s. 51, ch. 83-218; s. 1, ch. 86-79; s. 30, ch. 93-177; ss. 4, 49, ch. 93-217; s. 765, ch. 95-148; s. 30, ch. 99-225; s. 4, ch. 2001-45; s. 34, ch. 2001-62.

400.0233 Presuit notice; investigation; notification of violation of resident’s rights or alleged negligence; claims evaluation procedure; informal discovery; review; settlement offer; mediation.

(1) As used in this section, the term:
(a) “Claim for resident’s rights violation or negligence” means a negligence claim alleging injury to or the death of a resident arising out of an asserted violation of the rights of a resident under s. 400.022 or an asserted deviation from the applicable standard of care.
(b) “Insurer” means any self-insurer authorized under s. 627.357, liability insurance carrier, joint underwriting association, or uninsured prospective defendant.

(2) Prior to filing a claim for a violation of a resident’s rights or a claim for negligence, a claimant alleging injury to or the death of a resident shall notify each prospective defendant by certified mail, return receipt requested, of an asserted violation of a resident’s rights provided in s. 400.022 or deviation from the standard of care. Such notification shall include an identification of the rights the prospective defendant has violated and the negligence alleged to have caused the incident or incidents and a brief description of the injuries sustained by the resident which are reasonably identifiable at the time of notice. The notice shall contain a certificate of counsel that counsel’s reasonable investigation gave rise to a good faith belief that grounds exist for an action against each prospective defendant.

(3)(a) No suit may be filed for a period of 75 days after notice is mailed to any prospective defendant. During the 75-day period, the prospective defendants or their insurers shall conduct an evaluation of the claim to determine the liability of each defendant and to evaluate the damages of the claimants. Each defendant or insurer of the defendant shall have a procedure for the prompt
evaluation of claims during the 75-day period. The procedure shall include one or more of the following:

1. Internal review by a duly qualified facility risk manager or claims adjuster;
2. Internal review by counsel for each prospective defendant;
3. A quality assurance committee authorized under any applicable state or federal statutes or regulations; or
4. Any other similar procedure that fairly and promptly evaluates the claims.

Each defendant or insurer of the defendant shall evaluate the claim in good faith.

(b) At or before the end of the 75 days, the defendant or insurer of the defendant shall provide the claimant with a written response:

1. Rejecting the claim; or
2. Making a settlement offer.

(c) The response shall be delivered to the claimant if not represented by counsel or to the claimant’s attorney, by certified mail, return receipt requested. Failure of the prospective defendant or insurer of the defendant to reply to the notice within 75 days after receipt shall be deemed a rejection of the claim for purposes of this section.

(4) The notification of a violation of a resident’s rights or alleged negligence shall be served within the applicable statute of limitations period; however, during the 75-day period, the statute of limitations is tolled as to all prospective defendants. Upon stipulation by the parties, the 75-day period may be extended and the statute of limitations is tolled during any such extension. Upon receiving written notice by certified mail, return receipt requested, of termination of negotiations in an extended period, the claimant shall have 60 days or the remainder of the period of the statute of limitations, whichever is greater, within which to file suit.

(5) No statement, discussion, written document, report, or other work product generated by presuit claims evaluation procedures under this section is discoverable or admissible in any civil action for any purpose by the opposing party. All participants, including, but not limited to, physicians, investigators, witnesses, and employees or associates of the defendant, are immune from civil liability arising from participation in the presuit claims evaluation procedure. Any licensed physician or registered nurse may be retained by either party to provide an opinion regarding the reasonable basis of the claim. The presuit opinions of the expert are not discoverable or admissible in any civil action for any purpose by the opposing party.

(6) Upon receipt by a prospective defendant of a notice of claim, the parties shall make discoverable information available without formal discovery as provided in subsection (7).

(7) Informal discovery may be used by a party to obtain unsworn statements and the production of documents or things as follows:
(a) **Unsworn statements.**—Any party may require other parties to appear for the taking of an unsworn statement. Such statements may be used only for the purpose of claims evaluation and are not discoverable or admissible in any civil action for any purpose by any party. A party seeking to take the unsworn statement of any party must give reasonable notice in writing to all parties. The notice must state the time and place for taking the statement and the name and address of the party to be examined. Unless otherwise impractical, the examination of any party must be done at the same time by all other parties. Any party may be represented by counsel at the taking of an unsworn statement. An unsworn statement may be recorded electronically, stenographically, or on videotape. The taking of unsworn statements is subject to the provisions of the Florida Rules of Civil Procedure and may be terminated for abuses.

(b) **Documents or things.**—Any party may request discovery of relevant documents or things. The documents or things must be produced, at the expense of the requesting party, within 20 days after the date of receipt of the request. A party is required to produce relevant and discoverable documents or things within that party's possession or control, if in good faith it can reasonably be done within the timeframe of the claims evaluation process.

(8) Each request for and notice concerning informal discovery pursuant to this section must be in writing, and a copy thereof must be sent to all parties. Such a request or notice must bear a certificate of service identifying the name and address of the person to whom the request or notice is served, the date of the request or notice, and the manner of service thereof.

(9) If a prospective defendant makes a written settlement offer, the claimant shall have 15 days from the date of receipt to accept the offer. An offer shall be deemed rejected unless accepted by delivery of a written notice of acceptance.

(10) To the extent not inconsistent with this part, the provisions of the Florida Mediation Code, Florida Rules of Civil Procedure, shall be applicable to such proceedings.

(11) Within 30 days after the claimant’s receipt of the defendant’s response to the claim, the parties or their designated representatives shall meet in mediation to discuss the issues of liability and damages in accordance with the mediation rules of practice and procedures adopted by the Supreme Court. Upon stipulation of the parties, this 30-day period may be extended and the statute of limitations is tolled during the mediation and any such extension. At the conclusion of mediation, the claimant shall have 60 days or the remainder of the period of the statute of limitations, whichever is greater, within which to file suit.

*History.*—s. 5, ch. 2001-45.

400.0234 **Availability of facility records for investigation of resident’s rights violations and defenses; penalty.**—

(1) Failure to provide complete copies of a resident’s records, including, but not limited to, all medical records and the resident’s chart, within the control or possession of the facility in accordance
with s. 400.145 shall constitute evidence of failure of that party to comply with good faith discovery requirements and shall waive the good faith certificate and presuit notice requirements under this part by the requesting party.

(2) No facility shall be held liable for any civil damages as a result of complying with this section.

History.—s. 6, ch. 2001-45.

400.0235 Certain provisions not applicable to actions under this part.—An action under this part for a violation of rights or negligence recognized under this part is not a claim for medical malpractice, and the provisions of s. 768.21(8) do not apply to a claim alleging death of the resident.

History.—s. 7, ch. 2001-45.

400.0236 Statute of limitations.—

(1) Any action for damages brought under this part shall be commenced within 2 years from the time the incident giving rise to the action occurred or within 2 years from the time the incident is discovered or should have been discovered with the exercise of due diligence; however, in no event shall the action be commenced later than 4 years from the date of the incident or occurrence out of which the cause of action accrued.

(2) In those actions covered by this subsection in which it can be shown that fraudulent concealment or intentional misrepresentation of fact prevented the discovery of the injury, the period of limitations is extended forward 2 years from the time that the injury is discovered with the exercise of due diligence, but in no event for more than 6 years from the date the incident giving rise to the injury occurred.

(3) This section shall apply to causes of action that have accrued prior to the effective date of this section; however, any such cause of action that would not have been barred under prior law may be brought within the time allowed by prior law or within 2 years after the effective date of this section, whichever is earlier, and will be barred thereafter. In actions where it can be shown that fraudulent concealment or intentional misrepresentation of fact prevented the discovery of the injury, the period of limitations is extended forward 2 years from the time that the injury is discovered with the exercise of due diligence, but in no event more than 4 years from the effective date of this section.

History.—s. 8, ch. 2001-45.

400.0237 Punitive damages; pleading; burden of proof.—

(1) In any action for damages brought under this part, no claim for punitive damages shall be permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages. The claimant may move to amend her or his complaint to assert a claim for punitive damages as allowed by the rules of civil procedure. The rules of civil procedure shall be liberally construed so as to allow the claimant discovery of evidence which appears reasonably calculated to lead to admissible evidence on the issue
of punitive damages. No discovery of financial worth shall proceed until after the pleading concerning punitive damages is permitted.

(2) A defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct or gross negligence. As used in this section, the term:

(a) “Intentional misconduct” means that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage.

(b) “Gross negligence” means that the defendant’s conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.

(3) In the case of an employer, principal, corporation, or other legal entity, punitive damages may be imposed for the conduct of an employee or agent only if the conduct of the employee or agent meets the criteria specified in subsection (2) and:

(a) The employer, principal, corporation, or other legal entity actively and knowingly participated in such conduct;

(b) The officers, directors, or managers of the employer, principal, corporation, or other legal entity condoned, ratified, or consented to such conduct; or

(c) The employer, principal, corporation, or other legal entity engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant.

(4) The plaintiff must establish at trial, by clear and convincing evidence, its entitlement to an award of punitive damages. The “greater weight of the evidence” burden of proof applies to a determination of the amount of damages.

(5) This section is remedial in nature and shall take effect upon becoming a law.

History.—s. 9, ch. 2001-45.

400.0238 Punitive damages; limitation.—

(1)(a) Except as provided in paragraphs (b) and (c), an award of punitive damages may not exceed the greater of:

1. Three times the amount of compensatory damages awarded to each claimant entitled thereto, consistent with the remaining provisions of this section; or

2. The sum of $1 million.

(b) Where the fact finder determines that the wrongful conduct proven under this section was motivated primarily by unreasonable financial gain and determines that the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was actually known by the managing agent, director, officer, or other person responsible for making policy
decisions on behalf of the defendant, it may award an amount of punitive damages not to exceed the greater of:

1. Four times the amount of compensatory damages awarded to each claimant entitled thereto, consistent with the remaining provisions of this section; or
2. The sum of $4 million.

(c) Where the fact finder determines that at the time of injury the defendant had a specific intent to harm the claimant and determines that the defendant’s conduct did in fact harm the claimant, there shall be no cap on punitive damages.

(d) This subsection is not intended to prohibit an appropriate court from exercising its jurisdiction under s. 768.74 in determining the reasonableness of an award of punitive damages that is less than three times the amount of compensatory damages.

(e) In any case in which the findings of fact support an award of punitive damages pursuant to paragraph (b) or paragraph (c), the clerk of the court shall refer the case to the appropriate law enforcement agencies, to the state attorney in the circuit where the long-term care facility that is the subject of the underlying civil cause of action is located, and, for multijurisdictional facility owners, to the Office of the Statewide Prosecutor; and such agencies, state attorney, or Office of the Statewide Prosecutor shall initiate a criminal investigation into the conduct giving rise to the award of punitive damages. All findings by the trier of fact which support an award of punitive damages under this paragraph shall be admissible as evidence in any subsequent civil or criminal proceeding relating to the acts giving rise to the award of punitive damages under this paragraph.

(2) The claimant’s attorney’s fees, if payable from the judgment, are, to the extent that the fees are based on the punitive damages, calculated based on the final judgment for punitive damages. This subsection does not limit the payment of attorney’s fees based upon an award of damages other than punitive damages.

(3) The jury may neither be instructed nor informed as to the provisions of this section.

(4) Notwithstanding any other law to the contrary, the amount of punitive damages awarded pursuant to this section shall be equally divided between the claimant and the Quality of Long-Term Care Facility Improvement Trust Fund, in accordance with the following provisions:

(a) The clerk of the court shall transmit a copy of the jury verdict to the Chief Financial Officer by certified mail. In the final judgment, the court shall order the percentages of the award, payable as provided herein.

(b) A settlement agreement entered into between the original parties to the action after a verdict has been returned must provide a proportionate share payable to the Quality of Long-Term Care Facility Improvement Trust Fund specified herein. For purposes of this paragraph, a proportionate share is a 50-percent share of that percentage of the settlement amount which the punitive damages portion of the verdict bore to the total of the compensatory and punitive damages in the verdict.
(c) The Department of Financial Services shall collect or cause to be collected all payments due the state under this section. Such payments are made to the Chief Financial Officer and deposited in the appropriate fund specified in this subsection.

(d) If the full amount of punitive damages awarded cannot be collected, the claimant and the other recipient designated pursuant to this subsection are each entitled to a proportionate share of the punitive damages collected.

(5) This section is remedial in nature and shall take effect upon becoming a law.

History.—s. 10, ch. 2001-45; s. 415, ch. 2003-261.

400.0239 Quality of Long-Term Care Facility Improvement Trust Fund.—

(1) There is created within the Agency for Health Care Administration a Quality of Long-Term Care Facility Improvement Trust Fund to support activities and programs directly related to improvement of the care of nursing home and assisted living facility residents. The trust fund shall be funded through proceeds generated pursuant to ss. 400.0238 and 429.298, through funds specifically appropriated by the Legislature, through gifts, endowments, and other charitable contributions allowed under federal and state law, and through federal nursing home civil monetary penalties collected by the Centers for Medicare and Medicaid Services and returned to the state. These funds must be utilized in accordance with federal requirements.

(2) Expenditures from the trust fund shall be allowable for direct support of the following:

(a) Development and operation of a mentoring program, in consultation with the Department of Health and the Department of Elderly Affairs, for increasing the competence, professionalism, and career preparation of long-term care facility direct care staff, including nurses, nursing assistants, and social service and dietary personnel.

(b) Development and implementation of specialized training programs for long-term care facility personnel who provide direct care for residents with Alzheimer’s disease and other dementias, residents at risk of developing pressure sores, and residents with special nutrition and hydration needs.

(c) Addressing areas of deficient practice identified through regulation or state monitoring.

(d) Provision of economic and other incentives to enhance the stability and career development of the nursing home direct care workforce, including paid sabbaticals for exemplary direct care career staff to visit facilities throughout the state to train and motivate younger workers to commit to careers in long-term care.

(e) Promotion and support for the formation and active involvement of resident and family councils in the improvement of nursing home care.

(f) Evaluation of special residents’ needs in long-term care facilities, including challenges in meeting special residents’ needs, appropriateness of placement and setting, and cited deficiencies related to caring for special needs.
(g) Other initiatives authorized by the Centers for Medicare and Medicaid Services for the use of federal civil monetary penalties, including projects recommended through the Medicaid “Up-or-Out” Quality of Care Contract Management Program pursuant to s. 400.148.

(3) The agency shall carry out through the trust fund the priorities and directives specified in legislative appropriations.

(4) Notwithstanding the provisions of s. 216.301, and pursuant to s. 216.351, any balance in the trust fund at the end of any fiscal year shall remain in the trust fund at the end of the year and shall be available for carrying out the purposes of the trust fund.


400.0255 Resident transfer or discharge; requirements and procedures; hearings.—

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

(a) “Discharge” means to move a resident to a noninstitutional setting when the releasing facility ceases to be responsible for the resident’s care.

(b) “Transfer” means to move a resident from the facility to another legally responsible institutional setting.

(2) Each facility licensed under this part must comply with subsection (9) and s. 400.022(1)(p) when deciding to discharge or transfer a resident.

(3) When a discharge or transfer is initiated by the nursing home, the nursing home administrator employed by the nursing home that is discharging or transferring the resident, or an individual employed by the nursing home who is designated by the nursing home administrator to act on behalf of the administration, must sign the notice of discharge or transfer. Any notice indicating a medical reason for transfer or discharge must either be signed by the resident’s attending physician or the medical director of the facility, or include an attached written order for the discharge or transfer. The notice or the order must be signed by the resident’s physician, medical director, treating physician, nurse practitioner, or physician assistant.

(4)(a) Each facility must notify the agency of any proposed discharge or transfer of a resident when such discharge or transfer is necessitated by changes in the physical plant of the facility that make the facility unsafe for the resident.

(b) Upon receipt of such a notice, the agency shall conduct an onsite inspection of the facility to verify the necessity of the discharge or transfer.

(5) A resident of any Medicaid or Medicare certified facility may challenge a decision by the facility to discharge or transfer the resident.

(6) A facility that has been reimbursed for reserving a bed and, for reasons other than those permitted under this section, refuses to readmit a resident within the prescribed timeframe shall refund the bed reservation payment.
(7) At least 30 days prior to any proposed transfer or discharge, a facility must provide advance notice of the proposed transfer or discharge to the resident and, if known, to a family member or the resident’s legal guardian or representative, except, in the following circumstances, the facility shall give notice as soon as practicable before the transfer or discharge:

(a) The transfer or discharge is necessary for the resident’s welfare and the resident’s needs cannot be met in the facility, and the circumstances are documented in the resident’s medical records by the resident’s physician; or

(b) The health or safety of other residents or facility employees would be endangered, and the circumstances are documented in the resident’s medical records by the resident’s physician or the medical director if the resident’s physician is not available.

(8) The notice required by subsection (7) must be in writing and must contain all information required by state and federal law, rules, or regulations applicable to Medicaid or Medicare cases. The agency shall develop a standard document to be used by all facilities licensed under this part for purposes of notifying residents of a discharge or transfer. Such document must include a means for a resident to request the local long-term care ombudsman council to review the notice and request information about or assistance with initiating a fair hearing with the department’s Office of Appeals Hearings. In addition to any other pertinent information included, the form shall specify the reason allowed under federal or state law that the resident is being discharged or transferred, with an explanation to support this action. Further, the form shall state the effective date of the discharge or transfer and the location to which the resident is being discharged or transferred. The form shall clearly describe the resident’s appeal rights and the procedures for filing an appeal, including the right to request the local ombudsman council to review the notice of discharge or transfer. A copy of the notice must be placed in the resident’s clinical record, and a copy must be transmitted to the resident’s legal guardian or representative and to the local ombudsman council within 5 business days after signature by the resident or resident designee.

(9) A resident may request that the local ombudsman council review any notice of discharge or transfer given to the resident. When requested by a resident to review a notice of discharge or transfer, the local ombudsman council shall do so within 7 days after receipt of the request. The nursing home administrator, or the administrator’s designee, must forward the request for review contained in the notice to the local ombudsman council within 24 hours after such request is submitted. Failure to forward the request within 24 hours after the request is submitted shall toll the running of the 30-day advance notice period until the request has been forwarded.

(10)(a) A resident is entitled to a fair hearing to challenge a facility’s proposed transfer or discharge. The resident, or the resident’s legal representative or designee, may request a hearing at any time within 90 days after the resident’s receipt of the facility’s notice of the proposed discharge or transfer.
(b) If a resident requests a hearing within 10 days after receiving the notice from the facility, the request shall stay the proposed transfer or discharge pending a hearing decision. The facility may not take action, and the resident may remain in the facility, until the outcome of the initial fair hearing, which must be completed within 90 days after receipt of a request for a fair hearing.

(c) If the resident fails to request a hearing within 10 days after receipt of the facility notice of the proposed discharge or transfer, the facility may transfer or discharge the resident after 30 days from the date the resident received the notice.

(11) Notwithstanding paragraph (10)(b), an emergency discharge or transfer may be implemented as necessary pursuant to state or federal law during the period of time after the notice is given and before the time a hearing decision is rendered. Notice of an emergency discharge or transfer to the resident, the resident’s legal guardian or representative, and the local ombudsman council if requested pursuant to subsection (9) must be by telephone or in person. This notice shall be given before the transfer, if possible, or as soon thereafter as practicable. A local ombudsman council conducting a review under this subsection shall do so within 24 hours after receipt of the request. The resident’s file must be documented to show who was contacted, whether the contact was by telephone or in person, and the date and time of the contact. If the notice is not given in writing, written notice meeting the requirements of subsection (8) must be given the next working day.

(12) After receipt of any notice required under this section, the local ombudsman council may request a private informal conversation with a resident to whom the notice is directed, and, if known, a family member or the resident’s legal guardian or designee, to ensure that the facility is proceeding with the discharge or transfer in accordance with the requirements of this section. If requested, the local ombudsman council shall assist the resident with filing an appeal of the proposed discharge or transfer.

(13) The following persons must be present at all hearings authorized under this section:

(a) The resident, or the resident’s legal representative or designee.

(b) The facility administrator, or the facility’s legal representative or designee.

A representative of the local long-term care ombudsman council may be present at all hearings authorized by this section.

(14) In any hearing under this section, the following information concerning the parties shall be confidential and exempt from the provisions of s. 119.07(1):

(a) Names and addresses.

(b) Medical services provided.

(c) Social and economic conditions or circumstances.

(d) Evaluation of personal information.

(e) Medical data, including diagnosis and past history of disease or disability.
(f) Any information received verifying income eligibility and amount of medical assistance payments. Income information received from the Social Security Administration or the Internal Revenue Service must be safeguarded according to the requirements of the agency that furnished the data.

The exemption created by this subsection does not prohibit access to such information by a local long-term care ombudsman council upon request, by a reviewing court if such information is required to be part of the record upon subsequent review, or as specified in s. 24(a), Art. I of the State Constitution.

(15)(a) The department’s Office of Appeals Hearings shall conduct hearings under this section. The office shall notify the facility of a resident’s request for a hearing.

(b) The department shall, by rule, establish procedures to be used for fair hearings requested by residents. These procedures shall be equivalent to the procedures used for fair hearings for other Medicaid cases, chapter 10-2, part VI, Florida Administrative Code. The burden of proof must be clear and convincing evidence. A hearing decision must be rendered within 90 days after receipt of the request for hearing.

(c) If the hearing decision is favorable to the resident who has been transferred or discharged, the resident must be readmitted to the facility’s first available bed.

(d) The decision of the hearing officer shall be final. Any aggrieved party may appeal the decision to the district court of appeal in the appellate district where the facility is located. Review procedures shall be conducted in accordance with the Florida Rules of Appellate Procedure.

(16) The department may adopt rules necessary to administer this section.

(17) The provisions of this section apply to transfers or discharges that are initiated by the nursing home facility, and not by the resident or by the resident’s physician or legal guardian or representative.

History.—s. 6, ch. 93-217; s. 4, ch. 95-407; s. 34, ch. 96-169; s. 227, ch. 96-406; s. 8, ch. 99-394; s. 138, ch. 2000-349; s. 3, ch. 2000-350; s. 58, ch. 2000-367; ss. 13, 53, ch. 2001-45.

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

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

(a) Any facility, institution, or other place operated by the Federal Government or a federal agency.

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

(c) Any facility, together with improvements or additions thereto, which has existed and operated continuously in this state for at least 60 years on or before July 1, 1989, and is directly or indirectly owned and operated by a nationally recognized fraternal organization, is not open to the public, and accepts only its own members and their spouses as residents.

(2) Any facility or institution operated by and for persons who rely exclusively upon treatment by spiritual means through prayer, in accordance with the creed or tenets of any organized church or
religious denomination, shall be exempt from the provisions of this part. However, such facility or institution shall comply with all applicable laws and rules relating to sanitation and safety.

History.—s. 4, ch. 69-309; s. 4, ch. 70-361; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 3, ch. 81-318; ss. 8, 79, 83, ch. 83-181; s. 1, ch. 88-411; s. 30, ch. 93-177; ss. 7, 49, ch. 93-217; s. 5, ch. 94-206; s. 2, ch. 94-317; s. 34, ch. 98-89; s. 40, ch. 98-171; s. 210, ch. 99-13; s. 57, ch. 2007-230.

400.062 License required; fee; disposition.—

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

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

(3) In accordance with s. 408.805, an applicant or licensee shall pay a fee for each license application submitted under this part, part II of chapter 408, and applicable rules. The license fee shall be comprised of two parts. Part I of the license fee shall be the basic license fee. The rate per bed for the basic license fee shall be established biennially and shall be $100 per bed unless modified by rule. Part II of the license fee shall be the resident protection fee, which shall be at the rate of not less than 50 cents per bed. The rate per bed shall be the minimum rate per bed, and such rate shall remain in effect until the effective date of a rate per bed adopted by rule by the agency pursuant to this part. At such time as the amount on deposit in the Health Care Trust Fund for resident protection is less than $1 million, the agency may adopt rules to establish a rate which may not exceed $20 per bed. The rate per bed shall revert back to the minimum rate per bed when the amount on deposit in the Health Care Trust Fund for resident protection reaches $1 million, except that any rate established by rule shall remain in effect until such time as the rate has been equally required for each license issued under this part. Any amount in the fund in excess of $2 million may not be expended without prior approval of the Legislature. The agency may prorate the biennial license fee for those licenses which it issues under this part for less than 2 years. The resident protection fee collected shall be deposited in the Health Care Trust Fund for the sole purpose of paying, in accordance with the provisions of s. 400.063, for the appropriate alternate placement, care, and treatment of a resident removed from a nursing home facility on a temporary, emergency basis or for the maintenance and care of residents in a nursing home facility pending removal and alternate placement.

(4) Counties or municipalities applying for licenses under this part are exempt from license fees authorized under this section.
400.0625 Minimum standards for clinical laboratory test results and diagnostic X-ray results.—

(1) Each nursing home, as a requirement for issuance or renewal of its license, shall require that all clinical laboratory tests performed for the nursing home be performed by a clinical laboratory licensed under the provisions of chapter 483, except for such self-testing procedures as are approved by the agency by rule. Results of clinical laboratory tests performed prior to admission which meet the minimum standards provided in s. 483.181(3) shall be accepted in lieu of routine examinations required upon admission and clinical laboratory tests which may be ordered by a physician for residents of the nursing home.

(2) Each nursing home, as a requirement for issuance or renewal of its license, shall establish minimum standards for acceptance of results of diagnostic X rays performed by or for the nursing home. Such minimum standards shall require licensure or registration of the source of ionizing radiation under the provisions of chapter 404. Diagnostic X-ray results which meet the minimum standards shall be accepted in lieu of routine examinations required upon admission and in lieu of diagnostic X rays which may be ordered by a physician for residents of the nursing home.

History.—ss. 22, 28, ch. 82-182; ss. 10, 79, 81, 83, ch. 83-181; s. 26, ch. 83-215; s. 30, ch. 93-177; ss. 9, 49, ch. 93-217.

Note.—Former s. 400.4175.

400.063 Resident protection.—

(1) The Health Care Trust Fund shall be used for the purpose of collecting and disbursing funds generated from the license fees and administrative fines as provided for in ss. 393.0673(4), 400.062(3), 400.121(2), and 400.23(8). Such funds shall be for the sole purpose of paying for the appropriate alternate placement, care, and treatment of residents who are removed from a facility licensed under this part or a facility specified in s. 393.0678(1) in which the agency determines that existing conditions or practices constitute an immediate danger to the health, safety, or security of the residents. If the agency determines that it is in the best interest of the health, safety, or security of the residents to provide for an orderly removal of the residents from the facility, the agency may utilize such funds to maintain and care for the residents in the facility pending removal and alternative placement. The maintenance and care of the residents shall be under the direction and control of a receiver appointed pursuant to s. 393.0678(1) or s. 400.126(1). However, funds may be expended in an emergency upon a filing of a petition for a receiver, upon the declaration of a state of local emergency pursuant to s. 252.38(3)(a)5., or upon a duly authorized local order of evacuation of a facility by emergency personnel to protect the health and safety of the residents.
(2) The agency is authorized to establish for each facility, subject to intervention by the agency, a separate bank account for the deposit to the credit of the agency of any moneys received from the Health Care Trust Fund or any other moneys received for the maintenance and care of residents in the facility, and the agency is authorized to disburse moneys from such account to pay obligations incurred for the purposes of this section. The agency is authorized to requisition moneys from the Health Care Trust Fund in advance of an actual need for cash on the basis of an estimate by the agency of moneys to be spent under the authority of this section. Any bank account established under this section need not be approved in advance of its creation as required by s. 17.58, but shall be secured by depository insurance equal to or greater than the balance of such account or by the pledge of collateral security in conformance with criteria established in ‘s. 18.11. The agency shall notify the Chief Financial Officer of any such account so established and shall make a quarterly accounting to the Chief Financial Officer for all moneys deposited in such account.

(3) Funds authorized under this section shall be expended on behalf of all residents transferred to an alternate placement, at the usual and customary charges of the facility used for the alternate placement, provided no other source of private or public funding is available. However, such funds may not be expended on behalf of a resident who is eligible for Title XIX of the Social Security Act, if the alternate placement accepts Title XIX of the Social Security Act. Funds shall be utilized for maintenance and care of residents in a facility in receivership only to the extent private or public funds, including funds available under Title XIX of the Social Security Act, are not available or are not sufficient to adequately manage and operate the facility, as determined by the agency. The existence of the Health Care Trust Fund shall not make the agency liable for the maintenance of any resident in any facility. The state shall be liable for the cost of alternate placement of residents removed from a deficient facility, or for the maintenance of residents in a facility in receivership, only to the extent that funds are available in the Health Care Trust Fund.

(4) The agency is authorized to adopt rules necessary to implement this section.

History.—ss. 3, 9, ch. 79-268; ss. 4, 18, ch. 80-186; s. 2, ch. 81-318; ss. 11, 79, 83, ch. 83-181; s. 51, ch. 83-218; s. 14, ch. 83-230; s. 1, ch. 87-371; s. 30, ch. 93-177; ss. 10, 49, ch. 93-217; s. 211, ch. 99-394; s. 416, ch. 2003-261; s. 59, ch. 2007-230; s. 101, ch. 2008-4; s. 12, ch. 2008-9; s. 12, ch. 2008-244.

1Note.—Repealed by s. 11, ch. 81-285; confirmed by s. 1, ch. 83-85.

400.071 Application for license.—

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

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

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

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

(d) Information relating to the applicant and employees which the agency requires by rule. The applicant must demonstrate that sufficient numbers of qualified staff, by training or experience, will be employed to properly care for the type and number of residents who will reside in the facility.

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

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

(3) It is the intent of the Legislature that, in reviewing a certificate-of-need application to add beds to an existing nursing home facility, preference be given to the application of a licensee who has been awarded a Gold Seal as provided for in s. 400.235, if the applicant otherwise meets the review criteria specified in s. 408.035.

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

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

History.—s. 6, ch. 69-309; ss. 19, 35, ch. 69-106; ss. 5, 6, ch. 70-361; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 2, ch. 76-201; s. 236, ch. 77-147; s. 2, ch. 77-323; s. 1, ch. 77-457; ss. 4, 9, ch. 79-268; ss. 5, 18, ch. 80-186; ss. 2, 3, ch. 81-318; ss. 12, 79, 83, ch. 83-181; s. 44, ch. 87-92; s. 30, ch. 93-177; ss. 11, 49, ch. 93-217; s. 11, ch. 97-87; s. 1, ch. 98-85; ss. 41, 71, ch. 98-171; s. 9, ch. 99-394; s. 71, ch. 2000-349; s. 15, ch. 2001-45; s. 25, ch. 2001-53; s. 2, ch. 2001-67; s. 148, ch. 2001-277; s. 18, ch. 2001-377; s. 18, ch. 2003-57; s. 417, ch. 2003-261; s. 46, ch. 2004-267; s. 2, ch. 2004-298; s. 60, ch. 2007-230.
400.0712 Application for inactive license.—

(1) As specified in this section, the agency may issue an inactive license to a nursing home facility for all or a portion of its beds. Any request by a licensee that a nursing home or portion of a nursing home become inactive must be submitted to the agency in the approved format. The facility may not initiate any suspension of services, notify residents, or initiate inactivity before receiving approval from the agency; and a licensee that violates this provision may not be issued an inactive license.

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

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

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

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

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

History.—s. 1, ch. 2004-298; s. 61, ch. 2007-230; s. 102, ch. 2008-4; s. 37, ch. 2009-223.

400.102 Action by agency against licensee; grounds.—In addition to the grounds listed in part II of chapter 408, any of the following conditions shall be grounds for action by the agency against a licensee:

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

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

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

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

History.—s. 8, ch. 70-361; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 237, ch. 77-147; s. 1, ch. 77-457; ss. 2, 3, ch. 81-318; ss. 13, 79, 83, ch. 83-181; s. 30, ch. 93-177; ss. 12, 49, ch. 93-217; s. 35, ch. 96-169; s. 16, ch. 2001-45; s. 62, ch. 2007-230.

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

History.—s. 10, ch. 69-309; ss. 19, 35, ch. 69-106; s. 7, ch. 70-361; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 238, ch. 77-147; s. 1, ch. 77-457; ss. 5, 9, ch. 79-268; ss. 6, 18, ch. 80-186; ss. 2, 3, ch. 81-318; ss. 2, 19, ch. 82-148; ss. 14, 79, 83, ch. 83-181; s. 30, ch. 93-177; ss. 13, 49, ch. 93-217; s. 17, ch. 2001-45; s. 63, ch. 2007-230.

400.118 Quality assurance; early warning system; monitoring; rapid response teams.—
(1) The agency shall establish an early warning system to detect conditions in nursing facilities that could be detrimental to the health, safety, and welfare of residents. The early warning system shall include, but not be limited to, analysis of financial and quality-of-care indicators that would predict the need for the agency to take action pursuant to the authority set forth in this part.

(2) The agency shall also create teams of experts that can function as rapid response teams to visit nursing facilities identified through the agency’s early warning system. Rapid response teams may visit facilities that request the agency’s assistance. The rapid response teams shall not be deployed for the purpose of helping a facility prepare for a regular survey.

History.—s. 10, ch. 99-394; s. 17, ch. 2000-263; s. 18, ch. 2001-45; s. 38, ch. 2009-223.

400.1183 Resident grievance procedures.—
(1) Every nursing home must have a grievance procedure available to its residents and their families. The grievance procedure must include:

(a) An explanation of how to pursue redress of a grievance.

(b) The names, job titles, and telephone numbers of the employees responsible for implementing the facility’s grievance procedure. The list must include the address and the toll-free telephone numbers of the ombudsman and the agency.

(c) A simple description of the process through which a resident may, at any time, contact the toll-free telephone hotline of the ombudsman or the agency to report the unresolved grievance.

(d) A procedure for providing assistance to residents who cannot prepare a written grievance without help.

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

(3) Each facility must respond to the grievance within a reasonable time after its submission.

(4) The agency may investigate any grievance at any time.

History.—s. 19, ch. 2001-45; s. 64, ch. 2007-230.

400.119 Confidentiality of records and meetings of risk management and quality assurance committees.—
(1) Incident reports filed with the risk manager and administrator of a long-term care facility licensed under this part or part I of chapter 429, notifications of the occurrence of an adverse incident,
and adverse incident reports from the facility are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2)(a) The meetings of an internal risk management and quality assurance committee of a long-term care facility licensed under this part or part I of chapter 429 are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(b) Records of those meetings are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(3)(a) If the Agency for Health Care Administration has a reasonable belief that conduct by a staff member or employee of a facility is criminal activity or grounds for disciplinary action by a regulatory board, the agency may disclose records made confidential and exempt pursuant to this section to the appropriate law enforcement agency or regulatory board.

(b) Records disclosed to a law enforcement agency remain confidential and exempt until criminal charges are filed.

(4) Records made confidential and exempt under this section and that are obtained by a regulatory board are not available to the public as part of the record of investigation and prosecution in a disciplinary proceeding made available to the public by the agency or the appropriate regulatory board. However, the agency or the appropriate regulatory board shall make available, upon request by a health care professional against whom probable cause has been found, any such records that form the basis of the determination of probable cause.

History.—s. 1, ch. 2001-44; s. 59, ch. 2002-1; s. 1, ch. 2006-110; s. 25, ch. 2006-197.

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

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

(a) A violation of any provision of this part, part II of chapter 408, or applicable rules; or

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

All hearings shall be held within the county in which the licensee or applicant operates or applies for a license to operate a facility as defined herein.
(2) Except as provided in s. 400.23(8), a $500 fine shall be imposed for each violation. Each day a violation of this part or part II of chapter 408 occurs constitutes a separate violation and is subject to a separate fine, but in no event may any fine aggregate more than $5,000. A fine may be levied pursuant to this section in lieu of and notwithstanding the provisions of s. 400.23. Fines paid shall be deposited in the Health Care Trust Fund and expended as provided in s. 400.063.

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

(a) Has had two moratoria issued pursuant to this part or part II of chapter 408 which are imposed by final order for substandard quality of care, as defined by 42 C.F.R. part 483, within any 30-month period;
(b) Is conditionally licensed for 180 or more continuous days;
(c) Is cited for two class I deficiencies arising from unrelated circumstances during the same survey or investigation; or
(d) Is cited for two class I deficiencies arising from separate surveys or investigations within a 30-month period.

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

(4) If the agency has placed a moratorium pursuant to this part or part II of chapter 408 on any facility two times within a 7-year period, the agency may suspend the nursing home license.

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

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

(7) Notwithstanding any other provision of law to the contrary, agency action in an administrative proceeding under this section may be overcome by the licensee upon a showing by a preponderance of the evidence to the contrary.
In addition to any other sanction imposed under this part or part II of chapter 408, in any final order that imposes sanctions, the agency may assess costs related to the investigation and prosecution of the case. Payment of agency costs shall be deposited into the Health Care Trust Fund.

History.--s. 11, ch. 69-309; s. 1, ch. 69-267; ss. 19, 35, ch. 69-106; s. 9, ch. 70-361; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 239, ch. 77-147; s. 1, ch. 77-457; s. 19, ch. 78-95; ss. 6, 9, ch. 79-268; ss. 7, 18, ch. 80-186; ss. 2, 3, ch. 81-318; ss. 15, 79, 83, ch. 83-181; s. 30, ch. 93-177; ss. 14, 49, ch. 93-217; s. 36, ch. 96-169; s. 1, ch. 98-248; s. 11, ch. 99-394; s. 20, ch. 2001-45; s. 65, ch. 2007-230; s. 13, ch. 2008-9.

400.126 Receivership proceedings.--

(1) As an alternative to or in conjunction with an injunctive proceeding, the agency may petition a court of competent jurisdiction for the appointment of a receiver, when any of the following conditions exist:

(a) Any person is operating a facility without a license and refuses to make application for a license as required by s. 400.062.

(b) The licensee is closing the facility or has informed the agency that it intends to close the facility and adequate arrangements have not been made for relocation of the residents within 7 days, exclusive of weekends and holidays, of the closing of the facility. However, the failure on the part of the agency, after receiving notice of the closing of a facility that is certified to provide services under Title XIX of the Social Security Act, a minimum of 90 days prior to the closing date, to make adequate arrangement for relocating those residents who are receiving assistance under the Medicaid program shall in and of itself not be grounds to petition for the appointment of a receiver. Under these circumstances, if a facility remains open beyond the closing date, the agency shall reimburse the facility for all costs incurred, up to the cap, for those residents who are receiving assistance under the Medicaid program, provided the facility continues to be licensed pursuant to this part and certified to provide services under Title XIX of the Social Security Act.

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

(d) The licensee cannot meet its financial obligation for providing food, shelter, care, and utilities. Evidence such as the issuance of bad checks or an accumulation of delinquent bills for such items as personnel salaries, food, drugs, or utilities shall constitute prima facie evidence that the ownership of the facility lacks the financial ability to operate the home.

(2) Petitions for receivership shall take precedence over other court business unless the court determines that some other pending proceeding, having similar statutory precedence, shall have priority. A hearing shall be conducted within 5 days of the filing of the petition, at which time all interested parties shall have the opportunity to present evidence pertaining to the petition. The agency shall notify the owner or administrator of the facility named in the petition of the filing of the
petition and the date set for the hearing. The court may grant the petition only upon finding that the health, safety, or welfare of residents of the facility would be threatened if a condition existing at the time the petition was filed is permitted to continue. A receiver may not be appointed when the owner or administrator, or a representative of the owner or administrator, is not present at the hearing on the petition, unless the court determines that one or more of the conditions in subsection (1) exist; that the facility owner or administrator cannot be found; that all reasonable means of locating the owner or the administrator and notifying him or her of the petition and hearing have been exhausted; or that the owner or administrator, after notification of the hearing, chooses not to attend. After such findings, the court may appoint any person qualified by education, training, or experience to carry out the responsibilities of a receiver pursuant to this section, who must either be qualified pursuant to s. 400.20 or who must employ a licensed nursing home administrator in compliance with s. 400.20, except that the court may not appoint any owner or affiliate of the facility which is in receivership. The receiver may be selected from a list of persons qualified to act as receivers developed by the agency and presented to the court with each petition for receivership. Under no circumstances shall the agency or designated agency employee be appointed as a receiver for more than 60 days; however, the receiver may petition the court, one time only, for a 30-day extension. The court shall grant the extension upon a showing of good cause.

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

(a) Shall exercise those powers and perform those duties set out by the court.

(b) Shall operate the facility in such a manner as to assure safety and adequate health care for the residents.

(c) Shall take such action as is reasonably necessary to protect or conserve the assets or property of the facility for which the receiver is appointed, or the proceeds from any transfer thereof, and may use them only in the performance of the powers and duties set forth in this section and by order of the court.

(d) May use the building, fixtures, furnishings, and any accompanying consumable goods in the provision of care and services to residents and to any other persons receiving services from the facility at the time the petition for receivership was filed. The receiver shall collect payments for all goods and services provided to residents or others during the period of the receivership at the same rate of payment charged by the owners at the time the petition for receivership was filed, or at a fair and reasonable rate otherwise approved by the court for private-pay residents. The receiver may apply to the agency for a rate increase for Title XIX of the Social Security Act residents if the facility is not receiving the “state reimbursement cap” and expenditures justify an increase in the rate.

(e) May correct or eliminate any deficiency in the structure or furnishings of the facility which endangers the safety or health of residents while they remain in the facility, provided the total cost of
correction does not exceed $10,000. The court may order expenditures for this purpose in excess of $10,000 on application from the receiver after notice to the owner and a hearing.

(f) May let contracts and hire agents and employees to carry out the powers and duties of the receiver under this section.

(g) Shall honor all leases, mortgages, and secured transactions governing the building in which the facility is located and all goods and fixtures in the building of which the receiver has taken possession, but only to the extent of payments which, in the case of a rental agreement, are for the use of the property during the period of receivership, or which, in the case of a purchase agreement, become due during the period of receivership.

(h) Shall have full power to direct and manage and to discharge employees of the facility, subject to any contract rights they may have. The receiver shall pay employees at the rate of compensation, including benefits, approved by the court. A receivership does not relieve the owner of any obligation to employees made prior to the appointment of a receiver and not carried out by the receiver.

(i) Shall be entitled to take possession of all property or assets of residents which are in the possession of a facility or its owner. The receiver shall preserve all property or assets and all resident records of which the receiver takes possession and shall provide for the prompt transfer of the property, assets, and records to the new placement of any transferred resident. An inventory list certified by the owner and receiver shall be made at the time the receiver takes possession of the facility.

(4)(a) A person who is served with notice of an order of the court appointing a receiver and of the receiver’s name and address shall be liable to pay the receiver for any goods or services provided by the receiver after the date of the order if the person would have been liable for the goods or services as supplied by the owner. The receiver shall give a receipt for each payment and shall keep a copy of each receipt on file. The receiver shall deposit accounts received in a separate account and shall use this account for all disbursements.

(b) The receiver may bring an action to enforce the liability created by paragraph (a).

(c) A payment to the receiver of any sum owing to the facility or its owner shall discharge any obligation to the facility to the extent of the payment.

(5)(a) A receiver may petition the court that he or she not be required to honor any lease, mortgage, secured transaction, or other wholly or partially executory contract entered into by the owner of the facility if the rent, price, or rate of interest required to be paid under the agreement was substantially in excess of a reasonable rent, price, or rate of interest at the time the contract was entered into, or if any material provision of the agreement was unreasonable, when compared to contracts negotiated under similar conditions. Any relief in this form provided by the court shall be limited to the life of the receivership, unless otherwise determined by the court.
(b) If the receiver is in possession of real estate or goods subject to a lease, mortgage, or security interest which the receiver has obtained a court order to avoid under paragraph (a), and if the real estate or goods are necessary for the continued operation of the facility under this section, the receiver may apply to the court to set a reasonable rental, price, or rate of interest to be paid by the receiver during the duration of the receivership. The court shall hold a hearing on the application within 15 days. The receiver shall send notice of the application to any known persons who own the property involved or mortgage holders at least 10 days prior to the hearing. Payment by the receiver of the amount determined by the court to be reasonable is a defense to any action against the receiver for payment or for possession of the goods or real estate subject to the lease, security interest, or mortgage involved by any person who received such notice, but the payment does not relieve the owner of the facility of any liability for the difference between the amount paid by the receiver and the amount due under the original lease, security interest, or mortgage involved.

(6) The court shall set the compensation of the receiver, which will be considered a necessary expense of a receivership.

(7) A receiver may be held liable in a personal capacity only for the receiver’s own gross negligence, intentional acts, or breach of fiduciary duty.

(8) The court may require a receiver to post a bond.

(9) The court may terminate a receivership when:

(a) The court determines that the receivership is no longer necessary because the conditions which gave rise to the receivership no longer exist; or

(b) All of the residents in the facility have been transferred or discharged.

(10) Within 30 days after the termination, unless this time period is extended by the court, the receiver shall give the court a complete accounting of all property of which the receiver has taken possession, of all funds collected and disbursed, and of the expenses of the receivership.

(11) Nothing in this section shall be deemed to relieve any owner, administrator, or employee of a facility placed in receivership of any civil or criminal liability incurred, or of any duty imposed by law, by reason of acts or omissions of the owner, administrator, or employee prior to the appointment of a receiver; nor shall anything contained in this section be construed to suspend during the receivership any obligation of the owner, administrator, or employee for payment of taxes or other operating and maintenance expenses of the facility, or of the owner, administrator, employee, or any other person for the payment of mortgages or liens. The owner shall retain the right to sell or mortgage any facility under receivership, subject to approval of the court which ordered the receivership. A licensee that is placed in receivership by the court is liable for all expenses and costs incurred by the Health Care Trust Fund that are related to capital improvement and operating costs and are no more than 10 percent above the facility’s Medicaid rate which occur as a result of the receivership.
Concurrently with the appointment of a receiver, the agency and the Department of Elderly Affairs shall coordinate an assessment of each resident in the facility by the Comprehensive Assessment and Review for Long-Term-Care (CARES) Program for the purpose of evaluating each resident’s need for the level of care provided in a nursing facility and the potential for providing such care in alternative settings. If the CARES assessment determines that a resident could be cared for in a less restrictive setting or does not meet the criteria for skilled or intermediate care in a nursing home, the department and agency shall refer the resident for such care, as is appropriate for the resident. Residents referred pursuant to this subsection shall be given primary consideration for receiving services under the community care for the elderly program in the same manner as persons classified to receive such services pursuant to s. 430.205.

History.—ss. 8, 18, ch. 80-186; s. 2, ch. 81-318; ss. 17, 79, 83, ch. 83-181; s. 51, ch. 83-218; s. 57, ch. 91-282; s. 30, ch. 93-177; ss. 16, 49, ch. 93-217; s. 766, ch. 95-148; s. 21, ch. 2001-45; s. 14, ch. 2008-9.

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

(a) Be under the administrative direction and charge of a licensed administrator.

(b) Appoint a medical director licensed pursuant to chapter 458 or chapter 459. The agency may establish by rule more specific criteria for the appointment of a medical director.

(c) Have available the regular, consultative, and emergency services of physicians licensed by the state.

(d) Provide for resident use of a community pharmacy as specified in s. 400.022(1)(q). Any other law to the contrary notwithstanding, a registered pharmacist licensed in Florida, that is under contract with a facility licensed under this chapter or chapter 429, shall repackage a nursing facility resident’s bulk prescription medication which has been packaged by another pharmacist licensed in any state in the United States into a unit dose system compatible with the system used by the nursing facility, if the pharmacist is requested to offer such service. In order to be eligible for the repackaging, a resident or the resident’s spouse must receive prescription medication benefits provided through a former employer as part of his or her retirement benefits, a qualified pension plan as specified in s. 4972 of the Internal Revenue Code, a federal retirement program as specified under 5 C.F.R. s. 831, or a long-term care policy as defined in s. 627.9404(1). A pharmacist who correctly repackages and relabels the medication and the nursing facility which correctly administers such repackaged medication under this paragraph may not be held liable in any civil or administrative action arising from the repackaging. In order to be eligible for the repackaging, a nursing facility resident for whom the medication is to be repackaged shall sign an informed consent form provided by the facility which includes an explanation of the repackaging process and which notifies the resident of the immunities from liability provided in this paragraph. A pharmacist who repackages and relabels prescription medications, as authorized
under this paragraph, may charge a reasonable fee for costs resulting from the implementation of this provision.

(e) Provide for the access of the facility residents to dental and other health-related services, recreational services, rehabilitative services, and social work services appropriate to their needs and conditions and not directly furnished by the licensee. When a geriatric outpatient nurse clinic is conducted in accordance with rules adopted by the agency, outpatients attending such clinic shall not be counted as part of the general resident population of the nursing home facility, nor shall the nursing staff of the geriatric outpatient clinic be counted as part of the nursing staff of the facility, until the outpatient clinic load exceeds 15 a day.

(f) Be allowed and encouraged by the agency to provide other needed services under certain conditions. If the facility has a standard licensure status, and has had no class I or class II deficiencies during the past 2 years or has been awarded a Gold Seal under the program established in s. 400.235, it may be encouraged by the agency to provide services, including, but not limited to, respite and adult day services, which enable individuals to move in and out of the facility. A facility is not subject to any additional licensure requirements for providing these services. Respite care may be offered to persons in need of short-term or temporary nursing home services. Respite care must be provided in accordance with this part and rules adopted by the agency. However, the agency shall, by rule, adopt modified requirements for resident assessment, resident care plans, resident contracts, physician orders, and other provisions, as appropriate, for short-term or temporary nursing home services. The agency shall allow for shared programming and staff in a facility which meets minimum standards and offers services pursuant to this paragraph, but, if the facility is cited for deficiencies in patient care, may require additional staff and programs appropriate to the needs of service recipients. A person who receives respite care may not be counted as a resident of the facility for purposes of the facility's licensed capacity unless that person receives 24-hour respite care. A person receiving either respite care for 24 hours or longer or adult day services must be included when calculating minimum staffing for the facility. Any costs and revenues generated by a nursing home facility from nonresidential programs or services shall be excluded from the calculations of Medicaid per diems for nursing home institutional care reimbursement.

(g) If the facility has a standard license or is a Gold Seal facility, exceeds the minimum required hours of licensed nursing and certified nursing assistant direct care per resident per day, and is part of a continuing care facility licensed under chapter 651 or a retirement community that offers other services pursuant to part III of this chapter or part I or part III of chapter 429 on a single campus, be allowed to share programming and staff. At the time of inspection and in the semiannual report required pursuant to paragraph (o), a continuing care facility or retirement community that uses this option must demonstrate through staffing records that minimum staffing requirements for the facility were met. Licensed nurses and certified nursing assistants who work in the nursing home facility may
be used to provide services elsewhere on campus if the facility exceeds the minimum number of direct
care hours required per resident per day and the total number of residents receiving direct care
services from a licensed nurse or a certified nursing assistant does not cause the facility to violate the
staffing ratios required under s. 400.23(3)(a). Compliance with the minimum staffing ratios shall be
based on total number of residents receiving direct care services, regardless of where they reside on
campus. If the facility receives a conditional license, it may not share staff until the conditional license
status ends. This paragraph does not restrict the agency’s authority under federal or state law to
require additional staff if a facility is cited for deficiencies in care which are caused by an insufficient
number of certified nursing assistants or licensed nurses. The agency may adopt rules for the
documentation necessary to determine compliance with this provision.

(h) Maintain the facility premises and equipment and conduct its operations in a safe and sanitary
manner.

(i) If the licensee furnishes food service, provide a wholesome and nourishing diet sufficient to
meet generally accepted standards of proper nutrition for its residents and provide such therapeutic
diets as may be prescribed by attending physicians. In making rules to implement this paragraph, the
agency shall be guided by standards recommended by nationally recognized professional groups and
associations with knowledge of dietetics.

(j) Keep full records of resident admissions and discharges; medical and general health status,
including medical records, personal and social history, and identity and address of next of kin or other
persons who may have responsibility for the affairs of the residents; and individual resident care plans
including, but not limited to, prescribed services, service frequency and duration, and service goals.
The records shall be open to inspection by the agency.

(k) Keep such fiscal records of its operations and conditions as may be necessary to provide
information pursuant to this part.

(l) Furnish copies of personnel records for employees affiliated with such facility, to any other
facility licensed by this state requesting this information pursuant to this part. Such information
contained in the records may include, but is not limited to, disciplinary matters and any reason for
termination. Any facility releasing such records pursuant to this part shall be considered to be acting in
good faith and may not be held liable for information contained in such records, absent a showing that
the facility maliciously falsified such records.

(m) Publicly display a poster provided by the agency containing the names, addresses, and
telephone numbers for the state’s abuse hotline, the State Long-Term Care Ombudsman, the Agency
for Health Care Administration consumer hotline, the Advocacy Center for Persons with Disabilities, the
Florida Statewide Advocacy Council, and the Medicaid Fraud Control Unit, with a clear description of
the assistance to be expected from each.
(n) Submit to the agency the information specified in s. 400.071(1)(b) for a management company within 30 days after the effective date of the management agreement.

(o)1. Submit semiannually to the agency, or more frequently if requested by the agency, information regarding facility staff-to-resident ratios, staff turnover, and staff stability, including information regarding certified nursing assistants, licensed nurses, the director of nursing, and the facility administrator. For purposes of this reporting:
   a. Staff-to-resident ratios must be reported in the categories specified in s. 400.23(3)(a) and applicable rules. The ratio must be reported as an average for the most recent calendar quarter.
   b. Staff turnover must be reported for the most recent 12-month period ending on the last workday of the most recent calendar quarter prior to the date the information is submitted. The turnover rate must be computed quarterly, with the annual rate being the cumulative sum of the quarterly rates. The turnover rate is the total number of terminations or separations experienced during the quarter, excluding any employee terminated during a probationary period of 3 months or less, divided by the total number of staff employed at the end of the period for which the rate is computed, and expressed as a percentage.
   c. The formula for determining staff stability is the total number of employees that have been employed for more than 12 months, divided by the total number of employees employed at the end of the most recent calendar quarter, and expressed as a percentage.
   d. A nursing facility that has failed to comply with state minimum-staffing requirements for 2 consecutive days is prohibited from accepting new admissions until the facility has achieved the minimum-staffing requirements for a period of 6 consecutive days. For the purposes of this subparagraph, any person who was a resident of the facility and was absent from the facility for the purpose of receiving medical care at a separate location or was on a leave of absence is not considered a new admission. Failure to impose such an admissions moratorium constitutes a class II deficiency.
   e. A nursing facility which does not have a conditional license may be cited for failure to comply with the standards in s. 400.23(3)(a)1.b. and c. only if it has failed to meet those standards on 2 consecutive days or if it has failed to meet at least 97 percent of those standards on any one day.
   f. A facility which has a conditional license must be in compliance with the standards in s. 400.23(3)(a) at all times.

2. This paragraph does not limit the agency’s ability to impose a deficiency or take other actions if a facility does not have enough staff to meet the residents’ needs.

(p) Notify a licensed physician when a resident exhibits signs of dementia or cognitive impairment or has a change of condition in order to rule out the presence of an underlying physiological condition that may be contributing to such dementia or impairment. The notification must occur within 30 days after the acknowledgment of such signs by facility staff. If an underlying condition is determined to
exist, the facility shall arrange, with the appropriate health care provider, the necessary care and services to treat the condition.

(q) If the facility implements a dining and hospitality attendant program, ensure that the program is developed and implemented under the supervision of the facility director of nursing. A licensed nurse, licensed speech or occupational therapist, or a registered dietitian must conduct training of dining and hospitality attendants. A person employed by a facility as a dining and hospitality attendant must perform tasks under the direct supervision of a licensed nurse.

(r) Report to the agency any filing for bankruptcy protection by the facility or its parent corporation, divestiture or spin-off of its assets, or corporate reorganization within 30 days after the completion of such activity.

(s) Maintain general and professional liability insurance coverage that is in force at all times. In lieu of general and professional liability insurance coverage, a state-designated teaching nursing home and its affiliated assisted living facilities created under s. 430.80 may demonstrate proof of financial responsibility as provided in s. 430.80(3)(g).

(t) Maintain in the medical record for each resident a daily chart of certified nursing assistant services provided to the resident. The certified nursing assistant who is caring for the resident must complete this record by the end of his or her shift. This record must indicate assistance with activities of daily living, assistance with eating, and assistance with drinking, and must record each offering of nutrition and hydration for those residents whose plan of care or assessment indicates a risk for malnutrition or dehydration.

(u) Before November 30 of each year, subject to the availability of an adequate supply of the necessary vaccine, provide for immunizations against influenza viruses to all its consenting residents in accordance with the recommendations of the United States Centers for Disease Control and Prevention, subject to exemptions for medical contraindications and religious or personal beliefs. Subject to these exemptions, any consenting person who becomes a resident of the facility after November 30 but before March 31 of the following year must be immunized within 5 working days after becoming a resident. Immunization shall not be provided to any resident who provides documentation that he or she has been immunized as required by this paragraph. This paragraph does not prohibit a resident from receiving the immunization from his or her personal physician if he or she so chooses. A resident who chooses to receive the immunization from his or her personal physician shall provide proof of immunization to the facility. The agency may adopt and enforce any rules necessary to comply with or implement this paragraph.

(v) Assess all residents for eligibility for pneumococcal polysaccharide vaccination (PPV) and vaccinate residents when indicated within 60 days after the effective date of this act in accordance with the recommendations of the United States Centers for Disease Control and Prevention, subject to exemptions for medical contraindications and religious or personal beliefs. Residents admitted after
the effective date of this act shall be assessed within 5 working days of admission and, when indicated, vaccinated within 60 days in accordance with the recommendations of the United States Centers for Disease Control and Prevention, subject to exemptions for medical contraindications and religious or personal beliefs. Immunization shall not be provided to any resident who provides documentation that he or she has been immunized as required by this paragraph. This paragraph does not prohibit a resident from receiving the immunization from his or her personal physician if he or she so chooses. A resident who chooses to receive the immunization from his or her personal physician shall provide proof of immunization to the facility. The agency may adopt and enforce any rules necessary to comply with or implement this paragraph.

(w) Annually encourage and promote to its employees the benefits associated with immunizations against influenza viruses in accordance with the recommendations of the United States Centers for Disease Control and Prevention. The agency may adopt and enforce any rules necessary to comply with or implement this paragraph.

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

History.—s. 13, ch. 69-309; ss. 19, 35, ch. 69-106; s. 12, ch. 70-361; s. 3, ch. 76-168; s. 241, ch. 77-147; s. 3, ch. 77-401; s. 1, ch. 77-457; ss. 9, 18, ch. 80-186; ss. 2, 3, ch. 81-318; ss. 18, 79, 83, ch. 83-181; s. 30, ch. 93-177; ss. 17, 49, ch. 93-217; s. 21, ch. 95-418; s. 12, ch. 1999-362; s. 4, ch. 2000-263; s. 4, ch. 2000-350; s. 1, ch. 2001-42; ss. 22, 57, ch. 2001-45; s. 35, ch. 2001-62; s. 144, ch. 2001-277; s. 60, ch. 2002-1; s. 29, ch. 2002-223; s. 6, ch. 2002-400; s. 23, ch. 2003-57; s. 2, ch. 2003-120; s. 1, ch. 2005-136; s. 2, ch. 2006-28; s. 26, ch. 2006-197; s. 67, ch. 2007-230; s. 39, ch. 2009-223; s. 82, ch. 2010-5; s. 1, ch. 2010-156; s. 2, ch. 2010-197.

400.1413 Volunteers in nursing homes.—

(1) It is the intent of the Legislature to encourage the involvement of volunteers in nursing homes in this state. The Legislature also acknowledges that the licensee is responsible for all the activities that take place in the nursing home and recognizes the licensee’s need to be aware of and coordinate volunteer activities in the nursing home. Therefore, a nursing home may require that volunteers:

(a) Sign in and out with staff of the nursing home upon entering or leaving the facility.

(b) Wear an identification badge while in the building.

(c) Participate in a facility orientation and training program.

(2) This section does not affect the activities of state or local long-term care ombudsman councils authorized under part I.

History.—s. 23, ch. 2001-45.

400.1415 Patient records; penalties for alteration.—

(1) Any person who fraudulently alters, defaces, or falsifies any medical record or releases medical records for the purposes of solicitation or marketing the sale of goods or services absent a specific
written release or authorization permitting utilization of patient information, or other nursing home record, or causes or procures any of these offenses to be committed, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) A conviction under subsection (1) is also grounds for restriction, suspension, or termination of license privileges.

History.—s. 5, ch. 93-217; s. 7, ch. 99-394; s. 11, ch. 2001-222; s. 142, ch. 2001-277.

Note.—Former s. 400.0231.

400.142 Emergency medication kits; orders not to resuscitate.—

(1) Other provisions of this chapter or of chapter 465, chapter 499, or chapter 893 to the contrary notwithstanding, each nursing home operating pursuant to a license issued by the agency may maintain an emergency medication kit for the purpose of storing medicinal drugs to be administered under emergency conditions to residents residing in such facility.

(2) The agency shall adopt such rules as it may deem appropriate to the effective implementation of this act, including, but not limited to, rules which:

(a) Define the term “emergency medication kit.”

(b) Describe the medicinal drugs eligible to be placed in emergency medication kits.

(c) Establish requirements for the storing of medicinal drugs in emergency medication kits and the maintenance of records with respect thereto.

(d) Establish requirements for the administration of medicinal drugs to residents under emergency conditions from emergency medication kits.

(3) Facility staff may withhold or withdraw cardiopulmonary resuscitation if presented with an order not to resuscitate executed pursuant to s. 401.45. The agency shall adopt rules providing for the implementation of such orders. Facility staff and facilities shall not be subject to criminal prosecution or civil liability, nor be considered to have engaged in negligent or unprofessional conduct, for withholding or withdrawing cardiopulmonary resuscitation pursuant to such an order and rules adopted by the agency. The absence of an order not to resuscitate executed pursuant to s. 401.45 does not preclude a physician from withholding or withdrawing cardiopulmonary resuscitation as otherwise permitted by law.


Note.—Former s. 400.3221.

400.145 Records of care and treatment of resident; copies to be furnished.—

(1) Unless expressly prohibited by a legally competent resident, any nursing home licensed pursuant to this part shall furnish to the spouse, guardian, surrogate, proxy, or attorney in fact, as provided in chapters 744 and 765, of a current resident, within 7 working days after receipt of a written request, or of a former resident, within 10 working days after receipt of a written request, a copy of that resident’s records which are in the possession of the facility. Such records shall include medical and
psychiatric records and any records concerning the care and treatment of the resident performed by
the facility, except progress notes and consultation report sections of a psychiatric nature. Copies of
such records shall not be considered part of a deceased resident’s estate and may be made available
prior to the administration of an estate, upon request, to the spouse, guardian, surrogate, proxy, or
attorney in fact, as provided in chapters 744 and 765. A facility may charge a reasonable fee for the
copying of resident records. Such fee shall not exceed $1 per page for the first 25 pages and 25 cents
per page for each page in excess of 25 pages. The facility shall further allow any such spouse, guardian,
surrogate, proxy, or attorney in fact, as provided in chapters 744 and 765, to examine the original
records in its possession, or microfilms or other suitable reproductions of the records, upon such
reasonable terms as shall be imposed, to help assure that the records are not damaged, destroyed, or
altered.

(2) No person shall be allowed to obtain copies of residents’ records pursuant to this section more
often than once per month, except that physician’s reports in the residents’ records may be obtained
as often as necessary to effectively monitor the residents’ condition.

History.—s. 1, ch. 87-302; s. 23, ch. 91-71; s. 30, ch. 93-177; s. 18, ch. 93-217; s. 228, ch. 96-406.

400.147 Internal risk management and quality assurance program.—

(1) Every facility shall, as part of its administrative functions, establish an internal risk
management and quality assurance program, the purpose of which is to assess resident care practices;
review facility quality indicators, facility incident reports, deficiencies cited by the agency, and
resident grievances; and develop plans of action to correct and respond quickly to identified quality
deficiencies. The program must include:

(a) A designated person to serve as risk manager, who is responsible for implementation and
oversight of the facility’s risk management and quality assurance program as required by this section.

(b) A risk management and quality assurance committee consisting of the facility risk manager, the
administrator, the director of nursing, the medical director, and at least three other members of the
facility staff. The risk management and quality assurance committee shall meet at least monthly.

(c) Policies and procedures to implement the internal risk management and quality assurance
program, which must include the investigation and analysis of the frequency and causes of general
categories and specific types of adverse incidents to residents.

(d) The development and implementation of an incident reporting system based upon the
affirmative duty of all health care providers and all agents and employees of the licensed health care
facility to report adverse incidents to the risk manager, or to his or her designee, within 3 business
days after their occurrence.

(e) The development of appropriate measures to minimize the risk of adverse incidents to
residents, including, but not limited to, education and training in risk management and risk prevention
for all nonphysician personnel, as follows:
1. Such education and training of all nonphysician personnel must be part of their initial orientation; and

2. At least 1 hour of such education and training must be provided annually for all nonphysician personnel of the licensed facility working in clinical areas and providing resident care.

(f) The analysis of resident grievances that relate to resident care and the quality of clinical services.

(2) The internal risk management and quality assurance program is the responsibility of the facility administrator.

(3) In addition to the programs mandated by this section, other innovative approaches intended to reduce the frequency and severity of adverse incidents to residents and violations of residents' rights shall be encouraged and their implementation and operation facilitated.

(4) Each internal risk management and quality assurance program shall include the use of incident reports to be filed with the risk manager and the facility administrator. The risk manager shall have free access to all resident records of the licensed facility. The incident reports are part of the workpapers of the attorney defending the licensed facility in litigation relating to the licensed facility and are subject to discovery, but are not admissible as evidence in court. A person filing an incident report is not subject to civil suit by virtue of such incident report. As a part of each internal risk management and quality assurance program, the incident reports shall be used to develop categories of incidents which identify problem areas. Once identified, procedures shall be adjusted to correct the problem areas.

(5) For purposes of reporting to the agency under this section, the term “adverse incident” means:

(a) An event over which facility personnel could exercise control and which is associated in whole or in part with the facility's intervention, rather than the condition for which such intervention occurred, and which results in one of the following:

1. Death;
2. Brain or spinal damage;
3. Permanent disfigurement;
4. Fracture or dislocation of bones or joints;
5. A limitation of neurological, physical, or sensory function;
6. Any condition that required medical attention to which the resident has not given his or her informed consent, including failure to honor advanced directives;

7. Any condition that required the transfer of the resident, within or outside the facility, to a unit providing a more acute level of care due to the adverse incident, rather than the resident’s condition prior to the adverse incident; or

8. An event that is reported to law enforcement or its personnel for investigation; or

(b) Resident elopement, if the elopement places the resident at risk of harm or injury.
(6) The internal risk manager of each licensed facility shall:

(a) Investigate every allegation of sexual misconduct which is made against a member of the facility’s personnel who has direct patient contact when the allegation is that the sexual misconduct occurred at the facility or at the grounds of the facility;

(b) Report every allegation of sexual misconduct to the administrator of the licensed facility; and

(c) Notify the resident representative or guardian of the victim that an allegation of sexual misconduct has been made and that an investigation is being conducted.

(7) The facility shall initiate an investigation and shall notify the agency within 1 business day after the risk manager or his or her designee has received a report pursuant to paragraph (1)(d). The notification must be made in writing and be provided electronically, by facsimile device or overnight mail delivery. The notification must include information regarding the identity of the affected resident, the type of adverse incident, the initiation of an investigation by the facility, and whether the events causing or resulting in the adverse incident represent a potential risk to any other resident. The notification is confidential as provided by law and is not discoverable or admissible in any civil or administrative action, except in disciplinary proceedings by the agency or the appropriate regulatory board. The agency may investigate, as it deems appropriate, any such incident and prescribe measures that must or may be taken in response to the incident. The agency shall review each incident and determine whether it potentially involved conduct by the health care professional who is subject to disciplinary action, in which case the provisions of s. 456.073 shall apply.

(8)(a) Each facility shall complete the investigation and submit an adverse incident report to the agency for each adverse incident within 15 calendar days after its occurrence. If, after a complete investigation, the risk manager determines that the incident was not an adverse incident as defined in subsection (5), the facility shall include this information in the report. The agency shall develop a form for reporting this information.

(b) The information reported to the agency pursuant to paragraph (a) which relates to persons licensed under chapter 458, chapter 459, chapter 461, or chapter 466 shall be reviewed by the agency. The agency shall determine whether any of the incidents potentially involved conduct by a health care professional who is subject to disciplinary action, in which case the provisions of s. 456.073 shall apply.

(c) The report submitted to the agency must also contain the name of the risk manager of the facility.

(d) The adverse incident report is confidential as provided by law and is not discoverable or admissible in any civil or administrative action, except in disciplinary proceedings by the agency or the appropriate regulatory board.

(9) Abuse, neglect, or exploitation must be reported to the agency as required by 42 C.F.R. s. 483.13(c) and to the department as required by chapters 39 and 415.
(10) By the 10th of each month, each facility subject to this section shall report any notice received pursuant to s. 400.0233(2) and each initial complaint that was filed with the clerk of the court and served on the facility during the previous month by a resident or a resident’s family member, guardian, conservator, or personal legal representative. The report must include the name of the resident, the resident’s date of birth and social security number, the Medicaid identification number for Medicaid-eligible persons, the date or dates of the incident leading to the claim or dates of residency, if applicable, and the type of injury or violation of rights alleged to have occurred. Each facility shall also submit a copy of the notices received pursuant to s. 400.0233(2) and complaints filed with the clerk of the court. This report is confidential as provided by law and is not discoverable or admissible in any civil or administrative action, except in such actions brought by the agency to enforce the provisions of this part.

(11) The agency shall review, as part of its licensure inspection process, the internal risk management and quality assurance program at each facility regulated by this section to determine whether the program meets standards established in statutory laws and rules, is being conducted in a manner designed to reduce adverse incidents, and is appropriately reporting incidents as required by this section.

(12) There is no monetary liability on the part of, and a cause of action for damages may not arise against, any risk manager for the implementation and oversight of the internal risk management and quality assurance program in a facility licensed under this part as required by this section, or for any act or proceeding undertaken or performed within the scope of the functions of such internal risk management and quality assurance program if the risk manager acts without intentional fraud.

(13) If the agency, through its receipt of the adverse incident reports prescribed in subsection (7), or through any investigation, has a reasonable belief that conduct by a staff member or employee of a facility is grounds for disciplinary action by the appropriate regulatory board, the agency shall report this fact to the regulatory board.

(14) The agency may adopt rules to administer this section.

(15) Information gathered by a credentialing organization under a quality assurance program is not discoverable from the credentialing organization. This subsection does not limit discovery of, access to, or use of facility records, including those records from which the credentialing organization gathered its information.

History.—s. 24, ch. 2001-45; s. 8, ch. 2002-400; s. 40, ch. 2009-223.

400.148 Medicaid “Up-or-Out” Quality of Care Contract Management Program.—

(1) The Legislature finds that the federal Medicare program has implemented successful models of managing the medical and supportive-care needs of long-term nursing home residents. These programs have maintained the highest practicable level of good health and have the potential to reduce the incidence of preventable illnesses among long-stay residents of nursing homes, thereby increasing the
quality of care for residents and reducing the number of lawsuits against nursing homes. Such models are operated at no cost to the state. It is the intent of the Legislature that the Agency for Health Care Administration replicate such oversight for Medicaid recipients in poor-performing nursing homes and in assisted living facilities and nursing homes that are experiencing disproportionate numbers of lawsuits, with the goal of improving the quality of care in such homes or facilitating the revocation of licensure.

(2) The pilot project must ensure:

(a) Oversight and coordination of all aspects of a resident’s medical care and stay in a nursing home;

(b) Facilitation of close communication between the resident, the resident’s guardian or legal representative, the resident’s attending physician, the resident’s family, and staff of the nursing facility;

(c) Frequent onsite visits to the resident;

(d) Early detection of medical or quality problems that have the potential to lead to adverse outcomes and unnecessary hospitalization;

(e) Close communication with regulatory staff;

(f) Immediate investigation of resident quality-of-care complaints and communication and cooperation with the appropriate entity to address those complaints, including the ombudsman, state agencies, agencies responsible for Medicaid program integrity, and local law enforcement agencies;

(g) Assistance to the resident or the resident’s representative to relocate the resident if quality-of-care issues are not otherwise addressed; and

(h) Use of Medicare and other third-party funds to support activities of the program, to the extent possible.

(3) The agency shall model the pilot project activities after such Medicare-approved demonstration projects.

(4) The agency may contract to provide similar oversight services to Medicaid recipients.

(5) The agency shall, jointly with the Statewide Public Guardianship Office, develop a system in the pilot project areas to identify Medicaid recipients who are residents of a participating nursing home or assisted living facility who have diminished ability to make their own decisions and who do not have relatives or family available to act as guardians in nursing homes listed on the Nursing Home Guide Watch List. The agency and the Statewide Public Guardianship Office shall give such residents priority for publicly funded guardianship services.

History.—s. 25, ch. 2001-45; s. 107, ch. 2010-102.

400.151 Contracts.—

(1) The presence of each resident in a facility shall be covered by a contract, executed by the licensee and the resident or his or her designee or legal representative at the time of admission or prior thereto and at the expiration of the term of a previous contract, and modified by the licensee
and the resident or his or her designee or legal representative at the time the source of payment for the resident’s care changes. Each party to the contract is entitled to a duplicate original thereof, printed in boldfaced type, and the licensee shall keep on file all contracts which it has with residents. The licensee may not destroy or otherwise dispose of any such contract until 5 years after its expiration or such longer period as may be provided in the rules of the agency. Microfilmed records or records reproduced by a similar process of duplication may be kept in lieu of the original records.

(2) Each contract to which this section applies shall contain express provisions specifically setting forth the services and accommodations to be provided by the licensee, the rates or charges therefor, bed reservation and refund policies, and any other matters which the parties deem appropriate. The licensee shall attach to the contract a list of services and supplies available but not covered by the per diem rate of the facility or by Titles XVIII and XIX of the Social Security Act and the standard charge to the resident for each item. The licensee shall provide written notification to each party to the contract of any changes in any attachment thereto, no fewer than 14 days in advance of the effective date of those changes. The agency shall specify by rule an alternative method for notification of changes in the cost of supplies. If the resident is a party to the contract, the licensee shall provide him or her with a written and oral notification of the changes.

History.—s. 14, ch. 69-309; ss. 19, 35, ch. 69-106; s. 13, ch. 70-361; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 10, 18, ch. 80-186; ss. 2, 3, ch. 81-318; ss. 19, 79, 83, ch. 83-181; s. 46, ch. 85-81; s. 30, ch. 93-177; ss. 19, 49, ch. 93-217; s. 767, ch. 95-148.

400.162 Property and personal affairs of residents.—

(1) The admission of a resident to a facility and his or her presence in the facility shall not confer on the facility or its owner, administrator, employees, or representatives any authority to manage, use, or dispose of any property of the resident; nor shall such admission or presence confer on any of the aforementioned persons any authority or responsibility for the personal affairs of the resident, except that which may be necessary for the safety and orderly management of the facility.

(2) No licensee, owner, administrator, employee, or representative thereof shall act as guardian, trustee, or conservator for any resident of the facility or any of such resident’s property unless the person is the resident’s spouse or a blood relative within the third degree of consanguinity.

(3) A licensee shall provide for the safekeeping of personal effects, funds, and other property of the resident in the facility. Whenever necessary for the protection of valuables, or in order to avoid unreasonable responsibility therefor, the licensee may require that such valuables be excluded or removed from the facility and kept at some place not subject to the control of the licensee. At the request of a resident, the facility shall mark the resident’s personal property with the resident’s name or another type of identification, without defacing the property. Any theft or loss of a resident’s personal property shall be documented by the facility. The facility shall develop policies and procedures to minimize the risk of theft or loss of the personal property of residents. A copy of the
policy shall be provided to every employee and to each resident and the resident’s representative if appropriate at admission and when revised. Facility policies must include provisions related to reporting theft or loss of a resident’s property to law enforcement and any facility waiver of liability for loss or theft.

(4) A licensee shall keep complete and accurate records of all funds and other effects and property of its residents received by it for safekeeping.

(5)(a) Any funds or other property belonging to a resident which are received by a licensee shall be held in trust. Funds held in trust shall be kept separate from the funds and property of the facility; shall be deposited in a bank, savings association, trust company, or credit union located in this state and, if possible, located in the same district in which the facility is located; shall not be represented as part of the assets of the facility on a financial statement; and shall be used or otherwise expended only for the account of the resident.

(b) 1. Any licensee which holds resident funds in trust, as provided in paragraph (a), during the period for which a license is requested or issued shall file a surety bond with the agency in an amount equal to twice the average monthly balance in the resident trust fund during the prior year or $5,000, whichever is greater. The bond shall be executed by the licensee as principal and by a surety company authorized and licensed to do business in the state as surety. The bond shall be conditioned upon the faithful compliance of the licensee with the provisions of this section and shall run to the agency for the benefit of any resident injured by the violation by the licensee of the provisions of this section.

2. A new bond or a proper continuation certificate shall be required on the annual renewal date of each licensee’s bond. Such bond or certificate shall be filed with the agency as provided in subparagraph 1.

3. Any surety company which cancels or does not renew the bond of any licensee shall notify the agency, in writing, not less than 30 days in advance of such action, giving the reason for the cancellation or nonrenewal.

(c) As an alternative to posting a surety bond, the licensee may enter into a self-insurance agreement as specified in rules adopted by the agency. Funds contained in the pool shall run to any resident suffering financial loss as a result of the violation by the licensee of the provisions of this section. Such funds shall be awarded to any resident in an amount equal to the amount that the resident can establish, by affidavit or other adequate evidence, was deposited in trust with the licensee and which could not be paid to the resident within 30 days of the resident’s request. The agency shall promulgate rules with regard to the establishment, organization, and operation of such self-insurance pools. Such rules shall include, but shall not be limited to, requirements for monetary reserves to be maintained by such self-insurers to assure their financial solvency.

(d) If, at any time during the period for which a license is issued, a licensee that has not purchased a surety bond or entered into a self-insurance agreement, as provided in paragraphs (b) and (c), is
requested to provide safekeeping for the personal funds of a resident, the licensee shall notify the
agency of the request and make application for a surety bond or for participation in a self-insurance
agreement within 7 days of the request, exclusive of weekends and holidays. Copies of the application,
along with written documentation of related correspondence with an insurance agency or group, shall
be maintained by the licensee for review by the agency and the State Nursing Home and Long-Term
Care Facility Ombudsman Council.

(e) Moneys or securities received as advance payment for care may at no time exceed the cost of
care for a 6-month period.

(f) At least every 3 months, the licensee shall furnish the resident and the guardian, trustee, or
conservator, if any, for the resident a complete and verified statement of all funds and other property
to which this subsection applies, detailing the amounts and items received, together with their sources
and disposition. In any event, the licensee shall furnish such a statement annually and upon the
discharge or transfer of a resident. Any governmental agency or private charitable agency contributing
funds or other property on account of a resident also shall be entitled to receive such statement
annually and upon discharge or transfer and such other report as it may require pursuant to law.

(g) In the event of the death of a resident, a licensee shall return all refunds and funds held in trust
to the resident’s personal representative, if one has been appointed at the time the nursing home
disburses such funds, and if not, to the resident’s spouse or adult next of kin named in a beneficiary
designation form provided by the nursing home to the resident. In the event the resident has no spouse
or adult next of kin or such person cannot be located, funds due to the resident shall be placed in an
interest-bearing account in a bank, savings association, trust company, or credit union located in this
state and, if possible, located within the same district in which the facility is located, which funds shall
not be represented as part of the assets of the facility on a financial statement, and the licensee shall
maintain such account until such time as the trust funds are disbursed pursuant to the provisions of the
Florida Probate Code. All other property of a deceased resident being held in trust by the licensee shall
be returned to the resident’s personal representative, if one has been appointed at the time the
nursing home disburses such property, and if not, to the resident’s spouse or adult next of kin named in
a beneficiary designation form provided by the nursing home to the resident. In the event the resident
has no spouse or adult next of kin or such person cannot be located, property being held in trust shall
be safeguarded until such time as the property is disbursed pursuant to the provisions of the Florida
Probate Code. The trust funds and property of deceased residents shall be kept separate from the
funds and the property of the licensee and from the funds and property of the residents of the facility.
The nursing home needs to maintain only one account in which the trust funds amounting to less than
$100 of deceased residents are placed. However, it shall be the obligation of the nursing home to
maintain adequate records to permit compilation of interest due each individual resident’s account.
Separate accounts shall be maintained with respect to trust funds of deceased residents equal to or in
excess of $100. In the event the trust funds of the deceased resident are not disbursed pursuant to the
provisions of the Florida Probate Code within 2 years of the death of the resident, the trust funds shall
be deposited in the Health Care Trust Fund and expended as provided for in s. 400.063,
notwithstanding the provisions of any other law of this state. Any other property of a deceased resident
held in trust by a licensee which is not disbursed in accordance with the provisions of the Florida
Probate Code shall escheat to the state as provided by law.

History.—s. 15, ch. 69-309; s. 14, ch. 70-361; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 7, 9, ch. 79-268; ss. 2, 3, ch. 81-
318; ss. 3, 19, ch. 82-148; ss. 20, 79, 83, ch. 83-181; s. 1, ch. 85-286; s. 37, ch. 87-225; s. 30, ch. 93-177; ss. 20, 49, ch.
93-217; s. 768, ch. 95-148; s. 13, ch. 99-394; s. 15, ch. 2008-9; s. 41, ch. 2009-223.

400.165 Itemized resident billing, form and content prescribed by the agency.—

(1) Within 7 days following discharge or release from a nursing home, or within 7 days after the
earliest date at which the cost of all goods or services provided on behalf of the resident are billed to
the facility, the nursing home shall submit to the resident, or to his or her survivor or legal guardian,
an itemized statement detailing in language comprehensible to an ordinary layperson the specific
nature of charges or expenses incurred by the resident. The initial billing shall contain a statement of
specific services received and expenses incurred for such items of service, enumerating in detail the
constituent components of the services received within each department of the nursing home and
including unit price data on rates charged by the nursing home as may be prescribed by the agency.

(2) Each statement shall:

(a) Not include charges of nursing home-based physicians if billed separately.

(b) Not include any generalized category of expenses such as “other” or “miscellaneous” or similar
categories.

(c) List drugs by brand or generic name and may not refer to drug code numbers when referring to
drugs of any sort.

(d) Specifically identify therapy treatment as to the date, type, and length of treatment when
therapy treatment is a part of the statement. The person receiving a statement pursuant to this
section shall be fully and accurately informed as to each charge and service provided by the institution
preparing the statement.

(3) On each itemized statement there shall appear the words “A FOR-PROFIT (or NOT-FOR-PROFIT
or PUBLIC) NURSING HOME LICENSED BY THE STATE OF FLORIDA” or substantially similar words
sufficient to identify clearly and plainly the ownership status of the nursing home.

(4) In any billing for services subsequent to the initial billing for such services, the resident, or the
resident’s survivor or legal guardian, may elect, at his or her option, to receive a copy of the detailed
statement of specific services received and expenses incurred for each such item of service as provided
in subsection (1).
(5) No physician, dentist, or nursing home may add to the price charged by any third party except for a service or handling charge representing a cost actually incurred as an item of expense; however, the physician, dentist, or nursing home is entitled to fair compensation for all professional services rendered. The amount of the service or handling charge, if any, shall be set forth clearly in the bill to the resident.

History.—ss. 22, 27, ch. 82-182; ss. 21, 79, 81, 83, ch. 83-181; s. 30, ch. 93-177; ss. 21, 49, ch. 93-217; s. 769, ch. 95-148.

Note.—Former s. 400.425.

400.17 Bribes, kickbacks, certain solicitations prohibited.—

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

(a) “Bribe” means any consideration corruptly given, received, promised, solicited, or offered to any individual with intent or purpose to influence the performance of any act or omission.

(b) “Kickback” means that part of the payment for items or services which is returned to the payor by the provider of such items or services with the intent or purpose to induce the payor to purchase the items or services from the provider.

(2) Whoever furnishes items or services directly or indirectly to a nursing home resident and solicits, offers, or receives any:

(a) Kickback or bribe in connection with the furnishing of such items or services or the making or receipt of such payment; or

(b) Return of part of an amount given in payment for referring any such individual to another person for the furnishing of such items or services;

is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or by fine not exceeding $5,000, or both.

(3) No person shall, in connection with the solicitation of contributions to nursing homes, willfully misrepresent or mislead anyone, by any manner, means, practice, or device whatsoever, to believe that the receipts of such solicitation will be used for charitable purposes, if such is not the fact.

(4) Solicitation of contributions of any kind in a threatening, coercive, or unduly forceful manner by or on behalf of a nursing home by any agent, employee, owner, or representative of a nursing home shall be grounds for denial, suspension, or revocation of the license for any nursing home on behalf of which such contributions were solicited.

(5) The admission, maintenance, or treatment of a nursing home resident whose care is supported in whole or in part by state funds may not be made conditional upon the receipt of any manner of contribution or donation from any person. However, this may not be construed to prohibit the offer or receipt of contributions or donations to a nursing home which are not related to the care of a specific resident. Contributions solicited or received in violation of this subsection shall be grounds for denial,
suspension, or revocation of a license for any nursing home on behalf of which such contributions were solicited.

History.—s. 16, ch. 69-309; s. 16, ch. 70-361; s. 3, ch. 76-168; s. 3, ch. 76-201; s. 1, ch. 77-457; ss. 2, 3, ch. 81-318; ss. 22, 79, 83, ch. 83-181; s. 30, ch. 93-177; s. 49, ch. 93-217.

400.175 Patients with Alzheimer’s disease or other related disorders; certain disclosures.—A facility licensed under this part which claims that it provides special care for persons who have Alzheimer’s disease or other related disorders must disclose in its advertisements or in a separate document those services that distinguish the care as being especially applicable to, or suitable for, such persons. The facility must give a copy of all such advertisements or a copy of the document to each person who requests information about programs and services for persons with Alzheimer’s disease or other related disorders offered by the facility and must maintain a copy of all such advertisements and documents in its records. The agency shall examine all such advertisements and documents in the facility’s records as part of the license renewal procedure.

History.—s. 1, ch. 93-105.

400.1755 Care for persons with Alzheimer’s disease or related disorders.—

(1) As a condition of licensure, facilities licensed under this part must provide to each of their employees, upon beginning employment, basic written information about interacting with persons with Alzheimer’s disease or a related disorder.

(2) All employees who are expected to, or whose responsibilities require them to, have direct contact with residents with Alzheimer’s disease or a related disorder must, in addition to being provided the information required in subsection (1), also have an initial training of at least 1 hour completed in the first 3 months after beginning employment. This training must include, but is not limited to, an overview of dementias and must provide basic skills in communicating with persons with dementia.

(3) An individual who provides direct care shall be considered a direct caregiver and must complete the required initial training and an additional 3 hours of training within 9 months after beginning employment. This training shall include, but is not limited to, managing problem behaviors, promoting the resident’s independence in activities of daily living, and skills in working with families and caregivers.

(a) The required 4 hours of training for certified nursing assistants are part of the total hours of training required annually.

(b) For a health care practitioner as defined in s. 456.001, continuing education hours taken as required by that practitioner’s licensing board shall be counted toward this total of 4 hours.

(4) For an employee who is a licensed health care practitioner as defined in s. 456.001, training that is sanctioned by that practitioner’s licensing board shall be considered to be approved by the Department of Elderly Affairs.
(5) The Department of Elderly Affairs or its designee must approve the initial and continuing training provided in the facilities. The department must approve training offered in a variety of formats, including, but not limited to, Internet-based training, videos, teleconferencing, and classroom instruction. The department shall keep a list of current providers who are approved to provide initial and continuing training. The department shall adopt rules to establish standards for the trainers and the training required in this section.

(6) Upon completing any training listed in this section, the employee or direct caregiver shall be issued a certificate that includes the name of the training provider, the topic covered, and the date and signature of the training provider. The certificate is evidence of completion of training in the identified topic, and the employee or direct caregiver is not required to repeat training in that topic if the employee or direct caregiver changes employment to a different facility or to an assisted living facility, home health agency, adult day care center, or adult family-care home. The direct caregiver must comply with other applicable continuing education requirements.


400.176 Rebates prohibited; penalties.—

(1) It is unlawful for any person to pay or receive any commission, bonus, kickback, or rebate or engage in any split-fee arrangement in any form whatsoever with any physician, surgeon, organization, agency, or person, either directly or indirectly, for residents referred to a nursing home licensed under this part.

(2) The agency shall adopt rules which assess administrative penalties for acts prohibited by subsection (1). In the case of an entity licensed by the agency, such penalties may include any disciplinary action available to the agency under the appropriate licensing laws. In the case of an entity not licensed by the agency, such penalties may include:

(a) A fine not to exceed $5,000; and

(b) If applicable, a recommendation by the agency to the appropriate licensing board that disciplinary action be taken.

History.—s. 2, ch. 79-106; s. 2, ch. 81-318; ss. 23, 79, 83, ch. 83-181; s. 30, ch. 93-177; ss. 22, 49, ch. 93-217.

400.179 Liability for Medicaid underpayments and overpayments.—

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

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

(a) The Medicaid program shall be liable to the transferor for any underpayments owed during the transferor’s period of operation of the facility.
Without regard to whether the transferor had leased or owned the nursing facility, the transferor shall remain liable to the Medicaid program for all Medicaid overpayments received during the transferor’s period of operation of the facility, regardless of when determined.

Where the facility transfer takes any form of a sale of assets, in addition to the transferor’s continuing liability for any such overpayments, if the transferor fails to meet these obligations, the transferee shall be liable for all liabilities that can be readily identifiable 90 days in advance of the transfer. Such liability shall continue in succession until the debt is ultimately paid or otherwise resolved. It shall be the burden of the transferee to determine the amount of all such readily identifiable overpayments from the Agency for Health Care Administration, and the agency shall cooperate in every way with the identification of such amounts. Readily identifiable overpayments shall include overpayments that will result from, but not be limited to:

1. Medicaid rate changes or adjustments;
2. Any depreciation recapture;
3. Any recapture of fair rental value system indexing; or
4. Audits completed by the agency.

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

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

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

2. A leasehold licensee may meet the requirements of subparagraph 1. by payment of a nonrefundable fee, paid at initial licensure, paid at the time of any subsequent change of ownership, and paid annually thereafter, in the amount of 1 percent of the total of 3 months’ Medicaid payments to the facility computed on the basis of the preceding 12-month average Medicaid payments to the facility. If a preceding 12-month average is not available, projected Medicaid payments may be used. The fee shall be deposited into the Grants and Donations Trust Fund and shall be accounted for separately as a Medicaid nursing home overpayment account. These fees shall be used at the sole discretion of the agency to repay nursing home Medicaid overpayments. Payment of this fee shall not release the licensee from any liability for any Medicaid overpayments, nor shall payment by the agency from seeking to recoup overpayments from the licensee and any other liable party. As a condition of exercising this lease bond alternative, licensees paying this fee must maintain an existing lease bond through the end of the 30-month term period of that bond. The agency is herein granted specific authority to promulgate all rules pertaining to the administration and management of this
account, including withdrawals from the account, subject to federal review and approval. This provision shall take effect upon becoming law and shall apply to any leasehold license application. The financial viability of the Medicaid nursing home overpayment account shall be determined by the agency through annual review of the account balance and the amount of total outstanding, unpaid Medicaid overpayments owing from leasehold licensees to the agency as determined by final agency audits. By March 31 of each year, the agency shall assess the cumulative fees collected under this subparagraph, minus any amounts used to repay nursing home Medicaid overpayments and amounts transferred to contribute to the General Revenue Fund pursuant to s. 215.20. If the net cumulative collections, minus amounts utilized to repay nursing home Medicaid overpayments, exceed $25 million, the provisions of this subparagraph shall not apply for the subsequent fiscal year.

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

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

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

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

(e) For the 2009-2010 fiscal year only, the provisions of paragraph (d) shall not apply. This paragraph expires July 1, 2010.


400.18 Closing of nursing facility.—

(1) In addition to the requirements of part II of chapter 408, the licensee also shall inform each resident or the next of kin, legal representative, or agency acting on behalf of the resident of the fact,
and the proposed time, of discontinuance of operation and give at least 90 days’ notice so that suitable
arrangements may be made for the transfer and care of the resident. In the event any resident has no
such person to represent him or her, the licensee shall be responsible for securing a suitable transfer of
the resident before the discontinuance of operation. The agency shall be responsible for arranging for
the transfer of those residents requiring transfer who are receiving assistance under the Medicaid
program.

(2) A representative of the agency shall be placed in a facility 30 days before the voluntary
discontinuance of operation, or immediately upon the determination by the agency that the licensee is
discontinuing operation or that existing conditions or practices represent an immediate danger to the
health, safety, or security of the residents in the facility, to:

(a) Monitor the transfer of residents to other facilities.
(b) Ensure that the rights of residents are protected.
(c) Observe the operation of the facility.
(d) Assist the management of the facility by advising the management on compliance with state and
federal laws and rules.
(e) Recommend further action by the agency.

(3) The agency shall discontinue the monitoring of a facility pursuant to subsection (2) when:

(a) All residents in the facility have been relocated; or
(b) The agency determines that the conditions which gave rise to the placement of a representative
of the agency in the facility no longer exist and the agency is reasonably assured that those conditions
will not recur.

History.—s. 17, ch. 69-309; ss. 19, 35, ch. 69-106; s. 15, ch. 70-361; s. 3, ch. 76-168; s. 4, ch. 76-201; s. 1, ch. 77-457;
ss. 11, 18, ch. 80-186; ss. 2, 3, ch. 81-318; ss. 5, 22, ch. 82-182; ss. 25, 79, 83, ch. 83-181; s. 58, ch. 91-282; s. 30, ch.
93-177; ss. 24, 49, ch. 93-217; s. 770, ch. 95-148; s. 69, ch. 2007-230.

400.19 Right of entry and inspection.—

(1) In accordance with part II of chapter 408, the agency and any duly designated officer or
employee thereof or a member of the State Long-Term Care Ombudsman Council or the local long-term
care ombudsman council shall have the right to enter upon and into the premises of any facility
licensed pursuant to this part, or any distinct nursing home unit of a hospital licensed under chapter
395 or any freestanding facility licensed under chapter 395 that provides extended care or other long-
term care services, at any reasonable time in order to determine the state of compliance with the
provisions of this part, part II of chapter 408, and applicable rules in force pursuant thereto. The
agency shall, within 60 days after receipt of a complaint made by a resident or resident’s
representative, complete its investigation and provide to the complainant its findings and resolution.

(2) The agency shall coordinate nursing home facility licensing activities and responsibilities of any
duly designated officer or employee involved in nursing home facility inspection to assure necessary,
equitable, and consistent supervision of inspection personnel without unnecessary duplication of inspections, consultation services, or complaint investigations.

(3) The agency shall every 15 months conduct at least one unannounced inspection to determine compliance by the licensee with statutes, and with rules promulgated under the provisions of those statutes, governing minimum standards of construction, quality and adequacy of care, and rights of residents. The survey shall be conducted every 6 months for the next 2-year period if the facility has been cited for a class I deficiency, has been cited for two or more class II deficiencies arising from separate surveys or investigations within a 60-day period, or has had three or more substantiated complaints within a 6-month period, each resulting in at least one class I or class II deficiency. In addition to any other fees or fines in this part, the agency shall assess a fine for each facility that is subject to the 6-month survey cycle. The fine for the 2-year period shall be $6,000, one-half to be paid at the completion of each survey. The agency may adjust this fine by the change in the Consumer Price Index, based on the 12 months immediately preceding the increase, to cover the cost of the additional surveys. The agency shall verify through subsequent inspection that any deficiency identified during inspection is corrected. However, the agency may verify the correction of a class III or class IV deficiency unrelated to resident rights or resident care without reinspecting the facility if adequate written documentation has been received from the facility, which provides assurance that the deficiency has been corrected. The giving or causing to be given of advance notice of such unannounced inspections by an employee of the agency to any unauthorized person shall constitute cause for suspension of not fewer than 5 working days according to the provisions of chapter 110.

(4) The agency shall conduct unannounced onsite facility reviews following written verification of licensee noncompliance in instances in which a long-term care ombudsman council, pursuant to ss. 400.0071 and 400.0075, has received a complaint and has documented deficiencies in resident care or in the physical plant of the facility that threaten the health, safety, or security of residents, or when the agency documents through inspection that conditions in a facility present a direct or indirect threat to the health, safety, or security of residents. However, the agency shall conduct unannounced onsite reviews every 3 months of each facility while the facility has a conditional license. Deficiencies related to physical plant do not require followup reviews after the agency has determined that correction of the deficiency has been accomplished and that the correction is of the nature that continued compliance can be reasonably expected.

History.—s. 18, ch. 69-309; ss. 19, 35, ch. 69-106; s. 17, ch. 70-361; s. 3, ch. 76-168; s. 5, ch. 76-201; s. 1, ch. 77-457; ss. 35, 36, ch. 79-190; ss. 13, 18, ch. 80-186; ss. 2, 3, ch. 81-318; ss. 12, 19, ch. 82-148; ss. 26, 79, 83, ch. 83-181; ss. 21, 30, ch. 93-177; ss. 25, 49, ch. 93-217; s. 14, ch. 99-394; s. 139, ch. 2000-349; s. 59, ch. 2000-367; s. 27, ch. 2001-45; s. 70, ch. 2007-230.

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

(2) The agency shall publish the Nursing Home Guide quarterly in electronic form to assist consumers and their families in comparing and evaluating nursing home facilities.

(a) The agency shall provide an Internet site which shall include at least the following information either directly or indirectly through a link to another established site or sites of the agency’s choosing:

1. A section entitled “Have you considered programs that provide alternatives to nursing home care?” which shall be the first section of the Nursing Home Guide and which shall prominently display information about available alternatives to nursing homes and how to obtain additional information regarding these alternatives. The Nursing Home Guide shall explain that this state offers alternative programs that permit qualified elderly persons to stay in their homes instead of being placed in nursing homes and shall encourage interested persons to call the Comprehensive Assessment Review and Evaluation for Long-Term Care Services (CARES) Program to inquire if they qualify. The Nursing Home Guide shall list available home and community-based programs which shall clearly state the services that are provided and indicate whether nursing home services are included if needed.

2. A list by name and address of all nursing home facilities in this state, including any prior name by which a facility was known during the previous 24-month period.

3. Whether such nursing home facilities are proprietary or nonproprietary.

4. The current owner of the facility’s license and the year that that entity became the owner of the license.

5. The name of the owner or owners of each facility and whether the facility is affiliated with a company or other organization owning or managing more than one nursing facility in this state.

6. The total number of beds in each facility and the most recently available occupancy levels.

7. The number of private and semiprivate rooms in each facility.

8. The religious affiliation, if any, of each facility.

9. The languages spoken by the administrator and staff of each facility.

10. Whether or not each facility accepts Medicare or Medicaid recipients or insurance, health maintenance organization, Veterans Administration, CHAMPUS program, or workers’ compensation coverage.

11. Recreational and other programs available at each facility.

12. Special care units or programs offered at each facility.
13. Whether the facility is a part of a retirement community that offers other services pursuant to part III of this chapter or part I or part III of chapter 429.

14. Survey and deficiency information, including all federal and state recertification, licensure, revisit, and complaint survey information, for each facility for the past 30 months. For noncertified nursing homes, state survey and deficiency information, including licensure, revisit, and complaint survey information for the past 30 months shall be provided.

(b) The agency may provide the following additional information on an Internet site or in printed form as the information becomes available:

1. The licensure status history of each facility.
2. The rating history of each facility.
3. The regulatory history of each facility, which may include federal sanctions, state sanctions, federal fines, state fines, and other actions.
4. Whether the facility currently possesses the Gold Seal designation awarded pursuant to s. 400.235.
5. Internet links to the Internet sites of the facilities or their affiliates.

(3) Each nursing home facility licensee shall maintain as public information, available upon request, records of all cost and inspection reports pertaining to that facility that have been filed with, or issued by, any governmental agency. Copies of the reports shall be retained in the records for not less than 5 years following the date the reports are filed or issued.

(a) The agency shall publish in the Nursing Home Guide a “Nursing Home Guide Watch List” to assist consumers in evaluating the quality of nursing home care in Florida. The watch list must identify each facility that met the criteria for a conditional licensure status and each facility that is operating under bankruptcy protection. The watch list must include, but is not limited to, the facility’s name, address, and ownership; the county in which the facility operates; the license expiration date; the number of licensed beds; a description of the deficiency causing the facility to be placed on the list; any corrective action taken; and the cumulative number of days and percentage of days the facility had a conditional license in the past 30 months. The watch list must include a brief description regarding how to choose a nursing home, the categories of licensure, the agency’s inspection process, an explanation of terms used in the watch list, and the addresses and phone numbers of the agency’s health quality assurance field offices.

(b) Upon publication of each Nursing Home Guide, the agency must post a copy on its website by the 15th calendar day of the second month following the end of the calendar quarter. Each nursing home licensee must retrieve the most recent version of the Nursing Home Guide from the agency’s website.

(4) Any records of a nursing home facility determined by the agency to be necessary and essential to establish lawful compliance with any rules or standards must be made available to the agency on the
premises of the facility and submitted to the agency. Each facility must submit this information to the agency by electronic transmission when available.

(5) Every nursing home facility licensee shall:

(a) Post, in a sufficient number of prominent positions in the nursing home so as to be accessible to all residents and to the general public:

1. A concise summary of the last inspection report pertaining to the nursing home and issued by the agency, with references to the page numbers of the full reports, noting any deficiencies found by the agency and the actions taken by the licensee to rectify the deficiencies and indicating in the summaries where the full reports may be inspected in the nursing home.

2. A copy of all of the pages that list the facility in the most recent version of the Nursing Home Guide.

(b) Upon request, provide to any person who has completed a written application with an intent to be admitted to, or to any resident of, a nursing home, or to any relative, spouse, or guardian of the person, a copy of the last inspection report pertaining to the nursing home and issued by the agency, provided the person requesting the report agrees to pay a reasonable charge to cover copying costs.

(6) The agency may adopt rules as necessary to administer this section.

History.—s. 6, ch. 76-201; ss. 2, 12, ch. 80-198; s. 250, ch. 81-259; s. 2, ch. 81-318; ss. 6, 22, ch. 82-182; ss. 27, 79, 83, ch. 83-181; s. 16, ch. 90-347; s. 30, ch. 93-177; ss. 26, 49, ch. 93-217; s. 26, ch. 97-100; s. 15, ch. 99-394; s. 140, ch. 2000-349; s. 5, ch. 2000-350; s. 60, ch. 2000-367; ss. 28, 55, ch. 2001-45; s. 16, ch. 2001-377; s. 38, ch. 2003-1; s. 1, ch. 2006-49; s. 27, ch. 2006-197; s. 71, ch. 2007-230; s. 42, ch. 2009-223.

400.20 Licensed nursing home administrator required.—No nursing home shall operate except under the supervision of a licensed nursing home administrator, and no person shall be a nursing home administrator unless he or she is the holder of a current license as provided in chapter 468.

History.—s. 19, ch. 69-309; s. 18, ch. 70-361; s. 3, ch. 76-168; s. 242, ch. 77-147; s. 1, ch. 77-457; ss. 2, 3, ch. 81-318; ss. 28, 79, 83, ch. 83-181; s. 30, ch. 93-177; ss. 27, 49, ch. 93-217; s. 771, ch. 95-148.

400.211 Persons employed as nursing assistants; certification requirement.—

(1) To serve as a nursing assistant in any nursing home, a person must be certified as a nursing assistant under part II of chapter 464, unless the person is a registered nurse or practical nurse licensed in accordance with part I of chapter 464 or an applicant for such licensure who is permitted to practice nursing in accordance with rules adopted by the Board of Nursing pursuant to part I of chapter 464.

(2) The following categories of persons who are not certified as nursing assistants under part II of chapter 464 may be employed by a nursing facility for a period of 4 months:

(a) Persons who are enrolled in, or have completed, a state-approved nursing assistant program;

(b) Persons who have been positively verified as actively certified and on the registry in another state with no findings of abuse, neglect, or exploitation in that state; or

(c) Persons who have preliminarily passed the state’s certification exam.
The certification requirement must be met within 4 months after initial employment as a nursing assistant in a licensed nursing facility.

(3) Nursing homes shall require persons seeking employment as a certified nursing assistant to submit an employment history to the facility. The facility shall verify the employment history unless, through diligent efforts, such verification is not possible. There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, a former employer who reasonably and in good faith communicates his or her honest opinion about a former employee’s job performance.

(4) When employed by a nursing home facility for a 12-month period or longer, a nursing assistant, to maintain certification, shall submit to a performance review every 12 months and must receive regular inservice education based on the outcome of such reviews. The inservice training must:

(a) Be sufficient to ensure the continuing competence of nursing assistants and must meet the standard specified in s. 464.203(7);

(b) Include, at a minimum:

1. Techniques for assisting with eating and proper feeding;
2. Principles of adequate nutrition and hydration;
3. Techniques for assisting and responding to the cognitively impaired resident or the resident with difficult behaviors;
4. Techniques for caring for the resident at the end-of-life; and
5. Recognizing changes that place a resident at risk for pressure ulcers and falls; and

(c) Address areas of weakness as determined in nursing assistant performance reviews and may address the special needs of residents as determined by the nursing home facility staff.

Costs associated with this training may not be reimbursed from additional Medicaid funding through interim rate adjustments.

History.—ss. 2, 3, ch. 82-163; ss. 29, 79, 82, 83, ch. 83-181; s. 1, ch. 86-253; s. 61, ch. 92-136; s. 1, ch. 93-177; ss. 28, 49, ch. 94-218; s. 30, ch. 95-418; s. 10, ch. 96-268; s. 24, ch. 98-166; s. 3, ch. 98-248; s. 120, ch. 99-8; s. 206, ch. 99-397; s. 95, ch. 2000-318; s. 29, ch. 2001-45; s. 1, ch. 2002-366; s. 5, ch. 2004-298.

400.215 Personnel screening requirement.—

(1) The agency shall require level 2 background screening for personnel as required in s. 408.809(1)(e) pursuant to chapter 435 and s. 408.809.

(2) The agency shall, as allowable, reimburse nursing facilities for the cost of conducting background screening as required by this section. This reimbursement is not subject to any rate ceilings or payment targets in the Medicaid Reimbursement plan.

History.—s. 2, ch. 98-248; s. 16, ch. 99-394; s. 96, ch. 2000-318; s. 72, ch. 2000-349; s. 10, ch. 2004-267; s. 28, ch. 2006-197; s. 6, ch. 2010-114.
Note.—Section 58, ch. 2010-114, provides that “[t]he changes made by this act are intended to be prospective in nature. It is not intended that persons who are employed or licensed on the effective date of this act be rescreened until such time as they are otherwise required to be rescreened pursuant to law, at which time they must meet the requirements for screening as set forth in this act.”

400.23 Rules; evaluation and deficiencies; licensure status.—

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

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

(a) The location of the facility and housing conditions that will ensure the health, safety, and comfort of residents, including an adequate call system. In making such rules, the agency shall be guided by criteria recommended by nationally recognized reputable professional groups and associations with knowledge of such subject matters. The agency shall update or revise such criteria as the need arises. The agency may require alterations to a building if it determines that an existing condition constitutes a distinct hazard to life, health, or safety. In performing any inspections of facilities authorized by this part or part II of chapter 408, the agency may enforce the special-occupancy provisions of the Florida Building Code and the Florida Fire Prevention Code which apply to nursing homes. Residents or their representatives shall be able to request a change in the placement of the bed in their room, provided that at admission they are presented with a room that meets requirements of the Florida Building Code. The location of a bed may be changed if the requested placement does not infringe on the resident’s roommate or interfere with the resident’s care or safety as determined by the care planning team in accordance with facility policies and procedures. In addition, the bed placement may not be used as a restraint. Each facility shall maintain a log of resident rooms with beds that are not in strict compliance with the Florida Building Code in order for such log to be used by surveyors and nurse monitors during inspections and visits. A resident or resident representative who requests that a bed be moved shall sign a statement indicating that he or she understands the room will not be in compliance with the Florida Building Code, but they would prefer to exercise their right to self-determination. The statement must be retained as part of the resident’s care plan. Any facility that offers this option must submit a letter signed by the nursing home administrator of record to the agency notifying it of this practice with a copy of the policies and
procedures of the facility. The agency is directed to provide assistance to the Florida Building
Commission in updating the construction standards of the code relative to nursing homes.

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

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

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

(e) A uniform accounting system.

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

(g) The preparation and annual update of a comprehensive emergency management plan. The
agency shall adopt rules establishing minimum criteria for the plan after consultation with the
Department of Community Affairs. At a minimum, the rules must provide for plan components that
address emergency evacuation transportation; adequate sheltering arrangements; postdisaster
activities, including emergency power, food, and water; postdisaster transportation; supplies; staffing;
emergency equipment; individual identification of residents and transfer of records; and responding to
family inquiries. The comprehensive emergency management plan is subject to review and approval by
the local emergency management agency. During its review, the local emergency management agency
shall ensure that the following agencies, at a minimum, are given the opportunity to review the plan:
the Department of Elderly Affairs, the Department of Health, the Agency for Health Care
Administration, and the Department of Community Affairs. Also, appropriate volunteer organizations
must be given the opportunity to review the plan. The local emergency management agency shall
complete its review within 60 days and either approve the plan or advise the facility of necessary
revisions.

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

(3)(a)1. The agency shall adopt rules providing minimum staffing requirements for nursing homes.
These requirements shall include, for each nursing home facility:

a. A minimum weekly average of certified nursing assistant and licensed nursing staffing combined
of 3.9 hours of direct care per resident per day. As used in this sub-subparagraph, a week is defined as
Sunday through Saturday.

b. A minimum certified nursing assistant staffing of 2.7 hours of direct care per resident per day. A
facility may not staff below one certified nursing assistant per 20 residents.
c. A minimum licensed nursing staffing of 1.0 hour of direct care per resident per day. A facility may not staff below one licensed nurse per 40 residents.

2. Nursing assistants employed under s. 400.211(2) may be included in computing the staffing ratio for certified nursing assistants only if their job responsibilities include only nursing-assistant-related duties.

3. Each nursing home must document compliance with staffing standards as required under this paragraph and post daily the names of staff on duty for the benefit of facility residents and the public.

4. The agency shall recognize the use of licensed nurses for compliance with minimum staffing requirements for certified nursing assistants, provided that the facility otherwise meets the minimum staffing requirements for licensed nurses and that the licensed nurses are performing the duties of a certified nursing assistant. Unless otherwise approved by the agency, licensed nurses counted toward the minimum staffing requirements for certified nursing assistants must exclusively perform the duties of a certified nursing assistant for the entire shift and not also be counted toward the minimum staffing requirements for licensed nurses. If the agency approved a facility's request to use a licensed nurse to perform both licensed nursing and certified nursing assistant duties, the facility must allocate the amount of staff time specifically spent on certified nursing assistant duties for the purpose of documenting compliance with minimum staffing requirements for certified and licensed nursing staff. In no event may the hours of a licensed nurse with dual job responsibilities be counted twice.

(b) Nonnursing staff providing eating assistance to residents shall not count toward compliance with minimum staffing standards.

(c) Licensed practical nurses licensed under chapter 464 who are providing nursing services in nursing home facilities under this part may supervise the activities of other licensed practical nurses, certified nursing assistants, and other unlicensed personnel providing services in such facilities in accordance with rules adopted by the Board of Nursing.

(4) Rules developed pursuant to this section shall not restrict the use of shared staffing and shared programming in facilities which are part of retirement communities that provide multiple levels of care and otherwise meet the requirement of law or rule.

(5) The agency, in collaboration with the Division of Children’s Medical Services of the Department of Health, must, no later than December 31, 1993, adopt rules for minimum standards of care for persons under 21 years of age who reside in nursing home facilities. The rules must include a methodology for reviewing a nursing home facility under ss. 408.031-408.045 which serves only persons under 21 years of age. A facility may be exempt from these standards for specific persons between 18 and 21 years of age, if the person’s physician agrees that minimum standards of care based on age are not necessary.

(6) Prior to conducting a survey of the facility, the survey team shall obtain a copy of the local long-term care ombudsman council report on the facility. Problems noted in the report shall be
incorporated into and followed up through the agency’s inspection process. This procedure does not preclude the local long-term care ombudsman council from requesting the agency to conduct a followup visit to the facility.

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

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

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

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

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

(e) The agency shall adopt rules that:

1. Establish uniform procedures for the evaluation of facilities.
2. Provide criteria in the areas referenced in paragraph (c).
3. Address other areas necessary for carrying out the intent of this section.

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

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

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

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

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

(9) Civil penalties paid by any licensee under subsection (8) shall be deposited in the Health Care
Trust Fund and expended as provided in s. 400.063.

(10) Agency records, reports, ranking systems, Internet information, and publications must be
promptly updated to reflect the most current agency actions.

History.—s. 22, ch. 69-309; ss. 19, 35, ch. 69-106; s. 19, ch. 70-361; s. 3, ch. 76-168; s. 7, ch. 76-201; s. 2, ch. 76-252;
s. 2, ch. 77-188; s. 13, ch. 77-401; s. 1, ch. 77-457; s. 1, ch. 78-393; ss. 8, 9, ch. 79-268; ss. 3, 12, ch. 80-198; ss. 1, 2,
ch. 80-211; s. 251, ch. 81-259; ss. 2, 3, ch. 81-318; ss. 30, 79, 83, ch. 83-181; s. 2, ch. 86-253; s. 1, ch. 90-125; ss. 9, 77,
ch. 91-282; s. 30, ch. 93-177; s. 25, ch. 93-211; ss. 29, 49, ch. 93-217; s. 42, ch. 98-89; s. 121, ch. 99-8; s. 14, ch. 99-
332; s. 17, ch. 99-394; s. 29, ch. 2000-141; s. 97, ch. 2000-318; s. 141, ch. 2000-349; s. 6, ch. 2000-350; s. 61, ch. 2000-
367; ss. 30, 54, ch. 2001-45; s. 34, ch. 2001-186; s. 3, ch. 2001-372; s. 39, ch. 2003-1; s. 2, ch. 2003-405; s. 1, ch. 2004-
270; s. 4, ch. 2004-298; s. 2, ch. 2005-60; s. 2, ch. 2005-147; s. 1, ch. 2005-234; s. 4, ch. 2006-28; s. 72, ch. 2007-230; s.
44, ch. 2009-223; s. 3, ch. 2010-156.

400.232 Review and approval of plans; fees and costs.—The design, construction, erection,
alteration, modification, repair, and demolition of all public and private health care facilities are
governed by the Florida Building Code and the Florida Fire Prevention Code under ss. 553.73 and
633.022. In addition to the requirements of ss. 553.79 and 553.80, the agency shall review the facility
plans and survey the construction of facilities licensed under this chapter.

(1) The agency shall approve or disapprove the plans and specifications within 60 days after receipt
of the final plans and specifications. The agency may be granted one 15-day extension for the review
period, if the director of the agency so approves. If the agency fails to act within the specified time, it
shall be deemed to have approved the plans and specifications. When the agency disapproves plans and
specifications, it shall set forth in writing the reasons for disapproval. Conferences and consultations
may be provided as necessary.

(2) The agency is authorized to charge an initial fee of $2,000 for review of plans and construction
on all projects, no part of which is refundable. The agency may also collect a fee, not to exceed 1
percent of the estimated construction cost or the actual cost of review, whichever is less, for the
portion of the review which encompasses initial review through the initial revised construction
document review. The agency is further authorized to collect its actual costs on all subsequent portions
of the review and construction inspections. Initial fee payment shall accompany the initial submission
of plans and specifications. Any subsequent payment that is due is payable upon receipt of the invoice
from the agency. Notwithstanding any other provisions of law to the contrary, all money received by
the agency pursuant to the provisions of this section shall be deemed to be trust funds, to be held and applied solely for the operations required under this section.

History.—s. 22, ch. 69-309; ss. 19, 35, ch. 69-106; s. 19, ch. 70-361; s. 3, ch. 76-168; s. 7, ch. 76-201; s. 2, ch. 77-188; s. 1, ch. 77-457; ss. 8, 9, ch. 79-268; ss. 2, 3, ch. 81-318; ss. 30, 79, 83, ch. 83-181; s. 1, ch. 90-125; ss. 9, 77, ch. 91-282; s. 30, ch. 93-177; ss. 29, 49, ch. 93-217; s. 17, ch. 99-394; s. 30, ch. 2000-141; s. 34, ch. 2001-186; s. 3, ch. 2001-372.

Note.—Former s. 400.23(11), (12).

400.235 Nursing home quality and licensure status; Gold Seal Program.—

(1) To protect the health and welfare of persons receiving care in nursing facilities, it is the intent of the Legislature to develop a regulatory framework that promotes the stability of the industry and facilitates the physical, social, and emotional well-being of nursing facility residents.

(2) The Legislature intends to develop an award and recognition program for nursing facilities that demonstrate excellence in long-term care over a sustained period. This program shall be known as the Gold Seal Program.

(3)(a) The Gold Seal Program shall be developed and implemented by the Governor’s Panel on Excellence in Long-Term Care which shall operate under the authority of the Executive Office of the Governor. The panel shall be composed of three persons appointed by the Governor, to include a consumer advocate for senior citizens and two persons with expertise in the fields of quality management, service delivery excellence, or public sector accountability; three persons appointed by the Secretary of Elderly Affairs, to include an active member of a nursing facility family and resident care council and a member of the University Consortium on Aging; the State Long-Term Care Ombudsman; one person appointed by the Florida Life Care Residents Association; one person appointed by the State Surgeon General; two persons appointed by the Secretary of Health Care Administration; one person appointed by the Florida Association of Homes for the Aging; and one person appointed by the Florida Health Care Association. Vacancies on the panel shall be filled in the same manner as the original appointments.

(b) Members of the Governor’s Panel on Excellence in Long-Term Care shall be prohibited from having any ownership interest in a nursing facility. Any member of the panel who is employed by a nursing facility in any capacity shall be prohibited from participating in reviewing or voting on recommendations involving the facility by which the member is employed or any facility under common ownership with that facility.

(c) Recommendations to the panel for designation of a nursing facility as a Gold Seal facility may be received by the panel after January 1, 2000. The activities of the panel shall be supported by staff of the Department of Elderly Affairs and the Agency for Health Care Administration.
(4) The panel shall consider the quality of care provided to residents when evaluating a facility for the Gold Seal Program. The panel shall determine the procedure or procedures for measuring the quality of care.

(5) Facilities must meet the following additional criteria for recognition as a Gold Seal Program facility:

(a) Had no class I or class II deficiencies within the 30 months preceding application for the program.

(b) Evidence financial soundness and stability according to standards adopted by the agency in administrative rule. Such standards must include, but not be limited to, criteria for the use of financial statements that are prepared in accordance with generally accepted accounting principles and that are reviewed or audited by certified public accountants. A nursing home that is part of the same corporate entity as a continuing care facility licensed under chapter 651 which meets the minimum liquid reserve requirements specified in s. 651.035 and is accredited by a recognized accrediting organization under s. 651.028 and rules of the Office of Insurance Regulation satisfies this requirement as long as the accreditation is not provisional. Facilities operated by a federal or state agency are deemed to be financially stable for purposes of applying for the Gold Seal.

(c) Participate in a consumer satisfaction process, and demonstrate that information is elicited from residents, family members, and guardians about satisfaction with the nursing facility, its environment, the services and care provided, the staff’s skills and interactions with residents, attention to residents’ needs, and the facility’s efforts to act on information gathered from the consumer satisfaction measures.

(d) Evidence the involvement of families and members of the community in the facility on a regular basis.

(e) Have a stable workforce, as described in s. 400.141, as evidenced by a relatively low rate of turnover among certified nursing assistants and licensed nurses within the 30 months preceding application for the Gold Seal Program, and demonstrate a continuing effort to maintain a stable workforce and to reduce turnover of licensed nurses and certified nursing assistants.

(f) Evidence an outstanding record regarding the number and types of substantiated complaints reported to the State Long-Term Care Ombudsman Council within the 30 months preceding application for the program.

(g) Provide targeted inservice training provided to meet training needs identified by internal or external quality assurance efforts.

A facility assigned a conditional licensure status may not qualify for consideration for the Gold Seal Program until after it has operated for 30 months with no class I or class II deficiencies and has completed a regularly scheduled relicensure survey.
(6) The agency, nursing facility industry organizations, consumers, State Long-Term Care Ombudsman Council, and members of the community may recommend to the Governor facilities that meet the established criteria for consideration for and award of the Gold Seal. The panel shall review nominees and make a recommendation to the Governor for final approval and award. The decision of the Governor is final and is not subject to appeal.

(7) A facility must be licensed and operating for 30 months before it is eligible to apply for the Gold Seal Program. The agency shall establish by rule the frequency of review for designation as a Gold Seal Program facility and under what circumstances a facility may be denied the privilege of using this designation. The designation of a facility as a Gold Seal Program facility is not transferable to another license, except when an existing facility is being relicensed in the name of an entity related to the current licenseholder by common ownership or control, and there will be no change in the management, operation, or programs at the facility as a result of the relicensure.

(8)(a) Facilities awarded the Gold Seal may use the designation in their advertising and marketing.

(b) Upon approval by the United States Department of Health and Human Services, the agency shall adopt a revised schedule of survey and relicensure visits for Gold Seal Program facilities. Gold Seal Program facilities may be surveyed for certification and relicensure every 2 years, so long as they maintain the standards associated with retaining the Gold Seal.

(9) The agency may adopt rules as necessary to administer this section.

History.—s. 18, ch. 99-394; s. 12, ch. 2000-305; s. 31, 58, ch. 2001-45; s. 17, ch. 2001-377; s. 24, ch. 2003-57; s. 1, ch. 2003-120; s. 6, ch. 2004-298; s. 49, ch. 2008-6.

400.241 Prohibited acts; penalties for violations.—

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

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

History.—s. 11, ch. 70-361; s. 347, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 3, ch. 81-318; ss. 31, 79, 83, ch. 83-181; s. 30, ch. 93-177; s. 49, ch. 93-217; s. 19, ch. 99-394; s. 73, ch. 2007-230.

400.25 Educational program authorized.—The agency may conduct a clinic or seminar at such times and places as shall be convenient for the greatest number at which information may be offered in the general field of health education, management, and other subjects that will increase the knowledge and efficiency of applicants or licensees under this part. The board must approve the educational content of such clinic or seminar if it is intended to satisfy the educational requirements of the board.
400.275 Agency duties.—

(1) The agency shall ensure that each newly hired nursing home surveyor, as a part of basic training, is assigned full-time to a licensed nursing home for at least 2 days within a 7-day period to observe facility operations outside of the survey process before the surveyor begins survey responsibilities. Such observations may not be the sole basis of a deficiency citation against the facility. The agency may not assign an individual to be a member of a survey team for purposes of a survey, evaluation, or consultation visit at a nursing home facility in which the surveyor was an employee within the preceding 5 years.

(2) The agency shall semiannually provide for joint training of nursing home surveyors and staff of facilities licensed under this part on at least one of the 10 federal citations that were most frequently issued against nursing facilities in this state during the previous calendar year.

(3) Each member of a nursing home survey team who is a health professional licensed under part I of chapter 464, part X of chapter 468, or chapter 491 shall earn not less than 50 percent of required continuing education credits in geriatric care. Each member of a nursing home survey team who is a health professional licensed under chapter 465 shall earn not less than 30 percent of required continuing education credits in geriatric care.

(4) The agency must ensure that when a deficiency is related to substandard quality of care, a physician with geriatric experience licensed under chapter 458 or chapter 459 or a registered nurse with geriatric experience licensed under chapter 464 participates in the agency’s informal dispute resolution process.

History.—s. 24, ch. 69-309; ss. 19, 35, ch. 69-106; s. 21, ch. 70-361; s. 3, ch. 76-168; s. 243, ch. 77-147; s. 1, ch. 77-457; s. 252, ch. 81-259; ss. 2, 3, ch. 81-318; ss. 79, 83, ch. 83-181; s. 30, ch. 93-177; ss. 30, 49, ch. 93-217.

400.33 Legislative intent; community-based care for the elderly.—It is the intent of the Legislature to encourage the development of programs for community-based care for the elderly as an alternative to institutionalization. The Legislature finds and declares that routine health care provided on an outpatient basis is one such program, the availability of which would fill an unmet need, improve the quality and quantity of health care available to elderly persons while minimizing the cost of such care, and reduce the incidence of unnecessary or premature institutionalization of elderly persons. The purpose of this section and s. 400.332 is to encourage the development of geriatric outpatient nurse clinics to make such services available. The Legislature intends that existing and available nursing facility treatment rooms be used for geriatric outpatient nurse clinics in order that the cost of such programs be kept low.

History.—s. 1, ch. 77-401; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181; s. 30, ch. 93-177; ss. 33, 49, ch. 93-217.
400.332 Funds received not revenues for purpose of Medicaid program.—Any funds received by a nursing home in connection with its participation in the geriatric outpatient nurse clinic program shall not be considered as revenues for purposes of cost reports under the Medicaid program.

History.—s. 4, ch. 77-401; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181; s. 59, ch. 91-282; s. 30, ch. 93-177; s. 49, ch. 93-217.

400.334 Activity relating to unions by nursing home employees.—

(1) Participation by an employee of a nursing home in any activity that assists, promotes, deters, or discourages union organizing shall not be allowed during any time the employee is counted in staffing calculations for minimum staffing standards.

(2) Salaries paid by any health care provider to an employee for any activity that assists, promotes, deters, or discourages union organizing shall not be an allowable cost for Medicaid cost reporting purposes.

(3) Any expense, including, but not limited to, legal and consulting fees and salaries of supervisors and employees, incurred for activities directly relating to influencing employees with respect to unionization shall not be an allowable cost for Medicaid cost reporting purposes.

(4) This section does not apply to any activity performed, or any expense incurred, in connection with:

(a) Addressing a grievance or negotiating or administering a collective bargaining agreement;

(b) Performing an activity required by federal or state law or by a collective bargaining agreement;

or

(c) Keeping employees informed of issues and keeping lines of communication open between employees and employers as a part of normal personnel management,

provided such activities or expenses are not directly related to influencing employees with respect to unionization.

History.—s. 1, ch. 2002-231.

CHAPTER 415
ADULT PROTECTIVE SERVICES

415.101 Adult Protective Services Act; legislative intent.

415.102 Definitions of terms used in ss. 415.101-415.113.

415.103 Central abuse hotline.

415.1034 Mandatory reporting of abuse, neglect, or exploitation of vulnerable adults; mandatory reports of death.

415.1035 Facility’s duty to inform residents of their right to report abusive, neglectful, or exploitive practices.
415.101 Adult Protective Services Act; legislative intent.—

(1) Sections 415.101-415.113 may be cited as the “Adult Protective Services Act.”

(2) The Legislature recognizes that there are many persons in this state who, because of age or disability, are in need of protective services. Such services should allow such an individual the same rights as other citizens and, at the same time, protect the individual from abuse, neglect, and exploitation. It is the intent of the Legislature to provide for the detection and correction of abuse, neglect, and exploitation through social services and criminal investigations and to establish a program of protective services for all vulnerable adults in need of them. It is intended that the mandatory reporting of such cases will cause the protective services of the state to be brought to bear in an effort to prevent further abuse, neglect, and exploitation of vulnerable adults. In taking this action, the Legislature intends to place the fewest possible restrictions on personal liberty and the exercise of constitutional rights, consistent with due process and protection from abuse, neglect, and exploitation. Further, the Legislature intends to encourage the constructive
involvement of families in the care and protection of vulnerable adults.

History.—ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, ch. 73-176; s. 1, ch. 77-174; ss. 3, 5, ch. 79-287; s. 15, ch. 79-298; s. 1, ch. 80-293; s. 1, ch. 83-82; s. 61, ch. 85-81; s. 27, ch. 86-220; s. 93, ch. 95-418; s. 1, ch. 2010-31.

415.102 Definitions of terms used in ss. 415.101-415.113.—As used in ss. 415.101-415.113, the term:

1. “Abuse” means any willful act or threatened act by a relative, caregiver, or household member which causes or is likely to cause significant impairment to a vulnerable adult’s physical, mental, or emotional health. Abuse includes acts and omissions.

2. “Activities of daily living” means functions and tasks for self-care, including ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.

3. “Alleged perpetrator” means a person who has been named by a reporter as the person responsible for abusing, neglecting, or exploiting a vulnerable adult.

4. “Capacity to consent” means that a vulnerable adult has sufficient understanding to make and communicate responsible decisions regarding the vulnerable adult’s person or property, including whether or not to accept protective services offered by the department.

5. “Caregiver” means a person who has been entrusted with or has assumed the responsibility for frequent and regular care of or services to a vulnerable adult on a temporary or permanent basis and who has a commitment, agreement, or understanding with that person or that person’s guardian that a caregiver role exists. “Caregiver” includes, but is not limited to, relatives, household members, guardians, neighbors, and employees and volunteers of facilities as defined in subsection (9). For the purpose of departmental investigative jurisdiction, the term “caregiver” does not include law enforcement officers or employees of municipal or county detention facilities or the Department of Corrections while acting in an official capacity.

6. “Deception” means a misrepresentation or concealment of a material fact relating to services rendered, disposition of property, or the use of property intended to benefit a vulnerable adult.


8. “Exploitation” means a person who:

   1. Stands in a position of trust and confidence with a vulnerable adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, a vulnerable adult’s funds, assets, or property with the intent to temporarily or permanently deprive a vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult; or

   2. Knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, the vulnerable adult’s funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or
possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult.

(b) “Exploitation” may include, but is not limited to:

1. Breaches of fiduciary relationships, such as the misuse of a power of attorney or the abuse of guardianship duties, resulting in the unauthorized appropriation, sale, or transfer of property;
2. Unauthorized taking of personal assets;
3. Misappropriation, misuse, or transfer of moneys belonging to a vulnerable adult from a personal or joint account; or
4. Intentional or negligent failure to effectively use a vulnerable adult’s income and assets for the necessities required for that person’s support and maintenance.

(9) “Facility” means any location providing day or residential care or treatment for vulnerable adults. The term “facility” may include, but is not limited to, any hospital, state institution, nursing home, assisted living facility, adult family-care home, adult day care center, residential facility licensed under chapter 393, adult day training center, or mental health treatment center.

(10) “False report” means a report of abuse, neglect, or exploitation of a vulnerable adult to the central abuse hotline which is not true and is maliciously made for the purpose of:

(a) Harassing, embarrassing, or harming another person;
(b) Personal financial gain for the reporting person;
(c) Acquiring custody of a vulnerable adult; or
(d) Personal benefit for the reporting person in any other private dispute involving a vulnerable adult.

The term “false report” does not include a report of abuse, neglect, or exploitation of a vulnerable adult which is made in good faith to the central abuse hotline.

(11) “Fiduciary relationship” means a relationship based upon the trust and confidence of the vulnerable adult in the caregiver, relative, household member, or other person entrusted with the use or management of the property or assets of the vulnerable adult. The relationship exists where there is a special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to the interests of the vulnerable adult. For the purposes of this part, a fiduciary relationship may be formed by an informal agreement between the vulnerable adult and the other person and does not require a formal declaration or court order for its existence. A fiduciary relationship includes, but is not limited to, court-appointed or voluntary guardians, trustees, attorneys, or conservators of a vulnerable adult’s assets or property.

(12) “Guardian” means a person who has been appointed by a court to act on behalf of a person; a preneed guardian, as provided in chapter 744; or a health care surrogate expressly designated as provided in chapter 765.
(13) “In-home services” means the provision of nursing, personal care, supervision, or other services to vulnerable adults in their own homes.

(14) “Intimidation” means the communication by word or act to a vulnerable adult that that person will be deprived of food, nutrition, clothing, shelter, supervision, medicine, medical services, money, or financial support or will suffer physical violence.

(15) “Lacks capacity to consent” means a mental impairment that causes a vulnerable adult to lack sufficient understanding or capacity to make or communicate responsible decisions concerning person or property, including whether or not to accept protective services.

(16) “Neglect” means the failure or omission on the part of the caregiver or vulnerable adult to provide the care, supervision, and services necessary to maintain the physical and mental health of the vulnerable adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, which a prudent person would consider essential for the well-being of a vulnerable adult. The term “neglect” also means the failure of a caregiver or vulnerable adult to make a reasonable effort to protect a vulnerable adult from abuse, neglect, or exploitation by others. “Neglect” is repeated conduct or a single incident of carelessness which produces or could reasonably be expected to result in serious physical or psychological injury or a substantial risk of death.

(17) “Obtains or uses” means any manner of:
   (a) Taking or exercising control over property;
   (b) Making any use, disposition, or transfer of property;
   (c) Obtaining property by fraud, willful misrepresentation of a future act, or false promise; or
   (d) 1. Conduct otherwise known as stealing; larceny; purloining; abstracting; embezzlement; misapplication; misappropriation; conversion; or obtaining money or property by false pretenses, fraud, or deception; or
      2. Other conduct similar in nature.

(18) “Position of trust and confidence” with respect to a vulnerable adult means the position of a person who:
   (a) Is a parent, spouse, adult child, or other relative by blood or marriage;
   (b) Is a joint tenant or tenant in common;
   (c) Has a legal or fiduciary relationship, including, but not limited to, a court-appointed or voluntary guardian, trustee, attorney, or conservator; or
   (d) Is a caregiver or any other person who has been entrusted with or has assumed responsibility for the use or management of the vulnerable adult’s funds, assets, or property.

(19) “Protective investigation” means acceptance of a report from the central abuse hotline alleging abuse, neglect, or exploitation as defined in this section; investigation of the report; determination as to whether action by the court is warranted; and referral of the vulnerable adult
(20) “Protective investigator” means an authorized agent of the department who receives and investigates reports of abuse, neglect, or exploitation of vulnerable adults.

(21) “Protective services” means services to protect a vulnerable adult from further occurrences of abuse, neglect, or exploitation. Such services may include, but are not limited to, protective supervision, placement, and in-home and community-based services.

(22) “Protective supervision” means those services arranged for or implemented by the department to protect vulnerable adults from further occurrences of abuse, neglect, or exploitation.

(23) “Psychological injury” means an injury to the intellectual functioning or emotional state of a vulnerable adult as evidenced by an observable or measurable reduction in the vulnerable adult’s ability to function within that person’s customary range of performance and that person’s behavior.

(24) “Records” means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, videotapes, or other material, regardless of physical form or characteristics, made or received pursuant to a protective investigation.

(25) “Sexual abuse” means acts of a sexual nature committed in the presence of a vulnerable adult without that person’s informed consent. “Sexual abuse” includes, but is not limited to, the acts defined in s. 794.011(1)(h), fondling, exposure of a vulnerable adult’s sexual organs, or the use of a vulnerable adult to solicit for or engage in prostitution or sexual performance. “Sexual abuse” does not include any act intended for a valid medical purpose or any act that may reasonably be construed to be normal caregiving action or appropriate display of affection.

(26) “Victim” means any vulnerable adult named in a report of abuse, neglect, or exploitation.

(27) “Vulnerable adult” means a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.

(28) “Vulnerable adult in need of services” means a vulnerable adult who has been determined by a protective investigator to be suffering from the ill effects of neglect not caused by a second party perpetrator and is in need of protective services or other services to prevent further harm.

History.—ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, ch. 73-176; s. 1, ch. 77-174; ss. 3, 5, ch. 79-287; s. 15, ch. 79-298; s. 1, ch. 80-293; s. 1, ch. 83-82; s. 28, ch. 86-220; s. 29, ch. 87-238; s. 26, ch. 89-294; s. 1, ch. 90-50; s. 44, ch. 90-306; s. 1, ch. 91-57; s. 35, ch. 95-210; s. 94, ch. 95-418; s. 9, ch. 97-98; s. 127, ch. 97-101; s. 41, ch. 97-264; s. 1, ch. 98-182; s. 68, ch. 2000-153; s. 26, ch. 2000-349; s. 4, ch. 2003-57; s. 1, ch. 2006-131; s. 57, ch. 2006-227; s. 2, ch. 2010-31.

415.103 Central abuse hotline.—
(1) The department shall establish and maintain a central abuse hotline that receives all reports made pursuant to s. 415.1034 in writing or through a single statewide toll-free telephone number. Any person may use the statewide toll-free telephone number to report known or suspected abuse, neglect, or exploitation of a vulnerable adult at any hour of the day or night, any day of the week. The central abuse hotline must be operated in such a manner as to enable the department to:
   
(a) Accept reports for investigation when there is a reasonable cause to suspect that a vulnerable adult has been or is being abused, neglected, or exploited.

(b) Determine whether the allegations made by the reporter require an immediate, 24-hour, or next-working-day response priority.

(c) When appropriate, refer calls that do not allege the abuse, neglect, or exploitation of a vulnerable adult to other organizations that might better resolve the reporter’s concerns.

(d) Immediately identify and locate prior reports of abuse, neglect, or exploitation through the central abuse hotline.

(e) Track critical steps in the investigative process to ensure compliance with all requirements for all reports.

(f) Maintain data to facilitate the production of aggregate statistical reports for monitoring patterns of abuse, neglect, or exploitation.

(g) Serve as a resource for the evaluation, management, and planning of preventive and remedial services for vulnerable adults who have been subject to abuse, neglect, or exploitation.

(2) Upon receiving an oral or written report of known or suspected abuse, neglect, or exploitation of a vulnerable adult, the central abuse hotline must determine if the report requires an immediate onsite protective investigation. For reports requiring an immediate onsite protective investigation, the central abuse hotline must immediately notify the department’s designated protective investigative district staff responsible for protective investigations to ensure prompt initiation of an onsite investigation. For reports not requiring an immediate onsite protective investigation, the central abuse hotline must notify the department’s designated protective investigative district staff responsible for protective investigations in sufficient time to allow for an investigation to be commenced within 24 hours. At the time of notification of district staff with respect to the report, the central abuse hotline must also provide any known information on any previous report concerning a subject of the present report or any pertinent information relative to the present report or any noted earlier reports. If the report is of known or suspected abuse of a vulnerable adult by someone other than a relative, caregiver, or household member, the report shall be immediately transferred to the appropriate county sheriff’s office.

(3) The department shall set standards, priorities, and policies to maximize the efficiency and effectiveness of the central abuse hotline.
415.1034 Mandatory reporting of abuse, neglect, or exploitation of vulnerable adults; mandatory reports of death.—

(1) MANDATORY REPORTING.—

(a) Any person, including, but not limited to, any:

1. Physician, osteopathic physician, medical examiner, chiropractic physician, nurse, paramedic, emergency medical technician, or hospital personnel engaged in the admission, examination, care, or treatment of vulnerable adults;

2. Health professional or mental health professional other than one listed in subparagraph 1.;

3. Practitioner who relies solely on spiritual means for healing;

4. Nursing home staff; assisted living facility staff; adult day care center staff; adult family-care home staff; social worker; or other professional adult care, residential, or institutional staff;

5. State, county, or municipal criminal justice employee or law enforcement officer;

6. An employee of the Department of Business and Professional Regulation conducting inspections of public lodging establishments under s. 509.032;

7. Florida advocacy council member or long-term care ombudsman council member; or

8. Bank, savings and loan, or credit union officer, trustee, or employee,

who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited shall immediately report such knowledge or suspicion to the central abuse hotline.

(b) To the extent possible, a report made pursuant to paragraph (a) must contain, but need not be limited to, the following information:

1. Name, age, race, sex, physical description, and location of each victim alleged to have been abused, neglected, or exploited.

2. Names, addresses, and telephone numbers of the victim’s family members.

3. Name, address, and telephone number of each alleged perpetrator.

4. Name, address, and telephone number of the caregiver of the victim, if different from the alleged perpetrator.

5. Name, address, and telephone number of the person reporting the alleged abuse, neglect, or exploitation.

6. Description of the physical or psychological injuries sustained.

7. Actions taken by the reporter, if any, such as notification of the criminal justice agency.
8. Any other information available to the reporting person which may establish the cause of abuse, neglect, or exploitation that occurred or is occurring.

(2) MANDATORY REPORTS OF DEATH.—Any person who is required to investigate reports of abuse, neglect, or exploitation and who has reasonable cause to suspect that a vulnerable adult died as a result of abuse, neglect, or exploitation shall immediately report the suspicion to the appropriate medical examiner, to the appropriate criminal justice agency, and to the department, notwithstanding the existence of a death certificate signed by a practicing physician. The medical examiner shall accept the report for investigation pursuant to s. 406.11 and shall report the findings of the investigation, in writing, to the appropriate local criminal justice agency, the appropriate state attorney, and the department. Autopsy reports maintained by the medical examiner are not subject to the confidentiality requirements provided for in s. 415.107.

History.—s. 96, ch. 95-418; s. 10, ch. 97-98; s. 42, ch. 97-264; s. 256, ch. 98-166; s. 21, ch. 2000-263; s. 2, ch. 2000-318; s. 28, ch. 2000-349.

415.1035 Facility’s duty to inform residents of their right to report abusive, neglectful, or exploitive practices.—The department shall work cooperatively with the Agency for Health Care Administration, the Agency for Persons with Disabilities, and the Department of Elderly Affairs to ensure that every facility that serves vulnerable adults informs residents of their right to report abusive, neglectful, or exploitive practices. Each facility must establish appropriate policies and procedures to facilitate such reporting.

History.—s. 97, ch. 95-418; s. 29, ch. 2000-349; s. 58, ch. 2006-227.

415.1036 Immunity.—

(1) Any person who participates in making a report under s. 415.1034 or participates in a judicial proceeding resulting therefrom is presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, is immune from any liability, civil or criminal, that otherwise might be incurred or imposed. This section does not grant immunity, civil or criminal, to any person who is suspected of having abused, neglected, or exploited, or committed any illegal act upon or against, a vulnerable adult. Further, a resident or employee of a facility that serves vulnerable adults may not be subjected to reprisal or discharge because of the resident’s or employee’s actions in reporting abuse, neglect, or exploitation pursuant to s. 415.1034.

(2) Any person who makes a report under s. 415.1034 has a civil cause of action for appropriate compensatory and punitive damages against any person who causes detrimental changes in the employment status of the reporting party by reason of the reporting party’s making the report. Any detrimental change made in the residency or employment status of such a person, such as, but not limited to, discharge, termination, demotion, transfer, or reduction in pay or benefits or work privileges, or negative evaluations, within 120 days after the report is made establishes a
rebuttable presumption that the detrimental action was retaliatory.

History.—s. 98, ch. 95-418; s. 30, ch. 2000-349.

415.104 Protective investigations of cases of abuse, neglect, or exploitation of vulnerable adults; transmittal of records to state attorney.—

(1) The department shall, upon receipt of a report alleging abuse, neglect, or exploitation of a vulnerable adult, begin within 24 hours a protective investigation of the facts alleged therein. If a caregiver refuses to allow the department to begin a protective investigation or interferes with the conduct of such an investigation, the appropriate law enforcement agency shall be contacted for assistance. If, during the course of the investigation, the department has reason to believe that the abuse, neglect, or exploitation is perpetrated by a second party, the appropriate law enforcement agency and state attorney shall be orally notified. The department and the law enforcement agency shall cooperate to allow the criminal investigation to proceed concurrently with, and not be hindered by, the protective investigation. The department shall make a preliminary written report to the law enforcement agencies within 5 working days after the oral report. The department shall, within 24 hours after receipt of the report, notify the appropriate Florida local advocacy council, or long-term care ombudsman council, when appropriate, that an alleged abuse, neglect, or exploitation perpetrated by a second party has occurred. Notice to the Florida local advocacy council or long-term care ombudsman council may be accomplished orally or in writing and shall include the name and location of the vulnerable adult alleged to have been abused, neglected, or exploited and the nature of the report.

(2) Upon commencing an investigation, the protective investigator shall inform all of the vulnerable adults and alleged perpetrators named in the report of the following:

(a) The names of the investigators and identifying credentials from the department.

(b) The purpose of the investigation.

(c) That the victim, the victim’s guardian, the victim’s caregiver, and the alleged perpetrator, and legal counsel for any of those persons, have a right to a copy of the report at the conclusion of the investigation.

(d) The name and telephone number of the protective investigator’s supervisor available to answer questions.

(e) That each person has the right to obtain his or her own attorney.

Any person being interviewed by a protective investigator may be represented by an attorney, at the person’s own expense, or may choose to have another person present. The other person present may not be an alleged perpetrator in any report currently under investigation. Before participating in such interview, the other person present shall execute an agreement to comply with the confidentiality requirements of ss. 415.101-415.113. The absence of an attorney or other
person does not prevent the department from proceeding with other aspects of the investigation, including interviews with other persons. In an investigative interview with a vulnerable adult, the protective investigator may conduct the interview with no other person present.

(3) For each report it receives, the department shall perform an onsite investigation to:

(a) Determine that the person is a vulnerable adult as defined in s. 415.102.

(b) Determine whether the person is a vulnerable adult in need of services, as defined in s. 415.102.

(c) Determine the composition of the family or household, including the name, address, date of birth, social security number, sex, and race of each person in the household.

(d) Determine whether there is an indication that a vulnerable adult is abused, neglected, or exploited.

(e) Determine the nature and extent of present or prior injuries, abuse, or neglect, and any evidence thereof.

(f) Determine, if possible, the person or persons apparently responsible for the abuse, neglect, or exploitation, including name, address, date of birth, social security number, sex, and race.

(g) Determine the immediate and long-term risk to each vulnerable adult through utilization of standardized risk assessment instruments.

(h) Determine the protective, treatment, and ameliorative services necessary to safeguard and ensure the vulnerable adult’s well-being and cause the delivery of those services.

(4) No later than 60 days after receiving the initial report, the designated protective investigative staff of the department shall complete the investigation and notify the guardian of the vulnerable adult, the vulnerable adult, and the caregiver of any recommendations of services to be provided to ameliorate the causes or effects of abuse, neglect, or exploitation.

(5) Whenever the law enforcement agency and the department have conducted independent investigations, the law enforcement agency shall, within 5 working days after concluding its investigation, report its findings to the state attorney and to the department.

(6) Upon receipt of a report which alleges that an employee or agent of the department acting in an official capacity has committed an act of abuse, neglect, or exploitation, the department shall commence, or cause to be commenced, a protective investigation and shall notify the state attorney in whose circuit the alleged abuse, neglect, or exploitation occurred.

(7) With respect to any case of reported abuse, neglect, or exploitation of a vulnerable adult, the department, when appropriate, shall transmit all relevant reports to the state attorney of the circuit where the incident occurred.

(8) Within 15 days after completion of the state attorney’s investigation of a case reported to him or her pursuant to this section, the state attorney shall report his or her findings to the department and shall include a determination of whether or not prosecution is justified and
appropriate in view of the circumstances of the specific case.

(9) The department shall not use a warning, reprimand, or disciplinary action against an employee, found in that employee's personnel records, as the sole basis for a finding of abuse, neglect, or exploitation.

History.—ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, ch. 73-176; s. 1, ch. 77-174; ss. 3, 5, ch. 79-287; s. 15, ch. 79-298; s. 1, ch. 80-293; s. 1, ch. 83-82; s. 5, ch. 84-226; s. 2, ch. 85-143; s. 30, ch. 86-220; s. 31, ch. 87-238; s. 17, ch. 88-337; s. 28, ch. 89-294; s. 3, ch. 90-50; s. 46, ch. 90-306; s. 3, ch. 91-57; s. 64, ch. 97-103; s. 200, ch. 99-8; s. 22, ch. 2000-263; s. 31, ch. 2000-349.

415.1045 Photographs, videotapes, and medical examinations; abrogation of privileged communications; confidential records and documents.—

(1) PHOTOGRAPHS AND VIDEOTAPES.—

(a) The protective investigator, while investigating a report of abuse, neglect, or exploitation, may take or cause to be taken photographs and videotapes of the vulnerable adult, and of his or her environment, which are relevant to the investigation. All photographs and videotapes taken during the course of the protective investigation are confidential and exempt from public disclosure as provided in s. 415.107.

(b) Any photographs or videotapes made pursuant to this subsection, or copies thereof, must be sent to the department as soon as possible.

(2) MEDICAL EXAMINATIONS.—

(a) With the consent of the vulnerable adult who has the capacity to consent or the vulnerable adult's guardian, or pursuant to s. 415.1051, the department may cause the vulnerable adult to be referred to a licensed physician or any emergency department in a hospital or health care facility for medical examination, diagnosis, or treatment if any of the following circumstances exist:

1. The areas of trauma visible on the vulnerable adult indicate a need for medical examination;

2. The vulnerable adult verbally complains or otherwise exhibits signs or symptoms indicating a need for medical attention as a consequence of suspected abuse, neglect, or exploitation; or

3. The vulnerable adult is alleged to have been sexually abused.

(b) Upon admission to a hospital or health care facility, with the consent of the vulnerable adult who has capacity to consent or that person’s guardian, or pursuant to s. 415.1051, the medical staff of the facility may examine, diagnose, or treat the vulnerable adult. If a person who has legal authority to give consent for the provision of medical treatment to a vulnerable adult has not given or has refused to give such consent, examination and treatment must be limited to reasonable examination of the patient to determine the medical condition of the patient and treatment reasonably necessary to alleviate the medical condition or to stabilize the patient pending a determination by the court of the department’s petition authorizing protective services. Any person may seek an expedited judicial intervention under rule 5.900 of the Florida Probate
Rules concerning medical treatment procedures.

(c) Medical examination, diagnosis, and treatment provided under this subsection must be paid for by third-party reimbursement, if available, or by the vulnerable adult, if he or she is able to pay; or, if he or she is unable to pay, the department shall pay the costs within available emergency services funds.

(d) Reports of examination, diagnosis, and treatment made under this subsection, or copies thereof, must be sent to the department as soon as possible.

(e) This subsection does not obligate the department to pay for any treatment other than that necessary to alleviate the immediate presenting problems.

(3) ABROGATION OF PRIVILEGED COMMUNICATIONS.—The privileged quality of communication between husband and wife and between any professional and the professional’s patient or client, and any other privileged communication except that between attorney and client or clergy and person, as such communication relates to both the competency of the witness and to the exclusion of confidential communications, does not apply to any situation involving known or suspected abuse, neglect, or exploitation of a vulnerable adult and does not constitute grounds for failure to report as required by s. 415.1034, for failure to cooperate with law enforcement or the department in its activities under ss. 415.101-415.113, or for failure to give evidence in any judicial or administrative proceeding relating to abuse, neglect, or exploitation of a vulnerable adult.

(4) MEDICAL, SOCIAL, OR FINANCIAL RECORDS OR DOCUMENTS.—

(a) The protective investigator, while investigating a report of abuse, neglect, or exploitation, must have access to, inspect, and copy all medical, social, or financial records or documents in the possession of any person, caregiver, guardian, or facility which are relevant to the allegations under investigation, unless specifically prohibited by the vulnerable adult who has capacity to consent.

(b) The confidentiality of any medical, social, or financial record or document that is confidential under state law does not constitute grounds for failure to:
   1. Report as required by s. 415.1034;
   2. Cooperate with the department in its activities under ss. 415.101-415.113;
   3. Give access to such records or documents; or
   4. Give evidence in any judicial or administrative proceeding relating to abuse, neglect, or exploitation of a vulnerable adult.

(5) ACCESS TO RECORDS AND DOCUMENTS.—If any person refuses to allow a law enforcement officer or the protective investigator to have access to, inspect, or copy any medical, social, or financial record or document in the possession of any person, caregiver, guardian, or facility which is relevant to the allegations under investigation, the department may petition the court for an order requiring the person to allow access to the record or document. The petition must allege
specific facts sufficient to show that the record or document is relevant to the allegations under investigation and that the person refuses to allow access to such record or document. If the court finds by a preponderance of the evidence that the record or document is relevant to the allegations under investigation, the court may order the person to allow access to and permit the inspection or copying of the medical, social, or financial record or document.

(6) WORKING AGREEMENTS.— The department shall enter into working agreements with the jurisdictionally responsible county sheriff’s office or local police department that will be the lead agency for conducting any criminal investigation arising from an allegation of abuse, neglect, or exploitation of a vulnerable adult. The working agreement must specify how the requirements of this chapter will be met. For the purposes of such agreement, the jurisdictionally responsible law enforcement entity may share Florida criminal history and local criminal history information that is not otherwise exempt from s. 119.07(1) with the district personnel. A law enforcement entity entering into such agreement must comply with s. 943.0525. Criminal justice information provided by the law enforcement entity may be used only for the purposes specified in the agreement and shall be provided at no charge. Notwithstanding any other provision of law, the Department of Law Enforcement shall provide to the department electronic access to Florida criminal justice information that is lawfully available and not exempt from s. 119.07(1), only for the purpose of protective investigations and emergency placement. As a condition of access to the information, the department shall execute an appropriate user agreement addressing the access, use, dissemination, and destruction of such information and comply with all applicable laws and rules of the Department of Law Enforcement.


415.105 Provision of protective services with consent; withdrawal of consent; interference.—

(1) PROTECTIVE SERVICES WITH CONSENT.—If the department determines through its investigation that a vulnerable adult demonstrates a need for protective services or protective supervision, the department shall immediately provide, or arrange for the provision of, protective services or protective supervision, including in-home services, provided that the vulnerable adult consents. A vulnerable adult in need of services as defined in s. 415.102 shall be referred to the community care for disabled adults program, or to the community care for the elderly program administered by the Department of Elderly Affairs.

(2) WITHDRAWAL OF CONSENT.—If the vulnerable adult withdraws consent to the receipt of protective services or protective supervision, the services may not be provided, except pursuant to s. 415.1051.

(3) INTERFERENCE WITH THE PROVISION OF PROTECTIVE SERVICES.—When any person refuses to
allow the provision of protective services to a vulnerable adult who has the capacity to consent to services, the department shall petition the court for an order enjoining the person from interfering with the provision of protective services. The petition must allege specific facts sufficient to show that the vulnerable adult is in need of protective services and that the person refuses to allow the provision of such services. If the court finds by clear and convincing evidence that the vulnerable adult is in need of protective services and that the person refuses to allow the provision of such services, the court may issue an order enjoining the person from interfering with the provision of protective services to the vulnerable adult.

History.—ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, ch. 73-176; s. 1, ch. 77-174; ss. 3, 5, ch. 79-287; s. 15, ch. 79-298; ss. 3, 5, ch. 79-298; s. 1, ch. 80-293; s. 1, ch. 83-82; s. 31, ch. 86-220; s. 29, ch. 89-294; s. 21, ch. 95-144; s. 37, ch. 95-210; s. 100, ch. 95-418; s. 3, ch. 98-182; s. 33, ch. 2000-349.

415.1051 Protective services interventions when capacity to consent is lacking; nonemergencies; emergencies; orders; limitations.—

(1) NONEMERGENCY PROTECTIVE SERVICES INTERVENTIONS.—If the department has reasonable cause to believe that a vulnerable adult or a vulnerable adult in need of services is being abused, neglected, or exploited and is in need of protective services but lacks the capacity to consent to protective services, the department shall petition the court for an order authorizing the provision of protective services.

(a) Nonemergency protective services petition.—The petition must state the name, age, and address of the vulnerable adult, allege specific facts sufficient to show that the vulnerable adult is in need of protective services and lacks the capacity to consent to them, and indicate the services needed.

(b) Notice.—Notice of the filing of the petition and a copy of the petition must be given to the vulnerable adult, to that person’s spouse, guardian, and legal counsel, and, when known, to the adult children or next of kin of the vulnerable adult. Such notice must be given at least 5 days before the hearing.

(c) Hearing.—

1. The court shall set the case for hearing within 14 days after the filing of the petition. The vulnerable adult and any person given notice of the filing of the petition have the right to be present at the hearing. The department must make reasonable efforts to ensure the presence of the vulnerable adult at the hearing.

2. The vulnerable adult has the right to be represented by legal counsel at the hearing. The court shall appoint legal counsel to represent a vulnerable adult who is without legal representation.

3. The court shall determine whether:

   a. Protective services, including in-home services, are necessary.
b. The vulnerable adult lacks the capacity to consent to the provision of such services.

d) Hearing findings.—If at the hearing the court finds by clear and convincing evidence that the vulnerable adult is in need of protective services and lacks the capacity to consent, the court may issue an order authorizing the provision of protective services. If an order for protective services is issued, it must include a statement of the services to be provided and designate an individual or agency to be responsible for performing or obtaining the essential services on behalf of the vulnerable adult or otherwise consenting to protective services on behalf of the vulnerable adult.

e) Continued protective services.—

1. No more than 60 days after the date of the order authorizing the provision of protective services, the department shall petition the court to determine whether:
   a. Protective services will be continued with the consent of the vulnerable adult pursuant to this subsection;
   b. Protective services will be continued for the vulnerable adult who lacks capacity;
   c. Protective services will be discontinued; or
   d. A petition for guardianship should be filed pursuant to chapter 744.

2. If the court determines that a petition for guardianship should be filed pursuant to chapter 744, the court, for good cause shown, may order continued protective services until it makes a determination regarding capacity.

3. If the department has a good faith belief that the vulnerable adult lacks the capacity to consent to protective services, the petition to determine incapacity under s. 744.3201 may be filed by the department. Once the petition is filed, the department may not be appointed guardian and may not provide legal counsel for the guardian.

f) Costs.—The costs of services ordered under this section must be paid by the perpetrator if the perpetrator is financially able to do so; or by third-party reimbursement, if available. If the vulnerable adult is unable to pay for guardianship, application may be made to the public guardian for public guardianship services, if available.

2) EMERGENCY PROTECTIVE SERVICES INTERVENTION.—If the department has reasonable cause to believe that a vulnerable adult is suffering from abuse or neglect that presents a risk of death or serious physical injury to the vulnerable adult and that the vulnerable adult lacks the capacity to consent to emergency protective services, the department may take action under this subsection. If the vulnerable adult has the capacity to consent and refuses consent to emergency protective services, emergency protective services may not be provided.

a) Emergency entry of premises.—If, upon arrival at the scene of the incident, consent is not obtained for access to the alleged victim for purposes of conducting a protective investigation under this subsection and the department has reason to believe that the situation presents a risk of
death or serious physical injury, a representative of the department and a law enforcement officer may forcibly enter the premises. If, after obtaining access to the alleged victim, it is determined through a personal assessment of the situation that no emergency exists and there is no basis for emergency protective services intervention under this subsection, the department shall terminate the emergency entry.

(b) *Emergency removal from premises.*—If it appears that the vulnerable adult lacks the capacity to consent to emergency protective services and that the vulnerable adult, from the personal observations of the representative of the department and specified medical personnel or law enforcement officers, is likely to incur a risk of death or serious physical injury if such person is not immediately removed from the premises, then the representative of the department shall transport or arrange for the transportation of the vulnerable adult to an appropriate medical or protective services facility in order to provide emergency protective services. Law enforcement personnel have a duty to transport when medical transportation is not available or needed and the vulnerable adult presents a threat of injury to self or others. If the vulnerable adult’s caregiver or guardian is present, the protective investigator must seek the caregiver’s or guardian’s consent pursuant to subsection (4) before the vulnerable adult may be removed from the premises, unless the protective investigator suspects that the vulnerable adult’s caregiver or guardian has caused the abuse, neglect, or exploitation. The department shall, within 24 hours after providing or arranging for emergency removal of the vulnerable adult, excluding Saturdays, Sundays, and legal holidays, petition the court for an order authorizing emergency protective services.

(c) *Emergency medical treatment.*—If, upon admission to a medical facility, it is the opinion of the medical staff that immediate medical treatment is necessary to prevent serious physical injury or death, and that such treatment does not violate a known health care advance directive prepared by the vulnerable adult, the medical facility may proceed with treatment to the vulnerable adult. If a person with legal authority to give consent for the provision of medical treatment to a vulnerable adult has not given or has refused to give such consent, examination and treatment must be limited to reasonable examination of the patient to determine the medical condition of the patient and treatment reasonably necessary to alleviate the emergency medical condition or to stabilize the patient pending court determination of the department’s petition authorizing emergency protective services. Any person may seek an expedited judicial intervention under rule 5.900 of the Florida Probate Rules concerning medical treatment procedures.

(d) *Emergency protective services petition.*—A petition filed under this subsection must state the name, age, and address of the vulnerable adult and allege the facts constituting the emergency protective services intervention and subsequent removal of the vulnerable adult or provision of in-home services, the facts relating to the capacity of the vulnerable adult to consent to services, the efforts of the department to obtain consent, and the services needed or delivered.
(e) **Notice.**—Notice of the filing of the emergency protective services petition and a copy of the petition must be given to the vulnerable adult, to that person’s spouse, to that person’s guardian, if any, to legal counsel representing the vulnerable adult, and, when known, to adult children or next of kin of the vulnerable adult. Such notice must be given at least 24 hours before any hearing on the petition for emergency protective services.

(f) **Hearing.**—When emergency removal has occurred under this subsection, a hearing must be held within 4 days after the filing of the emergency protective services petition, excluding Saturday, Sunday, and legal holidays, to establish reasonable cause for grounds to continue emergency protective services.

1. The court shall determine, by clear and convincing evidence, whether an emergency existed which justified the emergency protective services intervention, whether the vulnerable adult is in need of emergency protective services, whether the vulnerable adult lacks the capacity to consent to emergency protective services, and whether:
   a. Emergency protective services will continue with the consent of the vulnerable adult;
   b. Emergency protective services will continue without the consent of the vulnerable adult; or
   c. Emergency protective services will be discontinued.

2. The vulnerable adult has the right to be represented by legal counsel at the hearing. The court shall appoint legal counsel to represent a vulnerable adult who is without legal representation.

3. The department must make reasonable efforts to ensure the presence of the vulnerable adult at the hearing.

4. If an order to continue emergency protective services is issued, it must state the services to be provided and designate an individual or agency to be responsible for performing or obtaining the essential services, or otherwise consenting to protective services on behalf of the vulnerable adult.

(g) **Continued emergency protective services.**—

1. Not more than 60 days after the date of the order authorizing the provision of emergency protective services, the department shall petition the court to determine whether:
   a. Emergency protective services will be continued with the consent of the vulnerable adult;
   b. Emergency protective services will be continued for the vulnerable adult who lacks capacity;
   c. Emergency protective services will be discontinued; or
   d. A petition should be filed under chapter 744.

2. If it is decided to file a petition under chapter 744, for good cause shown, the court may order continued emergency protective services until a determination is made by the court.

3. If the department has a good faith belief that the vulnerable adult lacks the capacity to consent to protective services, the petition to determine incapacity under s. 744.3201 may be filed by the department. Once the petition is filed, the department may not be appointed guardian and
may not provide legal counsel for the guardian.

(h) Costs.—The costs of services ordered under this section must be paid by the perpetrator if the perpetrator is financially able to do so, or by third-party reimbursement, if available.

(3) PROTECTIVE SERVICES ORDER.—In ordering any protective services under this section, the court shall adhere to the following limitations:

(a) Only such protective services as are necessary to ameliorate the conditions creating the abuse, neglect, or exploitation may be ordered, and the court shall specifically designate the approved services in the order of the court.

(b) Protective services ordered may not include a change of residence, unless the court specifically finds such action is necessary to ameliorate the conditions creating the abuse, neglect, or exploitation and the court gives specific approval for such action in the order. Placement may be made to such facilities as adult family-care homes, assisted living facilities, or nursing homes, or to other appropriate facilities. Placement may not be made to facilities for the acutely mentally ill, except as provided in chapter 394.

(c) If an order to continue emergency protective services is issued, it must include the designation of an individual or agency to be responsible for performing or obtaining the essential services on behalf of the vulnerable adult or otherwise consenting to protective services on behalf of the vulnerable adult.

(4) PROTECTIVE SERVICES INTERVENTIONS WITH CAREGIVER OR GUARDIAN PRESENT.—

(a) When a vulnerable adult who lacks the capacity to consent has been identified as the victim, the protective investigator must first request consent from the caregiver or guardian, if present, before providing protective services or protective supervision, unless the protective investigator suspects that the caregiver or guardian has caused the abuse, neglect, or exploitation.

(b) If the caregiver or guardian agrees to engage or provide services designed to prevent further abuse, neglect, or exploitation, the department may provide protective supervision.

(c) If the caregiver or guardian refuses to give consent or later withdraws consent to agreed-upon services, or otherwise fails to provide needed care and supervision, the department may provide emergency protective services as provided in subsection (2). If emergency protective services are so provided, the department must then petition the court for an order to provide emergency protective services under subsection (3).

(5) INTERFERENCE WITH COURT-ORDERED PROTECTIVE SERVICES.—When a court order exists authorizing protective services for a vulnerable adult who lacks capacity to consent and any person interferes with the provision of such court-ordered protective services, the appropriate law enforcement agency shall enforce the order of the court.

(6) LIMITATIONS.—This section does not limit in any way the authority of the court or a criminal justice officer, or any other duly appointed official, to intervene in emergency circumstances
under existing statutes. This section does not limit the authority of any person to file a petition for guardianship under chapter 744.

History.—s. 101, ch. 95-418; s. 11, ch. 97-98; s. 34, ch. 2000-349; s. 2, ch. 2006-131; s. 4, ch. 2010-31.

415.1052 Interference with investigation or with the provision of protective services.—

(1) If, upon arrival of the protective investigator, any person refuses to allow the department to begin a protective investigation, interferes with the department’s ability to conduct such an investigation, or refuses to give access to the vulnerable adult, the appropriate law enforcement agency must be contacted to assist the department in commencing the protective investigation.

(2) When any person refuses to allow the provision of protective services to the vulnerable adult who has the capacity to consent to services, the department shall petition the court for an order enjoining the person from interfering with the provision of protective services. The petition must allege specific facts sufficient to show that the vulnerable adult is in need of protective services and that the person refuses to allow the provision of such services. If the court finds by clear and convincing evidence that the vulnerable adult is in need of protective services and that the person refuses to allow the provision of such services, the court may issue an order enjoining the person from interfering with the provision of protective services to the vulnerable adult.

History.—s. 102, ch. 95-418; s. 35, ch. 2000-349.

415.1055 Notification to administrative entities.—

(1) Upon receipt of a report that alleges that an employee or agent of the department, the Agency for Persons with Disabilities, or the Department of Elderly Affairs, acting in an official capacity, has committed an act of abuse, neglect, or exploitation, the department shall notify the state attorney in whose circuit the abuse, neglect, or exploitation occurred. This notification may be oral or written.

(2) If at any time during a protective investigation the department has reasonable cause to believe that a vulnerable adult has been abused, neglected, or exploited by another person, the state attorney having jurisdiction in the county in which the abuse, neglect, or exploitation occurred shall be notified immediately, either orally or in writing.

(3) If at any time during a protective investigation the department has reasonable cause to believe that a vulnerable adult has been abused, neglected, or exploited by another person, the appropriate law enforcement agency shall be immediately notified. Such agency may begin a criminal investigation concurrent with or independent of the protective investigation of the department. This notification may be oral or written.

(4) If at any time during a protective investigation the department has reasonable cause to believe that abuse, neglect, or exploitation of a vulnerable adult has occurred within a facility that receives Medicaid funds, the department shall notify the Medicaid Fraud Control Unit within the Department of Legal Affairs, Office of the Attorney General, in order that it may begin an
investigation concurrent with the protective investigation of the department. This notification may be oral or written.

(5) If at any time during a protective investigation the department has reasonable cause to believe that an employee of a facility, as defined in s. 415.102, is the alleged perpetrator of abuse, neglect, or exploitation of a vulnerable adult, the department shall notify the Agency for Health Care Administration, Division of Health Quality Assurance, in writing.

(6) If at any time during a protective investigation the department has reasonable cause to believe that professional licensure violations have occurred, the department shall notify the Division of Medical Quality Assurance within the Department of Health. This notification must be in writing.

(7) The department shall notify the state attorney having jurisdiction in the county in which the abuse, neglect, or exploitation occurred if evidence indicates that further criminal investigation is warranted. This notification must be in writing.

(8) At the conclusion of a protective investigation at a facility, the department shall notify either the Florida local advocacy council or long-term care ombudsman council of the results of the investigation. This notification must be in writing.

(9) When a report involving a guardian of the person or property, or both, is received, the department shall notify the probate court having jurisdiction over the guardianship, in writing.

(10) When a report has been received and the department has reason to believe that a vulnerable adult resident of a facility licensed by the Agency for Health Care Administration or the Agency for Persons with Disabilities has been the victim of abuse, neglect, or exploitation, the department shall provide a copy of its investigation to the appropriate agency. If the investigation determines that a health professional licensed or certified under the Department of Health may have abused, neglected, or exploited a vulnerable adult, the department shall also provide a copy to the Department of Health.

History.—s. 103, ch. 95-418; s. 12, ch. 97-98; s. 30, ch. 98-166; s. 4, ch. 98-182; s. 69, ch. 2000-153; s. 23, ch. 2000-263; s. 36, ch. 2000-349; s. 59, ch. 2006-227.

415.106 Cooperation by the department and criminal justice and other agencies.—

(1) All criminal justice agencies have a duty and responsibility to cooperate fully with the department so as to enable the department to fulfill its responsibilities under ss. 415.101-415.113. Such duties include, but are not limited to, forced entry, emergency removal, emergency transportation, and the enforcement of court orders obtained under ss. 415.101-415.113.

(2) To ensure coordination, communication, and cooperation with the investigation of abuse, neglect, or exploitation of vulnerable adults, the department shall develop and maintain interprogram agreements or operational procedures among appropriate departmental programs and the State Long-Term Care Ombudsman Council, the Florida Statewide Advocacy Council, and other
agencies that provide services to vulnerable adults. These agreements or procedures must cover such subjects as the appropriate roles and responsibilities of the department in identifying and responding to reports of abuse, neglect, or exploitation of vulnerable adults; the provision of services; and related coordinated activities.

(3) To the fullest extent possible, the department shall cooperate with and seek cooperation from all appropriate public and private agencies, including health agencies, educational agencies, social service agencies, courts, organizations, or programs providing or concerned with human services related to the prevention, identification, or treatment of abuse, neglect, or exploitation of vulnerable adults.

History.—ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, ch. 73-176; s. 1, ch. 77-174; ss. 3, 5, ch. 79-287; s. 15, ch. 79-298; s. 1, ch. 80-293; s. 1, ch. 83-82; s. 32, ch. 86-220; s. 27, ch. 93-177; s. 104, ch. 95-418; s. 24, ch. 2000-263; s. 37, ch. 2000-349.

415.107 Confidentiality of reports and records.—

(1) In order to protect the rights of the individual or other persons responsible for the welfare of a vulnerable adult, all records concerning reports of abuse, neglect, or exploitation of the vulnerable adult, including reports made to the central abuse hotline, and all records generated as a result of such reports shall be confidential and exempt from s. 119.07(1) and may not be disclosed except as specifically authorized by ss. 415.101-415.113.

(2) Upon the request of the committee chairperson, access to all records shall be granted to staff of the legislative committees with jurisdiction over issues and services related to vulnerable adults, or over the department. All confidentiality provisions that apply to the Department of Children and Family Services continue to apply to the records made available to legislative staff under this subsection.

(3) Access to all records, excluding the name of the reporter which shall be released only as provided in subsection (6), shall be granted only to the following persons, officials, and agencies:

(a) Employees or agents of the department, the Agency for Persons with Disabilities, the Agency for Health Care Administration, or the Department of Elderly Affairs who are responsible for carrying out protective investigations, ongoing protective services, or licensure or approval of nursing homes, assisted living facilities, adult day care centers, adult family-care homes, home care for the elderly, hospices, residential facilities licensed under chapter 393, or other facilities used for the placement of vulnerable adults.

(b) A criminal justice agency investigating a report of known or suspected abuse, neglect, or exploitation of a vulnerable adult.

(c) The state attorney of the judicial circuit in which the vulnerable adult resides or in which the alleged abuse, neglect, or exploitation occurred.

(d) Any victim, the victim’s guardian, caregiver, or legal counsel, and any person who the
department has determined might be abusing, neglecting, or exploiting the victim.

(e) A court, by subpoena, upon its finding that access to such records may be necessary for the
determination of an issue before the court; however, such access must be limited to inspection in
camera, unless the court determines that public disclosure of the information contained in such
records is necessary for the resolution of an issue then pending before it.

(f) A grand jury, by subpoena, upon its determination that access to such records is necessary in
the conduct of its official business.

(g) Any appropriate official of the Florida advocacy council or long-term care ombudsman
council investigating a report of known or suspected abuse, neglect, or exploitation of a vulnerable
adult.

(h) Any appropriate official of the department, the Agency for Persons with Disabilities, the
Agency for Health Care Administration, or the Department of Elderly Affairs who is responsible for:

1. Administration or supervision of the programs for the prevention, investigation, or treatment
   of abuse, neglect, or exploitation of vulnerable adults when carrying out an official function; or

2. Taking appropriate administrative action concerning an employee alleged to have
   perpetrated abuse, neglect, or exploitation of a vulnerable adult in an institution.

(i) Any person engaged in bona fide research or auditing. However, information identifying the
subjects of the report must not be made available to the researcher.

(j) Employees or agents of an agency of another state that has jurisdiction comparable to the
jurisdiction described in paragraph (a).

(k) The Public Employees Relations Commission for the sole purpose of obtaining evidence for
appeals filed pursuant to s. 447.207. Records may be released only after deletion of all information
that specifically identifies persons other than the employee.

(l) Any person in the event of the death of a vulnerable adult determined to be a result of
abuse, neglect, or exploitation. Information identifying the person reporting abuse, neglect, or
exploitation shall not be released. Any information otherwise made confidential or exempt by law
shall not be released pursuant to this paragraph.

(4) The Department of Health, the Department of Business and Professional Regulation, and the
Agency for Health Care Administration may have access to a report, excluding the name of the
reporter, when considering disciplinary action against a licensee or certified nursing assistant
pursuant to allegations of abuse, neglect, or exploitation.

(5) The department may release to any professional person such information as is necessary for
the diagnosis and treatment of, and service delivery to, a vulnerable adult or the person
perpetrating the abuse, neglect, or exploitation.

(6) The identity of any person reporting abuse, neglect, or exploitation of a vulnerable adult
may not be released, without that person’s written consent, to any person other than employees of
the department responsible for protective services, the central abuse hotline, or the appropriate
state attorney or law enforcement agency. This subsection grants protection only for the person
who reported the abuse, neglect, or exploitation and protects only the fact that the person is the
reporter. This subsection does not prohibit the subpoena of a person reporting the abuse, neglect,
or exploitation when deemed necessary by the state attorney or the department to protect a
vulnerable adult who is the subject of a report, if the fact that the person made the report is not
disclosed.

(7) For the purposes of this section, the term “access” means a visual inspection or copy of the
hard-copy record maintained in the district.

(8) Information in the central abuse hotline may not be used for employment screening.

History.—ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, ch. 73-176; s. 1, ch. 77-174; ss. 3, 5, ch. 79-287; s. 15, ch. 79-298; s.
1, ch. 80-293; s. 1, ch. 83-82; s. 33, ch. 86-220; s. 32, ch. 87-238; s. 7, ch. 88-219; s. 18, ch. 88-337; s. 4, ch. 89-
170; s. 30, ch. 89-294; s. 4, ch. 90-50; s. 7, ch. 90-208; s. 47, ch. 90-306; s. 4, ch. 91-57; s. 15, ch. 91-71; ss. 43, 47,
ch. 92-58; s. 31, ch. 93-39; s. 15, ch. 93-214; s. 57, ch. 94-218; s. 38, ch. 95-210; s. 106, ch. 95-418; s. 267, ch. 96-
406; s. 1, ch. 98-111; s. 9, ch. 98-182; s. 2, ch. 98-255; s. 41, ch. 98-280; s. 70, ch. 2000-153; s. 25, ch. 2000-263; s.

415.1071 Release of confidential information.—

(1) Any person or organization, including the Department of Children and Family Services, may
petition the court for an order making public the records of the Department of Children and Family
Services which pertain to investigations of alleged abuse, neglect, or exploitation of a vulnerable
adult. The court shall determine whether good cause exists for public access to the records sought
or a portion thereof. In making this determination, the court shall balance the best interests of the
vulnerable adult who is the focus of the investigation together with the privacy right of other
persons identified in the reports against the public interest. The public interest in access to such
records is reflected in s. 119.01(1), and includes the need for citizens to know of and adequately
evaluate the actions of the Department of Children and Family Services and the court system in
providing vulnerable adults of this state with the protections enumerated in s. 415.101. However,
this subsection does not contravene s. 415.107, which protects the name of any person reporting
the abuse, neglect, or exploitation of a vulnerable adult.

(2) In cases involving serious bodily injury to a vulnerable adult, the Department of Children
and Family Services may petition the court for an order for the immediate public release of records
of the department which pertain to the protective investigation. The petition must be personally
served upon the vulnerable adult, the vulnerable adult’s legal guardian, if any, and any person
named as an alleged perpetrator in the report of abuse, neglect, or exploitation. The court must
determine whether good cause exists for the public release of the records sought no later than 24
hours, excluding Saturdays, Sundays, and legal holidays, after the date the department filed the
petition with the court. If the court does not grant or deny the petition within the 24-hour time period, the department may release to the public summary information including:

(a) A confirmation that an investigation has been conducted concerning the alleged victim.
(b) The dates and brief description of procedural activities undertaken during the department’s investigation.
(c) The date of each judicial proceeding, a summary of each participant’s recommendations made at the judicial proceeding, and the ruling of the court.

The summary information shall not include the name of, or other identifying information with respect to, any person identified in any investigation. In making a determination to release confidential information, the court shall balance the best interests of the vulnerable adult who is the focus of the investigation together with the privacy rights of other persons identified in the reports against the public interest for access to public records. However, this subsection does not contravene s. 415.107, which protects the name of any person reporting abuse, neglect, or exploitation of a vulnerable adult.

(3) When the court determines that good cause for public access exists, the court shall direct that the department redact the name of and other identifying information with respect to any person identified in any protective investigation report until such time as the court finds that there is probable cause to believe that the person identified committed an act of alleged abuse, neglect, or exploitation.

History.—s. 18, ch. 2004-335.

415.1099 Court and witness fees not allowed.—In all proceedings under ss. 415.101-415.113, court fees must not be charged to the department; to any party to a petition; to any legal custodian of records, documents, or persons; or to any adult named in a summons. In a proceeding under ss. 415.101-415.113, witness fees are not allowed to the department; to any party to a petition; to any legal custodian of records, documents, or persons; or to any adult named in a summons.

History.—s. 108, ch. 95-418.

415.1102 Adult protection teams.—

(1) Subject to an appropriation, the department may develop, maintain, and coordinate the services of one or more multidisciplinary adult protection teams in each of the districts of the department. As used in this section, the term “multidisciplinary adult protection team” means a team of two or more persons who are trained in the prevention, identification, and treatment of abuse of elderly persons, as defined in s. 430.602, or of dependent persons and who are qualified to provide a broad range of services related to abuse of elderly or dependent persons.

(2) Such teams may be composed of, but need not be limited to:
(a) Psychiatrists, psychologists, or other trained counseling personnel;
(b) Police officers or other law enforcement officers;
(c) Medical personnel who have sufficient training to provide health services;
(d) Social workers who have experience or training in preventing the abuse of elderly or dependent persons; and
(e) Public guardians as described in part IX of chapter 744.

(3) The department shall utilize and convene the teams to supplement the protective services activities of the protective services program of the department.

(4) This section does not prevent a person from reporting under s. 415.1034 all suspected or known cases of abuse, neglect, or exploitation of a vulnerable adult. The role of the teams is to support activities of the protective services program and to provide services deemed by the teams to be necessary and appropriate to abused, neglected, and exploited vulnerable adults upon referral. Services must be provided with the consent of the vulnerable adult or that person’s guardian, or through court order.

(5) If an adult protection team is providing certain services to abused, neglected, or exploited vulnerable adults, other offices and units of the department shall avoid duplicating those services.

History.—s. 32, ch. 89-294; s. 48, ch. 90-306; s. 109, ch. 95-418; s. 6, ch. 98-182; s. 71, ch. 2000-153; s. 39, ch. 2000-349; s. 2, ch. 2003-262.

415.1105 Training programs.—

(1) The department shall develop rules governing preservice and inservice training for adult protective investigation staff and, within available resources, shall provide appropriate preservice and inservice training to such staff.

(2) Within available resources, the department shall cooperate with other appropriate agencies in developing and providing preservice and inservice training programs for those persons specified in s. 415.1034(1)(a).

History.—s. 110, ch. 95-418.

415.111 Criminal penalties.—

(1) A person who knowingly and willfully fails to report a case of known or suspected abuse, neglect, or exploitation of a vulnerable adult, or who knowingly and willfully prevents another person from doing so, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) A person who knowingly and willfully makes public or discloses any confidential information contained in the central abuse hotline, or in other computer systems, or in the records of any case of abuse, neglect, or exploitation of a vulnerable adult, except as provided in ss. 415.101-415.113, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A person who has custody of records and documents the confidentiality of which is
abrogated under s. 415.1045(3) and who refuses to grant access to such records commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) If the department or its authorized agent has determined after its investigation that a report is false, the department shall, with the consent of the alleged perpetrator, refer the reports to the local law enforcement agency having jurisdiction for an investigation to determine whether sufficient evidence exists to refer the case for prosecution for filing a false report as defined in s. 415.102. During the pendency of the investigation by the local law enforcement agency, the department must notify the local law enforcement agency of, and the local law enforcement agency must respond to, all subsequent reports concerning the same vulnerable adult in accordance with s. 415.104 or s. 415.1045. If the law enforcement agency believes that there are indicators of abuse, neglect, or exploitation, it must immediately notify the department, which must assure the safety of the vulnerable adult. If the law enforcement agency finds sufficient evidence for prosecution for filing a false report, it must refer the case to the appropriate state attorney for prosecution.

(5) A person who knowingly and willfully makes a false report of abuse, neglect, or exploitation of a vulnerable adult, or a person who advises another to make a false report, commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(a) The department shall establish procedures for determining whether a false report of abuse, neglect, or exploitation of a vulnerable adult has been made and for submitting all identifying information relating to such a false report to the local law enforcement agency as provided in this subsection and shall report annually to the Legislature the number of reports referred.

(b) Anyone making a report who is acting in good faith is immune from any liability under this subsection.

History.—ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, ch. 73-176; s. 1, ch. 77-174; ss. 3, 5, ch. 79-287; s. 15, ch. 79-298; s. 1, ch. 80-293; s. 1, ch. 83-82; s. 36, ch. 86-220; s. 19, ch. 88-337; s. 1, ch. 89-322; s. 49, ch. 90-306; s. 5, ch. 91-57; s. 16, ch. 91-71; s. 250, ch. 91-224; s. 1, ch. 91-258; s. 4, ch. 95-140; s. 20, ch. 95-158; s. 111, ch. 95-418; s. 7, ch. 96-293; s. 2, ch. 98-111; s. 10, ch. 98-182; s. 40, ch. 2000-349; s. 4, ch. 2002-70.

415.1111 Civil actions.—A vulnerable adult who has been abused, neglected, or exploited as specified in this chapter has a cause of action against any perpetrator and may recover actual and punitive damages for such abuse, neglect, or exploitation. The action may be brought by the vulnerable adult, or that person’s guardian, by a person or organization acting on behalf of the vulnerable adult with the consent of that person or that person’s guardian, or by the personal representative of the estate of a deceased victim without regard to whether the cause of death resulted from the abuse, neglect, or exploitation. The action may be brought in any court of competent jurisdiction to enforce such action and to recover actual and punitive damages for any deprivation of or infringement on the rights of a vulnerable adult. A party who prevails in any such
action may be entitled to recover reasonable attorney’s fees, costs of the action, and damages.
The remedies provided in this section are in addition to and cumulative with other legal and
administrative remedies available to a vulnerable adult. Notwithstanding the foregoing, any civil
action for damages against any licensee or entity who establishes, controls, conducts, manages, or
operates a facility licensed under part II of chapter 400 relating to its operation of the licensed
facility shall be brought pursuant to s. 400.023, or against any licensee or entity who establishes,
controls, conducts, manages, or operates a facility licensed under part I of chapter 429 relating to
its operation of the licensed facility shall be brought pursuant to s. 429.29. Such licensee or entity
shall not be vicariously liable for the acts or omissions of its employees or agents or any other third
party in an action brought under this section.

History.—s. 112, ch. 95-418; s. 23, ch. 96-418; s. 41, ch. 2000-349; s. 12, ch. 2001-45; s. 86, ch. 2006-197.

415.1113 Administrative fines for false report of abuse, neglect, or exploitation of a
vulnerable adult.—

(1) In addition to any other penalty authorized by this section, chapter 120, or other law, the
department may impose a fine, not to exceed $10,000 for each violation, upon a person who
knowingly and willfully makes a false report of abuse, neglect, or exploitation of a vulnerable
adult, or a person who counsels another to make a false report.

(2) If the department alleges that a person has knowingly and willfully filed a false report with
the central abuse hotline, the department must file a notice of intent that alleges the name, age,
and address of the individual; the facts constituting the allegation that the individual made a false
report; and the administrative fine that the department proposes to impose on the person. Each
time that a false report is made constitutes a separate violation.

(3) The notice of intent to impose the administrative fine must be served by certified mail,
return receipt requested, upon the person alleged to have filed the false report and upon the
person’s legal counsel, if any.

(4) Any person alleged to have filed the false report is entitled to an administrative hearing
under chapter 120 before the imposition of the fine becomes final. The person must request an
administrative hearing within 60 days after receipt of the notice of intent by filing a request with
the department. Failure to request an administrative hearing within 60 days after receipt of the
notice of intent constitutes a waiver of the right to a hearing, making the administrative fine final.

(5) At the hearing, the department must prove by clear and convincing evidence that the
person knowingly and willfully filed a false report with the central abuse hotline. The person has
the right to be represented by legal counsel at the hearing.

(6) In determining the amount of fine to be imposed, if any, the following factors must be
considered:

(a) The gravity of the violation, including the probability that serious physical or emotional
harm to any person will result or has resulted, the severity of the actual or potential harm, and the nature of the false allegation.

(b) Actions taken by the false reporter to retract the false report as an element of mitigation, or, in contrast, to encourage an investigation on the basis of false information.

(c) Any previous false reports filed by the same individual.

(7) A decision by the department, following the administrative hearing, to impose an administrative fine for filing a false report constitutes final agency action within the meaning of chapter 120. Notice of the imposition of the administrative fine must be served upon the person and upon the person’s legal counsel, by certified mail, return receipt requested, and must state that the person may seek judicial review of the administrative fine under s. 120.68.

(8) All amounts collected under this section must be deposited into the Operations and Maintenance Trust Fund within the Adult Services Program of the department.

(9) A person who is determined to have filed a false report of abuse or neglect is not entitled to confidentiality. Subsequent to the conclusion of all administrative or other judicial proceedings concerning the filing of a false report, the name of the false reporter and the nature of the false report must be made public, pursuant to s. 119.01(1). Such information is admissible in any civil or criminal proceeding.

(10) Any person who makes a report and acts in good faith is immune from any liability under this section and continues to be entitled to have the confidentiality of his or her identity maintained.

History.—s. 113, ch. 95-418; s. 68, ch. 97-103; s. 3, ch. 98-111; s. 11, ch. 98-182; s. 201, ch. 99-8; s. 42, ch. 2000-349.

415.1115 Civil actions involving elderly parties; speedy trial.—In a civil action in which a person over the age of 65 is a party, such party may move the court to advance the trial on the docket. The presiding judge, after consideration of the age and health of the party, may advance the trial on the docket. The motion may be filed and served with the initial complaint or at any time thereafter.

History.—s. 1, ch. 91-251; s. 115, ch. 95-418.

Note.—Former s. 415.114.

415.112 Rules for implementation of ss. 415.101-415.113.—The department shall promulgate rules for the implementation of ss. 415.101-415.113.

History.—ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, ch. 73-176; s. 1, ch. 77-174; ss. 3, 5, ch. 79-287; s. 15, ch. 79-298; s. 1, ch. 80-293; s. 1, ch. 83-82; s. 37, ch. 86-220.

415.113 Statutory construction; treatment by spiritual means.—Nothing in ss. 415.101-415.112 shall be construed to mean a person is abused, neglected, or in need of emergency or protective services for the sole reason that the person relies upon and is, therefore, being
furnished treatment by spiritual means through prayer alone in accordance with the tenets and practices of a well-recognized church or religious denomination or organization; nor shall anything in such sections be construed to authorize, permit, or require any medical care or treatment in contravention of the stated or implied objection of such person. Such construction does not:

1. Eliminate the requirement that such a case be reported to the department;
2. Prevent the department from investigating such a case; or
3. Preclude a court from ordering, when the health of the individual requires it, the provision of medical services by a licensed physician or treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious denomination or organization.

History.—s. 1, ch. 85-143; s. 114, ch. 95-418; s. 43, ch. 2000-349.

CHAPTER 765
HEALTH CARE ADVANCE DIRECTIVES
PART I
GENERAL PROVISIONS
(ss. 765.101-765.113)

PART II
HEALTH CARE SURROGATE
(ss. 765.201-765.205)

PART III
LIFE-PROLONGING PROCEDURES
(ss. 765.301-765.309)

PART IV
ABSENCE OF ADVANCE DIRECTIVE
(ss. 765.401, 765.404)

PART V
ANATOMICAL GIFTS
(ss. 765.510-765.547)

PART I
GENERAL PROVISIONS

765.101 Definitions.
765.102 Legislative findings and intent.
765.103 Existing advance directives.
765.104 Amendment or revocation.
765.105 Review of surrogate or proxy’s decision.
Definitions.—As used in this chapter:

1. “Advance directive” means a witnessed written document or oral statement in which instructions are given by a principal or in which the principal’s desires are expressed concerning any aspect of the principal’s health care, and includes, but is not limited to, the designation of a health care surrogate, a living will, or an anatomical gift made pursuant to part V of this chapter.

2. “Attending physician” means the primary physician who has responsibility for the treatment and care of the patient.

3. “Close personal friend” means any person 18 years of age or older who has exhibited special care and concern for the patient, and who presents an affidavit to the health care facility or to the attending or treating physician stating that he or she is a friend of the patient; is willing and able to become involved in the patient’s health care; and has maintained such regular contact with the patient so as to be familiar with the patient’s activities, health, and religious or moral beliefs.

4. “End-stage condition” means an irreversible condition that is caused by injury, disease, or illness which has resulted in progressively severe and permanent deterioration, and which, to a reasonable degree of medical probability, treatment of the condition would be ineffective.

5. “Health care decision” means:

   a. Informed consent, refusal of consent, or withdrawal of consent to any and all health care, including life-prolonging procedures and mental health treatment, unless otherwise stated in the advance directives.

   b. The decision to apply for private, public, government, or veterans’ benefits to defray the cost of health care.

   c. The right of access to all records of the principal reasonably necessary for a health care surrogate to make decisions involving health care and to apply for benefits.

   d. The decision to make an anatomical gift pursuant to part V of this chapter.
(6) “Health care facility” means a hospital, nursing home, hospice, home health agency, or health maintenance organization licensed in this state, or any facility subject to part I of chapter 394.

(7) “Health care provider” or “provider” means any person licensed, certified, or otherwise authorized by law to administer health care in the ordinary course of business or practice of a profession.

(8) “Incapacity” or “incompetent” means the patient is physically or mentally unable to communicate a willful and knowing health care decision. For the purposes of making an anatomical gift, the term also includes a patient who is deceased.

(9) “Informed consent” means consent voluntarily given by a person after a sufficient explanation and disclosure of the subject matter involved to enable that person to have a general understanding of the treatment or procedure and the medically acceptable alternatives, including the substantial risks and hazards inherent in the proposed treatment or procedures, and to make a knowing health care decision without coercion or undue influence.

(10) “Life-prolonging procedure” means any medical procedure, treatment, or intervention, including artificially provided sustenance and hydration, which sustains, restores, or supplants a spontaneous vital function. The term does not include the administration of medication or performance of medical procedure, when such medication or procedure is deemed necessary to provide comfort care or to alleviate pain.

(11) “Living will” or “declaration” means:
(a) A witnessed document in writing, voluntarily executed by the principal in accordance with s. 765.302; or
(b) A witnessed oral statement made by the principal expressing the principal’s instructions concerning life-prolonging procedures.

(12) “Persistent vegetative state” means a permanent and irreversible condition of unconsciousness in which there is:
(a) The absence of voluntary action or cognitive behavior of any kind.
(b) An inability to communicate or interact purposefully with the environment.

(13) “Physician” means a person licensed pursuant to chapter 458 or chapter 459.

(14) “Principal” means a competent adult executing an advance directive and on whose behalf health care decisions are to be made.

(15) “Proxy” means a competent adult who has not been expressly designated to make health care decisions for a particular incapacitated individual, but who, nevertheless, is authorized pursuant to s. 765.401 to make health care decisions for such individual.

(16) “Surrogate” means any competent adult expressly designated by a principal to make health care decisions on behalf of the principal upon the principal’s incapacity.
“Terminal condition” means a condition caused by injury, disease, or illness from which there is no reasonable medical probability of recovery and which, without treatment, can be expected to cause death.

History.—s. 2, ch. 92-199; s. 3, ch. 94-183; s. 46, ch. 96-169; s. 16, ch. 99-331; s. 3, ch. 2001-250; s. 131, ch. 2001-277; s. 104, ch. 2006-1; s. 28, ch. 2006-178.

765.102 Legislative findings and intent.—

(1) The Legislature finds that every competent adult has the fundamental right of self-determination regarding decisions pertaining to his or her own health, including the right to choose or refuse medical treatment. This right is subject to certain interests of society, such as the protection of human life and the preservation of ethical standards in the medical profession.

(2) To ensure that such right is not lost or diminished by virtue of later physical or mental incapacity, the Legislature intends that a procedure be established to allow a person to plan for incapacity by executing a document or orally designating another person to direct the course of his or her medical treatment upon his or her incapacity. Such procedure should be less expensive and less restrictive than guardianship and permit a previously incapacitated person to exercise his or her full right to make health care decisions as soon as the capacity to make such decisions has been regained.

(3) The Legislature recognizes that for some the administration of life-prolonging medical procedures may result in only a precarious and burdensome existence. In order to ensure that the rights and intentions of a person may be respected even after he or she is no longer able to participate actively in decisions concerning himself or herself, and to encourage communication among such patient, his or her family, and his or her physician, the Legislature declares that the laws of this state recognize the right of a competent adult to make an advance directive instructing his or her physician to provide, withhold, or withdraw life-prolonging procedures, or to designate another to make the treatment decision for him or her in the event that such person should become incapacitated and unable to personally direct his or her medical care.

(4) The Legislature recognizes the need for all health care professionals to rapidly increase their understanding of end-of-life and palliative care. Therefore, the Legislature encourages the professional regulatory boards to adopt appropriate standards and guidelines regarding end-of-life care and pain management and encourages educational institutions established to train health care professionals and allied health professionals to implement curricula to train such professionals to provide end-of-life care, including pain management and palliative care.

(5) For purposes of this chapter:

(a) Palliative care is the comprehensive management of the physical, psychological, social, spiritual, and existential needs of patients. Palliative care is especially suited to the care of persons who have incurable, progressive illnesses.

(b) Palliative care must include:
1. An opportunity to discuss and plan for end-of-life care.
2. Assurance that physical and mental suffering will be carefully attended to.
3. Assurance that preferences for withholding and withdrawing life-sustaining interventions will be honored.
4. Assurance that the personal goals of the dying person will be addressed.
5. Assurance that the dignity of the dying person will be a priority.
6. Assurance that health care providers will not abandon the dying person.
7. Assurance that the burden to family and others will be addressed.
8. Assurance that advance directives for care will be respected regardless of the location of care.
9. Assurance that organizational mechanisms are in place to evaluate the availability and quality of end-of-life, palliative, and hospice care services, including the evaluation of administrative and regulatory barriers.
10. Assurance that necessary health care services will be provided and that relevant reimbursement policies are available.
11. Assurance that the goals expressed in subparagraphs 1.-10. will be accomplished in a culturally appropriate manner.

(6) The Department of Elderly Affairs, the Agency for Health Care Administration, and the Department of Health shall jointly create a campaign on end-of-life care for purposes of educating the public. This campaign should include culturally sensitive programs to improve understanding of end-of-life care issues in minority communities.

History.—s. 2, ch. 92-199; s. 1144, ch. 97-102; s. 17, ch. 99-331; s. 7, ch. 2000-295; s. 4, ch. 2001-250; ss. 132, 133, ch. 2001-277.

765.103 Existing advance directives.—Any advance directive made prior to October 1, 1999, shall be given effect as executed, provided such directive was legally effective when written.

History.—s. 2, ch. 92-199; s. 18, ch. 99-331.

765.104 Amendment or revocation.—

(1) An advance directive or designation of a surrogate may be amended or revoked at any time by a competent principal:

(a) By means of a signed, dated writing;
(b) By means of the physical cancellation or destruction of the advance directive by the principal or by another in the principal’s presence and at the principal’s direction;
(c) By means of an oral expression of intent to amend or revoke; or
(d) By means of a subsequently executed advance directive that is materially different from a previously executed advance directive.
(2) Unless otherwise provided in the advance directive or in an order of dissolution or annulment of marriage, the dissolution or annulment of marriage of the principal revokes the designation of the principal’s former spouse as a surrogate.

(3) Any such amendment or revocation will be effective when it is communicated to the surrogate, health care provider, or health care facility. No civil or criminal liability shall be imposed upon any person for a failure to act upon an amendment or revocation unless that person has actual knowledge of such amendment or revocation.

(4) Any patient for whom a medical proxy has been recognized under s. 765.401 and for whom any previous legal disability that precluded the patient’s ability to consent is removed may amend or revoke the recognition of the medical proxy and any uncompleted decision made by that proxy. The amendment or revocation takes effect when it is communicated to the proxy, the health care provider, or the health care facility in writing or, if communicated orally, in the presence of a third person.

History.—s. 2, ch. 92-199; s. 47, ch. 96-169; s. 19, ch. 99-331; s. 12, ch. 2002-195.

765.105 Review of surrogate or proxy’s decision.—The patient’s family, the health care facility, or the attending physician, or any other interested person who may reasonably be expected to be directly affected by the surrogate or proxy’s decision concerning any health care decision may seek expedited judicial intervention pursuant to rule 5.900 of the Florida Probate Rules, if that person believes:

(1) The surrogate or proxy’s decision is not in accord with the patient’s known desires or the provisions of this chapter;

(2) The advance directive is ambiguous, or the patient has changed his or her mind after execution of the advance directive;

(3) The surrogate or proxy was improperly designated or appointed, or the designation of the surrogate is no longer effective or has been revoked;

(4) The surrogate or proxy has failed to discharge duties, or incapacity or illness renders the surrogate or proxy incapable of discharging duties;

(5) The surrogate or proxy has abused powers; or

(6) The patient has sufficient capacity to make his or her own health care decisions.

History.—s. 2, ch. 92-199; s. 4, ch. 94-183.

765.106 Preservation of existing rights.—The provisions of this chapter are cumulative to the existing law regarding an individual’s right to consent, or refuse to consent, to medical treatment and do not impair any existing rights or responsibilities which a health care provider, a patient, including a minor, competent or incompetent person, or a patient’s family may have under the common law, Federal Constitution, State Constitution, or statutes of this state.

History.—s. 2, ch. 92-199; s. 5, ch. 94-183.

765.107 Construction.—
(1) This chapter shall not be construed to repeal by implication any provision of s. 766.103, the Florida Medical Consent Law. For all purposes, the Florida Medical Consent Law shall be considered an alternative to provisions of this section.

(2) Procedures provided in this chapter permitting the withholding or withdrawal of life-prolonging procedures do not apply to a person who never had capacity to designate a health care surrogate or execute a living will.

History.—s. 2, ch. 92-199; s. 20, ch. 99-331.

765.108 Effect with respect to insurance.—The making of an advance directive pursuant to the provisions of this chapter shall not affect the sale, procurement, or issuance of any policy of life insurance, nor shall such making of an advance directive be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance will be legally impaired or invalidated by the withholding or withdrawal of life-prolonging procedures from an insured patient in accordance with the provisions of this chapter, nor by any other treatment decision made according to this chapter, notwithstanding any term of the policy to the contrary. A person shall not be required to make an advance directive as a condition for being insured for, or receiving, health care services.

History.—s. 2, ch. 92-199.

765.109 Immunity from liability; weight of proof; presumption.—

(1) A health care facility, provider, or other person who acts under the direction of a health care facility or provider is not subject to criminal prosecution or civil liability, and will not be deemed to have engaged in unprofessional conduct, as a result of carrying out a health care decision made in accordance with the provisions of this chapter. The surrogate or proxy who makes a health care decision on a patient’s behalf, pursuant to this chapter, is not subject to criminal prosecution or civil liability for such action.

(2) The provisions of this section shall apply unless it is shown by a preponderance of the evidence that the person authorizing or effectuating a health care decision did not, in good faith, comply with the provisions of this chapter.

History.—s. 2, ch. 92-199.

765.110 Health care facilities and providers; discipline.—

(1) A health care facility, pursuant to Pub. L. No. 101-508, ss. 4206 and 4751, shall provide to each patient written information concerning the individual’s rights concerning advance directives and the health care facility’s policies respecting the implementation of such rights, and shall document in the patient’s medical records whether or not the individual has executed an advance directive.

(2) A health care provider or health care facility may not require a patient to execute an advance directive or to execute a new advance directive using the facility’s or provider’s forms. The patient’s advance directives shall travel with the patient as part of the patient’s medical record.
(3) A health care provider or health care facility shall be subject to professional discipline and revocation of license or certification, and a fine of not more than $1,000 per incident, or both, if the health care provider or health care facility, as a condition of treatment or admission, requires an individual to execute or waive an advance directive.

(4) The Department of Elderly Affairs for hospices and, in consultation with the Department of Elderly Affairs, the Department of Health for health care providers; the Agency for Health Care Administration for hospitals, nursing homes, home health agencies, and health maintenance organizations; and the Department of Children and Family Services for facilities subject to part I of chapter 394 shall adopt rules to implement the provisions of the section.

History.—s. 2, ch. 92-199; s. 6, ch. 94-183; s. 243, ch. 94-218; s. 48, ch. 96-169; s. 284, ch. 99-8; s. 21, ch. 99-331.

765.1103 Pain management and palliative care.—

(1) A patient shall be given information concerning pain management and palliative care when he or she discusses with the attending or treating physician, or such physician’s designee, the diagnosis, planned course of treatment, alternatives, risks, or prognosis for his or her illness. If the patient is incapacitated, the information shall be given to the patient’s health care surrogate or proxy, court-appointed guardian as provided in chapter 744, or attorney in fact under a durable power of attorney as provided in chapter 709. The court-appointed guardian or attorney in fact must have been delegated authority to make health care decisions on behalf of the patient.

(2) Health care providers and practitioners regulated under chapter 458, chapter 459, or chapter 464 must, as appropriate, comply with a request for pain management or palliative care from a patient under their care or, for an incapacitated patient under their care, from a surrogate, proxy, guardian, or other representative permitted to make health care decisions for the incapacitated patient. Facilities regulated under chapter 395, chapter 400, or chapter 429 must comply with the pain management or palliative care measures ordered by the patient’s physician.

History.—s. 8, ch. 2000-295; s. 5, ch. 2001-250; s. 134, ch. 2001-277; s. 105, ch. 2006-197.

765.1105 Transfer of a patient.—

(1) A health care provider or facility that refuses to comply with a patient’s advance directive, or the treatment decision of his or her surrogate, shall make reasonable efforts to transfer the patient to another health care provider or facility that will comply with the directive or treatment decision. This chapter does not require a health care provider or facility to commit any act which is contrary to the provider’s or facility’s moral or ethical beliefs, if the patient:

(a) Is not in an emergency condition; and

(b) Has received written information upon admission informing the patient of the policies of the health care provider or facility regarding such moral or ethical beliefs.
(2) A health care provider or facility that is unwilling to carry out the wishes of the patient or the treatment decision of his or her surrogate because of moral or ethical beliefs must within 7 days either:

(a) Transfer the patient to another health care provider or facility. The health care provider or facility shall pay the costs for transporting the patient to another health care provider or facility; or

(b) If the patient has not been transferred, carry out the wishes of the patient or the patient’s surrogate, unless the provisions of s. 765.105 apply.

History.—s. 4, ch. 92-199; s. 11, ch. 94-183; s. 1148, ch. 97-102; s. 30, ch. 99-331.

Note.—Former s. 765.308.

765.1115 Falsification, forgery, or willful concealment, cancellation, or destruction of directive or revocation or amendment; penalties.—

(1) Any person who willfully conceals, cancels, defaces, obliterates, or damages an advance directive without the principal’s consent or who falsifies or forges the revocation or amendment of an advance directive of another, and who thereby causes life-prolonging procedures to be utilized in contravention of the previously expressed intent of the principal, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any person who falsifies or forges the advance directive of another or who willfully conceals or withholds personal knowledge of the revocation of an advance directive, with the intent to cause a withholding or withdrawal of life-prolonging procedures contrary to the wishes of the principal, and who thereby because of such act directly causes life-prolonging procedures to be withheld or withdrawn and death to be hastened, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 4, ch. 92-199; s. 31, ch. 99-331.

Note.—Former s. 765.310.

765.112 Recognition of advance directive executed in another state.—An advance directive executed in another state in compliance with the law of that state or of this state is validly executed for the purposes of this chapter.

History.—s. 2, ch. 92-199.

765.113 Restrictions on providing consent.—Unless the principal expressly delegates such authority to the surrogate in writing, or a surrogate or proxy has sought and received court approval pursuant to rule 5.900 of the Florida Probate Rules, a surrogate or proxy may not provide consent for:

(1) Abortion, sterilization, electroshock therapy, psychosurgery, experimental treatments that have not been approved by a federally approved institutional review board in accordance with 45 C.F.R. part 46 or 21 C.F.R. part 56, or voluntary admission to a mental health facility.

(2) Withholding or withdrawing life-prolonging procedures from a pregnant patient prior to viability as defined in s. 390.0111(4).
765.201 Short title.

765.202 Designation of a health care surrogate.

765.203 Suggested form of designation.

765.204 Capacity of principal; procedure.

765.205 Responsibility of the surrogate.

765.201 Short title.—Sections 765.202-765.205 may be cited as the “Florida Health Care Surrogate Act.”

History.—s. 3, ch. 92-199.

765.202 Designation of a health care surrogate.—

(1) A written document designating a surrogate to make health care decisions for a principal shall be signed by the principal in the presence of two subscribing adult witnesses. A principal unable to sign the instrument may, in the presence of witnesses, direct that another person sign the principal’s name as required herein. An exact copy of the instrument shall be provided to the surrogate.

(2) The person designated as surrogate shall not act as witness to the execution of the document designating the health care surrogate. At least one person who acts as a witness shall be neither the principal’s spouse nor blood relative.

(3) A document designating a health care surrogate may also designate an alternate surrogate provided the designation is explicit. The alternate surrogate may assume his or her duties as surrogate for the principal if the original surrogate is unwilling or unable to perform his or her duties. The principal’s failure to designate an alternate surrogate shall not invalidate the designation.

(4) If neither the designated surrogate nor the designated alternate surrogate is able or willing to make health care decisions on behalf of the principal and in accordance with the principal’s instructions, the health care facility may seek the appointment of a proxy pursuant to part IV.

(5) A principal may designate a separate surrogate to consent to mental health treatment in the event that the principal is determined by a court to be incompetent to consent to mental health treatment and a guardian advocate is appointed as provided under s. 394.4598. However, unless the document designating the health care surrogate expressly states otherwise, the court shall assume that the health care surrogate authorized to make health care decisions under this chapter is also the principal’s choice to make decisions regarding mental health treatment.

(6) Unless the document states a time of termination, the designation shall remain in effect until revoked by the principal.
(7) A written designation of a health care surrogate executed pursuant to this section establishes a rebuttable presumption of clear and convincing evidence of the principal’s designation of the surrogate.

History.—s. 3, ch. 92-199; s. 8, ch. 94-183; s. 49, ch. 96-169; s. 1797, ch. 97-102.

765.203 Suggested form of designation.—A written designation of a health care surrogate executed pursuant to this chapter may, but need not be, in the following form:

DESIGNATION OF HEALTH CARE SURROGATE
Name:____(Last)____(First)____(Middle Initial)____

In the event that I have been determined to be incapacitated to provide informed consent for medical treatment and surgical and diagnostic procedures, I wish to designate as my surrogate for health care decisions:
Name:________
Address:________
________________________
Zip Code:________
Phone:______________

If my surrogate is unwilling or unable to perform his or her duties, I wish to designate as my alternate surrogate:
Name:________
Address:________
________________________
Zip Code:________
Phone:______________

I fully understand that this designation will permit my designee to make health care decisions and to provide, withhold, or withdraw consent on my behalf; to apply for public benefits to defray the cost of health care; and to authorize my admission to or transfer from a health care facility.

Additional instructions (optional):________________________________________

I further affirm that this designation is not being made as a condition of treatment or admission to a health care facility. I will notify and send a copy of this document to the following persons other than my surrogate, so they may know who my surrogate is.
Name:________
Name:______________________________
Signed:__________
Date:__________
Witnesses: 1.__________
2.__________

History.—s. 3, ch. 92-199; s. 1145, ch. 97-102; s. 9, ch. 2000-295; s. 1, ch. 2008-223.
765.204 Capacity of principal; procedure.—

(1) A principal is presumed to be capable of making health care decisions for herself or himself unless she or he is determined to be incapacitated. Incapacity may not be inferred from the person’s voluntary or involuntary hospitalization for mental illness or from her or his mental retardation.

(2) If a principal's capacity to make health care decisions for herself or himself or provide informed consent is in question, the attending physician shall evaluate the principal’s capacity and, if the physician concludes that the principal lacks capacity, enter that evaluation in the principal’s medical record. If the attending physician has a question as to whether the principal lacks capacity, another physician shall also evaluate the principal’s capacity, and if the second physician agrees that the principal lacks the capacity to make health care decisions or provide informed consent, the health care facility shall enter both physician’s evaluations in the principal’s medical record. If the principal has designated a health care surrogate or has delegated authority to make health care decisions to an attorney in fact under a durable power of attorney, the facility shall notify such surrogate or attorney in fact in writing that her or his authority under the instrument has commenced, as provided in chapter 709 or s. 765.203.

(3) The surrogate’s authority shall commence upon a determination under subsection (2) that the principal lacks capacity, and such authority shall remain in effect until a determination that the principal has regained such capacity. Upon commencement of the surrogate’s authority, a surrogate who is not the principal’s spouse shall notify the principal’s spouse or adult children of the principal’s designation of the surrogate. In the event the attending physician determines that the principal has regained capacity, the authority of the surrogate shall cease, but shall recommence if the principal subsequently loses capacity as determined pursuant to this section.

(4) A determination made pursuant to this section that a principal lacks capacity to make health care decisions shall not be construed as a finding that a principal lacks capacity for any other purpose.

(5) In the event the surrogate is required to consent to withholding or withdrawing life-prolonging procedures, the provisions of part III shall apply.

History.—s. 3, ch. 92-199; s. 1146, ch. 97-102; s. 22, ch. 99-331; s. 10, ch. 2000-295.

765.205 Responsibility of the surrogate.—

(1) The surrogate, in accordance with the principal’s instructions, unless such authority has been expressly limited by the principal, shall:

(a) Have authority to act for the principal and to make all health care decisions for the principal during the principal’s incapacity.

(b) Consult expeditiously with appropriate health care providers to provide informed consent, and make only health care decisions for the principal which he or she believes the principal would have made under the circumstances if the principal were capable of making such decisions. If there is no indication of what the principal would have chosen, the surrogate may consider the patient’s best
interest in deciding that proposed treatments are to be withheld or that treatments currently in effect are to be withdrawn.

(c) Provide written consent using an appropriate form whenever consent is required, including a physician’s order not to resuscitate.

(d) Be provided access to the appropriate medical records of the principal.

(e) Apply for public benefits, such as Medicare and Medicaid, for the principal and have access to information regarding the principal’s income and assets and banking and financial records to the extent required to make application. A health care provider or facility may not, however, make such application a condition of continued care if the principal, if capable, would have refused to apply.

(2) The surrogate may authorize the release of information and medical records to appropriate persons to ensure the continuity of the principal’s health care and may authorize the admission, discharge, or transfer of the principal to or from a health care facility or other facility or program licensed under chapter 400 or chapter 429.

(3) If, after the appointment of a surrogate, a court appoints a guardian, the surrogate shall continue to make health care decisions for the principal, unless the court has modified or revoked the authority of the surrogate pursuant to s. 744.3115. The surrogate may be directed by the court to report the principal’s health care status to the guardian.

History.—s. 3, ch. 92-199; s. 9, ch. 94-183; s. 50, ch. 96-169; s. 23, ch. 99-331; s. 11, ch. 2000-295; s. 6, ch. 2001-250; s. 135, ch. 2001-277; s. 106, ch. 2006-197.

PART III
LIFE-PROLONGING PROCEDURES

765.301 Short title.
765.302 Procedure for making a living will; notice to physician.
765.303 Suggested form of a living will.
765.304 Procedure for living will.
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765.306 Determination of patient condition.
765.309 Mercy killing or euthanasia not authorized; suicide distinguished.

765.301 Short title.—Sections 765.302-765.309 may be cited as the “Life-Prolonging Procedure Act of Florida.”

History.—s. 4, ch. 92-199; s. 24, ch. 99-331.

765.302 Procedure for making a living will; notice to physician.—

(1) Any competent adult may, at any time, make a living will or written declaration and direct the providing, withholding, or withdrawal of life-prolonging procedures in the event that such person has a terminal condition, has an end-stage condition, or is in a persistent vegetative state. A living will must be signed by the principal in the presence of two subscribing witnesses, one of whom is neither a
spouse nor a blood relative of the principal. If the principal is physically unable to sign the living will, one of the witnesses must subscribe the principal’s signature in the principal’s presence and at the principal’s direction.

(2) It is the responsibility of the principal to provide for notification to her or his attending or treating physician that the living will has been made. In the event the principal is physically or mentally incapacitated at the time the principal is admitted to a health care facility, any other person may notify the physician or health care facility of the existence of the living will. An attending or treating physician or health care facility which is so notified shall promptly make the living will or a copy thereof a part of the principal’s medical records.

(3) A living will, executed pursuant to this section, establishes a rebuttable presumption of clear and convincing evidence of the principal’s wishes.

History.—s. 4, ch. 92-199; s. 1147, ch. 97-102; s. 25, ch. 99-331.

765.303 Suggested form of a living will.—

(1) A living will may, BUT NEED NOT, be in the following form:

Living Will

Declaration made this ____ day of ____, (year), I, __________, willfully and voluntarily make known my desire that my dying not be artificially prolonged under the circumstances set forth below, and I do hereby declare that, if at any time I am incapacitated and

(initial) I have a terminal condition

or (initial) I have an end-stage condition

or (initial) I am in a persistent vegetative state

and if my attending or treating physician and another consulting physician have determined that there is no reasonable medical probability of my recovery from such condition, I direct that life-prolonging procedures be withheld or withdrawn when the application of such procedures would serve only to prolong artificially the process of dying, and that I be permitted to die naturally with only the administration of medication or the performance of any medical procedure deemed necessary to provide me with comfort care or to alleviate pain.

It is my intention that this declaration be honored by my family and physician as the final expression of my legal right to refuse medical or surgical treatment and to accept the consequences for such refusal.

In the event that I have been determined to be unable to provide express and informed consent regarding the withholding, withdrawal, or continuation of life-prolonging procedures, I wish to designate, as my surrogate to carry out the provisions of this declaration:

Name: __________
Address: __________
I understand the full import of this declaration, and I am emotionally and mentally competent to make this declaration.

Additional Instructions (optional): ________________________________

____(Signed)____
____Witness____
____Address____
____Phone____
____Witness____
____Address____
____Phone____

(2) The principal’s failure to designate a surrogate shall not invalidate the living will.

History.—s. 4, ch. 92-199; s. 35, ch. 99-6; s. 26, ch. 99-331; s. 12, ch. 2000-295.

765.304 Procedure for living will.—

(1) If a person has made a living will expressing his or her desires concerning life-prolonging procedures, but has not designated a surrogate to execute his or her wishes concerning life-prolonging procedures or designated a surrogate under part II, the attending physician may proceed as directed by the principal in the living will. In the event of a dispute or disagreement concerning the attending physician’s decision to withhold or withdraw life-prolonging procedures, the attending physician shall not withhold or withdraw life-prolonging procedures pending review under s. 765.105. If a review of a disputed decision is not sought within 7 days following the attending physician’s decision to withhold or withdraw life-prolonging procedures, the attending physician may proceed in accordance with the principal’s instructions.

(2) Before proceeding in accordance with the principal’s living will, it must be determined that:

(a) The principal does not have a reasonable medical probability of recovering capacity so that the right could be exercised directly by the principal.

(b) The principal has a terminal condition, has an end-stage condition, or is in a persistent vegetative state.

(c) Any limitations or conditions expressed orally or in a written declaration have been carefully considered and satisfied.

History.—s. 4, ch. 92-199; s. 10, ch. 94-183; s. 27, ch. 99-331.

765.305 Procedure in absence of a living will.—

(1) In the absence of a living will, the decision to withhold or withdraw life-prolonging procedures from a patient may be made by a health care surrogate designated by the patient pursuant to part II
unless the designation limits the surrogate’s authority to consent to the withholding or withdrawal of life-prolonging procedures.

(2) Before exercising the incompetent patient’s right to forego treatment, the surrogate must be satisfied that:
   (a) The patient does not have a reasonable medical probability of recovering capacity so that the right could be exercised by the patient.
   (b) The patient has an end-stage condition, the patient is in a persistent vegetative state, or the patient’s physical condition is terminal.

History.—s. 4, ch. 92-199; s. 28, ch. 99-331; s. 13, ch. 2000-295.

765.306 Determination of patient condition.—In determining whether the patient has a terminal condition, has an end-stage condition, or is in a persistent vegetative state or may recover capacity, or whether a medical condition or limitation referred to in an advance directive exists, the patient’s attending or treating physician and at least one other consulting physician must separately examine the patient. The findings of each such examination must be documented in the patient’s medical record and signed by each examining physician before life-prolonging procedures may be withheld or withdrawn.

History.—s. 4, ch. 92-199; s. 13, ch. 94-183; s. 29, ch. 99-331; s. 14, ch. 2000-295.

765.309 Mercy killing or euthanasia not authorized; suicide distinguished.—
   (1) Nothing in this chapter shall be construed to condone, authorize, or approve mercy killing or euthanasia, or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.
   (2) The withholding or withdrawal of life-prolonging procedures from a patient in accordance with any provision of this chapter does not, for any purpose, constitute a suicide.

History.—s. 4, ch. 92-199.

PART IV
ABSENCE OF ADVANCE DIRECTIVE

765.401 The proxy.
765.404 Persistent vegetative state.

765.401 The proxy.—
   (1) If an incapacitated or developmentally disabled patient has not executed an advance directive, or designated a surrogate to execute an advance directive, or the designated or alternate surrogate is no longer available to make health care decisions, health care decisions may be made for the patient by any of the following individuals, in the following order of priority, if no individual in a prior class is reasonably available, willing, or competent to act:
       (a) The judicially appointed guardian of the patient or the guardian advocate of the person having a developmental disability as defined in s. 393.063, who has been authorized to consent to medical
treatment, if such guardian has previously been appointed; however, this paragraph shall not be
construed to require such appointment before a treatment decision can be made under this subsection;

(b) The patient’s spouse;

(c) An adult child of the patient, or if the patient has more than one adult child, a majority of the
adult children who are reasonably available for consultation;

(d) A parent of the patient;

(e) The adult sibling of the patient or, if the patient has more than one sibling, a majority of the
adult siblings who are reasonably available for consultation;

(f) An adult relative of the patient who has exhibited special care and concern for the patient and
who has maintained regular contact with the patient and who is familiar with the patient’s activities,
health, and religious or moral beliefs; or

(g) A close friend of the patient.

(h) A clinical social worker licensed pursuant to chapter 491, or who is a graduate of a court-
approved guardianship program. Such a proxy must be selected by the provider’s bioethics committee
and must not be employed by the provider. If the provider does not have a bioethics committee, then
such a proxy may be chosen through an arrangement with the bioethics committee of another provider.
The proxy will be notified that, upon request, the provider shall make available a second physician, not
involved in the patient’s care to assist the proxy in evaluating treatment. Decisions to withhold or
withdraw life-prolonging procedures will be reviewed by the facility’s bioethics committee.

Documentation of efforts to locate proxies from prior classes must be recorded in the patient record.

(2) Any health care decision made under this part must be based on the proxy’s informed consent
and on the decision the proxy reasonably believes the patient would have made under the
circumstances. If there is no indication of what the patient would have chosen, the proxy may consider
the patient’s best interest in deciding that proposed treatments are to be withheld or that treatments
currently in effect are to be withdrawn.

(3) Before exercising the incapacitated patient’s rights to select or decline health care, the proxy
must comply with the provisions of ss. 765.205 and 765.305, except that a proxy’s decision to withhold
or withdraw life-prolonging procedures must be supported by clear and convincing evidence that the
decision would have been the one the patient would have chosen had the patient been competent or,
if there is no indication of what the patient would have chosen, that the decision is in the patient’s
best interest.

(4) Nothing in this section shall be construed to preempt the designation of persons who may
consent to the medical care or treatment of minors established pursuant to s. 743.0645.

History.—s. 5, ch. 92-199; s. 12, ch. 94-183; s. 32, ch. 99-331; s. 15, ch. 2000-295; s. 7, ch. 2001-250; s. 136, ch.
765.404 Persistent vegetative state.—For persons in a persistent vegetative state, as determined by the attending physician in accordance with currently accepted medical standards, who have no advance directive and for whom there is no evidence indicating what the person would have wanted under such conditions, and for whom, after a reasonably diligent inquiry, no family or friends are available or willing to serve as a proxy to make health care decisions for them, life-prolonging procedures may be withheld or withdrawn under the following conditions:

1. The person has a judicially appointed guardian representing his or her best interest with authority to consent to medical treatment; and

2. The guardian and the person’s attending physician, in consultation with the medical ethics committee of the facility where the patient is located, conclude that the condition is permanent and that there is no reasonable medical probability for recovery and that withholding or withdrawing life-prolonging procedures is in the best interest of the patient. If there is no medical ethics committee at the facility, the facility must have an arrangement with the medical ethics committee of another facility or with a community-based ethics committee approved by the Florida Bio-ethics Network. The ethics committee shall review the case with the guardian, in consultation with the person’s attending physician, to determine whether the condition is permanent and there is no reasonable medical probability for recovery. The individual committee members and the facility associated with an ethics committee shall not be held liable in any civil action related to the performance of any duties required in this subsection.

History.—s. 33, ch. 99-331.

PART V
ANATOMICAL GIFTS

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765.510 Legislative declaration.—Because of the rapid medical progress in the fields of tissue and organ preservation, transplantation of tissue, and tissue culture, and because it is in the public interest to aid the medical developments in these fields, the Legislature in enacting this part intends to encourage and aid the development of reconstructive medicine and surgery and the development of medical research by facilitating premortem and postmortem authorizations for donations of tissue and organs. It is the purpose of this part to regulate the gift of a body or parts of a body, the gift to be made after the death of a donor.

History.—s. 1, ch. 74-106; s. 113, ch. 75-220; s. 3, ch. 84-264; s. 60, ch. 2001-226.

Note.—Created from former s. 736.21; s. 732.910.

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

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

(2) “Anatomical gift” or “gift” means a donation of all or part of a human body to take effect after the donor’s death and to be used for transplantation, therapy, research, or education.

(3) “Bank” or “storage facility” means a facility licensed, accredited, or approved under the laws of any state for storage of human bodies or body parts.

(4) “Death” means the absence of life as determined, in accordance with currently accepted medical standards, by the irreversible cessation of all respiration and circulatory function, or as determined, in accordance with s. 382.009, by the irreversible cessation of the functions of the entire brain, including the brain stem.

(5) “Decedent” means a deceased individual whose body or body parts may be, or are, the source of an anatomical gift.

(6) “Department” means the Department of Highway Safety and Motor Vehicles.

(7) “Disinterested witness” means a witness other than a person listed in s. 765.512(3) or other family member.

(8) “Document of gift” means any of the documents or mechanisms used in making an anatomical gift under s. 765.514.
(9) “Donor” means an individual who makes an anatomical gift of all or part of his or her body.

(10) “Donor registry” means a database that contains records of anatomical gifts and amendments to, or revocations of, such gifts.

(11) “Eye bank” means an entity that is accredited by the Eye Bank Association of America or otherwise regulated under federal or state law to engage in the retrieval, screening, testing, processing, storage, or distribution of human eye tissue.

(12) “Guardian” means a person appointed pursuant to chapter 744. The term does not include a guardian ad litem.

(13) “Hospital” means a hospital licensed, accredited, or approved under the laws of any state and includes a hospital operated by the United States Government or a state, or a subdivision thereof, although not required to be licensed under state laws.

(14) “Identification card” means an official identification card issued by a governmental entity, state agency, or subdivision thereof.

(15) “Organ procurement organization” means an entity that is designated as an organ procurement organization by the Secretary of the United States Department of Health and Human Services and that engages in the retrieval, screening, testing, processing, storage, or distribution of human organs.

(16) “Part of the body” or “body part” means an organ, eye, or tissue of a human being. The term does not include the whole body.

(17) “Physician” or “surgeon” means a physician or surgeon licensed to practice under chapter 458 or chapter 459 or similar laws of any state. “Surgeon” includes dental or oral surgeon.

(18) “Procurement” means any retrieval, recovery, processing, storage, or distribution of human organs or tissues for transplantation, therapy, research, or education.

(19) “Procurement organization” means an organ procurement organization, eye bank, or tissue bank.

(20) “Reasonably available” means able to be contacted by a procurement organization in a timely manner without undue effort, and willing and able to act in a manner consistent with existing medical protocols necessary for the making of an anatomical gift.

(21) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(22) “Sign” or “signed” means, with the present intent to authenticate or adopt a record, to execute or adopt a tangible symbol, or attach to or logically associate an electronic symbol, sound, or process with the record.

(23) “Tissue bank” means an entity that is accredited by the American Association of Tissue Banks or otherwise regulated under federal or state law to engage in the retrieval, screening, testing, processing, storage, or distribution of human tissue.
765.512 Persons who may make an anatomical gift.—

(1) Any person who may make a will may make an anatomical gift of his or her body.

(a) If the decedent makes an anatomical gift by one of the methods listed in s. 765.514(1), and in the absence of actual notice of contrary indications by the decedent, the document or entry in the donor registry is legally sufficient evidence of the decedent’s informed consent to donate an anatomical gift.

(b) An anatomical gift made by a qualified donor and not revoked by the donor, as provided in s. 765.516, is irrevocable after the donor’s death. A family member, guardian, representative ad litem, or health care surrogate may not modify, deny, or prevent a donor’s wish or intent to make an anatomical gift after the donor’s death.

(2) A health care surrogate designated by the decedent pursuant to part II of this chapter may give all or any part of the decedent’s body for any purpose specified in s. 765.513 absent actual notice of contrary indications by the decedent.

(3) If the decedent has not made an anatomical gift or designated a health surrogate, a member of one of the classes of persons listed below, in the order of priority listed and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of a prior class, may give all or any part of the decedent’s body for any purpose specified in s. 765.513:

(a) The spouse of the decedent;
(b) An adult son or daughter of the decedent;
(c) Either parent of the decedent;
(d) An adult brother or sister of the decedent;
(e) An adult grandchild of the decedent;
(f) A grandparent of the decedent;
(g) A close personal friend, as defined in s. 765.101;
(h) A guardian of the person of the decedent at the time of his or her death; or
(i) A representative ad litem appointed by a court of competent jurisdiction upon a petition heard ex parte filed by any person, who shall ascertain that no person of higher priority exists who objects to the gift of all or any part of the decedent’s body and that no evidence exists of the decedent’s having made a communication expressing a desire that his or her body or body parts not be donated upon death.
Those of higher priority who are reasonably available must be contacted and made aware of the proposed gift and a reasonable search must be conducted which shows that there would have been no objection to the gift by the decedent.

(4) A donee may not accept an anatomical gift if the donee has actual notice of contrary indications by the donor or actual notice that an anatomical gift by a member of a class is opposed by a member of a prior class.

(5) The person authorized by subsection (3) may make the anatomical gift after the decedent’s death or immediately before the decedent’s death.

(6) An anatomical gift authorizes:
   (a) Any examination necessary to assure medical acceptability of the gift for the purposes intended.
   (b) The decedent’s medical provider, family, or a third party to furnish medical records requested concerning the decedent’s medical and social history.

(7) Once the anatomical gift has been made, the rights of the donee are paramount to the rights of others, except as provided by s. 765.517.

**History.**—s. 1, ch. 74-106; s. 45, ch. 75-220; s. 4, ch. 84-264; s. 62, ch. 85-62; s. 5, ch. 95-423; s. 974, ch. 97-102; s. 6, ch. 98-68; s. 12, ch. 99-331; s. 62, ch. 2001-226; s. 2, ch. 2003-46; s. 2, ch. 2008-223; s. 2, ch. 2009-218.

**Note.**—Created from former s. 736.23; s. 732.912.

### 765.513 Donees; purposes for which anatomical gifts may be made.—

(1) The following persons or entities may become donees of anatomical gifts of bodies or parts of them for the purposes stated:
   (a) Any procurement organization or accredited medical or dental school, college, or university for education, research, therapy, or transplantation.
   (b) Any individual specified by name for therapy or transplantation needed by him or her.

(2) If multiple purposes are set forth in the document of gift but are not set forth in any priority order, the anatomical gift shall be used first for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(3) The Legislature declares that the public policy of this state prohibits restrictions on the possible recipients of an anatomical gift on the basis of race, color, religion, gender, national origin, age, physical disability, health status, marital status, or economic status, and such restrictions are void and unenforceable.

**History.**—s. 1, ch. 74-106; s. 45, ch. 75-220; s. 1, ch. 94-305; s. 975, ch. 97-102; s. 7, ch. 98-68; s. 63, ch. 2001-226; s. 3, ch. 2009-218.

**Note.**—Created from former s. 736.24; s. 732.913.

### 765.514 Manner of making anatomical gifts.—

(1) A person may make an anatomical gift of all or part of his or her body under s. 765.512(1) by:
   (a) Signing an organ and tissue donor card.
(b) Registering online with the donor registry.

(c) Signifying an intent to donate on his or her driver’s license or identification card issued by the department. Revocation, suspension, expiration, or cancellation of the driver’s license or identification card does not invalidate the gift.

(d) Expressing a wish to donate in a living will or other advance directive.

(e) Executing a will that includes a provision indicating that the testator wishes to make an anatomical gift. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated or if it is declared invalid for testamentary purposes, the gift is nevertheless valid to the extent that it has been acted upon in good faith.

(f) Expressing a wish to donate in a document other than a will. The document must be signed by the donor in the presence of two witnesses who shall sign the document in the donor’s presence. If the donor cannot sign, the document may be signed for him or her at the donor’s direction and in his or her presence and the presence of two witnesses who must sign the document in the donor’s presence. Delivery of the document of gift during the donor’s lifetime is not necessary to make the gift valid. The following form of written document is sufficient for any person to make an anatomical gift for the purposes of this part:

UNIFORM DONOR CARD

The undersigned hereby makes this anatomical gift, if medically acceptable, to take effect on death. The words and marks below indicate my desires:

I give:

(a) ____ any needed organs, tissues, or eyes;
(b) ____ only the following organs, tissues, or eyes
    [Specify the organs, tissues, or eyes]

for the purpose of transplantation, therapy, medical research, or education;

(c) ____ my body for anatomical study if needed. Limitations or special wishes, if any:
    (If applicable, list specific donee;
    this must be arranged in advance with the donee.)

Signed by the donor and the following witnesses in the presence of each other:

(Signature of donor)             (Date of birth of donor)
(Date signed)                   (City and State)
(Witness)                       (Witness)
(Address)                       (Address)

(2) The anatomical gift may be made to a donee listed in s. 765.513, and the donee may be specified by name.
Any anatomical gift by a health care surrogate designated by the decedent pursuant to part II of this chapter or a member of a class designated in s. 765.512(3) must be made by a document signed by that person or made by that person’s witnessed telephonic discussion, telegraphic message, or other recorded message.

History.—s. 1, ch. 74-106; s. 45, ch. 75-220; s. 1, ch. 83-171; s. 2, ch. 94-305; s. 6, ch. 95-423; s. 976, ch. 97-102; s. 8, ch. 98-68; s. 13, ch. 99-331; s. 64, ch. 2001-226; s. 3, ch. 2008-223; s. 4, ch. 2009-218.

Note.—Created from former s. 736.25; s. 732.914.

765.515 Delivery of donor document.—

(1) If an anatomical gift is made pursuant to s. 765.521, the completed donor registration card shall be delivered to the department, and the department must communicate the donor’s intent to the donor registry, but delivery is not necessary to the validity of the gift. If the donor withdraws the gift, the records of the department must be updated to reflect such withdrawal, and the department must communicate the withdrawal to the donor registry for the purpose of updating the registry.

(2) If an anatomical gift is made by the donor to a specified donee, the document of gift, other than a will, may be delivered to the donee to expedite the appropriate procedures immediately after death, but delivery is not necessary to the validity of the gift. The document of gift may be deposited in any hospital, bank, storage facility, or registry office that accepts such documents for safekeeping or to facilitate the donation of organs and tissue after death.

(3) At the request of any interested party upon or after the donor’s death, the person in possession shall produce the document of gift for examination.

History.—s. 1, ch. 74-106; s. 45, ch. 75-220; s. 2, ch. 83-171; s. 1, ch. 87-372; s. 7, ch. 95-423; s. 33, ch. 96-418; s. 9, ch. 98-68; s. 65, ch. 2001-226; s. 17, ch. 2008-9; s. 4, ch. 2008-223; s. 5, ch. 2009-218.

Note.—Created from former s. 736.26; s. 732.915.

765.5155 Donor registry; education program.—

(1) The Legislature finds that:

(a) There is a shortage of organ and tissue donors in this state willing to provide the organs and tissue that could save lives or enhance the quality of life for many persons.

(b) There is a need to encourage the various minority populations of this state to donate organs and tissue.

(c) A statewide donor registry having an online donor registration process coupled with an enhanced program of donor education will lead to an increase in the number of organ and tissue donors registered in this state, thus affording more persons who are awaiting organ or tissue transplants the opportunity for a full and productive life.

(2) The agency and the department shall jointly contract for the operation of a donor registry and education program. The contractor shall be procured by competitive solicitation pursuant to chapter 287, notwithstanding any exemption in s. 287.057(3)(f). When awarding the contract, priority shall be
given to existing nonprofit groups that are based within the state, have expertise working with procurement organizations, have expertise in conducting statewide organ and tissue donor public education campaigns, and represent the needs of the organ and tissue donation community in the state.

(3) The contractor shall be responsible for:

(a) The development, implementation, and maintenance of an interactive web-based donor registry that, through electronic means, allows for online organ donor registration and the recording of organ and tissue donation records submitted through the driver’s license identification program or through other sources.
   1. The registry must be maintained in a manner that allows, through electronic and telephonic methods, immediate access to organ and tissue donation records 24 hours a day, 7 days a week.
   2. Access to the registry must be through coded and secure means to protect the integrity of the data in the registry.

(b) A continuing program to educate and inform medical professionals, law enforcement agencies and officers, other state and local government employees, high school students, minorities, and the public about the laws of this state relating to anatomical gifts and the need for anatomical gifts.
   1. Existing community resources, when available, must be used to support the program and volunteers may assist the program to the maximum extent possible.
   2. The contractor shall coordinate with the head of a state agency or other political subdivision of the state, or his or her designee, to establish convenient times, dates, and locations for educating that entity’s employees.

(c) Preparing and submitting an annual written report to the agency by December 31 of each year. The report must include:
   1. The number of donors on the registry and an analysis of the registration rates by location and method of donation;
   2. The characteristics of donors as determined from registry information submitted directly by the donors or by the department;
   3. The annual dollar amount of voluntary contributions received by the contractor;
   4. A description of the educational campaigns and initiatives implemented during the year and an evaluation of their effectiveness in increasing enrollment on the registry; and
   5. An analysis of Florida’s registry compared with other states’ donor registries.

(4) Costs for the donor registry and education program shall be paid by the agency from the funds deposited into the Health Care Trust Fund pursuant to ss. 320.08047 and 322.08, which are designated for maintaining the donor registry and education program. In addition, the contractor may receive and use voluntary contributions to help support the registry and provide education.
The donor registry established by this section is designated as the “Joshua Abbott Organ and Tissue Registry.”

History.—s. 5, ch. 2008-223; s. 6, ch. 2009-218; s. 40, ch. 2010-151.

765.51551 Donor registry; public records exemption.—
(1) Information held in the donor registry which identifies a donor is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2) Such information may be disclosed to the following:
   (a) Procurement organizations that have been certified by the agency for the purpose of ascertaining or effectuating the existence of a gift under s. 765.522.
   (b) Persons engaged in bona fide research if the person agrees to:
       1. Submit a research plan to the agency that specifies the exact nature of the information requested and the intended use of the information;
       2. Maintain the confidentiality of the records or information if personal identifying information is made available to the researcher;
       3. Destroy any confidential records or information obtained after the research is concluded; and
       4. Not directly or indirectly contact, for any purpose, any donor or donee.

(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2013, unless reviewed and saved from repeal through reenactment by the Legislature.

History.—s. 1, ch. 2008-222; s. 7, ch. 2009-218.

765.516 Donor amendment or revocation of anatomical gift.—
(1) A donor may amend the terms of or revoke an anatomical gift by:
   (a) The execution and delivery to the donee of a signed statement witnessed by at least two adults, at least one of whom is a disinterested witness.
   (b) An oral statement that is made in the presence of two persons, one of whom is not a family member, and communicated to the donor’s family or attorney or to the donee. An oral statement is effective only if the procurement organization, transplant hospital, or physician or technician has actual notice of the oral amendment or revocation before an incision is made to the decedent’s body or an invasive procedure to prepare the recipient has begun.
   (c) A statement made during a terminal illness or injury addressed to an attending physician, who must communicate the revocation of the gift to the procurement organization.
   (d) A signed document found on or about the donor’s person.
   (e) Removing his or her name from the donor registry.
   (f) A later-executed document of gift which amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.
(g) By the destruction or cancellation of the document of gift or the destruction or cancellation of that portion of the document of gift used to make the gift with the intent to revoke the gift.

(2) Any anatomical gift made by a will may also be amended or revoked in the manner provided for the amendment or revocation of wills or as provided in paragraph (1)(a).

History.—s. 1, ch. 74-106; s. 113, ch. 75-220; s. 3, ch. 83-171; s. 8, ch. 95-423; s. 977, ch. 97-102; s. 10, ch. 98-68; s. 66, ch. 2001-226; s. 3, ch. 2003-46; s. 6, ch. 2008-223; s. 8, ch. 2009-218.

Note.—Created from former s. 736.27; s. 732.916.

765.517 Rights and duties at death.—

(1) The donee, pursuant to s. 765.515(2), may accept or reject an anatomical gift. If the donee accepts a gift to be used for research or education purposes, the donee may authorize embalming and the use of the body in funeral services, subject to the terms of the gift. If the gift is of a part of the body, the donee shall cause the part to be removed without unnecessary mutilation upon the death of the donor and before or after embalming. After removal of the body part, custody of the remainder of the body vests in the surviving spouse, next of kin, or other persons under obligation to dispose of the body.

(2) The time of death shall be determined by a physician who attends the donor at the donor’s death or, if there is no such physician, the physician who certifies the death. After death, those physicians or the donor’s primary care physician may participate in, but may not obstruct, the procedures to preserve the donor’s organs or tissues and may not be paid or reimbursed for such participation, nor be associated with or employed by, a procurement organization. These physicians may not participate in the procedures for removing or transplanting a part. However, this subsection does not prevent a physician from serving in a voluntary capacity on the board of directors of a procurement organization or participating on any board, council, commission, or similar body related to the organ and tissue procurement system.

(3) The procurement organizations, or hospital medical professionals under the direction thereof, may perform any and all tests to evaluate the deceased as a potential donor and any invasive procedures on the deceased body in order to preserve the potential donor’s organs. These procedures do not include the surgical removal of an organ or penetrating any body cavity, specifically for the purpose of donation, until:

(a) It has been verified that the deceased’s consent to donate appears in the donor registry or a properly executed document of gift is located; or

(b) If a properly executed document of gift cannot be located or the deceased’s consent is not listed in the donor registry, a person specified in s. 765.512(2) or (3) has been located, has been notified of the death, and has granted legal permission for the donation.

(4) All reasonable additional expenses incurred in the procedures to preserve the donor’s organs or tissues shall be reimbursed by the procurement organization.
(5) A person who acts in good faith and without negligence in accord with the terms of this part or under the anatomical gift laws of another state or a foreign country, or attempts to do so, may not be subject to any civil action for damages, may not be subject to any criminal proceeding, and may not be subject to discipline, penalty, or liability in any administrative proceeding.

(6) The provisions of this part are subject to the laws of this state prescribing powers and duties with respect to autopsies.

(7) The person making an anatomical gift and the donor’s estate are not liable for any injury or damages that result from the making or use of the gift.

(8) In determining whether an anatomical gift has been made, amended, or revoked under this part, a person may rely upon the representation of an individual listed in s. 765.512, relating to the individual’s relationship to the donor or prospective donor, unless the person knows that the representation is untrue.

History.—s. 1, ch. 74-106; s. 45, ch. 75-220; s. 4, ch. 83-171; s. 9, ch. 95-423; s. 978, ch. 97-102; s. 14, ch. 99-331; s. 67, ch. 2001-226; s. 7, ch. 2008-223; s. 9, ch. 2009-218.

Note.—Created from former s. 736.28; s. 732.917.

765.518 Eye banks.—

(1) Any state, county, district, or other public hospital may purchase and provide the necessary facilities and equipment to establish and maintain an eye bank for restoration of sight purposes.

(2) The Department of Education may have prepared, printed, and distributed:

(a) A form document of gift for a gift of the eyes.

(b) An eye bank register consisting of the names of persons who have executed documents for the gift of their eyes.

(c) Wallet cards reciting the document of gift.

History.—s. 1, ch. 74-106; s. 45, ch. 75-220; s. 462, ch. 77-147; s. 68, ch. 2001-226.

Note.—Created from former s. 736.29; s. 732.918.

765.5185 Corneal removal by medical examiners.—

(1) In any case in which a patient is in need of corneal tissue for a transplant, a district medical examiner or an appropriately qualified designee with training in ophthalmologic techniques may, upon request of any eye bank authorized under s. 765.518, provide the cornea of a decedent whenever all of the following conditions are met:

(a) A decedent who may provide a suitable cornea for the transplant is under the jurisdiction of the medical examiner and an autopsy is required in accordance with s. 406.11.

(b) No objection by the next of kin of the decedent is known by the medical examiner.

(c) The removal of the cornea will not interfere with the subsequent course of an investigation or autopsy.
(2) Neither the district medical examiner nor the medical examiner’s appropriately qualified
designee nor any eye bank authorized under s. 765.518 may be held liable in any civil or criminal action
for failure to obtain consent of the next of kin.

History.—s. 1, ch. 77-172; s. 1, ch. 78-191; s. 979, ch. 97-102; s. 69, ch. 2001-226; s. 111, ch. 2002-1.

Note.—Former s. 732.9185.

765.519 Enucleation of eyes by licensed funeral directors.—With respect to a gift of an eye as
provided for in this part, a licensed funeral director as defined in chapter 497 who has completed a
course in eye enucleation and has received a certificate of competence from the Department of
Ophthalmology of the University of Florida School of Medicine, the University of South Florida School of
Medicine, or the University of Miami School of Medicine may enucleate eyes for gift after proper
certification of death by a physician and in compliance with the intent of the gift as defined in this
chapter. No properly certified funeral director acting in accordance with the terms of this part shall
have any civil or criminal liability for eye enucleation.

History.—s. 1, ch. 74-106; s. 45, ch. 75-220; s. 1, ch. 80-157; s. 70, ch. 2001-226; s. 148, ch. 2004-301.

Note.—Created from former s. 736.31; s. 732.919.

765.521 Donations as part of driver license or identification card process.—

(1) The agency and the department shall develop and implement a program encouraging and
allowing persons to make anatomical gifts as a part of the process of issuing identification cards and
issuing and renewing driver licenses. The donor registration card distributed by the department shall
include the information required by the uniform donor card under s. 765.514 and such additional
information as determined necessary by the department. The department shall also develop and
implement a program to identify donors which includes notations on identification cards, driver
licenses, and driver records or such other methods as the department develops to clearly indicate the
individual’s intent to make an anatomical gift. A notation on an individual’s driver license or
identification card that the individual intends to make an anatomical gift satisfies all requirements for
consent to organ or tissue donation. The agency shall provide the necessary supplies and forms from
funds appropriated from general revenue or contributions from interested voluntary, nonprofit
organizations. The department shall provide the necessary recordkeeping system from funds
appropriated from general revenue. The department and the agency shall incur no liability in
connection with the performance of any acts authorized herein.

(2) The department, after consultation with and concurrence by the agency, shall adopt rules to
implement the provisions of this section according to the provisions of chapter 120.

(3) Funds expended by the agency to carry out the intent of this section may not be taken from
funds appropriated for patient care.

History.—s. 1, ch. 75-71; s. 1, ch. 77-16; s. 463, ch. 77-147; s. 1, ch. 77-174; ss. 1, 2, ch. 80-134; s. 5, ch. 83-171; s.
10, ch. 95-423; s. 71, ch. 2001-226; s. 8, ch. 2008-223; s. 10, ch. 2009-218.
765.522 Duty of hospital administrators; liability of hospital administrators and procurement organizations.—

(1) If, based on accepted medical standards, a hospital patient is a suitable candidate for organ or tissue donation, the hospital administrator or the hospital administrator’s designee shall, at or near the time of death, notify the appropriate procurement organization, which shall access the donor registry created by s. 765.5155 or any other donor registry to ascertain the existence of an entry in the registry which has not been revoked or a document of gift executed by the decedent. In the absence of an entry in the donor registry, a document of gift, or other properly executed document, the procurement organization shall request:

(a) The patient’s health care surrogate, as authorized in s. 765.512(2); or
(b) If the patient does not have a surrogate, or the surrogate is not reasonably available, any of the persons specified in s. 765.512(3), in the order and manner listed,

to consent to the anatomical gift of the decedent’s body for any purpose specified in this part. Except as provided in s. 765.512, in the absence of actual notice of opposition, consent need only be obtained from the person or persons in the highest priority class reasonably available.

(2) A document of gift is valid if executed in accordance with this part or the laws of the state or country where it was executed and where the person making the anatomical gift was domiciled, has a place of residence, or was a citizen at the time the document of gift was executed.

(3) The agency shall establish rules and guidelines concerning the education of individuals who may be designated to perform the request and the procedures to be used in making the request. The agency is authorized to adopt rules concerning the documentation of the request, where such request is made.

(4) If a document of gift is valid under this section, the laws of this state govern the interpretation of the document of gift.

(5) A document of gift or amendment of an anatomical gift is presumed to be valid unless it was not validly executed or was revoked.

(6) There shall be no civil or criminal liability against any procurement organization certified under s. 765.542 or against any hospital or hospital administrator or designee who complies with the provisions of this part and agency rules or if, in the exercise of reasonable care, a request for organ donation is inappropriate and the gift is not made according to this part and agency rules.

(7) The hospital administrator or a designee shall, at or near the time of death of a potential donor, directly notify the affiliated organ procurement organization of the potential organ donor. The organ procurement organization must offer any organ from such a donor first to patients on a Florida-based local or state organ sharing transplant list. For the purpose of this subsection, the term “transplant list” includes certain categories of national or regional organ sharing for patients of exceptional need.
or exceptional match, as approved or mandated by the Organ Procurement and Transplantation Network, or its agent. This notification may not be made to a tissue bank or eye bank in lieu of the organ procurement organization unless the tissue bank or eye bank is also designated as an organ procurement organization.

History.—s. 1, ch. 86-212; s. 2, ch. 87-372; s. 13, ch. 95-423; s. 980, ch. 97-102; s. 12, ch. 98-68; s. 15, ch. 99-331; s. 75, ch. 2001-226; s. 104, ch. 2003-1; s. 9, ch. 2008-223; s. 11, ch. 2009-218.

Note.—Former s. 732.922.

765.53 Organ Transplant Advisory Council; membership; responsibilities.—

(1) A statewide technical Organ Transplant Advisory Council is created within the agency, consisting of twelve members who are physicians licensed under chapter 458 or chapter 459, to represent the interests of the public and the clients of the Department of Health or the agency. A person employed by the agency may not be appointed as a member of the council.

(2) The Secretary of Health Care Administration shall appoint all members of the council to serve a term of 2 years.

(3) The Secretary of Health Care Administration shall fill each vacancy on the council for the balance of the unexpired term. Priority consideration must be given to the appointment of an individual whose primary interest, experience, or expertise lies with clients of the Department of Health and the agency. If an appointment is not made within 120 days after a vacancy occurs on the council, the vacancy must be filled by the majority vote of the council.

(4) The members of the council shall elect a chairperson. The term of the chairperson shall be for 2 years, and an individual may not serve as chairperson for more than two consecutive terms.

(5) Members of the council shall receive no compensation, but shall be reimbursed for per diem and travel expenses by the agency in accordance with s. 112.061 while engaged in the performance of their duties.

(6) The responsibilities of the council shall be to recommend to the agency indications for adult and pediatric organ transplants. The council shall also formulate guidelines and standards for organ transplants and for the development of End Stage Organ Disease and Tissue/Organ Transplant programs. The recommendations, guidelines, and standards developed by the council are applicable only to those health programs funded through the agency.

(7) The council shall meet at least annually or upon the call of the chairperson or the Secretary of Health Care Administration.

History.—ss. 1, 2, ch. 86-208; ss. 88, 89, ch. 86-220; s. 3, ch. 87-50; s. 8, ch. 91-49; s. 52, ch. 91-297; s. 5, ch. 91-429; s. 3, ch. 94-305; s. 50, ch. 97-101; s. 1, ch. 99-299; s. 6, ch. 2000-305; s. 33, ch. 2003-1; s. 12, ch. 2009-218.

Note.—Former s. 381.602; s. 381.0602.

765.541 Certification of procurement organizations; agency responsibilities.—The agency shall:
(1) Establish a program for the certification of organizations, corporations, or other entities engaged in the procurement of organs, tissues, and eyes for transplantation.

(2) Adopt rules that set forth appropriate standards and guidelines for the program in accordance with ss. 765.541-765.546 and part II of chapter 408. These standards and guidelines must be substantially based on the existing laws of the Federal Government and this state and the existing standards and guidelines of the United Network for Organ Sharing (UNOS), the American Association of Tissue Banks (AATB), the South-Eastern Organ Procurement Foundation (SEOPF), the North American Transplant Coordinators Organization (NATCO), and the Eye Bank Association of America (EBAA). In addition, the agency shall, before adopting these standards and guidelines, seek input from all procurement organizations based in this state.

(3) Collect, keep, and make available to the Governor and the Legislature information regarding the numbers and disposition of organs, tissues, and eyes procured by each certified procurement organization.

(4) Monitor procurement organizations for program compliance.

(5) Provide for the administration of the Organ and Tissue Procurement and Transplantation Advisory Board.

History.—ss. 2, 9, ch. 91-271; s. 5, ch. 91-429; s. 5, ch. 94-305; s. 33, ch. 2003-1; s. 201, ch. 2007-230; s. 13, ch. 2009-218.

Note.—Former s. 381.6021.

765.542 Requirements to engage in organ, tissue, or eye procurement.—

(1) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to ss. 765.541-765.546 and part II of chapter 408 and to entities licensed or certified by or applying for such licensure or certification from the agency pursuant to ss. 765.541-765.546. A person may not engage in the practice of organ procurement in this state without being designated as an organ procurement organization by the Secretary of the United States Department of Health and Human Services and being appropriately certified by the agency. A physician or organ procurement organization based outside this state is exempt from these certification requirements if:

(a) The organs are procured for an out-of-state patient who is listed on, or referred through, the United Network for Organ Sharing System; and

(b) The organs are procured through an agreement of an organ procurement organization certified by the state.

(2) A person may not engage in tissue procurement in this state unless it is appropriately certified as a tissue bank by the agency.

(3) A person may not engage in the practice of eye procurement in this state without being appropriately certified as an eye bank by the agency. Funeral directors or direct disposers who retrieve
eye tissue for an eye bank certified under this subsection are exempt from the certification requirements under this subsection.

(4) A limited certificate may be issued to a tissue bank or eye bank, certifying only those components of procurement which the bank has chosen to perform. The agency may issue a limited certificate if it determines that the tissue bank or eye bank is adequately staffed and equipped to operate in conformity with the rules adopted under this section.

History.—s. 3, ch. 91-271; s. 6, ch. 94-305; s. 33, ch. 2003-1; s. 202, ch. 2007-230; s. 14, ch. 2009-218.

Note.—Former s. 381.6022.

765.543 Organ and Tissue Procurement and Transplantation Advisory Board; creation; duties.—
(1) There is hereby created the Organ and Tissue Procurement and Transplantation Advisory Board, which shall consist of 14 members who are appointed by and report directly to the Secretary of Health Care Administration. The membership must be regionally distributed and must include:

(a) Two representatives who have expertise in vascular organ transplant surgery;
(b) Two representatives who have expertise in vascular organ procurement, preservation, and distribution;
(c) Two representatives who have expertise in musculoskeletal tissue transplant surgery;
(d) Two representatives who have expertise in musculoskeletal tissue procurement, processing, and distribution;
(e) A representative who has expertise in eye and cornea transplant surgery;
(f) A representative who has expertise in eye and cornea procurement, processing, and distribution;
(g) A representative who has expertise in bone marrow procurement, processing, and transplantation;
(h) A representative from the Florida Pediatric Society;
(i) A representative from the Florida Society of Pathologists; and
(j) A representative from the Florida Medical Examiners Commission.

(2) The advisory board members may not be compensated for their services except that they may be reimbursed for their travel expenses as provided by law. Members of the board shall be appointed for 3-year terms of office.

(3) The board shall:

(a) Assist the agency in the development of necessary professional qualifications, including, but not limited to, the education, training, and performance of persons engaged in the various facets of organ and tissue procurement, processing, preservation, and distribution for transplantation;

(b) Assist the agency in monitoring the appropriate and legitimate expenses associated with organ and tissue procurement, processing, and distribution for transplantation and developing methodologies to assure the uniform statewide reporting of data to facilitate the accurate and timely evaluation of the organ and tissue procurement and transplantation system;
(c) Provide assistance to the Florida Medical Examiners Commission in the development of appropriate procedures and protocols to ensure the continued improvement in the approval and release of potential donors by the district medical examiners and associate medical examiners;

(d) Develop with and recommend to the agency the necessary procedures and protocols required to assure that all residents of this state have reasonable access to available organ and tissue transplantation therapy and that residents of this state can be reasonably assured that the statewide procurement transplantation system is able to fulfill their organ and tissue requirements within the limits of the available supply and according to the severity of their medical condition and need; and

(e) Develop with and recommend to the agency any changes to the laws of this state or administrative rules or procedures to ensure that the statewide organ and tissue procurement and transplantation system is able to function smoothly, effectively, and efficiently, in accordance with the Federal Anatomical Gift Act and in a manner that assures the residents of this state that no person or entity profits from the altruistic voluntary donation of organs or tissues.

History.—ss. 4, 9, ch. 91-271; s. 5, ch. 91-429; s. 7, ch. 94-305; s. 7, ch. 2000-305; s. 33, ch. 2003-1; s. 15, ch. 2009-218.

Note.—Former s. 381.6023.

765.544 Fees; organ and tissue donor education and procurement.—

(1) In accordance with s. 408.805, an applicant or a certificateholder shall pay a fee for each application submitted under this part, part II of chapter 408, and applicable rules. The amount of the fee shall be as follows:

(a) An initial application fee of $1,000 from organ procurement organizations and tissue banks and $500 from eye banks.

(b) Annual fees to be used, in the following order of priority, for the certification program, the advisory board, maintenance of the donor registry, and the organ and tissue donor education program, which may not exceed $35,000 per organization:

1. Each organ procurement organization shall pay the greater of $1,000 or 0.25 percent of its total revenues produced from procurement activity in this state by the certificateholder during its most recently completed fiscal or operational year.

2. Each tissue procurement organization shall pay the greater of $1,000 or 0.25 percent of its total revenues from procurement and processing activity in this state by the certificateholder during its most recently completed fiscal or operational year.

3. Each eye bank shall pay the greater of $500 or 0.25 percent of its total revenues produced from procurement activity in this state by the certificateholder during its most recently completed fiscal or operational year.
(2) The agency shall specify by rule the administrative penalties for the purpose of ensuring adherence to the standards of quality and practice required by this chapter, part II of chapter 408, and applicable rules of the agency for continued certification.

(3)(a) Proceeds from fees, administrative penalties, and surcharges collected pursuant to this section must be deposited into the Health Care Trust Fund.

(b) Moneys deposited in the trust fund pursuant to this section must be used exclusively for the implementation, administration, and operation of the certification program and the advisory board, for maintaining the donor registry, and for organ and tissue donor education.

(4) As used in this section, the term “procurement activity in this state” includes the bringing into this state for processing, storage, distribution, or transplantation of organs or tissues that are initially procured in another state or country.

History.—s. 5, ch. 91-271; s. 8, ch. 94-305; ss. 3, 4, ch. 98-68; s. 54, ch. 2002-1; s. 33, ch. 2003-1; s. 203, ch. 2007-230; s. 16, ch. 2009-218.

Note.—Former s. 381.6024.

765.545 Physician supervision of cadaveric organ and tissue procurement coordinators.—Procurement organizations may employ coordinators who are registered nurses, physician’s assistants, or other medically trained personnel who meet the relevant standards for procurement organizations adopted by the agency under s. 765.541, to assist in the medical management of organ donors or in the surgical procurement of cadaveric organs, tissues, or eyes for transplantation or research. A coordinator who assists in the medical management of organ donors or in the surgical procurement of cadaveric organs, tissues, or eyes for transplantation or research must do so under the direction and supervision of a physician medical director pursuant to rules and guidelines adopted by the agency. With the exception of organ procurement surgery, this supervision may be indirect supervision. For purposes of this section, the term “indirect supervision” means that the medical director is responsible for the medical actions of the coordinator, that the coordinator is operating under protocols expressly approved by the medical director, and that the medical director or his or her physician designee is always available, in person or by telephone, to provide medical direction, consultation, and advice in cases of organ, tissue, and eye donation and procurement. Although indirect supervision is authorized under this section, direct physician supervision is to be encouraged when appropriate.

History.—s. 6, ch. 91-271; s. 9, ch. 94-305; s. 1035, ch. 95-148; s. 34, ch. 2003-1; s. 17, ch. 2009-218.

Note.—Former s. 381.6025.

765.546 Procurement of cadaveric organs for transplant by out-of-state physicians.—Any physician currently licensed to practice medicine and surgery in the United States may surgically procure in this state cadaveric organs for transplant if:

(1) The organs are being procured for an out-of-state patient who is listed on, or referred through, the United Network for Organ Sharing System; and
(2) The organs are being procured through the auspices of an organ procurement organization certified in this state.

History.—s. 7, ch. 91-271; s. 33, ch. 2003-1.

Note.—Former s. 381.6026.

765.547 Cooperation between medical examiner and procurement organization.—

(1) A medical examiner and procurement organization shall cooperate with each other in order to maximize opportunities to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.

(2) The Florida Medical Examiners Commission shall adopt rules establishing cooperative responsibilities between medical examiners and procurement organizations to facilitate and expedite completion of the medical examiner’s responsibilities under chapter 406 in a manner that will maximize opportunities to recover anatomical gifts.

(3) This part does not supersede any part of chapter 406 relating to medical examiners and the disposition of dead bodies.

History.—s. 18, ch. 2009-218.

CHAPTER 120
ADMINISTRATIVE PROCEDURE ACT

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120.50 Exception to application of chapter.—This chapter shall not apply to:

(1) The Legislature.
(2) The courts.

History.—s. 1, ch. 74-310; s. 3, ch. 77-468; s. 1, ch. 78-162.

120.51 Short title.—This chapter may be known and cited as the “Administrative Procedure Act.”

History.—s. 1, ch. 74-310.

120.52 Definitions.—As used in this act:

(1) “Agency” means the following officers or governmental entities if acting pursuant to powers other than those derived from the constitution:

(a) The Governor; each state officer and state department, and each departmental unit described in s. 20.04; the Board of Governors of the State University System; the Commission on Ethics; the Fish and Wildlife Conservation Commission; a regional water supply authority; a regional planning agency; a multicounty special district, but only when a majority of its governing board is comprised of nonelected persons; educational units; and each entity described in chapters 163, 373, 380, and 582 and s. 186.504.

(b) Each officer and governmental entity in the state having statewide jurisdiction or jurisdiction in more than one county.
(c) Each officer and governmental entity in the state having jurisdiction in one county or less than
one county, to the extent they are expressly made subject to this act by general or special law or
existing judicial decisions.

This definition does not include any municipality or legal entity created solely by a municipality; any
legal entity or agency created in whole or in part pursuant to part II of chapter 361; any metropolitan
planning organization created pursuant to s. 339.175; any separate legal or administrative entity
created pursuant to s. 339.175 of which a metropolitan planning organization is a member; an
expressway authority pursuant to chapter 348 or any transportation authority under chapter 343 or
chapter 349; or any legal or administrative entity created by an interlocal agreement pursuant to s.
163.01(7), unless any party to such agreement is otherwise an agency as defined in this subsection.

(2) “Agency action” means the whole or part of a rule or order, or the equivalent, or the denial of a
petition to adopt a rule or issue an order. The term also includes any denial of a request made under s.
120.54(7).

(3) “Agency head” means the person or collegial body in a department or other governmental unit
statutorily responsible for final agency action.

(4) “Committee” means the Administrative Procedures Committee.

(5) “Division” means the Division of Administrative Hearings.

(6) “Educational unit” means a local school district, a community college district, the Florida
School for the Deaf and the Blind, or a state university when the university is acting pursuant to
statutory authority derived from the Legislature.

(7) “Final order” means a written final decision which results from a proceeding under s. 120.56, s.
120.565, s. 120.569, s. 120.57, s. 120.573, or s. 120.574 which is not a rule, and which is not excepted
from the definition of a rule, and which has been filed with the agency clerk, and includes final agency
actions which are affirmative, negative, injunctive, or declaratory in form. A final order includes all
materials explicitly adopted in it. The clerk shall indicate the date of filing on the order.

(8) “Invalid exercise of delegated legislative authority” means action that goes beyond the powers,
functions, and duties delegated by the Legislature. A proposed or existing rule is an invalid exercise of
delegated legislative authority if any one of the following applies:

(a) The agency has materially failed to follow the applicable rulemaking procedures or
requirements set forth in this chapter;

(b) The agency has exceeded its grant of rulemaking authority, citation to which is required by s.
120.54(3)(a)1.;

(c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation
to which is required by s. 120.54(3)(a)1.;
(d) The rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled
discretion in the agency;

(e) The rule is arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the
necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational; or

(f) The rule imposes regulatory costs on the regulated person, county, or city which could be
reduced by the adoption of less costly alternatives that substantially accomplish the statutory
objectives.

A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a
specific law to be implemented is also required. An agency may adopt only rules that implement or
interpret the specific powers and duties granted by the enabling statute. No agency shall have
authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation
and is not arbitrary and capricious or is within the agency’s class of powers and duties, nor shall an
agency have the authority to implement statutory provisions setting forth general legislative intent or
policy. Statutory language granting rulemaking authority or generally describing the powers and
functions of an agency shall be construed to extend no further than implementing or interpreting the
specific powers and duties conferred by the enabling statute.

(9) “Law implemented” means the language of the enabling statute being carried out or interpreted
by an agency through rulemaking.

(10) “License” means a franchise, permit, certification, registration, charter, or similar form of
authorization required by law, but it does not include a license required primarily for revenue purposes
when issuance of the license is merely a ministerial act.

(11) “Licensing” means the agency process respecting the issuance, denial, renewal, revocation,
suspension, annulment, withdrawal, or amendment of a license or imposition of terms for the exercise
of a license.

(12) “Official reporter” means the publication in which an agency publishes final orders, the index
to final orders, and the list of final orders which are listed rather than published.

(13) “Party” means:

(a) Specifically named persons whose substantial interests are being determined in the proceeding.

(b) Any other person who, as a matter of constitutional right, provision of statute, or provision of
agency regulation, is entitled to participate in whole or in part in the proceeding, or whose substantial
interests will be affected by proposed agency action, and who makes an appearance as a party.

(c) Any other person, including an agency staff member, allowed by the agency to intervene or
participate in the proceeding as a party. An agency may by rule authorize limited forms of
participation in agency proceedings for persons who are not eligible to become parties.
(d) Any county representative, agency, department, or unit funded and authorized by state statute or county ordinance to represent the interests of the consumers of a county, when the proceeding involves the substantial interests of a significant number of residents of the county and the board of county commissioners has, by resolution, authorized the representative, agency, department, or unit to represent the class of interested persons. The authorizing resolution shall apply to a specific proceeding and to appeals and ancillary proceedings thereto, and it shall not be required to state the names of the persons whose interests are to be represented.

The term “party” does not include a member government of a regional water supply authority or a governmental or quasi-judicial board or commission established by local ordinance or special or general law where the governing membership of such board or commission is shared with, in whole or in part, or appointed by a member government of a regional water supply authority in proceedings under s. 120.569, s. 120.57, or s. 120.68, to the extent that an interlocal agreement under ss. 163.01 and 373.713 exists in which the member government has agreed that its substantial interests are not affected by the proceedings or that it is to be bound by alternative dispute resolution in lieu of participating in the proceedings. This exclusion applies only to those particular types of disputes or controversies, if any, identified in an interlocal agreement.

(14) “Person” means any person described in s. 1.01, any unit of government in or outside the state, and any agency described in subsection (1).

(15) “Recommended order” means the official recommendation of an administrative law judge assigned by the division or of any other duly authorized presiding officer, other than an agency head or member of an agency head, for the final disposition of a proceeding under ss. 120.569 and 120.57.

(16) “Rule” means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeal of a rule. The term does not include:

(a) Internal management memoranda which do not affect either the private interests of any person or any plan or procedure important to the public and which have no application outside the agency issuing the memorandum.

(b) Legal memoranda or opinions issued to an agency by the Attorney General or agency legal opinions prior to their use in connection with an agency action.

(c) The preparation or modification of:

1. Agency budgets.
2. Statements, memoranda, or instructions to state agencies issued by the Chief Financial Officer or Comptroller as chief fiscal officer of the state and relating or pertaining to claims for payment submitted by state agencies to the Chief Financial Officer or Comptroller.

3. Contractual provisions reached as a result of collective bargaining.

4. Memoranda issued by the Executive Office of the Governor relating to information resources management.

(17) “Rulemaking authority” means statutory language that explicitly authorizes or requires an agency to adopt, develop, establish, or otherwise create any statement coming within the definition of the term “rule.”

(18) “Small city” means any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census.

(19) “Small county” means any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

(20) “Unadopted rule” means an agency statement that meets the definition of the term “rule,” but that has not been adopted pursuant to the requirements of s. 120.54.

(21) “Variance” means a decision by an agency to grant a modification to all or part of the literal requirements of an agency rule to a person who is subject to the rule. Any variance shall conform to the standards for variances outlined in this chapter and in the uniform rules adopted pursuant to s. 120.54(5).

(22) “Waiver” means a decision by an agency not to apply all or part of a rule to a person who is subject to the rule. Any waiver shall conform to the standards for waivers outlined in this chapter and in the uniform rules adopted pursuant to s. 120.54(5).

History.—s. 1, ch. 74-310; s. 1, ch. 75-191; s. 1, ch. 76-131; s. 1, ch. 77-174; s. 12, ch. 77-290; s. 2, ch. 77-453; s. 1, ch. 78-28; s. 1, ch. 78-425; s. 1, ch. 79-20; s. 55, ch. 79-40; s. 1, ch. 79-299; s. 2, ch. 81-119; s. 1, ch. 81-180; s. 7, ch. 82-180; s. 1, ch. 83-78; s. 2, ch. 83-273; s. 10, ch. 84-170; s. 15, ch. 85-80; s. 1, ch. 85-168; s. 2, ch. 87-385; s. 1, ch. 88-367; s. 1, ch. 89-147; s. 1, ch. 91-46; s. 9, ch. 92-166; s. 50, ch. 92-279; s. 55, ch. 92-326; s. 3, ch. 96-159; s. 1, ch. 97-176; s. 2, ch. 97-286; s. 1, ch. 98-402; s. 64, ch. 99-245; s. 2, ch. 99-379; s. 895, ch. 2002-387; s. 1, ch. 2003-94; s. 138, ch. 2003-261; s. 7, ch. 2003-286; s. 3, ch. 2007-196; s. 13, ch. 2007-217; s. 2, ch. 2008-104; s. 1, ch. 2009-85; s. 1, ch. 2009-187; s. 10, ch. 2010-5; s. 2, ch. 2010-205.

120.525 Meetings, hearings, and workshops.—

(1) Except in the case of emergency meetings, each agency shall give notice of public meetings, hearings, and workshops by publication in the Florida Administrative Weekly and on the agency’s website not less than 7 days before the event. The notice shall include a statement of the general subject matter to be considered.

(2) An agenda shall be prepared by the agency in time to ensure that a copy of the agenda may be received at least 7 days before the event by any person in the state who requests a copy and who pays
the reasonable cost of the copy. The agenda, along with any meeting materials available in electronic
form excluding confidential and exempt information, shall be published on the agency’s website. The
agenda shall contain the items to be considered in order of presentation. After the agenda has been
made available, a change shall be made only for good cause, as determined by the person designated
to preside, and stated in the record. Notification of such change shall be at the earliest practicable
time.

(3) If an agency finds that an immediate danger to the public health, safety, or welfare requires
immediate action, the agency may hold an emergency public meeting and give notice of such meeting
by any procedure that is fair under the circumstances and necessary to protect the public interest, if:
   (a) The procedure provides at least the procedural protection given by other statutes, the State
       Constitution, or the United States Constitution.
   (b) The agency takes only that action necessary to protect the public interest under the emergency
       procedure.
   (c) The agency publishes in writing at the time of, or prior to, its action the specific facts and
       reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for
       concluding that the procedure used is fair under the circumstances. The agency findings of immediate
danger, necessity, and procedural fairness shall be judicially reviewable.

History.—s. 4, ch. 96-159; s. 3, ch. 2009-187.

120.53 Maintenance of orders; indexing; listing; organizational information.—
(1)(a) Each agency shall maintain:
   1. All agency final orders.
   2.a. A current hierarchical subject-matter index, identifying for the public any rule or order as
       specified in this subparagraph.
       b. In lieu of the requirement for making available for public inspection and copying a hierarchical
          subject-matter index of its orders, an agency may maintain and make available for public use an
          electronic database of its orders that allows users to research and retrieve the full texts of agency
          orders by devising an ad hoc indexing system employing any logical search terms in common usage
          which are composed by the user and which are contained in the orders of the agency or by descriptive
          information about the order which may not be specifically contained in the order.
       c. The agency orders that must be indexed, unless excluded under paragraph (c) or paragraph (d),
          include:
             (I) Each final agency order resulting from a proceeding under s. 120.57 or s. 120.573.
             (II) Each final agency order rendered pursuant to s. 120.57(4) which contains a statement of agency
                 policy that may be the basis of future agency decisions or that may otherwise contain a statement of
                 precedential value.
             (III) Each declaratory statement issued by an agency.
(IV) Each final order resulting from a proceeding under s. 120.56 or s. 120.574.

3. A list of all final orders rendered pursuant to s. 120.57(4) which have been excluded from the indexing requirement of this section, with the approval of the Department of State, because they do not contain statements of agency policy or statements of precedential value. The list must include the name of the parties to the proceeding and the number assigned to the final order.

4. All final orders listed pursuant to subparagraph 3.

(b) An agency final order that must be indexed or listed pursuant to paragraph (a) must be indexed or listed within 120 days after the order is rendered. Each final order that must be indexed or listed pursuant to paragraph (a) must have attached a copy of the complete text of any materials incorporated by reference; however, if the quantity of the materials incorporated makes attachment of the complete text of the materials impractical, the order may contain a statement of the location of such materials and the manner in which the public may inspect or obtain copies of the materials incorporated by reference. The Department of State shall establish by rule procedures for indexing final orders, and procedures of agencies for indexing orders must be approved by the department.

(c) Each agency must receive approval in writing from the Department of State for:

1. The specific types and categories of agency final orders that may be excluded from the indexing and public inspection requirements, as determined by the department pursuant to paragraph (d).
2. The method for maintaining indexes, lists, and final orders that must be indexed or listed and made available to the public.
3. The method by which the public may inspect or obtain copies of indexes, lists, and final orders.
4. A sequential numbering system which numbers all final orders required to be indexed or listed pursuant to paragraph (a), in the order rendered.
5. Proposed rules for implementing the requirements of this section for indexing and making final orders available for public inspection.

(d) In determining which final orders may be excluded from the indexing and public inspection requirements, the Department of State may consider all factors specified by an agency, including precedential value, legal significance, and purpose. Only agency final orders that are of limited or no precedential value, that are of limited or no legal significance, or that are ministerial in nature may be excluded.

(e) Each agency shall specify the specific types or categories of agency final orders that are excluded from the indexing and public inspection requirements.

(f) Each agency shall specify the location or locations where agency indexes, lists, and final orders that are required to be indexed or listed are maintained and shall specify the method or procedure by which the public may inspect or obtain copies of indexes, lists, and final orders.

(g) Each agency shall specify all systems in use by the agency to search and locate agency final orders that are required to be indexed or listed, including, but not limited to, any automated system.
An agency shall make the search capabilities employed by the agency available to the public subject to reasonable terms and conditions, including a reasonable charge, as provided by s. 119.07. The agency shall specify how assistance and information pertaining to final orders may be obtained.

(h) Each agency shall specify the numbering system used to identify agency final orders.

(2)(a) An agency may comply with subparagraphs (1)(a)1. and 2. by designating an official reporter to publish and index by subject matter each agency order that must be indexed and made available to the public, or by electronically transmitting to the division a copy of such orders for posting on the division’s website. An agency is in compliance with subparagraph (1)(a)3. if it publishes in its designated reporter a list of each agency final order that must be listed and preserves each listed order and makes it available for public inspection and copying.

(b) An agency may publish its official reporter or may contract with a publishing firm to publish its official reporter; however, if an agency contracts with a publishing firm to publish its reporter, the agency is responsible for the quality, timeliness, and usefulness of the reporter. The Department of State may publish an official reporter for an agency or may contract with a publishing firm to publish the reporter for the agency; however, if the department contracts for publication of the reporter, the department is responsible for the quality, timeliness, and usefulness of the reporter. A reporter that is designated by an agency as its official reporter and approved by the Department of State constitutes the official compilation of the administrative final orders for that agency.

(c) A reporter that is published by the Department of State may be made available by annual subscription, and each agency that designates an official reporter published by the department may be charged a space rate payable to the department. The subscription rate and the space rate must be equitably apportioned to cover the costs of publishing the reporter.

(d) An agency that designates an official reporter need not publish the full text of an agency final order that is rendered pursuant to s. 120.57(4) and that must be indexed pursuant to paragraph (1)(a), if the final order is preserved by the agency and made available for public inspection and copying and the official reporter indexes the final order and includes a synopsis of the order. A synopsis must include the names of the parties to the order; any rule, statute, or constitutional provision pertinent to the order; a summary of the facts, if included in the order, which are pertinent to the final disposition; and a summary of the final disposition.

(3) Agency orders that must be indexed or listed are documents of continuing legal value and must be permanently preserved and made available to the public. Each agency to which this chapter applies shall provide, under the direction of the Department of State, for the preservation of orders as required by this chapter and for maintaining an index to those orders.

(4) Each agency must provide any person who makes a request with a written description of its organization and the general course of its operations.
120.533 Coordination of indexing by Department of State.—The Department of State shall:

1. Administer the coordination of the indexing, management, preservation, and availability of agency orders that must be indexed or listed pursuant to s. 120.53(1).

2. Provide, by rule, guidelines for the indexing of agency orders. More than one system for indexing may be approved by the Department of State, including systems or methods in use, or proposed for use, by an agency. More than one system may be approved for use by a single agency as best serves the needs of that agency and the public.

3. Provide, by rule, for storage and retrieval systems to be maintained by agencies for indexing, and making available, agency orders by subject matter. The Department of State may approve more than one system, including systems in use, or proposed for use, by an agency. Storage and retrieval systems that may be used by an agency include, without limitation, a designated reporter or reporters, a microfilming system, an automated system, or any other system considered appropriate by the Department of State.

4. Determine which final orders must be indexed for each agency.

5. Require each agency to report to the department concerning which types or categories of agency orders establish precedent for each agency.

120.536 Rulemaking authority; repeal; challenge.—

1. A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency’s class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.

2. The Administrative Procedures Committee or any substantially affected person may petition an agency to repeal any rule, or portion thereof, because it exceeds the rulemaking authority permitted by this section. Not later than 30 days after the date of filing the petition if the agency is headed by an individual, or not later than 45 days if the agency is headed by a collegial body, the agency shall
initiate rulemaking proceedings to repeal the rule, or portion thereof, or deny the petition, giving a written statement of its reasons for the denial.

(3) Nothing in this section shall be construed to change the legal status of a rule that has otherwise been judicially or administratively determined to be invalid.

History.—s. 9, ch. 96-159; s. 3, ch. 99-379; s. 15, ch. 2000-151; s. 15, ch. 2005-2; s. 4, ch. 2008-104.

120.54 Rulemaking.—
(1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN EMERGENCY RULES.—
(a) Rulemaking is not a matter of agency discretion. Each agency statement defined as a rule by s. 120.52 shall be adopted by the rulemaking procedure provided by this section as soon as feasible and practicable.
1. Rulemaking shall be presumed feasible unless the agency proves that:
   a. The agency has not had sufficient time to acquire the knowledge and experience reasonably necessary to address a statement by rulemaking; or
   b. Related matters are not sufficiently resolved to enable the agency to address a statement by rulemaking.
2. Rulemaking shall be presumed practicable to the extent necessary to provide fair notice to affected persons of relevant agency procedures and applicable principles, criteria, or standards for agency decisions unless the agency proves that:
   a. Detail or precision in the establishment of principles, criteria, or standards for agency decisions is not reasonable under the circumstances; or
   b. The particular questions addressed are of such a narrow scope that more specific resolution of the matter is impractical outside of an adjudication to determine the substantial interests of a party based on individual circumstances.
(b) Whenever an act of the Legislature is enacted which requires implementation of the act by rules of an agency within the executive branch of state government, such rules shall be drafted and formally proposed as provided in this section within 180 days after the effective date of the act, unless the act provides otherwise.
(c) No statutory provision shall be delayed in its implementation pending an agency’s adoption of implementing rules unless there is an express statutory provision prohibiting its application until the adoption of implementing rules.
(d) In adopting rules, all agencies must, among the alternative approaches to any regulatory objective and to the extent allowed by law, choose the alternative that does not impose regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.
(e) No agency has inherent rulemaking authority, nor has any agency authority to establish penalties for violation of a rule unless the Legislature, when establishing a penalty, specifically provides that the penalty applies to rules.

(f) An agency may adopt rules authorized by law and necessary to the proper implementation of a statute prior to the effective date of the statute, but the rules may not be effective until the statute upon which they are based is effective. An agency may not adopt retroactive rules, including retroactive rules intended to clarify existing law, unless that power is expressly authorized by statute.

(g) Each rule adopted shall contain only one subject.

(h) In rulemaking proceedings, the agency may recognize any material which may be judicially noticed, and it may provide that materials so recognized be incorporated into the record of the proceeding. Before the record of any proceeding is completed, all parties shall be provided a list of these materials and given a reasonable opportunity to examine them and offer written comments or written rebuttal.

(i) 1. A rule may incorporate material by reference but only as the material exists on the date the rule is adopted. For purposes of the rule, changes in the material are not effective unless the rule is amended to incorporate the changes.

2. An agency rule that incorporates by specific reference another rule of that agency automatically incorporates subsequent amendments to the referenced rule unless a contrary intent is clearly indicated in the referencing rule. A notice of amendments to a rule that has been incorporated by specific reference in other rules of that agency must explain the effect of those amendments on the referencing rules.

3. In rules adopted after December 31, 2010, material may not be incorporated by reference unless:

   a. The material has been submitted in the prescribed electronic format to the Department of State and the full text of the material can be made available for free public access through an electronic hyperlink from the rule making the reference in the Florida Administrative Code; or

   b. The agency has determined that posting the material on the Internet for purposes of public examination and inspection would constitute a violation of federal copyright law, in which case a statement to that effect, along with the address of locations at the Department of State and the agency at which the material is available for public inspection and examination, must be included in the notice required by subparagraph (3)(a)1.

4. A rule may not be amended by reference only. Amendments must set out the amended rule in full in the same manner as required by the State Constitution for laws.

5. Notwithstanding any contrary provision in this section, when an adopted rule of the Department of Environmental Protection or a water management district is incorporated by reference in the other agency’s rule to implement a provision of part IV of chapter 373, subsequent amendments to the rule
are not effective as to the incorporating rule unless the agency incorporating by reference notifies the committee and the Department of State of its intent to adopt the subsequent amendment, publishes notice of such intent in the Florida Administrative Weekly, and files with the Department of State a copy of the amended rule incorporated by reference. Changes in the rule incorporated by reference are effective as to the other agency 20 days after the date of the published notice and filing with the Department of State. The Department of State shall amend the history note of the incorporating rule to show the effective date of such change. Any substantially affected person may, within 14 days after the date of publication of the notice of intent in the Florida Administrative Weekly, file an objection to rulemaking with the agency. The objection shall specify the portions of the rule incorporated by reference to which the person objects and the reasons for the objection. The agency shall not have the authority under this subparagraph to adopt those portions of the rule specified in such objection. The agency shall publish notice of the objection and of its action in response in the next available issue of the Florida Administrative Weekly.

6. The Department of State may adopt by rule requirements for incorporating materials pursuant to this paragraph.

(j) A rule published in the Florida Administrative Code must be indexed by the Department of State within 90 days after the rule is filed. The Department of State shall by rule establish procedures for indexing rules.

(k) An agency head may delegate the authority to initiate rule development under subsection (2); however, rulemaking responsibilities of an agency head under subparagraph (3)(a)1., subparagraph (3)(e)1., or subparagraph (3)(e)6. may not be delegated or transferred.

(2) RULE DEVELOPMENT; WORKSHOPS; NEGOTIATED RULEMAKING.—

(a) Except when the intended action is the repeal of a rule, agencies shall provide notice of the development of proposed rules by publication of a notice of rule development in the Florida Administrative Weekly before providing notice of a proposed rule as required by paragraph (3)(a). The notice of rule development shall indicate the subject area to be addressed by rule development, provide a short, plain explanation of the purpose and effect of the proposed rule, cite the specific legal authority for the proposed rule, and include the preliminary text of the proposed rules, if available, or a statement of how a person may promptly obtain, without cost, a copy of any preliminary draft, if available.

(b) All rules should be drafted in readable language. The language is readable if:

1. It avoids the use of obscure words and unnecessarily long or complicated constructions; and
2. It avoids the use of unnecessary technical or specialized language that is understood only by members of particular trades or professions.

(c) An agency may hold public workshops for purposes of rule development. An agency must hold public workshops, including workshops in various regions of the state or the agency’s service area, for
purposes of rule development if requested in writing by any affected person, unless the agency head explains in writing why a workshop is unnecessary. The explanation is not final agency action subject to review pursuant to ss. 120.569 and 120.57. The failure to provide the explanation when required may be a material error in procedure pursuant to s. 120.56(1)(c). When a workshop or public hearing is held, the agency must ensure that the persons responsible for preparing the proposed rule are available to explain the agency’s proposal and to respond to questions or comments regarding the rule being developed. The workshop may be facilitated or mediated by a neutral third person, or the agency may employ other types of dispute resolution alternatives for the workshop that are appropriate for rule development. Notice of a rule development workshop shall be by publication in the Florida Administrative Weekly not less than 14 days prior to the date on which the workshop is scheduled to be held and shall indicate the subject area which will be addressed; the agency contact person; and the place, date, and time of the workshop.

(d) 1. An agency may use negotiated rulemaking in developing and adopting rules. The agency should consider the use of negotiated rulemaking when complex rules are being drafted or strong opposition to the rules is anticipated. The agency should consider, but is not limited to considering, whether a balanced committee of interested persons who will negotiate in good faith can be assembled, whether the agency is willing to support the work of the negotiating committee, and whether the agency can use the group consensus as the basis for its proposed rule. Negotiated rulemaking uses a committee of designated representatives to draft a mutually acceptable proposed rule.

2. An agency that chooses to use the negotiated rulemaking process described in this paragraph shall publish in the Florida Administrative Weekly a notice of negotiated rulemaking that includes a listing of the representative groups that will be invited to participate in the negotiated rulemaking process. Any person who believes that his or her interest is not adequately represented may apply to participate within 30 days after publication of the notice. All meetings of the negotiating committee shall be noticed and open to the public pursuant to the provisions of this chapter. The negotiating committee shall be chaired by a neutral facilitator or mediator.

3. The agency’s decision to use negotiated rulemaking, its selection of the representative groups, and approval or denial of an application to participate in the negotiated rulemaking process are not agency action. Nothing in this subparagraph is intended to affect the rights of an affected person to challenge a proposed rule developed under this paragraph in accordance with s. 120.56(2).

(3) ADOPTION PROCEDURES.—
(a) Notices.—
1. Prior to the adoption, amendment, or repeal of any rule other than an emergency rule, an agency, upon approval of the agency head, shall give notice of its intended action, setting forth a short, plain explanation of the purpose and effect of the proposed action; the full text of the proposed
rule or amendment and a summary thereof; a reference to the grant of rulemaking authority pursuant
to which the rule is adopted; and a reference to the section or subsection of the Florida Statutes or the
Laws of Florida being implemented or interpreted. The notice must include a summary of the agency’s
statement of the estimated regulatory costs, if one has been prepared, based on the factors set forth
in s. 120.541(2), and a statement that any person who wishes to provide the agency with information
regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost
regulatory alternative as provided by s. 120.541(1), must do so in writing within 21 days after
publication of the notice. The notice must state the procedure for requesting a public hearing on the
proposed rule. Except when the intended action is the repeal of a rule, the notice must include a
reference both to the date on which and to the place where the notice of rule development that is
required by subsection (2) appeared.

2. The notice shall be published in the Florida Administrative Weekly not less than 28 days prior to
the intended action. The proposed rule shall be available for inspection and copying by the public at
the time of the publication of notice.

3. The notice shall be mailed to all persons named in the proposed rule and to all persons who, at
least 14 days prior to such mailing, have made requests of the agency for advance notice of its
proceedings. The agency shall also give such notice as is prescribed by rule to those particular classes
of persons to whom the intended action is directed.

4. The adopting agency shall file with the committee, at least 21 days prior to the proposed
adoption date, a copy of each rule it proposes to adopt; a copy of any material incorporated by
reference in the rule; a detailed written statement of the facts and circumstances justifying the
proposed rule; a copy of any statement of estimated regulatory costs that has been prepared pursuant
to s. 120.541; a statement of the extent to which the proposed rule relates to federal standards or
rules on the same subject; and the notice required by subparagraph 1.

(b) Special matters to be considered in rule adoption.—

1. Statement of estimated regulatory costs.—Prior to the adoption, amendment, or repeal of any
rule other than an emergency rule, an agency is encouraged to prepare a statement of estimated
regulatory costs of the proposed rule, as provided by s. 120.541. However, an agency must prepare a
statement of estimated regulatory costs of the proposed rule, as provided by s. 120.541, if:
   a. The proposed rule will have an adverse impact on small business; or
   b. The proposed rule is likely to directly or indirectly increase regulatory costs in excess of
$200,000 in the aggregate in this state within 1 year after the implementation of the rule.

2. Small businesses, small counties, and small cities.—
   a. Each agency, before the adoption, amendment, or repeal of a rule, shall consider the impact of
the rule on small businesses as defined by s. 288.703 and the impact of the rule on small counties or
small cities as defined by s. 120.52. Whenever practicable, an agency shall tier its rules to reduce
disproportionate impacts on small businesses, small counties, or small cities to avoid regulating small businesses, small counties, or small cities that do not contribute significantly to the problem the rule is designed to address. An agency may define “small business” to include businesses employing more than 200 persons, may define “small county” to include those with populations of more than 75,000, and may define “small city” to include those with populations of more than 10,000, if it finds that such a definition is necessary to adapt a rule to the needs and problems of small businesses, small counties, or small cities. The agency shall consider each of the following methods for reducing the impact of the proposed rule on small businesses, small counties, and small cities, or any combination of these entities:

(I) Establishing less stringent compliance or reporting requirements in the rule.

(II) Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements.

(III) Consolidating or simplifying the rule’s compliance or reporting requirements.

(IV) Establishing performance standards or best management practices to replace design or operational standards in the rule.

(V) Exempting small businesses, small counties, or small cities from any or all requirements of the rule.

b.(I) If the agency determines that the proposed action will affect small businesses as defined by the agency as provided in sub-subparagraph a., the agency shall send written notice of the rule to the Small Business Regulatory Advisory Council and the Office of Tourism, Trade, and Economic Development not less than 28 days prior to the intended action.

(II) Each agency shall adopt those regulatory alternatives offered by the Small Business Regulatory Advisory Council and provided to the agency no later than 21 days after the council’s receipt of the written notice of the rule which it finds are feasible and consistent with the stated objectives of the proposed rule and which would reduce the impact on small businesses. When regulatory alternatives are offered by the Small Business Regulatory Advisory Council, the 90-day period for filing the rule in subparagraph (e)2. is extended for a period of 21 days.

(III) If an agency does not adopt all alternatives offered pursuant to this sub-subparagraph, it shall, prior to rule adoption or amendment and pursuant to subparagraph (d)1., file a detailed written statement with the committee explaining the reasons for failure to adopt such alternatives. Within 3 working days of the filing of such notice, the agency shall send a copy of such notice to the Small Business Regulatory Advisory Council. The Small Business Regulatory Advisory Council may make a request of the President of the Senate and the Speaker of the House of Representatives that the presiding officers direct the Office of Program Policy Analysis and Government Accountability to determine whether the rejected alternatives reduce the impact on small business while meeting the stated objectives of the proposed rule. Within 60 days after the date of the directive from the
presiding officers, the Office of Program Policy Analysis and Government Accountability shall report to the Administrative Procedures Committee its findings as to whether an alternative reduces the impact on small business while meeting the stated objectives of the proposed rule. The Office of Program Policy Analysis and Government Accountability shall consider the proposed rule, the economic impact statement, the written statement of the agency, the proposed alternatives, and any comment submitted during the comment period on the proposed rule. The Office of Program Policy Analysis and Government Accountability shall submit a report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The Administrative Procedures Committee shall report such findings to the agency, and the agency shall respond in writing to the Administrative Procedures Committee if the Office of Program Policy Analysis and Government Accountability found that the alternative reduced the impact on small business while meeting the stated objectives of the proposed rule. If the agency will not adopt the alternative, it must also provide a detailed written statement to the committee as to why it will not adopt the alternative.

(c) **Hearings.**—

1. If the intended action concerns any rule other than one relating exclusively to procedure or practice, the agency shall, on the request of any affected person received within 21 days after the date of publication of the notice of intended agency action, give affected persons an opportunity to present evidence and argument on all issues under consideration. The agency may schedule a public hearing on the rule and, if requested by any affected person, shall schedule a public hearing on the rule. When a public hearing is held, the agency must ensure that staff are available to explain the agency’s proposal and to respond to questions or comments regarding the rule. If the agency head is a board or other collegial body created under s. 20.165(4) or s. 20.43(3)(g), and one or more requested public hearings is scheduled, the board or other collegial body shall conduct at least one of the public hearings itself and may not delegate this responsibility without the consent of those persons requesting the public hearing. Any material pertinent to the issues under consideration submitted to the agency within 21 days after the date of publication of the notice or submitted to the agency between the date of publication of the notice and the end of the final public hearing shall be considered by the agency and made a part of the record of the rulemaking proceeding.

2. Rulemaking proceedings shall be governed solely by the provisions of this section unless a person timely asserts that the person’s substantial interests will be affected in the proceeding and affirmatively demonstrates to the agency that the proceeding does not provide adequate opportunity to protect those interests. If the agency determines that the rulemaking proceeding is not adequate to protect the person’s interests, it shall suspend the rulemaking proceeding and convene a separate proceeding under the provisions of ss. 120.569 and 120.57. Similarly situated persons may be requested to join and participate in the separate proceeding. Upon conclusion of the separate proceeding, the rulemaking proceeding shall be resumed.
(d) **Modification or withdrawal of proposed rules.**—

1. After the final public hearing on the proposed rule, or after the time for requesting a hearing has expired, if the rule has not been changed from the rule as previously filed with the committee, or contains only technical changes, the adopting agency shall file a notice to that effect with the committee at least 7 days prior to filing the rule for adoption. Any change, other than a technical change that does not affect the substance of the rule, must be supported by the record of public hearings held on the rule, must be in response to written material submitted to the agency within 21 days after the date of publication of the notice of intended agency action or submitted to the agency between the date of publication of the notice and the end of the final public hearing, or must be in response to a proposed objection by the committee. In addition, when any change is made in a proposed rule, other than a technical change, the adopting agency shall provide a copy of a notice of change by certified mail or actual delivery to any person who requests it in writing no later than 21 days after the notice required in paragraph (a). The agency shall file the notice of change with the committee, along with the reasons for the change, and provide the notice of change to persons requesting it, at least 21 days prior to filing the rule for adoption. The notice of change shall be published in the Florida Administrative Weekly at least 21 days prior to filing the rule for adoption. This subparagraph does not apply to emergency rules adopted pursuant to subsection (4).

2. After the notice required by paragraph (a) and prior to adoption, the agency may withdraw the rule in whole or in part.

3. After adoption and before the effective date, a rule may be modified or withdrawn only in response to an objection by the committee or may be modified to extend the effective date by not more than 60 days when the committee has notified the agency that an objection to the rule is being considered.

4. The agency shall give notice of its decision to withdraw or modify a rule in the first available issue of the publication in which the original notice of rulemaking was published, shall notify those persons described in subparagraph (a)3. in accordance with the requirements of that subparagraph, and shall notify the Department of State if the rule is required to be filed with the Department of State.

5. After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.

(e) **Filing for final adoption; effective date.**—

1. If the adopting agency is required to publish its rules in the Florida Administrative Code, the agency, upon approval of the agency head, shall file with the Department of State three certified copies of the rule it proposes to adopt; one copy of any material incorporated by reference in the rule, certified by the agency; a summary of the rule; a summary of any hearings held on the rule; and a detailed written statement of the facts and circumstances justifying the rule. Agencies not required to
publish their rules in the Florida Administrative Code shall file one certified copy of the proposed rule, and the other material required by this subparagraph, in the office of the agency head, and such rules shall be open to the public.

2. A rule may not be filed for adoption less than 28 days or more than 90 days after the notice required by paragraph (a), until 21 days after the notice of change required by paragraph (d), until 14 days after the final public hearing, until 21 days after a statement of estimated regulatory costs required under s. 120.541 has been provided to all persons who submitted a lower cost regulatory alternative and made available to the public, or until the administrative law judge has rendered a decision under s. 120.56(2), whichever applies. When a required notice of change is published prior to the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after the date of publication. If notice of a public hearing is published prior to the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after adjournment of the final hearing on the rule, 21 days after receipt of all material authorized to be submitted at the hearing, or 21 days after receipt of the transcript, if one is made, whichever is latest. The term “public hearing” includes any public meeting held by any agency at which the rule is considered. If a petition for an administrative determination under s. 120.56(2) is filed, the period during which a rule must be filed for adoption is extended to 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete.

3. At the time a rule is filed, the agency shall certify that the time limitations prescribed by this paragraph have been complied with, that all statutory rulemaking requirements have been met, and that there is no administrative determination pending on the rule.

4. At the time a rule is filed, the committee shall certify whether the agency has responded in writing to all material and timely written comments or written inquiries made on behalf of the committee. The department shall reject any rule that is not filed within the prescribed time limits; that does not comply with all statutory rulemaking requirements and rules of the department; upon which an agency has not responded in writing to all material and timely written inquiries or written comments; upon which an administrative determination is pending; or which does not include a statement of estimated regulatory costs, if required.

5. If a rule has not been adopted within the time limits imposed by this paragraph or has not been adopted in compliance with all statutory rulemaking requirements, the agency proposing the rule shall withdraw the rule and give notice of its action in the next available issue of the Florida Administrative Weekly.

6. The proposed rule shall be adopted on being filed with the Department of State and become effective 20 days after being filed, on a later date specified in the notice required by subparagraph (a)1., or on a date required by statute. Rules not required to be filed with the Department of State
shall become effective when adopted by the agency head or on a later date specified by rule or statute. If the committee notifies an agency that an objection to a rule is being considered, the agency may postpone the adoption of the rule to accommodate review of the rule by the committee. When an agency postpones adoption of a rule to accommodate review by the committee, the 90-day period for filing the rule is tolled until the committee notifies the agency that it has completed its review of the rule.

For the purposes of this paragraph, the term “administrative determination” does not include subsequent judicial review.

(4) EMERGENCY RULES.—

(a) If an agency finds that an immediate danger to the public health, safety, or welfare requires emergency action, the agency may adopt any rule necessitated by the immediate danger. The agency may adopt a rule by any procedure which is fair under the circumstances if:

1. The procedure provides at least the procedural protection given by other statutes, the State Constitution, or the United States Constitution.

2. The agency takes only that action necessary to protect the public interest under the emergency procedure.

3. The agency publishes in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. In any event, notice of emergency rules, other than those of educational units or units of government with jurisdiction in only one or a part of one county, including the full text of the rules, shall be published in the first available issue of the Florida Administrative Weekly and provided to the committee along with any material incorporated by reference in the rules. The agency’s findings of immediate danger, necessity, and procedural fairness shall be judicially reviewable.

(b) Rules pertaining to the public health, safety, or welfare shall include rules pertaining to perishable agricultural commodities or rules pertaining to the interpretation and implementation of the requirements of chapters 97-102 and chapter 105 of the Election Code.

(c) An emergency rule adopted under this subsection shall not be effective for a period longer than 90 days and shall not be renewable, except when the agency has initiated rulemaking to adopt rules addressing the subject of the emergency rule and either:

1. A challenge to the proposed rules has been filed and remains pending; or

2. The proposed rules are awaiting ratification by the Legislature pursuant to s. 120.541(3).

Nothing in this paragraph prohibits the agency from adopting a rule or rules identical to the emergency rule through the rulemaking procedures specified in subsection (3).
(d) Subject to applicable constitutional and statutory provisions, an emergency rule becomes effective immediately on filing, or on a date less than 20 days thereafter if specified in the rule, if the adopting agency finds that such effective date is necessary because of immediate danger to the public health, safety, or welfare.

(5) UNIFORM RULES.—

(a)1. By July 1, 1997, the Administration Commission shall adopt one or more sets of uniform rules of procedure which shall be reviewed by the committee and filed with the Department of State. Agencies must comply with the uniform rules by July 1, 1998. The uniform rules shall establish procedures that comply with the requirements of this chapter. On filing with the department, the uniform rules shall be the rules of procedure for each agency subject to this chapter unless the Administration Commission grants an exception to the agency under this subsection.

2. An agency may seek exceptions to the uniform rules of procedure by filing a petition with the Administration Commission. The Administration Commission shall approve exceptions to the extent necessary to implement other statutes, to the extent necessary to conform to any requirement imposed as a condition precedent to receipt of federal funds or to permit persons in this state to receive tax benefits under federal law, or as required for the most efficient operation of the agency as determined by the Administration Commission. The reasons for the exceptions shall be published in the Florida Administrative Weekly.

3. Agency rules that provide exceptions to the uniform rules shall not be filed with the department unless the Administration Commission has approved the exceptions. Each agency that adopts rules that provide exceptions to the uniform rules shall publish a separate chapter in the Florida Administrative Code that delineates clearly the provisions of the agency’s rules that provide exceptions to the uniform rules and specifies each alternative chosen from among those authorized by the uniform rules. Each chapter shall be organized in the same manner as the uniform rules.

(b) The uniform rules of procedure adopted by the commission pursuant to this subsection shall include, but are not limited to:

1. Uniform rules for the scheduling of public meetings, hearings, and workshops.

2. Uniform rules for use by each state agency that provide procedures for conducting public meetings, hearings, and workshops, and for taking evidence, testimony, and argument at such public meetings, hearings, and workshops, in person and by means of communications media technology. The rules shall provide that all evidence, testimony, and argument presented shall be afforded equal consideration, regardless of the method of communication. If a public meeting, hearing, or workshop is to be conducted by means of communications media technology, or if attendance may be provided by such means, the notice shall so state. The notice for public meetings, hearings, and workshops utilizing communications media technology shall state how persons interested in attending may do so and shall name locations, if any, where communications media technology facilities will be available. Nothing in
this paragraph shall be construed to diminish the right to inspect public records under chapter 119. Limiting points of access to public meetings, hearings, and workshops subject to the provisions of s. 286.011 to places not normally open to the public shall be presumed to violate the right of access of the public, and any official action taken under such circumstances is void and of no effect. Other laws relating to public meetings, hearings, and workshops, including penal and remedial provisions, shall apply to public meetings, hearings, and workshops conducted by means of communications media technology, and shall be liberally construed in their application to such public meetings, hearings, and workshops. As used in this subparagraph, “communications media technology” means the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available.

3. Uniform rules of procedure for the filing of notice of protests and formal written protests. The Administration Commission may prescribe the form and substantive provisions of a required bond.

4. Uniform rules of procedure for the filing of petitions for administrative hearings pursuant to s. 120.569 or s. 120.57. Such rules shall require the petition to include:
   a. The identification of the petitioner.
   b. A statement of when and how the petitioner received notice of the agency’s action or proposed action.
   c. An explanation of how the petitioner’s substantial interests are or will be affected by the action or proposed action.
   d. A statement of all material facts disputed by the petitioner or a statement that there are no disputed facts.
   e. A statement of the ultimate facts alleged, including a statement of the specific facts the petitioner contends warrant reversal or modification of the agency’s proposed action.
   f. A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency’s proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes.
   g. A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the proposed action.

5. Uniform rules for the filing of request for administrative hearing by a respondent in agency enforcement and disciplinary actions. Such rules shall require a request to include:
   a. The name, address, and telephone number of the party making the request and the name, address, and telephone number of the party’s counsel or qualified representative upon whom service of pleadings and other papers shall be made;
   b. A statement that the respondent is requesting an administrative hearing and disputes the material facts alleged by the petitioner, in which case the respondent shall identify those material
facts that are in dispute, or that the respondent is requesting an administrative hearing and does not
dispute the material facts alleged by the petitioner; and

c. A reference by file number to the administrative complaint that the party has received from the
agency and the date on which the agency pleading was received.

The agency may provide an election-of-rights form for the respondent’s use in requesting a hearing, so
long as any form provided by the agency calls for the information in sub-subparagraphs a. through c.
and does not impose any additional requirements on a respondent in order to request a hearing, unless
such requirements are specifically authorized by law.

6. Uniform rules of procedure for the filing and prompt disposition of petitions for declaratory
statements. The rules shall also describe the contents of the notices that must be published in the
Florida Administrative Weekly under s. 120.565, including any applicable time limit for the filing of
petitions to intervene or petitions for administrative hearing by persons whose substantial interests
may be affected.

7. Provision of a method by which each agency head shall provide a description of the agency’s
organization and general course of its operations. The rules shall require that the statement concerning
the agency’s organization and operations be published on the agency’s website.

8. Uniform rules establishing procedures for granting or denying petitions for variances and waivers
pursuant to s. 120.542.

(6) ADOPTION OF FEDERAL STANDARDS.—Notwithstanding any contrary provision of this section, in
the pursuance of state implementation, operation, or enforcement of federal programs, an agency is
empowered to adopt rules substantively identical to regulations adopted pursuant to federal law, in
accordance with the following procedures:

(a) The agency shall publish notice of intent to adopt a rule pursuant to this subsection in the
Florida Administrative Weekly at least 21 days prior to filing the rule with the Department of State.
The agency shall provide a copy of the notice of intent to adopt a rule to the committee at least 21
days prior to the date of filing with the Department of State. Prior to filing the rule with the
Department of State, the agency shall consider any written comments received within 14 days after the
date of publication of the notice of intent to adopt a rule. The rule shall be adopted upon filing with
the Department of State. Substantive changes from the rules as noticed shall require republishing of
notice as required in this subsection.

(b) Any rule adopted pursuant to this subsection shall become effective upon the date designated
by the agency in the notice of intent to adopt a rule; however, no such rule shall become effective
earlier than the effective date of the substantively identical federal regulation.

(c) Any substantially affected person may, within 14 days after the date of publication of the notice
of intent to adopt a rule, file an objection to rulemaking with the agency. The objection shall specify
the portions of the proposed rule to which the person objects and the specific reasons for the objection. The agency shall not proceed pursuant to this subsection to adopt those portions of the proposed rule specified in an objection, unless the agency deems the objection to be frivolous, but may proceed pursuant to subsection (3). An objection to a proposed rule, which rule in no material respect differs from the requirements of the federal regulation upon which it is based, is deemed to be frivolous.

(d) Whenever any federal regulation adopted as an agency rule pursuant to this subsection is declared invalid or is withdrawn, revoked, repealed, remanded, or suspended, the agency shall, within 60 days thereafter, publish a notice of repeal of the substantively identical agency rule in the Florida Administrative Weekly. Such repeal is effective upon publication of the notice. Whenever any federal regulation adopted as an agency rule pursuant to this subsection is substantially amended, the agency may adopt the amended regulation as a rule. If the amended regulation is not adopted as a rule within 180 days after the effective date of the amended regulation, the original rule is deemed repealed and the agency shall publish a notice of repeal of the original agency rule in the next available Florida Administrative Weekly.

(e) Whenever all or part of any rule proposed for adoption by the agency is substantively identical to a regulation adopted pursuant to federal law, such rule shall be written in a manner so that the rule specifically references the regulation wherever possible.

(7) PETITION TO INITIATE RULEMAKING.—

(a) Any person regulated by an agency or having substantial interest in an agency rule may petition an agency to adopt, amend, or repeal a rule or to provide the minimum public information required by this chapter. The petition shall specify the proposed rule and action requested. Not later than 30 calendar days following the date of filing a petition, the agency shall initiate rulemaking proceedings under this chapter, otherwise comply with the requested action, or deny the petition with a written statement of its reasons for the denial.

(b) If the petition filed under this subsection is directed to an unadopted rule, the agency shall, not later than 30 days following the date of filing a petition, initiate rulemaking, or provide notice in the Florida Administrative Weekly that the agency will hold a public hearing on the petition within 30 days after publication of the notice. The purpose of the public hearing is to consider the comments of the public directed to the agency rule which has not been adopted by the rulemaking procedures or requirements of this chapter, its scope and application, and to consider whether the public interest is served adequately by the application of the rule on a case-by-case basis, as contrasted with its adoption by the rulemaking procedures or requirements set forth in this chapter.

(c) Within 30 days following the public hearing provided for by paragraph (b), if the agency does not initiate rulemaking or otherwise comply with the requested action, the agency shall publish in the Florida Administrative Weekly a statement of its reasons for not initiating rulemaking or otherwise
complying with the requested action, and of any changes it will make in the scope or application of the unadopted rule. The agency shall file the statement with the committee. The committee shall forward a copy of the statement to the substantive committee with primary oversight jurisdiction of the agency in each house of the Legislature. The committee or the committee with primary oversight jurisdiction may hold a hearing directed to the statement of the agency. The committee holding the hearing may recommend to the Legislature the introduction of legislation making the rule a statutory standard or limiting or otherwise modifying the authority of the agency.

(8) RULEMAKING RECORD.—In all rulemaking proceedings the agency shall compile a rulemaking record. The record shall include, if applicable, copies of:

(a) All notices given for the proposed rule.
(b) Any statement of estimated regulatory costs for the rule.
(c) A written summary of hearings on the proposed rule.
(d) The written comments and responses to written comments as required by this section and s. 120.541.
(e) All notices and findings made under subsection (4).
(f) All materials filed by the agency with the committee under subsection (3).
(g) All materials filed with the Department of State under subsection (3).
(h) All written inquiries from standing committees of the Legislature concerning the rule.

Each state agency shall retain the record of rulemaking as long as the rule is in effect. When a rule is no longer in effect, the record may be destroyed pursuant to the records-retention schedule developed under s. 257.36(6).

History.—s. 1, ch. 74-310; s. 3, ch. 75-191; s. 3, ch. 76-131; ss. 1, 2, ch. 76-276; s. 1, ch. 77-174; s. 13, ch. 77-290; s. 3, ch. 77-453; s. 2, ch. 78-28; s. 2, ch. 78-425; s. 7, ch. 79-3; s. 3, ch. 79-299; s. 69, ch. 79-400; s. 5, ch. 80-391; s. 1, ch. 81-309; s. 2, ch. 83-351; s. 1, ch. 84-173; s. 2, ch. 84-203; s. 7, ch. 85-104; s. 1, ch. 86-30; s. 3, ch. 87-385; s. 36, ch. 90-302; ss. 2, 4, 7, ch. 92-166; s. 63, ch. 93-187; s. 758, ch. 95-147; s. 6, ch. 95-295; s. 10, ch. 96-159; s. 6, ch. 96-320; s. 9, ch. 96-370; s. 3, ch. 97-176; s. 3, ch. 98-200; s. 4, ch. 99-379; s. 9, ch. 2001-75; s. 2, ch. 2003-94; s. 50, ch. 2005-278; s. 3, ch. 2006-82; ss. 5, 6, ch. 2008-104; s. 7, ch. 2008-149; s. 4, ch. 2009-187; ss. 1, 5, ch. 2010-279; H.J.R. 9-A, 2010 Special Session A.

Note.—Section 5, ch. 2010-279, provides that “[t]his act shall take effect upon becoming a law.” Passed by the Senate and the House of Representatives over the Governor’s veto November 16, 2010. House Joint Resolution 9-A, 2010 Special Session A, provides that C.S. for C.S. for H.B. 1565, which became ch. 2010-279, is effective November 17, 2010.

120.541 Statement of estimated regulatory costs.—

(1)(a) Within 21 days after publication of the notice required under s. 120.54(3)(a), a substantially affected person may submit to an agency a good faith written proposal for a lower cost regulatory alternative to a proposed rule which substantially accomplishes the objectives of the law being
implemented. The proposal may include the alternative of not adopting any rule if the proposal explains how the lower costs and objectives of the law will be achieved by not adopting any rule. If such a proposal is submitted, the 90-day period for filing the rule is extended 21 days. Upon the submission of the lower cost regulatory alternative, the agency shall prepare a statement of estimated regulatory costs as provided in subsection (2), or shall revise its prior statement of estimated regulatory costs, and either adopt the alternative or provide a statement of the reasons for rejecting the alternative in favor of the proposed rule.

(b) If a proposed rule will have an adverse impact on small business or if the proposed rule is likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate within 1 year after the implementation of the rule, the agency shall prepare a statement of estimated regulatory costs as required by s. 120.54(3)(b).

(c) The agency shall revise a statement of estimated regulatory costs if any change to the rule made under s. 120.54(3)(d) increases the regulatory costs of the rule.

(d) At least 45 days before filing the rule for adoption, an agency that is required to revise a statement of estimated regulatory costs shall provide the statement to the person who submitted the lower cost regulatory alternative and to the committee and shall provide notice on the agency’s website that it is available to the public.

(e) Notwithstanding s. 120.56(1)(c), the failure of the agency to prepare a statement of estimated regulatory costs or to respond to a written lower cost regulatory alternative as provided in this subsection is a material failure to follow the applicable rulemaking procedures or requirements set forth in this chapter.

(f) An agency’s failure to prepare a statement of estimated regulatory costs or to respond to a written lower cost regulatory alternative may not be raised in a proceeding challenging the validity of a rule pursuant to s. 120.52(8)(a) unless:

1. Raised in a petition filed no later than 1 year after the effective date of the rule; and
2. Raised by a person whose substantial interests are affected by the rule’s regulatory costs.

(g) A rule that is challenged pursuant to s. 120.52(8)(f) may not be declared invalid unless:

1. The issue is raised in an administrative proceeding within 1 year after the effective date of the rule;
2. The challenge is to the agency’s rejection of a lower cost regulatory alternative offered under paragraph (a) or s. 120.54(3)(b)2.b.; and
3. The substantial interests of the person challenging the rule are materially affected by the rejection.

(2) A statement of estimated regulatory costs shall include:

(a) An economic analysis showing whether the rule directly or indirectly:
1. Is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of $1 million in the aggregate within 5 years after the implementation of the rule;

2. Is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of $1 million in the aggregate within 5 years after the implementation of the rule; or

3. Is likely to increase regulatory costs, including any transactional costs, in excess of $1 million in the aggregate within 5 years after the implementation of the rule.

(b) A good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.

(c) A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues.

(d) A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. As used in this section, “transactional costs” are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring and reporting, and any other costs necessary to comply with the rule.

(e) An analysis of the impact on small businesses as defined by s. 288.703, and an analysis of the impact on small counties and small cities as defined in s. 120.52. The impact analysis for small businesses must include the basis for the agency’s decision not to implement alternatives that would reduce adverse impacts on small businesses.

(f) Any additional information that the agency determines may be useful.

(g) In the statement or revised statement, whichever applies, a description of any regulatory alternatives submitted under paragraph (1)(a) and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

(3) If the adverse impact or regulatory costs of the rule exceed any of the criteria established in paragraph (2)(a), the rule shall be submitted to the President of the Senate and Speaker of the House of Representatives no later than 30 days prior to the next regular legislative session, and the rule may not take effect until it is ratified by the Legislature.

(4) Paragraph (2)(a) does not apply to the adoption of emergency rules pursuant to s. 120.54(4) or the adoption of federal standards pursuant to s. 120.54(6).
History.—s. 11, ch. 96-159; s. 4, ch. 97-176; ss. 2, 5, ch. 2010-279; H.J.R. 9-A, 2010 Special Session A.

Note.—Section 5, ch. 2010-279, provides that “[t]his act shall take effect upon becoming a law.” Passed by the Senate and the House of Representatives over the Governor’s veto November 16, 2010. House Joint Resolution 9-A, 2010 Special Session A, provides that C.S. for C.S. for H.B. 1565, which became ch. 2010-279, is effective November 17, 2010.

120.542 Variances and waivers.—

(1) Strict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The Legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation. A public employee is not a person subject to regulation under this section for the purpose of petitioning for a variance or waiver to a rule that affects that public employee in his or her capacity as a public employee. Agencies are authorized to grant variances and waivers to requirements of their rules consistent with this section and with rules adopted under the authority of this section. An agency may limit the duration of any grant of a variance or waiver or otherwise impose conditions on the grant only to the extent necessary for the purpose of the underlying statute to be achieved. This section does not authorize agencies to grant variances or waivers to statutes or to rules required by the Federal Government for the agency’s implementation or retention of any federally approved or delegated program, except as allowed by the program or when the variance or waiver is also approved by the appropriate agency of the Federal Government. This section is supplemental to, and does not abrogate, the variance and waiver provisions in any other statute.

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, “substantial hardship” means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, “principles of fairness” are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

(3) The Governor and Cabinet, sitting as the Administration Commission, shall adopt uniform rules of procedure pursuant to the requirements of s. 120.54(5) establishing procedures for granting or denying petitions for variances and waivers. The uniform rules shall include procedures for the granting, denying, or revoking of emergency and temporary variances and waivers. Such provisions may provide for expedited timeframes, waiver of or limited public notice, and limitations on comments on the petition in the case of such temporary or emergency variances and waivers.

(4) Agencies shall advise persons of the remedies available through this section and shall provide copies of this section, the uniform rules on variances and waivers, and, if requested, the underlying statute, to persons who inquire about the possibility of relief from rule requirements.
(5) A person who is subject to regulation by an agency rule may file a petition with that agency, with a copy to the committee, requesting a variance or waiver from the agency's rule. In addition to any requirements mandated by the uniform rules, each petition shall specify:
   (a) The rule from which a variance or waiver is requested.
   (b) The type of action requested.
   (c) The specific facts that would justify a waiver or variance for the petitioner.
   (d) The reason why the variance or the waiver requested would serve the purposes of the underlying statute.

(6) Within 15 days after receipt of a petition for variance or waiver, an agency shall provide notice of the petition to the Department of State, which shall publish notice of the petition in the first available issue of the Florida Administrative Weekly. The notice shall contain the name of the petitioner, the date the petition was filed, the rule number and nature of the rule from which variance or waiver is sought, and an explanation of how a copy of the petition can be obtained. The uniform rules shall provide a means for interested persons to provide comments on the petition.

(7) Except for requests for emergency variances or waivers, within 30 days after receipt of a petition for a variance or waiver, an agency shall review the petition and request submittal of all additional information that the agency is permitted by this section to require. Within 30 days after receipt of such additional information, the agency shall review it and may request only that information needed to clarify the additional information or to answer new questions raised by or directly related to the additional information. If the petitioner asserts that any request for additional information is not authorized by law or by rule of the affected agency, the agency shall proceed, at the petitioner’s written request, to process the petition.

(8) An agency shall grant or deny a petition for variance or waiver within 90 days after receipt of the original petition, the last item of timely requested additional material, or the petitioner’s written request to finish processing the petition. A petition not granted or denied within 90 days after receipt of a completed petition is deemed approved. A copy of the order granting or denying the petition shall be filed with the committee and shall contain a statement of the relevant facts and reasons supporting the agency’s action. The agency shall provide notice of the disposition of the petition to the Department of State, which shall publish the notice in the next available issue of the Florida Administrative Weekly. The notice shall contain the name of the petitioner, the date the petition was filed, the rule number and nature of the rule from which the waiver or variance is sought, a reference to the place and date of publication of the notice of the petition, the date of the order denying or approving the variance or waiver, the general basis for the agency decision, and an explanation of how a copy of the order can be obtained. The agency’s decision to grant or deny the petition shall be supported by competent substantial evidence and is subject to ss. 120.569 and 120.57. Any proceeding pursuant to ss. 120.569 and 120.57 in regard to a variance or waiver shall be limited to the agency
action on the request for the variance or waiver, except that a proceeding in regard to a variance or waiver may be consolidated with any other proceeding authorized by this chapter.

(9) Each agency shall maintain a record of the type and disposition of each petition, including temporary or emergency variances and waivers, filed pursuant to this section.

History.—s. 12, ch. 96-159; s. 5, ch. 97-176; s. 37, ch. 2010-102.

120.545 Committee review of agency rules.—

(1) As a legislative check on legislatively created authority, the committee shall examine each proposed rule, except for those proposed rules exempted by s. 120.81(1)(e) and (2), and its accompanying material, and each emergency rule, and may examine any existing rule, for the purpose of determining whether:

(a) The rule is an invalid exercise of delegated legislative authority.

(b) The statutory authority for the rule has been repealed.

(c) The rule reiterates or paraphrases statutory material.

(d) The rule is in proper form.

(e) The notice given prior to its adoption was sufficient to give adequate notice of the purpose and effect of the rule.

(f) The rule is consistent with expressed legislative intent pertaining to the specific provisions of law which the rule implements.

(g) The rule is necessary to accomplish the apparent or expressed objectives of the specific provision of law which the rule implements.

(h) The rule is a reasonable implementation of the law as it affects the convenience of the general public or persons particularly affected by the rule.

(i) The rule could be made less complex or more easily comprehensible to the general public.

(j) The rule’s statement of estimated regulatory costs complies with the requirements of s. 120.541 and whether the rule does not impose regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

(k) The rule will require additional appropriations.

(l) If the rule is an emergency rule, there exists an emergency justifying the adoption of such rule, the agency is within its statutory authority, and the rule was adopted in compliance with the requirements and limitations of s. 120.54(4).

(2) The committee may request from an agency such information as is reasonably necessary for examination of a rule as required by subsection (1). The committee shall consult with legislative standing committees having jurisdiction over the subject areas. If the committee objects to a rule, the committee shall, within 5 days after the objection, certify that fact to the agency whose rule has been examined and include with the certification a statement detailing its objections with particularity. The
committee shall notify the Speaker of the House of Representatives and the President of the Senate of any objection to an agency rule concurrent with certification of that fact to the agency. Such notice shall include a copy of the rule and the statement detailing the committee’s objections to the rule.

(3) Within 30 days after receipt of the objection, if the agency is headed by an individual, or within 45 days after receipt of the objection, if the agency is headed by a collegial body, the agency shall:
   (a) If the rule is not yet in effect:
      1. File notice pursuant to s. 120.54(3)(d) of only such modifications as are necessary to address the committee’s objection;
      2. File notice pursuant to s. 120.54(3)(d) of withdrawal of the rule; or
      3. Notify the committee in writing that it refuses to modify or withdraw the rule.
   (b) If the rule is in effect:
      1. File notice pursuant to s. 120.54(3)(a), without prior notice of rule development, to amend the rule to address the committee’s objection;
      2. File notice pursuant to s. 120.54(3)(a) to repeal the rule; or
      3. Notify the committee in writing that the agency refuses to amend or repeal the rule.
   (c) If the objection is to the statement of estimated regulatory costs:
      1. Prepare a corrected statement of estimated regulatory costs, give notice of the availability of the corrected statement in the first available issue of the Florida Administrative Weekly, and file a copy of the corrected statement with the committee; or
      2. Notify the committee that it refuses to prepare a corrected statement of estimated regulatory costs.

(4) Failure of the agency to respond to a committee objection to a rule that is not yet in effect within the time prescribed in subsection (3) constitutes withdrawal of the rule in its entirety. In this event, the committee shall notify the Department of State that the agency, by its failure to respond to a committee objection, has elected to withdraw the rule. Upon receipt of the committee’s notice, the Department of State shall publish a notice to that effect in the next available issue of the Florida Administrative Weekly. Upon publication of the notice, the rule shall be stricken from the files of the Department of State and the files of the agency.

(5) Failure of the agency to respond to a committee objection to a rule that is in effect within the time prescribed in subsection (3) constitutes a refusal to amend or repeal the rule.

(6) Failure of the agency to respond to a committee objection to a statement of estimated regulatory costs within the time prescribed in subsection (3) constitutes a refusal to prepare a corrected statement of estimated regulatory costs.

(7) If the committee objects to a rule and the agency refuses to modify, amend, withdraw, or repeal the rule, the committee shall file with the Department of State a notice of the objection, detailing with particularity the committee’s objection to the rule. The Department of State shall
publish this notice in the Florida Administrative Weekly. If the rule is published in the Florida Administrative Code, a reference to the committee’s objection and to the issue of the Florida Administrative Weekly in which the full text thereof appears shall be recorded in a history note.

(8)(a) If the committee objects to a rule, or portion of a rule, and the agency fails to initiate administrative action to modify, amend, withdraw, or repeal the rule consistent with the objection within 60 days after the objection, or thereafter fails to proceed in good faith to complete such action, the committee may submit to the President of the Senate and the Speaker of the House of Representatives a recommendation that legislation be introduced to address the committee’s objection.

(b)1. If the committee votes to recommend the introduction of legislation to address the committee’s objection, the committee shall, within 5 days after this determination, certify that fact to the agency whose rule or proposed rule has been examined. The committee may request that the agency temporarily suspend the rule or suspend the adoption of the proposed rule, pending consideration of proposed legislation during the next regular session of the Legislature.

2. Within 30 days after receipt of the certification, if the agency is headed by an individual, or within 45 days after receipt of the certification, if the agency is headed by a collegial body, the agency shall:
   a. Temporarily suspend the rule or suspend the adoption of the proposed rule; or
   b. Notify the committee in writing that the agency refuses to temporarily suspend the rule or suspend the adoption of the proposed rule.

3. If the agency elects to temporarily suspend the rule or suspend the adoption of the proposed rule, the agency shall give notice of the suspension in the Florida Administrative Weekly. The rule or the rule adoption process shall be suspended upon publication of the notice. An agency may not base any agency action on a suspended rule or suspended proposed rule, or portion of such rule, prior to expiration of the suspension. A suspended rule or suspended proposed rule, or portion of such rule, continues to be subject to administrative determination and judicial review as provided by law.

4. Failure of an agency to respond to committee certification within the time prescribed by subparagraph 2. constitutes a refusal to suspend the rule or to suspend the adoption of the proposed rule.

(c) The committee shall prepare proposed legislation to address the committee’s objection in accordance with the rules of the Senate and the House of Representatives for prefiling and introduction in the next regular session of the Legislature. The proposed legislation shall be presented to the President of the Senate and the Speaker of the House of Representatives with the committee recommendation.

(d) If proposed legislation addressing the committee’s objection fails to become law, any temporary agency suspension shall expire.
History.—s. 4, ch. 76-131; s. 1, ch. 77-174; s. 6, ch. 80-391; s. 3, ch. 81-309; s. 4, ch. 87-385; s. 8, ch. 92-166; s. 20, ch. 95-280; s. 14, ch. 96-159; s. 16, ch. 2000-151; s. 18, ch. 2008-4; s. 7, ch. 2008-104.

120.55 Publication.—
(1) The Department of State shall:
   (a)1. Through a continuous revision system, compile and publish electronically, on an Internet website managed by the department, the “Florida Administrative Code.” The Florida Administrative Code shall contain all rules adopted by each agency, citing the grant of rulemaking authority and the specific law implemented pursuant to which each rule was adopted, all history notes as authorized in s. 120.545(7), complete indexes to all rules contained in the code, and any other material required or authorized by law or deemed useful by the department. The electronic code shall display each rule chapter currently in effect in browse mode and allow full text search of the code and each rule chapter. The department shall publish a printed version of the Florida Administrative Code and may contract with a publishing firm for such printed publication; however, the department shall retain responsibility for the code as provided in this section. Supplementation of the printed code shall be made as often as practicable, but at least monthly. The printed publication shall be the official compilation of the administrative rules of this state. The Department of State shall retain the copyright over the Florida Administrative Code.
   2. Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or state university rules relating to internal personnel or business and finance shall not be published in the Florida Administrative Code. Exclusion from publication in the Florida Administrative Code shall not affect the validity or effectiveness of such rules.
   3. At the beginning of the section of the code dealing with an agency that files copies of its rules with the department, the department shall publish the address and telephone number of the executive offices of each agency, the manner by which the agency indexes its rules, a listing of all rules of that agency excluded from publication in the code, and a statement as to where those rules may be inspected.
   4. Forms shall not be published in the Florida Administrative Code; but any form which an agency uses in its dealings with the public, along with any accompanying instructions, shall be filed with the committee before it is used. Any form or instruction which meets the definition of “rule” provided in s. 120.52 shall be incorporated by reference into the appropriate rule. The reference shall specifically state that the form is being incorporated by reference and shall include the number, title, and effective date of the form and an explanation of how the form may be obtained. Each form created by an agency which is incorporated by reference in a rule notice of which is given under s. 120.54(3)(a) after December 31, 2007, must clearly display the number, title, and effective date of the form and the number of the rule in which the form is incorporated.
5. The department shall allow material incorporated by reference to be filed in electronic form as prescribed by department rule. When a rule is filed for adoption with incorporated material in electronic form, the department’s publication of the Florida Administrative Code on its Internet website must contain a hyperlink from the incorporating reference in the rule directly to that material. The department may not allow hyperlinks from rules in the Florida Administrative Code to any material other than that filed with and maintained by the department, but may allow hyperlinks to incorporated material maintained by the department from the adopting agency’s website or other sites.

(b) Electronically publish on an Internet website managed by the department a weekly publication entitled the “Florida Administrative Weekly,” which shall serve as the official Internet website for such publication and must contain:

1. Notice of adoption of, and an index to, all rules filed during the preceding week.
2. All notices required by s. 120.54(3)(a), showing the text of all rules proposed for consideration.
3. All notices of public meetings, hearings, and workshops conducted in accordance with the provisions of s. 120.525, including a statement of the manner in which a copy of the agenda may be obtained.
4. A notice of each request for authorization to amend or repeal an existing uniform rule or for the adoption of new uniform rules.
5. Notice of petitions for declaratory statements or administrative determinations.
6. A summary of each objection to any rule filed by the Administrative Procedures Committee during the preceding week.
7. A cumulative list of all rules that have been proposed but not filed for adoption.
8. Any other material required or authorized by law or deemed useful by the department.

The department shall publish a printed version of the Florida Administrative Weekly and make copies available on an annual subscription basis. The department may contract with a publishing firm for printed publication of the Florida Administrative Weekly.

(c) Review notices for compliance with format and numbering requirements before publishing them on the Florida Administrative Weekly Internet website.

(d) Prescribe by rule the style and form required for rules, notices, and other materials submitted for filing.

(e) Correct grammatical, typographical, and like errors not affecting the construction or meaning of the rules, after having obtained the advice and consent of the appropriate agency, and insert history notes.

(f) Charge each agency using the Florida Administrative Weekly a space rate to cover the costs related to the Florida Administrative Weekly and the Florida Administrative Code.

(g) Maintain a permanent record of all notices published in the Florida Administrative Weekly.
The Florida Administrative Weekly Internet website must allow users to:

(a) Search for notices by type, publication date, rule number, word, subject, and agency;
(b) Search a database that makes available all notices published on the website for a period of at least 5 years;
(c) Subscribe to an automated e-mail notification of selected notices to be sent out before or concurrently with weekly publication of the printed and electronic Florida Administrative Weekly. Such notification must include in the text of the e-mail a summary of the content of each notice;
(d) View agency forms and other materials submitted to the department in electronic form and incorporated by reference in proposed rules; and
(e) Comment on proposed rules.

Publication of material required by paragraph (1)(b) on the Florida Administrative Weekly Internet website does not preclude publication of such material on an agency’s website or by other means.

Each agency shall provide copies of its rules upon request, with citations to the grant of rulemaking authority and the specific law implemented for each rule.

Any publication of a proposed rule promulgated by an agency, whether published in the Florida Administrative Code or elsewhere, shall include, along with the rule, the name of the person or persons originating such rule, the name of the agency head who approved the rule, and the date upon which the rule was approved.

Access to the Florida Administrative Weekly Internet website and its contents, including the e-mail notification service, shall be free for the public.

Each year the Department of State shall furnish the Florida Administrative Weekly, without charge and upon request, as follows:

1. One subscription to each federal and state court having jurisdiction over the residents of the state; the Legislative Library; each state university library; the State Library; each depository library designated pursuant to s. 257.05; and each standing committee of the Senate and House of Representatives and each state legislator.
2. Two subscriptions to each state department.
3. Three subscriptions to the library of the Supreme Court of Florida, the library of each state district court of appeal, the division, the library of the Attorney General, each law school library in Florida, the Secretary of the Senate, and the Clerk of the House of Representatives.
4. Ten subscriptions to the committee.

The Department of State shall furnish one copy of the Florida Administrative Weekly, at no cost, to each clerk of the circuit court and each state department, for posting for public inspection.
(8)(a) All fees and moneys collected by the Department of State under this chapter shall be deposited in the Records Management Trust Fund for the purpose of paying for costs incurred by the department in carrying out this chapter.

(b) The unencumbered balance in the Records Management Trust Fund for fees collected pursuant to this chapter may not exceed $300,000 at the beginning of each fiscal year, and any excess shall be transferred to the General Revenue Fund.

History.—s. 1, ch. 74-310; s. 1, ch. 75-107; s. 4, ch. 75-191; s. 5, ch. 76-131; s. 1, ch. 77-174; s. 4, ch. 77-453; s. 3, ch. 78-425; s. 4, ch. 79-299; s. 7, ch. 80-391; s. 4, ch. 81-309; s. 1, ch. 82-19; s. 1, ch. 82-47; s. 3, ch. 83-351; s. 3, ch. 84-203; s. 17, ch. 87-224; s. 1, ch. 87-322; s. 20, ch. 91-45; s. 15, ch. 96-159; s. 896, ch. 2002-387; s. 5, ch. 2004-235; s. 14, ch. 2004-335; s. 4, ch. 2006-82; ss. 8, 9, ch. 2008-104; ss. 11, 12, ch. 2010-5.

120.56 Challenges to rules.—

(1) GENERAL PROCEDURES FOR CHALLENGING THE VALIDITY OF A RULE OR A PROPOSED RULE.—

(a) Any person substantially affected by a rule or a proposed rule may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority.

(b) The petition seeking an administrative determination must state with particularity the provisions alleged to be invalid with sufficient explanation of the facts or grounds for the alleged invalidity and facts sufficient to show that the person challenging a rule is substantially affected by it, or that the person challenging a proposed rule would be substantially affected by it.

(c) The petition shall be filed with the division which shall, immediately upon filing, forward copies to the agency whose rule is challenged, the Department of State, and the committee. Within 10 days after receiving the petition, the division director shall, if the petition complies with the requirements of paragraph (b), assign an administrative law judge who shall conduct a hearing within 30 days thereafter, unless the petition is withdrawn or a continuance is granted by agreement of the parties or for good cause shown. Evidence of good cause includes, but is not limited to, written notice of an agency’s decision to modify or withdraw the proposed rule or a written notice from the chair of the committee stating that the committee will consider an objection to the rule at its next scheduled meeting. The failure of an agency to follow the applicable rulemaking procedures or requirements set forth in this chapter shall be presumed to be material; however, the agency may rebut this presumption by showing that the substantial interests of the petitioner and the fairness of the proceedings have not been impaired.

(d) Within 30 days after the hearing, the administrative law judge shall render a decision and state the reasons therefor in writing. The division shall forthwith transmit copies of the administrative law judge’s decision to the agency, the Department of State, and the committee.

(e) Hearings held under this section shall be de novo in nature. The standard of proof shall be the preponderance of the evidence. Hearings shall be conducted in the same manner as provided by ss.
120.569 and 120.57, except that the administrative law judge’s order shall be final agency action. The petitioner and the agency whose rule is challenged shall be adverse parties. Other substantially affected persons may join the proceedings as intervenors on appropriate terms which shall not unduly delay the proceedings. Failure to proceed under this section shall not constitute failure to exhaust administrative remedies.

(2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.—

(a) A substantially affected person may seek an administrative determination of the invalidity of a proposed rule by filing a petition seeking such a determination with the division within 21 days after the date of publication of the notice required by s. 120.54(3)(a); within 10 days after the final public hearing is held on the proposed rule as provided by s. 120.54(3)(e)2.; within 44 days after the statement of estimated regulatory costs or revised statement of estimated regulatory costs, if applicable, has been prepared and made available as provided in s. 120.541(1)(d); or within 20 days after the date of publication of the notice required by s. 120.54(3)(d). The petition must state with particularity the objections to the proposed rule and the reasons that the proposed rule is an invalid exercise of delegated legislative authority. The petitioner has the burden of going forward. The agency then has the burden to prove by a preponderance of the evidence that the proposed rule is not an invalid exercise of delegated legislative authority as to the objections raised. A person who is substantially affected by a change in the proposed rule may seek a determination of the validity of such change. A person who is not substantially affected by the proposed rule as initially noticed, but who is substantially affected by the rule as a result of a change, may challenge any provision of the rule and is not limited to challenging the change to the proposed rule.

(b) The administrative law judge may declare the proposed rule wholly or partly invalid. Unless the decision of the administrative law judge is reversed on appeal, the proposed rule or provision of a proposed rule declared invalid shall not be adopted. After a petition for administrative determination has been filed, the agency may proceed with all other steps in the rulemaking process, including the holding of a factfinding hearing. In the event part of a proposed rule is declared invalid, the adopting agency may, in its sole discretion, withdraw the proposed rule in its entirety. The agency whose proposed rule has been declared invalid in whole or part shall give notice of the decision in the first available issue of the Florida Administrative Weekly.

(c) When any substantially affected person seeks determination of the invalidity of a proposed rule pursuant to this section, the proposed rule is not presumed to be valid or invalid.

(3) CHALLENGING EXISTING RULES; SPECIAL PROVISIONS.—

(a) A substantially affected person may seek an administrative determination of the invalidity of an existing rule at any time during the existence of the rule. The petitioner has a burden of proving by a preponderance of the evidence that the existing rule is an invalid exercise of delegated legislative authority as to the objections raised.
(b) The administrative law judge may declare all or part of a rule invalid. The rule or part thereof declared invalid shall become void when the time for filing an appeal expires. The agency whose rule has been declared invalid in whole or part shall give notice of the decision in the Florida Administrative Weekly in the first available issue after the rule has become void.

(4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES; SPECIAL PROVISIONS.—

(a) Any person substantially affected by an agency statement may seek an administrative determination that the statement violates s. 120.54(1)(a). The petition shall include the text of the statement or a description of the statement and shall state with particularity facts sufficient to show that the statement constitutes a rule under s. 120.52 and that the agency has not adopted the statement by the rulemaking procedure provided by s. 120.54.

(b) The administrative law judge may extend the hearing date beyond 30 days after assignment of the case for good cause. Upon notification to the administrative law judge provided before the final hearing that the agency has published a notice of rulemaking under s. 120.54(3), such notice shall automatically operate as a stay of proceedings pending adoption of the statement as a rule. The administrative law judge may vacate the stay for good cause shown. A stay of proceedings pending rulemaking shall remain in effect so long as the agency is proceeding expeditiously and in good faith to adopt the statement as a rule. If a hearing is held and the petitioner proves the allegations of the petition, the agency shall have the burden of proving that rulemaking is not feasible or not practicable under s. 120.54(1)(a).

(c) The administrative law judge may determine whether all or part of a statement violates s. 120.54(1)(a). The decision of the administrative law judge shall constitute a final order. The division shall transmit a copy of the final order to the Department of State and the committee. The Department of State shall publish notice of the final order in the first available issue of the Florida Administrative Weekly.

(d) If an administrative law judge enters a final order that all or part of an agency statement violates s. 120.54(1)(a), the agency must immediately discontinue all reliance upon the statement or any substantially similar statement as a basis for agency action.

(e) If proposed rules addressing the challenged statement are determined to be an invalid exercise of delegated legislative authority as defined in s. 120.52(8)(b)-(f), the agency must immediately discontinue reliance on the statement and any substantially similar statement until rules addressing the subject are properly adopted, and the administrative law judge shall enter a final order to that effect.

(f) All proceedings to determine a violation of s. 120.54(1)(a) shall be brought pursuant to this subsection. A proceeding pursuant to this subsection may be consolidated with a proceeding under subsection (3) or under any other section of this chapter. This paragraph does not prevent a party whose substantial interests have been determined by an agency action from bringing a proceeding pursuant to s. 120.57(1)(e).
(5) CHALLENGING EMERGENCY RULES; SPECIAL PROVISIONS.—Challenges to the validity of an emergency rule shall be subject to the following time schedules in lieu of those established by paragraphs (1)(c) and (d). Within 7 days after receiving the petition, the division director shall, if the petition complies with paragraph (1)(b), assign an administrative law judge, who shall conduct a hearing within 14 days, unless the petition is withdrawn. The administrative law judge shall render a decision within 14 days after the hearing.

History.—s. 1, ch. 74-310; s. 5, ch. 75-191; s. 6, ch. 76-131; s. 1, ch. 77-174; s. 4, ch. 78-425; s. 759, ch. 95-147; s. 16, ch. 96-159; s. 6, ch. 97-176; s. 5, ch. 99-379; s. 3, ch. 2003-94; s. 5, ch. 2006-82; ss. 10, 11, ch. 2008-104; ss. 3, 5, ch. 2010-279; H.J.R. 9-A, 2010 Special Session A.

Note.—Section 5, ch. 2010-279, provides that "[t]his act shall take effect upon becoming a law." Passed by the Senate and the House of Representatives over the Governor’s veto November 16, 2010. House Joint Resolution 9-A, 2010 Special Session A, provides that C.S. for C.S. for H.B. 1565, which became ch. 2010-279, is effective November 17, 2010.

120.565 Declaratory statement by agencies.—

(1) Any substantially affected person may seek a declaratory statement regarding an agency’s opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner’s particular set of circumstances.

(2) The petition seeking a declaratory statement shall state with particularity the petitioner’s set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

(3) The agency shall give notice of the filing of each petition in the next available issue of the Florida Administrative Weekly and transmit copies of each petition to the committee. The agency shall issue a declaratory statement or deny the petition within 90 days after the filing of the petition. The declaratory statement or denial of the petition shall be noticed in the next available issue of the Florida Administrative Weekly. Agency disposition of petitions shall be final agency action.

History.—s. 6, ch. 75-191; s. 7, ch. 76-131; s. 5, ch. 78-425; s. 5, ch. 79-299; s. 760, ch. 95-147; s. 17, ch. 96-159.

120.569 Decisions which affect substantial interests.—

(1) The provisions of this section apply in all proceedings in which the substantial interests of a party are determined by an agency, unless the parties are proceeding under s. 120.573 or s. 120.574. Unless waived by all parties, s. 120.57(1) applies whenever the proceeding involves a disputed issue of material fact. Unless otherwise agreed, s. 120.57(2) applies in all other cases. If a disputed issue of material fact arises during a proceeding under s. 120.57(2), then, unless waived by all parties, the proceeding under s. 120.57(2) shall be terminated and a proceeding under s. 120.57(1) shall be conducted. Parties shall be notified of any order, including a final order. Unless waived, a copy of the order shall be delivered or mailed to each party or the party’s attorney of record at the address of record. Each notice shall inform the recipient of any administrative hearing or judicial review that is
available under this section, s. 120.57, or s. 120.68; shall indicate the procedure which must be followed to obtain the hearing or judicial review; and shall state the time limits which apply.

(2)(a) Except for any proceeding conducted as prescribed in s. 120.56, a petition or request for a hearing under this section shall be filed with the agency. If the agency requests an administrative law judge from the division, it shall so notify the division within 15 days after receipt of the petition or request. A request for a hearing shall be granted or denied within 15 days after receipt. On the request of any agency, the division shall assign an administrative law judge with due regard to the expertise required for the particular matter. The referring agency shall take no further action with respect to a proceeding under s. 120.57(1), except as a party litigant, as long as the division has jurisdiction over the proceeding under s. 120.57(1). Any party may request the disqualification of the administrative law judge by filing an affidavit with the division prior to the taking of evidence at a hearing, stating the grounds with particularity.

(b) All parties shall be afforded an opportunity for a hearing after reasonable notice of not less than 14 days; however, the 14-day notice requirement may be waived with the consent of all parties. The notice shall include:

1. A statement of the time, place, and nature of the hearing.
2. A statement of the legal authority and jurisdiction under which the hearing is to be held.

(c) Unless otherwise provided by law, a petition or request for hearing shall include those items required by the uniform rules adopted pursuant to s. 120.54(5)(b). Upon the receipt of a petition or request for hearing, the agency shall carefully review the petition to determine if it contains all of the required information. A petition shall be dismissed if it is not in substantial compliance with these requirements or it has been untimely filed. Dismissal of a petition shall, at least once, be without prejudice to petitioner’s filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured. The agency shall promptly give written notice to all parties of the action taken on the petition, shall state with particularity its reasons if the petition is not granted, and shall state the deadline for filing an amended petition if applicable. This paragraph does not eliminate the availability of equitable tolling as a defense to the untimely filing of a petition.

(d) The agency may refer a petition to the division for the assignment of an administrative law judge only if the petition is in substantial compliance with the requirements of paragraph (c).

(e) All pleadings, motions, or other papers filed in the proceeding must be signed by the party, the party’s attorney, or the party’s qualified representative. The signature constitutes a certificate that the person has read the pleading, motion, or other paper and that, based upon reasonable inquiry, it is not interposed for any improper purposes, such as to harass or to cause unnecessary delay, or for frivolous purpose or needless increase in the cost of litigation. If a pleading, motion, or other paper is signed in violation of these requirements, the presiding officer shall impose upon the person who
signed it, the represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney’s fee.

(f) The presiding officer has the power to swear witnesses and take their testimony under oath, to issue subpoenas, and to effect discovery on the written request of any party by any means available to the courts and in the manner provided in the Florida Rules of Civil Procedure, including the imposition of sanctions, except contempt. However, no presiding officer has the authority to issue any subpoena or order directing discovery to any member or employee of the Legislature when the subpoena or order commands the production of documents or materials or compels testimony relating to the legislative duties of the member or employee. Any subpoena or order directing discovery directed to a member or an employee of the Legislature shall show on its face that the testimony sought does not relate to legislative duties.

(g) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of Florida. Any part of the evidence may be received in written form, and all testimony of parties and witnesses shall be made under oath.

(h) Documentary evidence may be received in the form of a copy or excerpt. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

(i) When official recognition is requested, the parties shall be notified and given an opportunity to examine and contest the material.

(j) A party shall be permitted to conduct cross-examination when testimony is taken or documents are made a part of the record.

(k)1. Any person subject to a subpoena may, before compliance and on timely petition, request the presiding officer having jurisdiction of the dispute to invalidate the subpoena on the ground that it was not lawfully issued, is unreasonably broad in scope, or requires the production of irrelevant material.

2. A party may seek enforcement of a subpoena, order directing discovery, or order imposing sanctions issued under the authority of this chapter by filing a petition for enforcement in the circuit court of the judicial circuit in which the person failing to comply with the subpoena or order resides. A failure to comply with an order of the court shall result in a finding of contempt of court. However, no person shall be in contempt while a subpoena is being challenged under subparagraph 1. The court may award to the prevailing party all or part of the costs and attorney’s fees incurred in obtaining the court order whenever the court determines that such an award should be granted under the Florida Rules of Civil Procedure.

3. Any public employee subpoenaed to appear at an agency proceeding shall be entitled to per diem and travel expenses at the same rate as that provided for state employees under s. 112.061 if
travel away from such public employee’s headquarters is required. All other witnesses appearing pursuant to a subpoena shall be paid such fees and mileage for their attendance as is provided in civil actions in circuit courts of this state. In the case of a public employee, such expenses shall be processed and paid in the manner provided for agency employee travel expense reimbursement, and in the case of a witness who is not a public employee, payment of such fees and expenses shall accompany the subpoena.

(l) Unless the time period is waived or extended with the consent of all parties, the final order in a proceeding which affects substantial interests must be in writing and include findings of fact, if any, and conclusions of law separately stated, and it must be rendered within 90 days:

1. After the hearing is concluded, if conducted by the agency;
2. After a recommended order is submitted to the agency and mailed to all parties, if the hearing is conducted by an administrative law judge; or
3. After the agency has received the written and oral material it has authorized to be submitted, if there has been no hearing.

(m) Findings of fact, if set forth in a manner which is no more than mere tracking of the statutory language, must be accompanied by a concise and explicit statement of the underlying facts of record which support the findings.

(n) If an agency head finds that an immediate danger to the public health, safety, or welfare requires an immediate final order, it shall recite with particularity the facts underlying such finding in the final order, which shall be appealable or enjoinable from the date rendered.

(o) On the request of any party, the administrative law judge shall enter an initial scheduling order to facilitate the just, speedy, and inexpensive determination of the proceeding. The initial scheduling order shall establish a discovery period, including a deadline by which all discovery shall be completed, and the date by which the parties shall identify expert witnesses and their opinions. The initial scheduling order also may require the parties to meet and file a joint report by a date certain.

History.—s. 18, ch. 96-159; s. 7, ch. 97-176; s. 4, ch. 98-200; s. 4, ch. 2003-94; s. 6, ch. 2006-82; s. 14, ch. 2008-104.

120.57 Additional procedures for particular cases.—

(1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS INVOLVING DISPUTED ISSUES OF MATERIAL FACT.—

(a) Except as provided in ss. 120.80 and 120.81, an administrative law judge assigned by the division shall conduct all hearings under this subsection, except for hearings before agency heads or a member thereof. If the administrative law judge assigned to a hearing becomes unavailable, the division shall assign another administrative law judge who shall use any existing record and receive any additional evidence or argument, if any, which the new administrative law judge finds necessary.

(b) All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of
facts and orders, to file exceptions to the presiding officer’s recommended order, and to be represented by counsel or other qualified representative. When appropriate, the general public may be given an opportunity to present oral or written communications. If the agency proposes to consider such material, then all parties shall be given an opportunity to cross-examine or challenge or rebut the material.

(c) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

(d) Notwithstanding s. 120.569(2)(g), similar fact evidence of other violations, wrongs, or acts is admissible when relevant to prove a material fact in issue, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, but it is inadmissible when the evidence is relevant solely to prove bad character or propensity. When the state in an administrative proceeding intends to offer evidence of other acts or offenses under this paragraph, the state shall furnish to the party whose substantial interests are being determined and whose other acts or offenses will be the subject of such evidence, no fewer than 10 days before commencement of the proceeding, a written statement of the acts or offenses it intends to offer, describing them and the evidence the state intends to offer with particularity. Notice is not required for evidence of acts or offenses which is used for impeachment or on rebuttal.

(e)1. An agency or an administrative law judge may not base agency action that determines the substantial interests of a party on an unadopted rule. The administrative law judge shall determine whether an agency statement constitutes an unadopted rule. This subparagraph does not preclude application of adopted rules and applicable provisions of law to the facts.

2. Notwithstanding subparagraph 1., if an agency demonstrates that the statute being implemented directs it to adopt rules, that the agency has not had time to adopt those rules because the requirement was so recently enacted, and that the agency has initiated rulemaking and is proceeding expeditiously and in good faith to adopt the required rules, then the agency’s action may be based upon those unadopted rules, subject to de novo review by the administrative law judge. The agency action shall not be presumed valid or invalid. The agency must demonstrate that the unadopted rule:

a. Is within the powers, functions, and duties delegated by the Legislature or, if the agency is operating pursuant to authority derived from the State Constitution, is within that authority;

b. Does not enlarge, modify, or contravene the specific provisions of law implemented;

c. Is not vague, establishes adequate standards for agency decisions, or does not vest unbridled discretion in the agency;

d. Is not arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational;

e. Is not being applied to the substantially affected party without due notice; and
f. Does not impose excessive regulatory costs on the regulated person, county, or city.

3. The recommended and final orders in any proceeding shall be governed by the provisions of paragraphs (k) and (l), except that the administrative law judge’s determination regarding an unadopted rule under subparagraph 1. or subparagraph 2. shall not be rejected by the agency unless the agency first determines from a review of the complete record, and states with particularity in the order, that such determination is clearly erroneous or does not comply with essential requirements of law. In any proceeding for review under s. 120.68, if the court finds that the agency’s rejection of the determination regarding the unadopted rule does not comport with the provisions of this subparagraph, the agency action shall be set aside and the court shall award to the prevailing party the reasonable costs and a reasonable attorney’s fee for the initial proceeding and the proceeding for review.

(f) The record in a case governed by this subsection shall consist only of:
1. All notices, pleadings, motions, and intermediate rulings.
2. Evidence admitted.
3. Those matters officially recognized.
4. Proffers of proof and objections and rulings thereon.
5. Proposed findings and exceptions.
6. Any decision, opinion, order, or report by the presiding officer.
7. All staff memoranda or data submitted to the presiding officer during the hearing or prior to its disposition, after notice of the submission to all parties, except communications by advisory staff as permitted under s. 120.66(1), if such communications are public records.
8. All matters placed on the record after an ex parte communication.
9. The official transcript.

(g) The agency shall accurately and completely preserve all testimony in the proceeding, and, on the request of any party, it shall make a full or partial transcript available at no more than actual cost.

(h) Any party to a proceeding in which an administrative law judge of the Division of Administrative Hearings has final order authority may move for a summary final order when there is no genuine issue as to any material fact. A summary final order shall be rendered if the administrative law judge determines from the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that no genuine issue as to any material fact exists and that the moving party is entitled as a matter of law to the entry of a final order. A summary final order shall consist of findings of fact, if any, conclusions of law, a disposition or penalty, if applicable, and any other information required by law to be contained in the final order.

(i) When, in any proceeding conducted pursuant to this subsection, a dispute of material fact no longer exists, any party may move the administrative law judge to relinquish jurisdiction to the agency. An order relinquishing jurisdiction shall be rendered if the administrative law judge determines from the pleadings, depositions, answers to interrogatories, and admissions on file, together with supporting
and opposing affidavits, if any, that no genuine issue as to any material fact exists. If the
administrative law judge enters an order relinquishing jurisdiction, the agency may promptly conduct a
proceeding pursuant to subsection (2), if appropriate, but the parties may not raise any issues of
disputed fact that could have been raised before the administrative law judge. An order entered by an
administrative law judge relinquishing jurisdiction to the agency based upon a determination that no
genuine dispute of material fact exists, need not contain findings of fact, conclusions of law, or a
recommended disposition or penalty.

(j) Findings of fact shall be based upon a preponderance of the evidence, except in penal or
licensure disciplinary proceedings or except as otherwise provided by statute, and shall be based
exclusively on the evidence of record and on matters officially recognized.

(k) The presiding officer shall complete and submit to the agency and all parties a recommended
order consisting of findings of fact, conclusions of law, and recommended disposition or penalty, if
applicable, and any other information required by law to be contained in the final order. All
proceedings conducted under this subsection shall be de novo. The agency shall allow each party 15
days in which to submit written exceptions to the recommended order. The final order shall include an
explicit ruling on each exception, but an agency need not rule on an exception that does not clearly
identify the disputed portion of the recommended order by page number or paragraph, that does not
identify the legal basis for the exception, or that does not include appropriate and specific citations to
the record.

(l) The agency may adopt the recommended order as the final order of the agency. The agency in
its final order may reject or modify the conclusions of law over which it has substantive jurisdiction
and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or
modifying such conclusion of law or interpretation of administrative rule, the agency must state with
particularity its reasons for rejecting or modifying such conclusion of law or interpretation of
administrative rule and must make a finding that its substituted conclusion of law or interpretation of
administrative rule is as or more reasonable than that which was rejected or modified. Rejection or
modification of conclusions of law may not form the basis for rejection or modification of findings of
fact. The agency may not reject or modify the findings of fact unless the agency first determines from
a review of the entire record, and states with particularity in the order, that the findings of fact were
not based upon competent substantial evidence or that the proceedings on which the findings were
based did not comply with essential requirements of law. The agency may accept the recommended
penalty in a recommended order, but may not reduce or increase it without a review of the complete
record and without stating with particularity its reasons therefor in the order, by citing to the record in
justifying the action.

(m) If a recommended order is submitted to an agency, the agency shall provide a copy of its final
order and any exceptions to the division within 15 days after the order is filed with the agency clerk.
(n) Notwithstanding any law to the contrary, when statutes or rules impose conflicting time requirements for the scheduling of expedited hearings or issuance of recommended or final orders, the director of the division shall have the authority to set the proceedings for the orderly operation of this chapter.

(2) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT.—In any case to which subsection (1) does not apply:

(a) The agency shall:

1. Give reasonable notice to affected persons of the action of the agency, whether proposed or already taken, or of its decision to refuse action, together with a summary of the factual, legal, and policy grounds therefor.

2. Give parties or their counsel the option, at a convenient time and place, to present to the agency or hearing officer written or oral evidence in opposition to the action of the agency or to its refusal to act, or a written statement challenging the grounds upon which the agency has chosen to justify its action or inaction.

3. If the objections of the parties are overruled, provide a written explanation within 7 days.

(b) The record shall only consist of:

1. The notice and summary of grounds.

2. Evidence received.

3. All written statements submitted.

4. Any decision overruling objections.

5. All matters placed on the record after an ex parte communication.

6. The official transcript.

7. Any decision, opinion, order, or report by the presiding officer.

(3) ADDITIONAL PROCEDURES APPLICABLE TO PROTESTS TO CONTRACT SOLICITATION OR AWARD.—Agencies subject to this chapter shall use the uniform rules of procedure, which provide procedures for the resolution of protests arising from the contract solicitation or award process. Such rules shall at least provide that:

(a) The agency shall provide notice of a decision or intended decision concerning a solicitation, contract award, or exceptional purchase by electronic posting. This notice shall contain the following statement: “Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under chapter 120, Florida Statutes.”

(b) Any person who is adversely affected by the agency decision or intended decision shall file with the agency a notice of protest in writing within 72 hours after the posting of the notice of decision or intended decision. With respect to a protest of the terms, conditions, and specifications contained in a solicitation, including any provisions governing the methods for ranking bids, proposals, or replies,
awarding contracts, reserving rights of further negotiation, or modifying or amending any contract, the notice of protest shall be filed in writing within 72 hours after the posting of the solicitation. The formal written protest shall be filed within 10 days after the date the notice of protest is filed. Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings under this chapter. The formal written protest shall state with particularity the facts and law upon which the protest is based. Saturdays, Sundays, and state holidays shall be excluded in the computation of the 72-hour time periods provided by this paragraph.

(c) Upon receipt of the formal written protest that has been timely filed, the agency shall stop the solicitation or contract award process until the subject of the protest is resolved by final agency action, unless the agency head sets forth in writing particular facts and circumstances which require the continuance of the solicitation or contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare.

(d) 1. The agency shall provide an opportunity to resolve the protest by mutual agreement between the parties within 7 days, excluding Saturdays, Sundays, and state holidays, after receipt of a formal written protest.

2. If the subject of a protest is not resolved by mutual agreement within 7 days, excluding Saturdays, Sundays, and state holidays, after receipt of the formal written protest, and if there is no disputed issue of material fact, an informal proceeding shall be conducted pursuant to subsection (2) and applicable agency rules before a person whose qualifications have been prescribed by rules of the agency.

3. If the subject of a protest is not resolved by mutual agreement within 7 days, excluding Saturdays, Sundays, and state holidays, after receipt of the formal written protest, and if there is a disputed issue of material fact, the agency shall refer the protest to the division for proceedings under subsection (1).

(e) Upon receipt of a formal written protest referred pursuant to this subsection, the director of the division shall expedite the hearing and assign an administrative law judge who shall commence a hearing within 30 days after the receipt of the formal written protest by the division and enter a recommended order within 30 days after the hearing or within 30 days after receipt of the hearing transcript by the administrative law judge, whichever is later. Each party shall be allowed 10 days in which to submit written exceptions to the recommended order. A final order shall be entered by the agency within 30 days of the entry of a recommended order. The provisions of this paragraph may be waived upon stipulation by all parties.

(f) In a protest to an invitation to bid or request for proposals procurement, no submissions made after the bid or proposal opening which amend or supplement the bid or proposal shall be considered. In a protest to an invitation to negotiate procurement, no submissions made after the agency announces its intent to award a contract, reject all replies, or withdraw the solicitation which amend
or supplement the reply shall be considered. Unless otherwise provided by statute, the burden of proof shall rest with the party protesting the proposed agency action. In a competitive-procurement protest, other than a rejection of all bids, proposals, or replies, the administrative law judge shall conduct a de novo proceeding to determine whether the agency’s proposed action is contrary to the agency’s governing statutes, the agency’s rules or policies, or the solicitation specifications. The standard of proof for such proceedings shall be whether the proposed agency action was clearly erroneous, contrary to competition, arbitrary, or capricious. In any bid-protest proceeding contesting an intended agency action to reject all bids, proposals, or replies, the standard of review by an administrative law judge shall be whether the agency’s intended action is illegal, arbitrary, dishonest, or fraudulent.

(g) For purposes of this subsection, the definitions in s. 287.012 apply.

(4) INFORMAL DISPOSITION.—Unless precluded by law, informal disposition may be made of any proceeding by stipulation, agreed settlement, or consent order.

(5) APPLICABILITY.—This section does not apply to agency investigations preliminary to agency action.

History.—s. 1, ch. 74-310; s. 7, ch. 75-191; s. 8, ch. 76-131; s. 1, ch. 77-174; s. 5, ch. 77-453; ss. 6, 11, ch. 78-95; s. 6, ch. 78-425; s. 8, ch. 79-7; s. 7, ch. 80-95; s. 4, ch. 80-289; s. 57, ch. 81-259; s. 2, ch. 83-78; s. 9, ch. 83-216; s. 2, ch. 84-173; s. 4, ch. 84-203; ss. 1, 2, ch. 86-108; s. 44, ch. 87-6; ss. 1, 2, ch. 87-54; s. 5, ch. 87-385; s. 1, ch. 90-283; s. 4, ch. 91-30; s. 1, ch. 91-191; s. 22, ch. 92-315; s. 7, ch. 94-218; s. 1420, ch. 95-147; s. 1, ch. 95-328; s. 19, ch. 96-159; s. 1, ch. 96-423; s. 8, ch. 97-176; s. 5, ch. 98-200; s. 3, ch. 98-279; s. 47, ch. 99-2; s. 6, ch. 99-379; s. 2, ch. 2002-207; s. 5, ch. 2003-94; s. 7, ch. 2006-82; s. 12, ch. 2008-104.

120.573 Mediation of disputes.—Each announcement of an agency action that affects substantial interests shall advise whether mediation of the administrative dispute for the type of agency action announced is available and that choosing mediation does not affect the right to an administrative hearing. If the agency and all parties to the administrative action agree to mediation, in writing, within 10 days after the time period stated in the announcement for election of an administrative remedy under ss. 120.569 and 120.57, the time limitations imposed by ss. 120.569 and 120.57 shall be tolled to allow the agency and parties to mediate the administrative dispute. The mediation shall be concluded within 60 days of such agreement unless otherwise agreed by the parties. The mediation agreement shall include provisions for mediator selection, the allocation of costs and fees associated with mediation, and the mediating parties’ understanding regarding the confidentiality of discussions and documents introduced during mediation. If mediation results in settlement of the administrative dispute, the agency shall enter a final order incorporating the agreement of the parties. If mediation terminates without settlement of the dispute, the agency shall notify the parties in writing that the administrative hearing processes under ss. 120.569 and 120.57 are resumed.

History.—s. 20, ch. 96-159; s. 9, ch. 97-176.

120.574 Summary hearing.—
(1)(a) Within 5 business days following the division’s receipt of a petition or request for hearing, the division shall issue and serve on all original parties an initial order that assigns the case to a specific administrative law judge and provides general information regarding practice and procedure before the division. The initial order shall also contain a statement advising the addressees that a summary hearing is available upon the agreement of all parties under subsection (2) and briefly describing the expedited time sequences, limited discovery, and final order provisions of the summary procedure.

(b) Within 15 days after service of the initial order, any party may file with the division a motion for summary hearing in accordance with subsection (2). If all original parties agree, in writing, to the summary proceeding, the proceeding shall be conducted within 30 days of the agreement, in accordance with the provisions of subsection (2).

(c) Intervenors in the proceeding shall be governed by the decision of the original parties regarding whether the case will proceed in accordance with the summary hearing process and shall not have standing to challenge that decision.

(d) If a motion for summary hearing is not filed within 15 days after service of the division’s initial order, the matter shall proceed in accordance with ss. 120.569 and 120.57.

(2) In any case to which this subsection is applicable, the following procedures apply:

(a) Motions shall be limited to the following:

1. A motion in opposition to the petition.

2. A motion requesting discovery beyond the informal exchange of documents and witness lists described in paragraph (b). Upon a showing of necessity, additional discovery may be permitted in the discretion of the administrative law judge, but only if it can be completed not later than 5 days prior to the final hearing.

3. A motion for continuance of the final hearing date.

4. A motion requesting a prehearing conference, or the administrative law judge may require a prehearing conference, for the purpose of identifying: the legal and factual issues to be considered at the final hearing; the names and addresses of witnesses who may be called to testify at the final hearing; documentary evidence that will be offered at the final hearing; the range of penalties that may be imposed upon final hearing; and any other matter that the administrative law judge determines would expedite resolution of the proceeding. The prehearing conference may be held by telephone conference call.

5. During or after any preliminary hearing or conference, any party or the administrative law judge may suggest that the case is no longer appropriate for summary disposition. Following any argument requested by the parties, the administrative law judge may enter an order referring the case back to the formal adjudicatory process described in s. 120.57(1), in which event the parties shall proceed accordingly.
(b) Not later than 5 days prior to the final hearing, the parties shall furnish to each other copies of documentary evidence and lists of witnesses who may testify at the final hearing.

(c) All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, and to be represented by counsel or other qualified representative.

(d) The record in a case governed by this subsection shall consist only of:
1. All notices, pleadings, motions, and intermediate rulings.
2. Evidence received.
3. A statement of matters officially recognized.
4. Proffers of proof and objections and rulings thereon.
5. Matters placed on the record after an ex parte communication.
6. The written decision of the administrative law judge presiding at the final hearing.
7. The official transcript of the final hearing.

(e) The agency shall accurately and completely preserve all testimony in the proceeding and, upon request by any party, shall make a full or partial transcript available at no more than actual cost.

(f) The decision of the administrative law judge shall be rendered within 30 days after the conclusion of the final hearing or the filing of the transcript thereof, whichever is later. The administrative law judge’s decision, which shall be final agency action subject to judicial review under s. 120.68, shall include the following:
1. Findings of fact based exclusively on the evidence of record and matters officially recognized.
2. Conclusions of law.
3. Imposition of a fine or penalty, if applicable.
4. Any other information required by law or rule to be contained in a final order.

History.—s. 21, ch. 96-159; s. 10, ch. 97-176; s. 11, ch. 2000-158; s. 10, ch. 2000-336.

120.595 Attorney’s fees.—

(1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION 120.57(1).—

(a) The provisions of this subsection are supplemental to, and do not abrogate, other provisions allowing the award of fees or costs in administrative proceedings.

(b) The final order in a proceeding pursuant to s. 120.57(1) shall award reasonable costs and a reasonable attorney’s fee to the prevailing party only where the nonprevailing adverse party has been determined by the administrative law judge to have participated in the proceeding for an improper purpose.

(c) In proceedings pursuant to s. 120.57(1), and upon motion, the administrative law judge shall determine whether any party participated in the proceeding for an improper purpose as defined by this subsection. In making such determination, the administrative law judge shall consider whether the nonprevailing adverse party has participated in two or more other such proceedings involving the same
prevailing party and the same project as an adverse party and in which such two or more proceedings the nonprevailing adverse party did not establish either the factual or legal merits of its position, and shall consider whether the factual or legal position asserted in the instant proceeding would have been cognizable in the previous proceedings. In such event, it shall be rebuttably presumed that the nonprevailing adverse party participated in the pending proceeding for an improper purpose.

(d) In any proceeding in which the administrative law judge determines that a party participated in the proceeding for an improper purpose, the recommended order shall so designate and shall determine the award of costs and attorney’s fees.

(e) For the purpose of this subsection:

1. “Improper purpose” means participation in a proceeding pursuant to s. 120.57(1) primarily to harass or to cause unnecessary delay or for frivolous purpose or to needlessly increase the cost of litigation, licensing, or securing the approval of an activity.

2. “Costs” has the same meaning as the costs allowed in civil actions in this state as provided in chapter 57.

3. “Nonprevailing adverse party” means a party that has failed to have substantially changed the outcome of the proposed or final agency action which is the subject of a proceeding. In the event that a proceeding results in any substantial modification or condition intended to resolve the matters raised in a party’s petition, it shall be determined that the party having raised the issue addressed is not a nonprevailing adverse party. The recommended order shall state whether the change is substantial for purposes of this subsection. In no event shall the term “nonprevailing party” or “prevailing party” be deemed to include any party that has intervened in a previously existing proceeding to support the position of an agency.

(2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO SECTION 120.56(2).—If the appellate court or administrative law judge declares a proposed rule or portion of a proposed rule invalid pursuant to s. 120.56(2), a judgment or order shall be rendered against the agency for reasonable costs and reasonable attorney’s fees, unless the agency demonstrates that its actions were substantially justified or special circumstances exist which would make the award unjust. An agency’s actions are “substantially justified” if there was a reasonable basis in law and fact at the time the actions were taken by the agency. If the agency prevails in the proceedings, the appellate court or administrative law judge shall award reasonable costs and reasonable attorney’s fees against a party if the appellate court or administrative law judge determines that a party participated in the proceedings for an improper purpose as defined by paragraph (1)(e). No award of attorney’s fees as provided by this subsection shall exceed $50,000.

(3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO SECTION 120.56(3) AND (5).—If the appellate court or administrative law judge declares a rule or portion of a rule invalid pursuant to s. 120.56(3) or (5), a judgment or order shall be rendered against the agency for reasonable costs and
reasonable attorney’s fees, unless the agency demonstrates that its actions were substantially justified or special circumstances exist which would make the award unjust. An agency’s actions are “substantially justified” if there was a reasonable basis in law and fact at the time the actions were taken by the agency. If the agency prevails in the proceedings, the appellate court or administrative law judge shall award reasonable costs and reasonable attorney’s fees against a party if the appellate court or administrative law judge determines that a party participated in the proceedings for an improper purpose as defined by paragraph (1)(e). No award of attorney’s fees as provided by this subsection shall exceed $50,000.

(4) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION 120.56(4).—

(a) If the appellate court or administrative law judge determines that all or part of an agency statement violates s. 120.54(1)(a), or that the agency must immediately discontinue reliance on the statement and any substantially similar statement pursuant to s. 120.56(4)(e), a judgment or order shall be entered against the agency for reasonable costs and reasonable attorney’s fees, unless the agency demonstrates that the statement is required by the Federal Government to implement or retain a delegated or approved program or to meet a condition to receipt of federal funds.

(b) Upon notification to the administrative law judge provided before the final hearing that the agency has published a notice of rulemaking under s. 120.54(3)(a), such notice shall automatically operate as a stay of proceedings pending rulemaking. The administrative law judge may vacate the stay for good cause shown. A stay of proceedings under this paragraph remains in effect so long as the agency is proceeding expeditiously and in good faith to adopt the statement as a rule. The administrative law judge shall award reasonable costs and reasonable attorney’s fees accrued by the petitioner prior to the date the notice was published, unless the agency proves to the administrative law judge that it did not know and should not have known that the statement was an unadopted rule. Attorneys’ fees and costs under this paragraph and paragraph (a) shall be awarded only upon a finding that the agency received notice that the statement may constitute an unadopted rule at least 30 days before a petition under s. 120.56(4) was filed and that the agency failed to publish the required notice of rulemaking pursuant to s. 120.54(3) that addresses the statement within that 30-day period. Notice to the agency may be satisfied by its receipt of a copy of the s. 120.56(4) petition, a notice or other paper containing substantially the same information, or a petition filed pursuant to s. 120.54(7). An award of attorney’s fees as provided by this paragraph may not exceed $50,000.

(c) Notwithstanding the provisions of chapter 284, an award shall be paid from the budget entity of the secretary, executive director, or equivalent administrative officer of the agency, and the agency shall not be entitled to payment of an award or reimbursement for payment of an award under any provision of law.

(d) If the agency prevails in the proceedings, the appellate court or administrative law judge shall award reasonable costs and attorney’s fees against a party if the appellate court or administrative law
judge determines that the party participated in the proceedings for an improper purpose as defined in paragraph (1)(e) or that the party or the party’s attorney knew or should have known that a claim was not supported by the material facts necessary to establish the claim or would not be supported by the application of then-existing law to those material facts.

(5) APPEALS.—When there is an appeal, the court in its discretion may award reasonable attorney’s fees and reasonable costs to the prevailing party if the court finds that the appeal was frivolous, meritless, or an abuse of the appellate process, or that the agency action which precipitated the appeal was a gross abuse of the agency’s discretion. Upon review of agency action that precipitates an appeal, if the court finds that the agency improperly rejected or modified findings of fact in a recommended order, the court shall award reasonable attorney’s fees and reasonable costs to a prevailing appellant for the administrative proceeding and the appellate proceeding.

(6) OTHER SECTIONS NOT AFFECTED.—Other provisions, including ss. 57.105 and 57.111, authorize the award of attorney’s fees and costs in administrative proceedings. Nothing in this section shall affect the availability of attorney’s fees and costs as provided in those sections.

History.—s. 25, ch. 96-159; s. 11, ch. 97-176; s. 48, ch. 99-2; s. 6, ch. 2003-94; s. 13, ch. 2008-104.

'120.60 Licensing.—

(1) Upon receipt of a license application, an agency shall examine the application and, within 30 days after such receipt, notify the applicant of any apparent errors or omissions and request any additional information the agency is permitted by law to require. An agency may not deny a license for failure to correct an error or omission or to supply additional information unless the agency timely notified the applicant within this 30-day period. The agency may establish by rule the time period for submitting any additional information requested by the agency. For good cause shown, the agency shall grant a request for an extension of time for submitting the additional information. If the applicant believes the agency’s request for additional information is not authorized by law or rule, the agency, at the applicant’s request, shall proceed to process the application. An application is complete upon receipt of all requested information and correction of any error or omission for which the applicant was timely notified or when the time for such notification has expired. An application for a license must be approved or denied within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law. The 90-day time period is tolled by the initiation of a proceeding under ss. 120.569 and 120.57. Any application for a license which is not approved or denied within the 90-day or shorter time period, within 15 days after conclusion of a public hearing held on the application, or within 45 days after a recommended order is submitted to the agency and the parties, whichever action and timeframe is latest and applicable, is considered approved unless the recommended order recommends that the agency deny the license. Subject to the satisfactory completion of an examination if required as a prerequisite to licensure, any license that is considered approved shall be issued and may include such reasonable conditions as are authorized by law. Any
applicant for licensure seeking to claim licensure by default under this subsection shall notify the agency clerk of the licensing agency, in writing, of the intent to rely upon the default license provision of this subsection, and may not take any action based upon the default license until after receipt of such notice by the agency clerk.

(2) If an applicant seeks a license for an activity that is exempt from licensure, the agency shall notify the applicant and return any tendered application fee within 30 days after receipt of the original application.

(3) Each applicant shall be given written notice, personally or by mail, that the agency intends to grant or deny, or has granted or denied, the application for license. The notice must state with particularity the grounds or basis for the issuance or denial of the license, except when issuance is a ministerial act. Unless waived, a copy of the notice shall be delivered or mailed to each party’s attorney of record and to each person who has made a written request for notice of agency action. Each notice must inform the recipient of the basis for the agency decision, inform the recipient of any administrative hearing pursuant to ss. 120.569 and 120.57 or judicial review pursuant to s. 120.68 which may be available, indicate the procedure that must be followed, and state the applicable time limits. The issuing agency shall certify the date the notice was mailed or delivered, and the notice and the certification must be filed with the agency clerk.

(4) When a licensee has made timely and sufficient application for the renewal of a license which does not automatically expire by statute, the existing license shall not expire until the application for renewal has been finally acted upon by the agency or, in case the application is denied or the terms of the license are limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(5) No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the entry of a final order, the agency has served, by personal service or certified mail, an administrative complaint which affords reasonable notice to the licensee of facts or conduct which warrant the intended action and unless the licensee has been given an adequate opportunity to request a proceeding pursuant to ss. 120.569 and 120.57. When personal service cannot be made and the certified mail notice is returned undelivered, the agency shall cause a short, plain notice to the licensee to be published once each week for 4 consecutive weeks in a newspaper published in the county of the licensee’s last known address as it appears on the records of the agency. If no newspaper is published in that county, the notice may be published in a newspaper of general circulation in that county. If the address is in some state other than this state or in a foreign territory or country, the notice may be published in Leon County.

(6) If the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a license, the agency may take such action by any procedure that is fair under the circumstances if:
(a) The procedure provides at least the same procedural protection as is given by other statutes, the State Constitution, or the United States Constitution;

(b) The agency takes only that action necessary to protect the public interest under the emergency procedure; and

(c) The agency states in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. The agency’s findings of immediate danger, necessity, and procedural fairness are judicially reviewable. Summary suspension, restriction, or limitation may be ordered, but a suspension or revocation proceeding pursuant to ss. 120.569 and 120.57 shall also be promptly instituted and acted upon.

(7) No agency shall include as a condition of approval of any license any provision that is based upon a statement, policy, or guideline of another agency unless the statement, policy, or guideline is within the jurisdiction of the other agency. The other agency shall identify for the licensing agency the specific legal authority for each such statement, policy, or guideline. The licensing agency must provide the licensee with an opportunity to challenge the condition as invalid. If the licensing agency bases a condition of approval or denial of the license upon the statement, policy, or guideline of the other agency, any party to an administrative proceeding that arises from the approval with conditions or denial of the license may require the other agency to join as a party in determining the validity of the condition.

History.—s. 1, ch. 74-310; s. 10, ch. 76-131; s. 1, ch. 77-174; ss. 6, 9, ch. 77-453; s. 57, ch. 78-95; s. 8, ch. 78-425; s. 1, ch. 79-142; s. 6, ch. 79-299; s. 2, ch. 81-180; s. 6, ch. 84-203; s. 2, ch. 84-265; s. 1, ch. 85-82; s. 14, ch. 90-51; s. 7, ch. 95-147; s. 26, ch. 96-159; s. 326, ch. 96-410; s. 12, ch. 97-176; s. 7, ch. 2003-94; ss. 4, 5, ch. 2010-279; H.J.R. 9-A, 2010 Special Session A.

'Note.—Section 5, ch. 2010-279, provides that “[t]his act shall take effect upon becoming a law.” Passed by the Senate and the House of Representatives over the Governor’s veto November 16, 2010. House Joint Resolution 9-A, 2010 Special Session A, provides that C.S. for C.S. for H.B. 1565, which became ch. 2010-279, is effective November 17, 2010.

120.62 Agency investigations.—

(1) Every person who responds to a request or demand by any agency or representative thereof for written data or an oral statement shall be entitled to a transcript or recording of his or her oral statement at no more than cost.

(2) Any person compelled to appear, or who appears voluntarily, before any presiding officer or agency in an investigation or in any agency proceeding has the right, at his or her own expense, to be accompanied, represented, and advised by counsel or by other qualified representatives.

History.—s. 1, ch. 74-310; s. 763, ch. 95-147; s. 28, ch. 96-159.

120.63 Exemption from act.—
(1) Upon application of any agency, the Administration Commission may exempt any process or proceeding governed by this act from one or more requirements of this act:

(a) When the agency head has certified that the requirement would conflict with any provision of federal law or rules with which the agency must comply;

(b) In order to permit persons in the state to receive tax benefits or federal funds under any federal law; or

(c) When the commission has found that conformity with the requirements of the part or parts of this act for which exemption is sought would be so inconvenient or impractical as to defeat the purpose of the agency proceeding involved or the purpose of this act and would not be in the public interest in light of the nature of the intended action and the enabling act or other laws affecting the agency.

(2) The commission may not exempt an agency from any requirement of this act pursuant to this section until it establishes alternative procedures to achieve the agency’s purpose which shall be consistent, insofar as possible, with the intent and purpose of the act.

(a) Prior to the granting of any exemption authorized by this section, the commission shall hold a public hearing after notice given as provided in s. 120.525. Upon the conclusion of the hearing, the commission, through the Executive Office of the Governor, shall issue an order specifically granting or denying the exemption and specifying any processes or proceedings exempted and the extent of the exemption; transmit to the committee and to the Department of State a copy of the petition, a certified copy of the order granting or denying the petition, and a copy of any alternative procedures prescribed; and give notice of the petition and the commission’s response in the Florida Administrative Weekly.

(b) An exemption and any alternative procedure prescribed shall terminate 90 days following adjournment sine die of the then-current or next regular legislative session after issuance of the exemption order, or upon the effective date of any subsequent legislation incorporating the exemption or any partial exemption related thereto, whichever is earlier. The exemption granted by the commission shall be renewable upon the same or similar facts not more than once. Such renewal shall terminate as would an original exemption.

History.—s. 1, ch. 74-310; s. 11, ch. 76-131; s. 1, ch. 77-53; s. 8, ch. 77-453; s. 87, ch. 79-190; s. 7, ch. 79-299; s. 70, ch. 79-400; s. 58, ch. 81-259; s. 29, ch. 96-159.

120.65 Administrative law judges.—

(1) The Division of Administrative Hearings within the Department of Management Services shall be headed by a director who shall be appointed by the Administration Commission and confirmed by the Senate. The director, who shall also serve as the chief administrative law judge, and any deputy chief administrative law judge must possess the same minimum qualifications as the administrative law judges employed by the division. The Deputy Chief Judge of Compensation Claims must possess the minimum qualifications established in s. 440.45(2) and shall report to the director. The division shall be
a separate budget entity, and the director shall be its agency head for all purposes. The Department of Management Services shall provide administrative support and service to the division to the extent requested by the director. The division shall not be subject to control, supervision, or direction by the Department of Management Services in any manner, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters.

(2) The director has the right to appeal actions by the Executive Office of the Governor that affect amendments to the division’s approved operating budget or any personnel actions pursuant to chapter 216 to the Administration Commission, which shall decide such issue by majority vote. The appropriations committees may advise the Administration Commission on the issue. If the President of the Senate and the Speaker of the House of Representatives object in writing to the effects of the appeal, the appeal may be affirmed by the affirmative vote of two-thirds of the commission members present.

(3) Each state agency as defined in chapter 216 and each political subdivision shall make its facilities available, at a time convenient to the provider, for use by the division in conducting proceedings pursuant to this chapter.

(4) The division shall employ administrative law judges to conduct hearings required by this chapter or other law. Any person employed by the division as an administrative law judge must have been a member of The Florida Bar in good standing for the preceding 5 years.

(5) If the division cannot furnish a division administrative law judge promptly in response to an agency request, the director shall designate in writing a qualified full-time employee of an agency other than the requesting agency to conduct the hearing. The director shall have the discretion to designate such a hearing officer who is located in that part of the state where the parties and witnesses reside.

(6) By rule, the division may establish:

(a) Further qualifications for administrative law judges and shall establish procedures by which candidates will be considered for employment or contract.

(b) The manner in which public notice will be given of vacancies in the staff of administrative law judges.

(c) Procedures for the assignment of administrative law judges.

(7) The division is authorized to provide administrative law judges on a contract basis to any governmental entity to conduct any hearing not covered by this section.

(8) The division shall have the authority to adopt reasonable rules to carry out the provisions of this act.

(9) Rules promulgated by the division may authorize any reasonable sanctions except contempt for violation of the rules of the division or failure to comply with a reasonable order issued by an administrative law judge, which is not under judicial review.
(10) Not later than February 1 of each year, the division shall issue a written report to the Administrative Procedures Committee and the Administration Commission, including at least the following information:

(a) A summary of the extent and effect of agencies’ utilization of administrative law judges, court reporters, and other personnel in proceedings under this chapter.

(b) Recommendations for change or improvement in the Administrative Procedure Act or any agency’s practice or policy with respect thereto.

(c) Recommendations as to those types of cases or disputes which should be conducted under the summary hearing process described in s. 120.574.

(d) A report regarding each agency’s compliance with the filing requirement in s. 120.57(1)(m).

(11) The division shall be reimbursed for administrative law judge services and travel expenses by the following entities: water management districts, regional planning councils, school districts, community colleges, the Division of Florida Colleges, state universities, the Board of Governors of the State University System, the State Board of Education, the Florida School for the Deaf and the Blind, and the Commission for Independent Education. These entities shall contract with the division to establish a contract rate for services and provisions for reimbursement of administrative law judge travel expenses and video teleconferencing expenses attributable to hearings conducted on behalf of these entities. The contract rate must be based on a total-cost-recovery methodology.

History.—s. 1, ch. 74-310; s. 9, ch. 75-191; s. 14, ch. 76-131; s. 9, ch. 78-425; s. 46, ch. 79-190; s. 1, ch. 86-297; s. 46, ch. 87-6; s. 25, ch. 87-101; s. 54, ch. 88-1; s. 30, ch. 88-277; s. 51, ch. 92-279; s. 23, ch. 92-315; s. 55, ch. 92-326; s. 764, ch. 95-147; s. 31, ch. 96-159; s. 13, ch. 97-176; s. 38, ch. 2000-371; s. 4, ch. 2001-91; s. 1, ch. 2004-247; s. 8, ch. 2006-82; s. 14, ch. 2007-217; s. 8, ch. 2009-228.

120.651 Designation of two administrative law judges to preside over actions involving department or boards.—The Division of Administrative Hearings shall designate at least two administrative law judges who shall specifically preside over actions involving the Department of Health or boards within the Department of Health. Each designated administrative law judge must be a member of The Florida Bar in good standing and must have legal, managerial, or clinical experience in issues related to health care or have attained board certification in health care law from The Florida Bar.

History.—s. 32, ch. 2003-416.

120.655 Withholding funds to pay for administrative law judge services to school boards.—If a district school board fails to make a timely payment for the services provided by an administrative law judge of the Division of Administrative Hearings as provided annually in the General Appropriations Act, the Commissioner of Education shall withhold, from any general revenue funds the district is eligible to receive, an amount sufficient to pay for the administrative law judge’s services. The commissioner
shall transfer the amount withheld to the Division of Administrative Hearings in payment of such services.

History.—s. 1, ch. 92-121; s. 32, ch. 96-159.

120.66 Ex parte communications.—

(1) In any proceeding under ss. 120.569 and 120.57, no ex parte communication relative to the merits, threat, or offer of reward shall be made to the agency head, after the agency head has received a recommended order, or to the presiding officer by:

(a) An agency head or member of the agency or any other public employee or official engaged in prosecution or advocacy in connection with the matter under consideration or a factually related matter.

(b) A party to the proceeding, the party's authorized representative or counsel, or any person who, directly or indirectly, would have a substantial interest in the proposed agency action.

Nothing in this subsection shall apply to advisory staff members who do not testify on behalf of the agency in the proceeding or to any rulemaking proceedings under s. 120.54.

(2) A presiding officer, including an agency head or designee, who is involved in the decisional process and who receives an ex parte communication in violation of subsection (1) shall place on the record of the pending matter all written communications received, all written responses to such communications, and a memorandum stating the substance of all oral communications received and all oral responses made, and shall also advise all parties that such matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be allowed to do so, if such party requests the opportunity for rebuttal within 10 days after notice of such communication. The presiding officer may, if necessary to eliminate the effect of an ex parte communication, withdraw from the proceeding, in which case the entity that appointed the presiding officer shall assign a successor.

(3) Any person who makes an ex parte communication prohibited by subsection (1), and any presiding officer, including an agency head or designee, who fails to place in the record any such communication, is in violation of this act and may be assessed a civil penalty not to exceed $500 or be subjected to other disciplinary action.

History.—s. 1, ch. 74-310; s. 10, ch. 75-191; s. 12, ch. 76-131; s. 1, ch. 77-174; s. 10, ch. 78-425; s. 765, ch. 95-147; s. 33, ch. 96-159; s. 14, ch. 97-176.

120.665 Disqualification of agency personnel.—

(1) Notwithstanding the provisions of s. 112.3143, any individual serving alone or with others as an agency head may be disqualified from serving in an agency proceeding for bias, prejudice, or interest when any party to the agency proceeding shows just cause by a suggestion filed within a reasonable period of time prior to the agency proceeding. If the disqualified individual was appointed, the appointing power may appoint a substitute to serve in the matter from which the individual is
disqualified. If the individual is an elected official, the Governor may appoint a substitute to serve in the matter from which the individual is disqualified. However, if a quorum remains after the individual is disqualified, it shall not be necessary to appoint a substitute.

(2) Any agency action taken by a duly appointed substitute for a disqualified individual shall be as conclusive and effective as if agency action had been taken by the agency as it was constituted prior to any substitution.

History.—s. 1, ch. 74-310; s. 12, ch. 78-425; s. 2, ch. 83-329; s. 767, ch. 95-147; s. 34, ch. 96-159.

Note.—Former s. 120.71.

120.68 Judicial review.—

(1) A party who is adversely affected by final agency action is entitled to judicial review. A preliminary, procedural, or intermediate order of the agency or of an administrative law judge of the Division of Administrative Hearings is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(2)(a) Judicial review shall be sought in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law. All proceedings shall be instituted by filing a notice of appeal or petition for review in accordance with the Florida Rules of Appellate Procedure within 30 days after the rendition of the order being appealed. If the appeal is of an order rendered in a proceeding initiated under s. 120.56, the agency whose rule is being challenged shall transmit a copy of the notice of appeal to the committee.

(b) When proceedings under this chapter are consolidated for final hearing and the parties to the consolidated proceeding seek review of final or interlocutory orders in more than one district court of appeal, the courts of appeal are authorized to transfer and consolidate the review proceedings. The court may transfer such appellate proceedings on its own motion, upon motion of a party to one of the appellate proceedings, or by stipulation of the parties to the appellate proceedings. In determining whether to transfer a proceeding, the court may consider such factors as the interrelationship of the parties and the proceedings, the desirability of avoiding inconsistent results in related matters, judicial economy, and the burden on the parties of reproducing the record for use in multiple appellate courts.

(3) The filing of the petition does not itself stay enforcement of the agency decision, but if the agency decision has the effect of suspending or revoking a license, supersedeas shall be granted as a matter of right upon such conditions as are reasonable, unless the court, upon petition of the agency, determines that a supersedeas would constitute a probable danger to the health, safety, or welfare of the state. The agency also may grant a stay upon appropriate terms, but, whether or not the action has the effect of suspending or revoking a license, a petition to the agency for a stay is not a prerequisite to a petition to the court for supersedeas. In any event the court shall specify the conditions, if any, upon which the stay or supersedeas is granted.
(4) Judicial review of any agency action shall be confined to the record transmitted and any additions made thereto in accordance with paragraph (7)(a).

(5) The record for judicial review shall be compiled in accordance with the Florida Rules of Appellate Procedure.

(6)(a) The reviewing court’s decision may be mandatory, prohibitory, or declaratory in form, and it shall provide whatever relief is appropriate irrespective of the original form of the petition. The court may:

1. Order agency action required by law; order agency exercise of discretion when required by law; set aside agency action; remand the case for further agency proceedings; or decide the rights, privileges, obligations, requirements, or procedures at issue between the parties; and

2. Order such ancillary relief as the court finds necessary to redress the effects of official action wrongfully taken or withheld.

(b) If the court sets aside agency action or remands the case to the agency for further proceedings, it may make such interlocutory order as the court finds necessary to preserve the interests of any party and the public pending further proceedings or agency action.

(7) The court shall remand a case to the agency for further proceedings consistent with the court’s decision or set aside agency action, as appropriate, when it finds that:

(a) There has been no hearing prior to agency action and the reviewing court finds that the validity of the action depends upon disputed facts;

(b) The agency’s action depends on any finding of fact that is not supported by competent, substantial evidence in the record of a hearing conducted pursuant to ss. 120.569 and 120.57; however, the court shall not substitute its judgment for that of the agency as to the weight of the evidence on any disputed finding of fact;

(c) The fairness of the proceedings or the correctness of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure;

(d) The agency has erroneously interpreted a provision of law and a correct interpretation compels a particular action; or

(e) The agency’s exercise of discretion was:

1. Outside the range of discretion delegated to the agency by law;

2. Inconsistent with agency rule;

3. Inconsistent with officially stated agency policy or a prior agency practice, if deviation therefrom is not explained by the agency; or

4. Otherwise in violation of a constitutional or statutory provision;

but the court shall not substitute its judgment for that of the agency on an issue of discretion.
(8) Unless the court finds a ground for setting aside, modifying, remanding, or ordering agency action or ancillary relief under a specified provision of this section, it shall affirm the agency’s action.

(9) No petition challenging an agency rule as an invalid exercise of delegated legislative authority shall be instituted pursuant to this section, except to review an order entered pursuant to a proceeding under s. 120.56 or an agency’s findings of immediate danger, necessity, and procedural fairness prerequisite to the adoption of an emergency rule pursuant to s. 120.54(4), unless the sole issue presented by the petition is the constitutionality of a rule and there are no disputed issues of fact.

(10) If an administrative law judge’s final order depends on any fact found by the administrative law judge, the court shall not substitute its judgment for that of the administrative law judge as to the weight of the evidence on any disputed finding of fact. The court shall, however, set aside the final order of the administrative law judge or remand the case to the administrative law judge, if it finds that the final order depends on any finding of fact that is not supported by competent substantial evidence in the record of the proceeding.

History.—s. 1, ch. 74-310; s. 13, ch. 76-131; s. 38, ch. 77-104; s. 1, ch. 77-174; s. 11, ch. 78-425; s. 4, ch. 84-173; s. 7, ch. 87-385; s. 36, ch. 90-302; s. 6, ch. 91-30; s. 1, ch. 91-191; s. 10, ch. 92-166; s. 35, ch. 96-159; s. 15, ch. 97-176; s. 8, ch. 2003-94.

120.69 Enforcement of agency action.—

(1) Except as otherwise provided by statute:

(a) Any agency may seek enforcement of an action by filing a petition for enforcement, as provided in this section, in the circuit court where the subject matter of the enforcement is located.

(b) A petition for enforcement of any agency action may be filed by any substantially interested person who is a resident of the state. However, no such action may be commenced:

1. Prior to 60 days after the petitioner has given notice of the violation of the agency action to the head of the agency concerned, the Attorney General, and any alleged violator of the agency action.

2. If an agency has filed, and is diligently prosecuting, a petition for enforcement.

(c) A petition for enforcement filed by a nongovernmental person shall be in the name of the State of Florida on the relation of the petitioner, and the doctrines of res judicata and collateral estoppel shall apply.

(d) In an action brought under paragraph (b), the agency whose action is sought to be enforced, if not a party, may intervene as a matter of right.

(2) A petition for enforcement may request declaratory relief; temporary or permanent equitable relief; any fine, forfeiture, penalty, or other remedy provided by statute; any combination of the foregoing; or, in the absence of any other specific statutory authority, a fine not to exceed $1,000.

(3) After the court has rendered judgment on a petition for enforcement, no other petition shall be filed or adjudicated against the same agency action, on the basis of the same transaction or occurrence, unless expressly authorized on remand. The doctrines of res judicata and collateral
estoppel shall apply, and the court shall make such orders as are necessary to avoid multiplicity of actions.

(4) In all enforcement proceedings:
   (a) If enforcement depends on any facts other than those appearing in the record, the court may ascertain such facts under procedures set forth in s. 120.68(7)(a).
   (b) If one or more petitions for enforcement and a petition for review involving the same agency action are pending at the same time, the court considering the review petition may order all such actions transferred to and consolidated in one court. Each party shall be under an affirmative duty to notify the court when it becomes aware of multiple proceedings.
   (c) Should any party willfully fail to comply with an order of the court, the court shall punish that party in accordance with the law applicable to contempt committed by a person in the trial of any other action.

(5) In any enforcement proceeding the respondent may assert as a defense the invalidity of any relevant statute, the inapplicability of the administrative determination to respondent, compliance by the respondent, the inappropriateness of the remedy sought by the agency, or any combination of the foregoing. In addition, if the petition for enforcement is filed during the time within which the respondent could petition for judicial review of the agency action, the respondent may assert the invalidity of the agency action.

(6) Notwithstanding any other provision of this section, upon receipt of evidence that an alleged violation of an agency’s action presents an imminent and substantial threat to the public health, safety, or welfare, the agency may bring suit for immediate temporary relief in an appropriate circuit court, and the granting of such temporary relief shall not have res judicata or collateral estoppel effect as to further relief sought under a petition for enforcement relating to the same violation.

(7) In any final order on a petition for enforcement the court may award to the prevailing party all or part of the costs of litigation and reasonable attorney's fees and expert witness fees, whenever the court determines that such an award is appropriate.

History.—s. 1, ch. 74-310; s. 766, ch. 95-147; s. 36, ch. 96-159.

120.695 Notice of noncompliance.—

(1) It is the policy of the state that the purpose of regulation is to protect the public by attaining compliance with the policies established by the Legislature. Fines and other penalties may be provided in order to assure compliance; however, the collection of fines and the imposition of penalties are intended to be secondary to the primary goal of attaining compliance with an agency’s rules. It is the intent of the Legislature that an agency charged with enforcing rules shall issue a notice of noncompliance as its first response to a minor violation of a rule in any instance in which it is reasonable to assume that the violator was unaware of the rule or unclear as to how to comply with it.
(2)(a) Each agency shall issue a notice of noncompliance as a first response to a minor violation of a rule. A “notice of noncompliance” is a notification by the agency charged with enforcing the rule issued to the person or business subject to the rule. A notice of noncompliance may not be accompanied with a fine or other disciplinary penalty. It must identify the specific rule that is being violated, provide information on how to comply with the rule, and specify a reasonable time for the violator to comply with the rule. A rule is agency action that regulates a business, occupation, or profession, or regulates a person operating a business, occupation, or profession, and that, if not complied with, may result in a disciplinary penalty.

(b) Each agency shall review all of its rules and designate those for which a violation would be a minor violation and for which a notice of noncompliance must be the first enforcement action taken against a person or business subject to regulation. A violation of a rule is a minor violation if it does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm. If an agency under the direction of a cabinet officer mails to each licensee a notice of the designated rules at the time of licensure and at least annually thereafter, the provisions of paragraph (a) may be exercised at the discretion of the agency. Such notice shall include a subject-matter index of the rules and information on how the rules may be obtained.

(c) The agency’s review and designation must be completed by December 1, 1995; each agency under the direction of the Governor shall make a report to the Governor, and each agency under the joint direction of the Governor and Cabinet shall report to the Governor and Cabinet by January 1, 1996, on which of its rules have been designated as rules the violation of which would be a minor violation.

(d) The Governor or the Governor and Cabinet, as appropriate pursuant to paragraph (c), may evaluate the review and designation effects of each agency and may apply a different designation than that applied by the agency.

(e) This section does not apply to the regulation of law enforcement personnel or teachers.

(f) Designation pursuant to this section is not subject to challenge under this chapter.

History.—s. 1, ch. 95-402.

120.72 Legislative intent; references to chapter 120 or portions thereof.—Unless expressly provided otherwise, a reference in any section of the Florida Statutes to chapter 120 or to any section or sections or portion of a section of chapter 120 includes, and shall be understood as including, all subsequent amendments to chapter 120 or to the referenced section or sections or portions of a section.

History.—s. 3, ch. 74-310; s. 1, ch. 76-207; s. 1, ch. 77-174; s. 57, ch. 78-95; s. 13, ch. 78-425; s. 38, ch. 96-159.

120.73 Circuit court proceedings; declaratory judgments.—Nothing in this chapter shall be construed to repeal any provision of the Florida Statutes which grants the right to a proceeding in the
circuit court in lieu of an administrative hearing or to divest the circuit courts of jurisdiction to render declaratory judgments under the provisions of chapter 86.

History.—s. 11, ch. 75-191; s. 14, ch. 78-425.

120.74 Agency review, revision, and report.—
(1) Each agency shall review and revise its rules as often as necessary to ensure that its rules are correct and comply with statutory requirements. Additionally, each agency shall perform a formal review of its rules every 2 years. In the review, each agency must:
(a) Identify and correct deficiencies in its rules;
(b) Clarify and simplify its rules;
(c) Delete obsolete or unnecessary rules;
(d) Delete rules that are redundant of statutes;
(e) Seek to improve efficiency, reduce paperwork, or decrease costs to government and the private sector;
(f) Contact agencies that have concurrent or overlapping jurisdiction to determine whether their rules can be coordinated to promote efficiency, reduce paperwork, or decrease costs to government and the private sector; and
(g) Determine whether the rules should be continued without change or should be amended or repealed to reduce the impact on small business while meeting the stated objectives of the proposed rule.

(2) Beginning October 1, 1997, and by October 1 of every other year thereafter, the head of each agency shall file a report with the President of the Senate, the Speaker of the House of Representatives, and the committee, with a copy to each appropriate standing committee of the Legislature, which certifies that the agency has complied with the requirements of this section. The report must specify any changes made to its rules as a result of the review and, when appropriate, recommend statutory changes that will promote efficiency, reduce paperwork, or decrease costs to government and the private sector. The report must specifically address the economic impact of the rules on small business. The report must identify the types of cases or disputes in which the agency is involved which should be conducted under the summary hearing process described in s. 120.574.

History.—s. 46, ch. 96-399; s. 16, ch. 97-176; s. 9, ch. 2006-82; s. 15, ch. 2008-104; s. 8, ch. 2008-149.

120.80 Exceptions and special requirements; agencies.—
(1) DIVISION OF ADMINISTRATIVE HEARINGS.—
(a) Division as a party.—Notwithstanding s. 120.57(1)(a), a hearing in which the division is a party may not be conducted by an administrative law judge assigned by the division. An attorney assigned by the Administration Commission shall be the hearing officer.
(b) **Workers’ compensation.**—Notwithstanding s. 120.52(1), a judge of compensation claims, in adjudicating matters under chapter 440, is not an agency or part of an agency for purposes of this chapter.

(2) **DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES.**—

(a) Marketing orders under chapter 527, chapter 573, or chapter 601 are not rules.

(b) Notwithstanding s. 120.57(1)(a), hearings held by the Department of Agriculture and Consumer Services pursuant to chapter 601 need not be conducted by an administrative law judge assigned by the division.

(3) **OFFICE OF FINANCIAL REGULATION.**—

(a) Notwithstanding s. 120.60(1), in proceedings for the issuance, denial, renewal, or amendment of a license or approval of a merger pursuant to title XXXVIII:

1. a. The Office of Financial Regulation of the Financial Services Commission shall have published in the Florida Administrative Weekly notice of the application within 21 days after receipt.

   b. Within 21 days after publication of notice, any person may request a hearing. Failure to request a hearing within 21 days after notice constitutes a waiver of any right to a hearing. The Office of Financial Regulation or an applicant may request a hearing at any time prior to the issuance of a final order. Hearings shall be conducted pursuant to ss. 120.569 and 120.57, except that the Financial Services Commission shall by rule provide for participation by the general public.

2. Should a hearing be requested as provided by sub-subparagraph 1.b., the applicant or licensee shall publish at its own cost a notice of the hearing in a newspaper of general circulation in the area affected by the application. The Financial Services Commission may by rule specify the format and size of the notice.

3. Notwithstanding s. 120.60(1), and except as provided in subparagraph 4., every application for license for a new bank, new trust company, new credit union, or new savings and loan association shall be approved or denied within 180 days after receipt of the original application or receipt of the timely requested additional information or correction of errors or omissions. Any application for such a license or for acquisition of such control which is not approved or denied within the 180-day period or within 30 days after conclusion of a public hearing on the application, whichever is later, shall be deemed approved subject to the satisfactory completion of conditions required by statute as a prerequisite to license and approval of insurance of accounts for a new bank, a new savings and loan association, or a new credit union by the appropriate insurer.

4. In the case of every application for license to establish a new bank, trust company, or capital stock savings association in which a foreign national proposes to own or control 10 percent or more of any class of voting securities, and in the case of every application by a foreign national for approval to acquire control of a bank, trust company, or capital stock savings association, the Office of Financial Regulation shall request that a public hearing be conducted pursuant to ss. 120.569 and 120.57. Notice
of such hearing shall be published by the applicant as provided in subparagraph 2. The failure of any such foreign national to appear personally at the hearing shall be grounds for denial of the application. Notwithstanding the provisions of s. 120.60(1) and subparagraph 3., every application involving a foreign national shall be approved or denied within 1 year after receipt of the original application or any timely requested additional information or the correction of any errors or omissions, or within 30 days after the conclusion of the public hearing on the application, whichever is later.

(b) In any application for a license or merger pursuant to title XXXVIII which is referred by the agency to the division for hearing, the administrative law judge shall complete and submit to the agency and to all parties a written report consisting of findings of fact and rulings on evidentiary matters. The agency shall allow each party at least 10 days in which to submit written exceptions to the report.

(4) DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION.—

(a) Business regulation.—The Division of Pari-mutuel Wagering is exempt from the hearing and notice requirements of ss. 120.569 and 120.57(1)(a), but only for stewards, judges, and boards of judges when the hearing is to be held for the purpose of the imposition of fines or suspensions as provided by rules of the Division of Pari-mutuel Wagering, but not for revocations, and only upon violations of subparagraphs 1.-6. The Division of Pari-mutuel Wagering shall adopt rules establishing alternative procedures, including a hearing upon reasonable notice, for the following violations:

1. Horse riding, harness riding, greyhound interference, and jai alai game actions in violation of chapter 550.
2. Application and usage of drugs and medication to horses, greyhounds, and jai alai players in violation of chapter 550.
3. Maintaining or possessing any device which could be used for the injection or other infusion of a prohibited drug to horses, greyhounds, and jai alai players in violation of chapter 550.
4. Suspensions under reciprocity agreements between the Division of Pari-mutuel Wagering and regulatory agencies of other states.
5. Assault or other crimes of violence on premises licensed for pari-mutuel wagering.
6. Prearranging the outcome of any race or game.

(b) Professional regulation.—Notwithstanding s. 120.57(1)(a), formal hearings may not be conducted by the Secretary of Business and Professional Regulation or a board or member of a board within the Department of Business and Professional Regulation for matters relating to the regulation of professions, as defined by chapter 455.

(5) FLORIDA LAND AND WATER ADJUDICATORY COMMISSION.—Notwithstanding the provisions of s. 120.57(1)(a), when the Florida Land and Water Adjudicatory Commission receives a notice of appeal pursuant to s. 380.07, the commission shall notify the division within 60 days after receipt of the notice of appeal if the commission elects to request the assignment of an administrative law judge.
(6) DEPARTMENT OF LAW ENFORCEMENT.—Law enforcement policies and procedures of the Department of Law Enforcement which relate to the following are not rules as defined by this chapter:

(a) The collection, management, and dissemination of active criminal intelligence information and active criminal investigative information; management of criminal investigations; and management of undercover investigations and the selection, assignment, and fictitious identity of undercover personnel.

(b) The recruitment, management, identity, and remuneration of confidential informants or sources.

(c) Surveillance techniques, the selection of surveillance personnel, and electronic surveillance, including court-ordered and consensual interceptions of communication conducted pursuant to chapter 934.

(d) The safety and release of hostages.

(e) The provision of security and protection to public figures.

(f) The protection of witnesses.

(7) DEPARTMENT OF CHILDREN AND FAMILY SERVICES.—Notwithstanding s. 120.57(1)(a), hearings conducted within the Department of Children and Family Services in the execution of those social and economic programs administered by the former Division of Family Services of the former Department of Health and Rehabilitative Services prior to the reorganization effected by chapter 75-48, Laws of Florida, need not be conducted by an administrative law judge assigned by the division.

(8) DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES.—

(a) Drivers' licenses.—

1. Notwithstanding s. 120.57(1)(a), hearings regarding drivers' licensing pursuant to chapter 322 need not be conducted by an administrative law judge assigned by the division.

2. Notwithstanding s. 120.60(5), cancellation, suspension, or revocation of a driver's license shall be by personal delivery to the licensee or by first-class mail as provided in s. 322.251.

(b) Wrecker operators.—Notwithstanding s. 120.57(1)(a), hearings held by the Division of the Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles to deny, suspend, or remove a wrecker operator from participating in the wrecker rotation system established by s. 321.051 need not be conducted by an administrative law judge assigned by the division. These hearings shall be held by a hearing officer appointed by the director of the Division of the Florida Highway Patrol.

(9) OFFICE OF INSURANCE REGULATION.—Notwithstanding s. 120.60(1), every application for a certificate of authority as required by s. 624.401 shall be approved or denied within 180 days after receipt of the original application. Any application for a certificate of authority which is not approved or denied within the 180-day period, or within 30 days after conclusion of a public hearing held on the application, shall be deemed approved, subject to the satisfactory completion of conditions required by statute as a prerequisite to licensure.
(10) AGENCY FOR WORKFORCE INNOVATION.—

(a) Notwithstanding s. 120.54, the rulemaking provisions of this chapter do not apply to unemployment appeals referees.

(b) Notwithstanding s. 120.54(5), the uniform rules of procedure do not apply to appeal proceedings conducted under chapter 443 by the Unemployment Appeals Commission, special deputies, or unemployment appeals referees.

(c) Notwithstanding s. 120.57(1)(a), hearings under chapter 443 may not be conducted by an administrative law judge assigned by the division, but instead shall be conducted by the Unemployment Appeals Commission in unemployment compensation appeals, unemployment appeals referees, and the Agency for Workforce Innovation or its special deputies under s. 443.141.

(11) NATIONAL GUARD.—Notwithstanding s. 120.52(16), the enlistment, organization, administration, equipment, maintenance, training, and discipline of the militia, National Guard, organized militia, and unorganized militia, as provided by s. 2, Art. X of the State Constitution, are not rules as defined by this chapter.

(12) PUBLIC EMPLOYEES RELATIONS COMMISSION.—

(a) Notwithstanding s. 120.57(1)(a), hearings within the jurisdiction of the Public Employees Relations Commission need not be conducted by an administrative law judge assigned by the division.

(b) Section 120.60 does not apply to certification of employee organizations pursuant to s. 447.307.

(13) FLORIDA PUBLIC SERVICE COMMISSION.—

(a) Agency statements that relate to cost-recovery clauses, factors, or mechanisms implemented pursuant to chapter 366, relating to public utilities, are exempt from the provisions of s. 120.54(1)(a).

(b) Notwithstanding ss. 120.569 and 120.57, a hearing on an objection to proposed action of the Florida Public Service Commission may only address the issues in dispute. Issues in the proposed action which are not in dispute are deemed stipulated.

(c) The Florida Public Service Commission is exempt from the time limitations in s. 120.60(1) when issuing a license.

(d) Notwithstanding the provisions of this chapter, in implementing the Telecommunications Act of 1996, Pub. L. No. 104-104, the Public Service Commission is authorized to employ procedures consistent with that act.

(e) Notwithstanding the provisions of this chapter, s. 350.128, or s. 364.381, appellate jurisdiction for Public Service Commission decisions that implement the Telecommunications Act of 1996, Pub. L. No. 104-104, shall be consistent with the provisions of that act.

(f) Notwithstanding any provision of this chapter, all public utilities and companies regulated by the Public Service Commission shall be entitled to proceed under the interim rate provisions of chapter 364 or the procedures for interim rates contained in chapter 74-195, Laws of Florida, or as otherwise provided by law.
(14) DEPARTMENT OF REVENUE.—

(a) **Assessments.**—An assessment of tax, penalty, or interest by the Department of Revenue is not a final order as defined by this chapter. Assessments by the Department of Revenue shall be deemed final as provided in the statutes and rules governing the assessment and collection of taxes.

(b) **Taxpayer contest proceedings.**—

1. In any administrative proceeding brought pursuant to this chapter as authorized by s. 72.011(1), the taxpayer shall be designated the “petitioner” and the Department of Revenue shall be designated the “respondent,” except that for actions contesting an assessment or denial of refund under chapter 207, the Department of Highway Safety and Motor Vehicles shall be designated the “respondent,” and for actions contesting an assessment or denial of refund under chapters 210, 550, 561, 562, 563, 564, and 565, the Department of Business and Professional Regulation shall be designated the “respondent.”

2. In any such administrative proceeding, the applicable department’s burden of proof, except as otherwise specifically provided by general law, shall be limited to a showing that an assessment has been made against the taxpayer and the factual and legal grounds upon which the applicable department made the assessment.

3. a. Prior to filing a petition under this chapter, the taxpayer shall pay to the applicable department the amount of taxes, penalties, and accrued interest assessed by that department which are not being contested by the taxpayer. Failure to pay the uncontested amount shall result in the dismissal of the action and imposition of an additional penalty of 25 percent of the amount taxed.

b. The requirements of s. 72.011(2) and (3)(a) are jurisdictional for any action under this chapter to contest an assessment or denial of refund by the Department of Revenue, the Department of Highway Safety and Motor Vehicles, or the Department of Business and Professional Regulation.

4. Except as provided in s. 220.719, further collection and enforcement of the contested amount of an assessment for nonpayment or underpayment of any tax, interest, or penalty shall be stayed beginning on the date a petition is filed. Upon entry of a final order, an agency may resume collection and enforcement action.

5. The prevailing party, in a proceeding under ss. 120.569 and 120.57 authorized by s. 72.011(1), may recover all legal costs incurred in such proceeding, including reasonable attorney’s fees, if the losing party fails to raise a justiciable issue of law or fact in its petition or response.

6. Upon review pursuant to s. 120.68 of final agency action concerning an assessment of tax, penalty, or interest with respect to a tax imposed under chapter 212, or the denial of a refund of any tax imposed under chapter 212, if the court finds that the Department of Revenue improperly rejected or modified a conclusion of law, the court may award reasonable attorney’s fees and reasonable costs of the appeal to the prevailing appellant.

(c) **Proceedings to establish paternity or paternity and child support; orders to appear for genetic testing; proceedings for administrative support orders.**—In proceedings to establish paternity or
paternity and child support pursuant to s. 409.256 and proceedings for the establishment of administrative support orders pursuant to s. 409.2563, final orders in cases referred by the Department of Revenue to the Division of Administrative Hearings shall be entered by the division’s administrative law judge and transmitted to the Department of Revenue for filing and rendering. The Department of Revenue has the right to seek judicial review under s. 120.68 of a final order entered by an administrative law judge. The Department of Revenue or the person ordered to appear for genetic testing may seek immediate judicial review under s. 120.68 of an order issued by an administrative law judge pursuant to s. 409.256(5)(b). Final orders that adjudicate paternity or paternity and child support pursuant to s. 409.256 and administrative support orders rendered pursuant to s. 409.2563 may be enforced pursuant to s. 120.69 or, alternatively, by any method prescribed by law for the enforcement of judicial support orders, except contempt. Hearings held by the Division of Administrative Hearings pursuant to ss. 409.256, 409.2563, and 409.25635 shall be held in the judicial circuit where the person receiving services under Title IV-D resides or, if the person receiving services under Title IV-D does not reside in this state, in the judicial circuit where the respondent resides. If the department and the respondent agree, the hearing may be held in another location. If ordered by the administrative law judge, the hearing may be conducted telephonically or by videoconference.

(15) DEPARTMENT OF HEALTH.—Notwithstanding s. 120.57(1)(a), formal hearings may not be conducted by the State Surgeon General, the Secretary of Health Care Administration, or a board or member of a board within the Department of Health or the Agency for Health Care Administration for matters relating to the regulation of professions, as defined by chapter 456. Notwithstanding s. 120.57(1)(a), hearings conducted within the Department of Health in execution of the Special Supplemental Nutrition Program for Women, Infants, and Children; Child Care Food Program; Children’s Medical Services Program; the Brain and Spinal Cord Injury Program; and the exemption from disqualification reviews for certified nurse assistants program need not be conducted by an administrative law judge assigned by the division. The Department of Health may contract with the Department of Children and Family Services for a hearing officer in these matters.

(16) FLORIDA BUILDING COMMISSION.—

(a) Notwithstanding the provisions of s. 120.542, the Florida Building Commission may not accept a petition for waiver or variance and may not grant any waiver or variance from the requirements of the Florida Building Code.

(b) The Florida Building Commission shall adopt within the Florida Building Code criteria and procedures for alternative means of compliance with the code or local amendments thereto, for enforcement by local governments, local enforcement districts, or other entities authorized by law to enforce the Florida Building Code. Appeals from the denial of the use of alternative means shall be heard by the local board, if one exists, and may be appealed to the Florida Building Commission.
(c) Notwithstanding ss. 120.565, 120.569, and 120.57, the Florida Building Commission and hearing officer panels appointed by the commission in accordance with s. 553.775(3)(c)1. may conduct proceedings to review decisions of local building code officials in accordance with s. 553.775(3)(c).


120.81 Exceptions and special requirements; general areas.—

(1) EDUCATIONAL UNITS.—

(a) Notwithstanding s. 120.536(1) and the flush left provisions of s. 120.52(8), district school boards may adopt rules to implement their general powers under s. 1001.41.

(b) The preparation or modification of curricula by an educational unit is not a rule as defined by this chapter.

(c) Notwithstanding s. 120.52(16), any tests, test scoring criteria, or testing procedures relating to student assessment which are developed or administered by the Department of Education pursuant to s. 1003.43, s. 1003.438, s. 1008.22, or s. 1008.25, or any other statewide educational tests required by law, are not rules.

(d) Notwithstanding any other provision of this chapter, educational units shall not be required to include the full text of the rule or rule amendment in notices relating to rules and need not publish these or other notices in the Florida Administrative Weekly, but notice shall be made:

1. By publication in a newspaper of general circulation in the affected area;

2. By mail to all persons who have made requests of the educational unit for advance notice of its proceedings and to organizations representing persons affected by the proposed rule; and

3. By posting in appropriate places so that those particular classes of persons to whom the intended action is directed may be duly notified.

(e) Educational units, other than the Florida School for the Deaf and the Blind, shall not be required to make filings with the committee of the documents required to be filed by s. 120.54 or s. 120.55(1)(a)4.

(f) Notwithstanding s. 120.57(1)(a), hearings which involve student disciplinary suspensions or expulsions may be conducted by educational units.

(g) Sections 120.569 and 120.57 do not apply to any proceeding in which the substantial interests of a student are determined by a state university or a community college.

(h) Notwithstanding ss. 120.569 and 120.57, in a hearing involving a student disciplinary suspension or expulsion conducted by an educational unit, the 14-day notice of hearing requirement may be waived by the agency head or the hearing officer without the consent of parties.
(i) For purposes of s. 120.68, a district school board whose decision is reviewed under the provisions of s. 1012.33 and whose final action is modified by a superior administrative decision shall be a party entitled to judicial review of the final action.

(j) Notwithstanding s. 120.525(2), the agenda for a special meeting of a district school board under authority of s. 1001.372(1) shall be prepared upon the calling of the meeting, but not less than 48 hours prior to the meeting.

(k) Students are not persons subject to regulation for the purposes of petitioning for a variance or waiver to rules of educational units under s. 120.542.

(2) LOCAL UNITS OF GOVERNMENT.—

(a) Local units of government with jurisdiction in only one county or part thereof shall not be required to make filings with the committee of the documents required to be filed under s. 120.54.

(b) Notwithstanding any other provision of this chapter, units of government with jurisdiction in only one county or part thereof need not publish required notices in the Florida Administrative Weekly, but shall publish these notices in the manner required by their enabling acts for notice of rulemaking or notice of meeting. Notices relating to rules are not required to include the full text of the rule or rule amendment.

(3) PRISONERS AND PAROLEES.—

(a) Notwithstanding s. 120.52(13), prisoners, as defined by s. 944.02, shall not be considered parties in any proceedings other than those under s. 120.54(3)(c) or (7), and may not seek judicial review under s. 120.68 of any other agency action. Prisoners are not eligible to seek an administrative determination of an agency statement under s. 120.56(4). Parolees shall not be considered parties for purposes of agency action or judicial review when the proceedings relate to the rescission or revocation of parole.

(b) Notwithstanding s. 120.54(3)(c), prisoners, as defined by s. 944.02, may be limited by the Department of Corrections to an opportunity to present evidence and argument on issues under consideration by submission of written statements concerning intended action on any department rule.

(c) Notwithstanding ss. 120.569 and 120.57, in a preliminary hearing for revocation of parole, no less than 7 days’ notice of hearing shall be given.

(4) REGULATION OF PROFESSIONS.—Notwithstanding s. 120.569(2)(g), in a proceeding against a licensed professional or in a proceeding for licensure of an applicant for professional licensure which involves allegations of sexual misconduct:

(a) The testimony of the victim of the sexual misconduct need not be corroborated.

(b) Specific instances of prior consensual sexual activity between the victim of the sexual misconduct and any person other than the offender is inadmissible, unless:

1. It is first established to the administrative law judge in a proceeding in camera that the victim of the sexual misconduct is mistaken as to the identity of the perpetrator of the sexual misconduct; or
2. If consent by the victim of the sexual misconduct is at issue and it is first established to the
administrative law judge in a proceeding in camera that such evidence tends to establish a pattern of
conduct or behavior on the part of such victim which is so similar to the conduct or behavior in the
case that it is relevant to the issue of consent.

(c) Reputation evidence relating to the prior sexual conduct of a victim of sexual misconduct is
inadmissible.

(5) HUNTING AND FISHING REGULATION.—Agency action which has the effect of altering established
hunting or fishing seasons, or altering established annual harvest limits for saltwater fishing if the
procedure for altering such harvest limits is set out by rule of the Fish and Wildlife Conservation
Commission, is not a rule as defined by this chapter, provided such action is adequately noticed in the
area affected through publishing in a newspaper of general circulation or through notice by
broadcasting by electronic media.

(6) RISK IMPACT STATEMENT.—The Department of Environmental Protection shall prepare a risk
impact statement for any rule that is proposed for approval by the Environmental Regulation
Commission and that establishes or changes standards or criteria based on impacts to or effects upon
human health. The Department of Agriculture and Consumer Services shall prepare a risk impact
statement for any rule that is proposed for adoption that establishes standards or criteria based on
impacts to or effects upon human health.

(a) This subsection does not apply to rules adopted pursuant to federally delegated or mandated
programs where such rules are identical or substantially identical to the federal regulations or laws
being adopted or implemented by the Department of Environmental Protection or Department of
Agriculture and Consumer Services, as applicable. However, the Department of Environmental
Protection and the Department of Agriculture and Consumer Services shall identify any risk analysis
information available to them from the Federal Government that has formed the basis of such a rule.

(b) This subsection does not apply to emergency rules adopted pursuant to this chapter.

(c) The Department of Environmental Protection and the Department of Agriculture and Consumer
Services shall prepare and publish notice of the availability of a clear and concise risk impact
statement for all applicable rules. The risk impact statement must explain the risk to the public health
addressed by the rule and shall identify and summarize the source of the scientific information used in
evaluating that risk.

(d) Nothing in this subsection shall be construed to create a new cause of action or basis for
challenging a rule nor diminish any existing cause of action or basis for challenging a rule.

History.—s. 42, ch. 96-159; s. 17, ch. 97-176; s. 49, ch. 99-2; s. 65, ch. 99-245; s. 7, ch. 99-379; s. 28, ch. 99-398; s.
4, ch. 2000-214; s. 897, ch. 2002-387; s. 17, ch. 2008-104; s. 4, ch. 2010-78.