

Health & Human Services Committee

Thursday, February 16, 2012
9:00 AM – 11:00 AM
404 HOB

Dean Cannon
Speaker

Robert C. "Rob" Schenck
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Health & Human Services Committee

Start Date and Time: Thursday, February 16, 2012 09:00 am
End Date and Time: Thursday, February 16, 2012 11:00 am
Location: 404 HOB
Duration: 2.00 hrs

Consideration of the following bill(s):

CS/HB 99 Sexual Exploitation by Health & Human Services Access Subcommittee, Fresen, Nuñez
CS/HB 529 Adult Day Care Centers by Health & Human Services Access Subcommittee, Corcoran
HB 621 Nursing Homes and Related Health Care Facilities by Frishe
HB 655 Biomedical Research by Coley
CS/HB 657 Pub. Rec./Biomedical Research by Health & Human Services Access Subcommittee, Coley
CS/HB 787 Nursing Home Facilities by Health & Human Services Quality Subcommittee, Trujillo
CS/CS/HB 943 Background Screening by Criminal Justice Subcommittee, Health & Human Services Access Subcommittee, Holder
CS/HB 1229 Reorganization of the Department of Children and Family Services by Health & Human Services Access Subcommittee, Drake

Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Wednesday, February 15, 2012.

By request of the chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Wednesday, February 15, 2012.

NOTICE FINALIZED on 02/14/2012 16:11 by Iseminger.Bobbye

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 99 Sexual Exploitation

SPONSOR(S): Health & Human Services Access Subcommittee; Fresen; Nuñez and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 202

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	15 Y, 0 N, As CS	Batchelor	Schoolfield
2) Civil Justice Subcommittee	14 Y, 0 N	Cary	Bond
3) Health & Human Services Committee		Batchelor	Gormley

SUMMARY ANALYSIS

CS/HB 99 creates the Florida Safe Harbor Act to serve sexually exploited children. The bill:

- Amends definitions relating to abuse and sexual exploitation of children and licensure of facilities.
- Requires that children who have been sexually exploited and taken into custody by the Department of Children and Family Services (DCF) be placed in shelters and facilities that offer treatment for sexual exploitation.
- Requires the DCF to develop guidelines for serving sexually exploited children and to report to the Legislature on criteria used for, and success of, placing children in treatment facilities.
- Creates a program for the creation of safe houses for sexually exploited children.
- Increases the civil penalty for specified violations of prostitution from \$500 to \$5,000 and directs that the additional \$4,500 be paid to the Department of Children and Family Services (DCF) to fund services for sexually exploited children.

The bill is not anticipated to have a fiscal impact on state agencies but may have an indeterminate fiscal impact on DCF contractors. The bill provides an effective date of January 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Safe Harbor Act

In 2008, the state of New York signed the "Safe Harbor for Exploited Youth Act" into law. The act requires local districts to provide crisis intervention services for sexually exploited children and decriminalizes child prostitution, recognizing these children as victims, rather than as criminals. The law is designed to provide counseling, emergency services and long term housing solutions for these children.¹ After the passage of this legislation various programs have become available to young children who have been sexually exploited, including GEMS in New York² and the Paul and Lisa Program in Connecticut.³ Both of these programs have received recognition and grant funding through the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.⁴

Sexual Exploitation and Prostitution

Chapter 39, F.S., provides guidance for treating dependent children who are the subject of abuse, neglect or abandonment. Sexual exploitation of a child includes allowing, encouraging, or forcing a child to either solicit for or engage in prostitution or engage in a sexual performance.⁵ Children who are allowed, encouraged or forced to engage in prostitution may be considered dependent by the courts⁶ and delivered to DCF for shelter and services in or out of their caregiver's home.⁷ The definition of abuse from sexual exploitation in Chapter 39, Florida Statutes, does not include children who willfully engage in prostitution.⁸

The prohibition against prostitution is without respect to the age of the person offering, committing, or engaging in prostitution.⁹ A first offense for prostitution is a second-degree misdemeanor, a second offense is a first-degree misdemeanor, and a third or subsequent offense is a third-degree felony.¹⁰ In addition to the criminal penalties, a civil penalty of \$500 shall be assessed against individuals that solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation.¹¹

Any person who knowingly recruits, entices, harbors, transports, provides, or obtains by any means a person, knowing that force, fraud, or coercion will be used to cause that person to engage in prostitution, commits the offense of sex trafficking, a second-degree felony.¹² However, a person commits a first degree felony if the offense of sex trafficking is committed against a person who is under the age of 14 or if such offense results in death.¹³

¹ Department of Children and Family Services, Staff Analysis, HB 99 (September 15, 2011).

² <http://www.gems-girls.org/> (last visited 1/19/2012).

³ <http://www.paulandlisa.org/index.htm> (last visited 1/19/2012).

⁴ http://www.ojjdp.gov/programs/csec_program.html (last visited on 1/19/2012).

⁵ Section 39.01(67)(g), F.S.

⁶ Section 39.01(15), F.S.

⁷ See generally s. 39.013, F.S., which gives the circuit court exclusive original jurisdiction over a child found to be dependent.

⁸ Section 39.01(67)(g), F.S.

⁹ Section 796.07, F.S.

¹⁰ Section 796.07(4), F.S.

¹¹ Section 769.07(6), F.S.

¹² Section 796.045, F.S.

¹³ *Id.*

Sex-Trafficking and Prostitution of Children

It is estimated that about 293,000 American youth are currently at risk of becoming victims of commercial sexual exploitation. The majority of American victims of commercial sexual exploitation tend to be runaway youth living on the streets who are highly susceptible to become victims of prostitution. These children generally come from homes where they have been abused, or from families that have abandoned them, and often become involved in prostitution as a way to support themselves financially or to get the things they want or need.¹⁴

Other young people are recruited into prostitution through forced abduction, pressure from adults, or through deceptive agreements between parents and traffickers.¹⁵ In a study conducted at the University of New Hampshire in 2009, researchers found that among a sampling of law enforcement agencies for information concerning youth involved in prostitution, of the estimated 1,450 arrests or detentions in the U.S. in 2005, 95% involved third party exploiters, 31% were for what they labeled solo types of prostitution cases, and 12% involved sexual exploitation.¹⁶

Third party or pimp-controlled commercial sexual exploitation of children is linked to escort and massage services, private dancing, drinking and photographic clubs, major sporting and recreational events, major cultural events, conventions, and tourist destinations. About one-fifth of these children become involved in nationally organized crime networks and is trafficked nationally. They are transported around the United States by a variety of means – cars, buses, vans, trucks or planes, and are often provided counterfeit identification to use in the event of arrest. The average age at which girls first become victims of prostitution is 12-14; for boys and transgender youth it is 11-13.¹⁷

Services Currently Available for Shelter

The Department of Children and Families (DCF) acknowledges that foster homes, group homes and shelters used in the child welfare system are lacking in services or trained staff to address victims of sexual exploitation. DCF notes that victims in runaway shelters or group homes can continue to be psychologically manipulated and return to the control of the trafficker. Foster homes, group homes, and shelters are not ideal for several reasons including the fact that these residences are not equipped to deal with sexual exploitation trauma and also that the trafficker/pimp could easily find the child and threaten to harm the foster family or residents unless contact with the child is permitted.¹⁸

Services are available through the Children In Need of Services (CINS) program to provide short-term shelter, counseling, services, and case management in one of the 28 youth shelters statewide that are operated by DJJ.¹⁹ These shelters are primarily voluntary and a court may order the child to stay in a shelter for a period no longer than 120 days.²⁰ Even under this longer stay option, only 10 shelters are available statewide.²¹ The CINS program shelters are not available for children who have been adjudicated dependent.²²

¹⁴ *Id.*; Richard J. Estes and Neil Alan Weiner, *Commercial Sexual Exploitation of Children in the U.S, Canada and Mexico*, University of Pennsylvania (2001), available at www.sp2.upenn.edu/~restes/CSEC_Files/Exec_Sum_020220.pdf (last visited 1/19/12)

¹⁵ Department of Children and Family Services, Staff Analysis, HB 99 (September 15, 2011); Francis T. Miko & Grace Park, *Trafficking in Women and Children: The U.S. and International Response*, p. 7 (Updated July 10, 2003), at <http://www.usembassy.it/pdf/other/RL30545.pdf> (last visited 1/19/12).

¹⁶ Department of Children and Family Services, Staff Analysis, HB 99 (September 15, 2011); Kimberly J. Mitchell, David Finkelhor and Janis Wolak, *Conceptualizing Juvenile Prostitution as Child Maltreatment: Findings from the National Juvenile Prostitution Study*, p.22-26, *University of New Hampshire Sage Publications*.

¹⁷ Department of Children and Family Services, Staff Analysis, HB 99 (September 15, 2011); Richard J. Estes and Neil Alan Weiner, *Commercial Sexual Exploitation of Children in the U.S, Canada and Mexico*, pp. 7-8. University of Pennsylvania (2001), available at www.sp2.upenn.edu/~restes/CSEC_Files/Exec_Sum_020220.pdf (last visited 1/19/12).

¹⁸ Department of Children and Family Services, Staff Analysis, HB 99 (September 15, 2011).

¹⁹ *Id.*

²⁰ Section 984.226(4), F.S.

²¹ Department of Children and Family Services, Staff Analysis, HB 99 (September 15, 2011).

²² Section 984.226(5)(d), F.S.

Currently, DCF has identified 69 possible victims of sexual exploitation that are being served within the foster care system. Additionally, DCF has identified 55 children within the last year who have been arrested for prostitution and are currently being served through the Department of Juvenile Justice system.²³ The Florida Department of Law Enforcement (FDLE) reports that during 2009, 22 children were arrested under the age of 16 for prostitution pursuant to 796.07(2), F.S.²⁴

Effect of Proposed Changes

Purpose and Intent Language

The bill is titled the Florida Safe Harbor Act. The bill amends s. 39.001, F.S., to provide legislative intent language as it relates to children that are victims of sexual exploitation. The bill recognizes that sexual exploitation is a problem in the state of Florida and nationwide, identifying that many of these children have a history of abuse and neglect and are often a hard population to serve. The legislative intent states that traffickers maintain control of these children through manipulation and force. The intent language also establishes goals of the Legislature in treating these children.

Definitions

The bill amends the following definitions in s. 39.01, F.S:

- “Abuse” is amended so that it includes sexual abuse.
- “Child who is found to be dependent” is amended to include children that have been sexually exploited and have no parent, legal custodian, or responsible adult relative currently known and capable of providing the necessary and appropriate supervision and care. The effect of this change will specifically include sexually exploited children within dependency actions.
- “Sexual abuse of a child” is amended to include participation in sex trafficking as an act of sexual exploitation of a child.

Shelter Placement

The bill amends s. 39.402, F.S., to require that a child who is in the custody of DCF and has been sexually exploited be placed in a shelter that offers treatment for sexually exploited children.

Disposition Hearings

The bill amends s. 39.521, F.S., to direct the court, when determining a child to be dependent, to place a child who is alleged to be sexually exploited in a facility that offers treatment for sexually exploited children.

Placement of Sexually Exploited Children

The bill creates s. 39.524, F.S., to require that any dependent child 6 years of age or older who has been found to be a victim of sexual exploitation be assessed for placement in a facility which is appropriate to serve sexually exploited children. This does not apply to children who have been removed from their caregiver’s home, are receiving medical screenings or other proceedings pursuant to s. 39.407, F.S. The bill includes the manner in which the assessment is conducted as well as a requirement that the results of assessments be included in the judicial reviews for dependent children. The bill requires facilities serving sexually exploited children to report to DCF its success in achieving permanency for those children.

The bill requires DCF to address, in consultation with local law enforcement, runaway and homeless youth program providers, local probation departments, lead agencies and subcontract providers, local guardians ad litem, public defenders, state attorney’s offices, and child advocates and service

²³ Department of Children and Family Services, Staff Analysis, HB 99 (September 15, 2011).

²⁴ Florida Department of Law Enforcement, Staff Analysis, HB 99 (December 2, 2011).

providers, the child welfare service needs of sexually exploited children as a component of the department's master plan. The bill also requires DCF to develop guidelines and a plan for serving children who have been sexually exploited. The plan must be submitted to the House of Representatives and the Senate by June 1, 2013, and address the assessment of estimated number of children that need services currently and over the next five years, options for treatment, recommendations of specific services needed, and recommendations concerning partnerships with law enforcement and other state and local government entities. The bill also provides that DCF may contract with local law enforcement to train officers working with sexually exploited children. Finally, DCF is required to report annually to the Legislature regarding the placement of children in facilities that provide treatment for sexually exploited children.

Safe House Services for Children Who Are Victims of Sexual Exploitation

The bill creates s. 409.1678, F.S., to provide the following definitions:

- "Child advocate" means an employee of a short-term safe house who shall accompany the child to court, meet with law enforcement and serve as a liaison between the safe house and the court. It is not clear from the bill how this advocate will coordinate with case management staff of community based care lead agencies and the guardian ad litem in their advocacy role with the court.
- "Safe house" means a living environment that has set aside gender-specific, separate and distinct living quarters for sexually exploited children who have been adjudicated dependent or delinquent and need to reside in a secure facility with 24-hour-awake staff. The safe house is required to be licensed by DCF as a child-caring agency under s. 409.175, F.S.
- "Secure" means that a child is supervised 24 hours a day by staff who are awake while on duty.
- "Sexually exploited child" means a dependent child who has suffered sexual abuse, as defined in 39.01(67)(g), and is not eligible for federal benefits through the Trafficking Victims Protection Act.²⁵
- "Short-term safe house" means a shelter operated by a licensed child-caring agency, including runaway youth center, gender specific, separate living quarters for sexually exploited children, and which provides care and counseling to exploited children.

The bill provides that the lead agency, not-for-profit agency or local government entity that is providing safe house services is responsible for security, counseling, residential care, food, clothing, etc., for children who are placed there. The bill also provides that a lead agency or other service provider providing a safe house program for children has specific legal authority to enroll the child in school, sign for driver's license, cosign loans and insurance for the child, sign for medical treatment and other such activities.

Licensure of Safe Houses and Short Term Safe Houses

The bill amends s. 409.175, F.S., to define "family foster home" and "residential child-caring agency" to include a "safe house" and a "short-term safe house". This addition to the current licensure definitions of foster homes and residential child caring agencies recognizes a safe house and a short term safe house as an option for placement of a dependent child who has been sexually exploited.

Civil Penalty Related to Prostitution

The bill amends s. 796.07, F.S., to increase the civil penalty that may be assessed against violators of specified provisions related to prostitution. Currently, a civil penalty of \$500 must be assessed against a person who violates s. 796.07(2)(f), F.S., by soliciting, inducing, enticing, or procuring another to commit prostitution, lewdness, or assignation. The bill increases the civil penalty to \$5,000 and directs that \$4,500 of the penalty be paid to DCF to fund services for sexually exploited children and the remaining \$500 shall be paid to the circuit court administrator. The effect of this change creates a proposed funding source for services for sexually exploited children. According to information provided

²⁵ 22 U.S.C. s. 7101.

by the Clerk of Courts, the collections of the fines by counties are not always certain and collection amounts vary by year.²⁶

Eligibility for Victim Assistance Award

The Florida Crimes Compensation Act directs the Office of the Attorney General to administer the Crimes Compensation Trust Fund to provide financial assistance to victims of violent crimes and to provide information and referral services that can help victims cope with the effects of the crimes against them. The Crimes Compensation Trust Fund receives funding derived from court-ordered assessments from offenders, including a mandatory court cost, a surcharge on fines, restitution, and subrogation, when appropriate.²⁷ The Victim Assistance program is overseen by the Attorney General's office and provides financial assistance for medical care, lost income, mental health services, funeral expenses and other out-of-pocket expenses directly related to the injury, to persons who are eligible.²⁸

The bill amends s. 960.065, F.S., to allow victims of sexual exploitation pursuant to a definition in s.39.01 (67)(g), F.S., to be eligible for compensation awards.

B. SECTION DIRECTORY:

Section 1 provides a title of Florida Safe Harbor Act.

Section 2 amends s. 39.001, F.S., relating to purposes and intent; personnel standards and screening.

Section 3 amends s. 39.01, F.S., relating to definitions.

Section 4 amends s. 39.402, F.S., relating to placement in a shelter.

Section 5 amends s. 39.521, F.S., relating to disposition hearings; powers of disposition.

Section 6 creates s. 39.524, F.S., relating to placement of sexually exploited children.

Section 7 creates s. 409.1678, F.S., relating to safe house services for children who are victims of sexual exploitation.

Section 8 amends s. 409.175, F.S., relating to licensure of family foster homes, residential child-caring agencies, child-placing agencies; public records exemption.

Section 9 amends s. 796.07, F.S., relating to prohibiting prostitution, etc.; evidence; penalties; definitions.

Section 10 amends s. 960.065, F.S., relating to eligibility for awards.

Section 11 provides an effective date of January 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate and likely minimal. See Fiscal Comments.

²⁶ E-mail from Randy Long at the Clerk of Courts, received 11/16/2011 (on file with committee staff).

²⁷ Sections 938.03, 938.04, 775.0835, and 775.089, F.S.

²⁸ <http://myfloridalegal.com/pages.nsf/main/1c7376f380d0704c85256cc6004b8ed3!OpenDocument> (last visited 1/20/2012).

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See fiscal comments under child protection expenditures.

D. FISCAL COMMENTS:

Collection of the Civil Penalty

At line 443, the civil penalty related to solicitation of prostitution is increased by this bill from \$500 to \$5,000. The \$4,500 increase is to be provided to DCF for services to sexually exploited children. According to information provided by the Clerk of Courts, while data is inconsistent from circuit to circuit, the collections of the fines by counties are not always certain and collection amounts vary by year.²⁹

The current \$500 penalty is collected by the clerks and distributed to the local drug courts. Collection statistics and rates are not kept on a statewide basis, and there is no reliable statewide data on what percentage of the current fee is collected. Assuming the statewide average collection rate for county court criminal fines is 38.5%³⁰ and an estimated 1,244 offenders annually,³¹ yields potential revenue of \$2,155,230 annually. However, the current collection rate related to this offense appears to be significantly lower than the overall collection rate for misdemeanor offenders. For instance, Miami-Dade County collected a total of \$862 in FY 2010 and \$415 in FY 2011 from such offenders.

Child Protection Expenditures

The cost associated with this bill is not anticipated to have a direct fiscal impact on state agencies. However, it could have an indeterminate fiscal impact on community based care (CBC) lead agencies (under contract with DCF). CBC agencies are required to serve all dependent children referred to their agency under a fixed contract amount. The use of safe house services described in this bill are anticipated to be an expensive option estimated at about \$225.00 per day. However, the bill does not require DCF or CBC agencies to use these services. CBC agencies may already provide treatment to sexually exploited children and may not need to incur additional cost to implement this bill. However, if services do not exist, then any additional cost for services would have to be absorbed by current contract funds to the CBC agency. DCF anticipates that the cost to CBC agencies could be \$4.1 million in the first year and \$8.3 million in the second year³², due to an increase in the number of children that could be recognized as victims of sexual exploitation. These costs are based on serving children in an environment similar to a safe house.

²⁹ E-mail from Randy Long at the Clerk of Courts, received 11/16/2011 (on file with committee staff).

³⁰ Florida Association of Court Clerks/Comptrollers, Collection Rate Analysis, November 2011.

³¹ Florida Department of Law Enforcement (FDLE) reports that in the last 10 years there were 12,441 charges under s. 796.07(2)(f), F.S., according to an e-mail from FDLE staff to Civil Justice Subcommittee staff (on file with committee staff).

³² Department of Children and Family Services, Amended Staff Analysis, HB 99 (February 3, 2012).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Funding for drug courts come from many different sources, including from a civil penalty for violations of s. 796.07(2)(f), F.S. (which is solicitation of prostitution). The bill increases the civil penalty to \$5,000, with \$4,500 of that going to DCF to fund services for sexually exploited children. However, as drafted the bill requires monies collected to be split pro rata between services for sexually exploited children and drug courts. In cases where less than the maximum penalty is collected from an individual offender, drug court funding from this source will be reduced by 90%.

Section 39.01(15)(g), F.S., as amended by this bill, provides that a finding by the court that a child has been sexually exploited automatically makes the child a dependent of the court, even if the caregiver had no part in the exploitation. The current wording appears to require the court to put the child in dependent status even if there is a current caregiver, unless the current caregiver is a parent, legal custodian, or responsible adult relative.

Section 409.1678(1)(a), F.S. provides for a definition of "child advocate," requiring the advocate to accompany the child to all court appearances. It is not clear how this advocate will coordinate with case management staff of community based care lead agencies and the Guardian ad Litem, which often already represent the child's interests in advocacy efforts.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGE

On December 7, 2011, the Health and Human Services Access Subcommittee adopted a strike all amendment to House Bill 99.

The strike all amendment makes the following changes to the bill:

- Amends the definition of abuse to clarify that it includes sexual abuse. The definition of a child who is dependent is amended to recognize sexual exploitation as one of the possible findings of the court. Further, the bill clarifies that sexual exploitation includes sex trafficking.
- Removes rebuttable presumption language that law enforcement must deliver a child to a safe house if one is available. The amendment keeps intact law enforcements current process for addressing these children.
- Requires that children who have been sexually exploited be placed in shelters and facilities that offer treatment for sexually exploited children.
- Requires the Department of Children and Families (DCF) to develop guidelines for serving sexually exploited children and to produce reports to the Legislature.
- The amendment adds the term "safe house" and "short term safe house" to s. 409.175, F.S., relating to licensure of facilities.

The bill was reported favorably as a Committee Substitute. This analysis reflects the Committee Substitute.

1 A bill to be entitled
2 An act relating to sexual exploitation; providing a
3 short title; amending s. 39.001, F.S.; providing
4 legislative intent and goals; conforming cross-
5 references; amending s. 39.01, F.S.; revising the
6 definitions of the terms "abuse," "child who is found
7 to be dependent," and "sexual abuse of a child";
8 amending ss. 39.402 and 39.521, F.S.; requiring a
9 child who has been or is alleged to have been sexually
10 exploited to be placed in a facility that offers
11 treatment; creating s. 39.524, F.S.; requiring
12 assessment of certain children for placement in a
13 facility that treats sexually exploited children;
14 providing for use of such assessments; requiring
15 facilities to report to the Department of Children and
16 Family Services their success in achieving permanency
17 for children who have been sexually exploited;
18 requiring the department to address child welfare
19 service needs of sexually exploited children as a
20 component of its master plan; requiring the department
21 to develop guidelines for treating sexually exploited
22 children; authorizing the department, to the extent
23 that funds are available, to contract with an
24 appropriate not-for-profit agency having experience
25 working with sexually exploited children to train law
26 enforcement officials who are likely to encounter such
27 children; requiring certain reports to the
28 Legislature; creating s. 409.1678, F.S.; providing

29 definitions; providing duties, responsibilities, and
 30 requirements for safe houses and their operators;
 31 amending s. 409.175, F.S.; revising the definitions of
 32 the terms "family foster home" and "residential child-
 33 caring agency" to include safe houses; amending s.
 34 796.07, F.S.; increasing the civil penalty for
 35 soliciting another to commit prostitution or related
 36 acts; providing for disposition of proceeds; amending
 37 s. 960.065, F.S.; allowing victim compensation for
 38 sexually exploited children; providing an effective
 39 date.

40

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

42

43 Section 1. This act may be cited as the "Florida Safe
 44 Harbor Act."

45 Section 2. Subsections (4) through (12) of section 39.001,
 46 Florida Statutes, are renumbered as subsections (5) through
 47 (13), respectively, paragraph (c) of present subsection (7) and
 48 paragraph (b) of present subsection (9) are amended, and a new
 49 subsection (4) is added to that section, to read:

50 39.001 Purposes and intent; personnel standards and
 51 screening.-

52 (4) SEXUAL EXPLOITATION SERVICES.-

53 (a) The Legislature recognizes that child sexual
 54 exploitation is a serious problem nationwide and in this state.
 55 Many of these children have a history of abuse and neglect.
 56 Traffickers maintain control of child victims through

57 psychological manipulation, force, drug addiction, or the
 58 exploitation of economic, physical, or emotional vulnerability.
 59 Children exploited through the sex trade often find it difficult
 60 to trust adults because of their abusive experiences. These
 61 children make up a population that is difficult to serve and
 62 even more difficult to rehabilitate.

63 (b) The Legislature establishes the following goals for
 64 the state related to the status and treatment of sexually
 65 exploited children in the dependency process:

- 66 1. To ensure the safety of children.
- 67 2. To provide for the treatment of such children.
- 68 3. To sever the bond between exploited children and
 69 traffickers and to reunite these children with their families or
 70 provide them with appropriate guardians.
- 71 4. To enable such children to be willing and reliable
 72 witnesses in the prosecution of traffickers.

73 (c) The Legislature finds that sexually exploited children
 74 need special care and services, including counseling, health
 75 care, substance abuse treatment, educational opportunities, and
 76 a safe environment secure from traffickers.

77 (d) It is the intent of the Legislature that this state
 78 provide such care and services to all sexually exploited
 79 children in this state who are not otherwise receiving
 80 comparable services, such as those under the federal Trafficking
 81 Victims Protection Act, 22 U.S.C. ss. 7101 et seq.

82 (8)(7) OFFICE OF ADOPTION AND CHILD PROTECTION.—

- 83 (c) The office is authorized and directed to:
- 84 1. Oversee the preparation and implementation of the state

85 plan established under subsection (9) ~~(8)~~ and revise and update
 86 the state plan as necessary.

87 2. Provide for or make available continuing professional
 88 education and training in the prevention of child abuse and
 89 neglect.

90 3. Work to secure funding in the form of appropriations,
 91 gifts, and grants from the state, the Federal Government, and
 92 other public and private sources in order to ensure that
 93 sufficient funds are available for the promotion of adoption,
 94 support of adoptive families, and child abuse prevention
 95 efforts.

96 4. Make recommendations pertaining to agreements or
 97 contracts for the establishment and development of:

98 a. Programs and services for the promotion of adoption,
 99 support of adoptive families, and prevention of child abuse and
 100 neglect.

101 b. Training programs for the prevention of child abuse and
 102 neglect.

103 c. Multidisciplinary and discipline-specific training
 104 programs for professionals with responsibilities affecting
 105 children, young adults, and families.

106 d. Efforts to promote adoption.

107 e. Postadoptive services to support adoptive families.

108 5. Monitor, evaluate, and review the development and
 109 quality of local and statewide services and programs for the
 110 promotion of adoption, support of adoptive families, and
 111 prevention of child abuse and neglect and shall publish and
 112 distribute an annual report of its findings on or before January

113 1 of each year to the Governor, the Speaker of the House of
 114 Representatives, the President of the Senate, the head of each
 115 state agency affected by the report, and the appropriate
 116 substantive committees of the Legislature. The report shall
 117 include:

- 118 a. A summary of the activities of the office.
- 119 b. A summary of the adoption data collected and reported
 120 to the federal Adoption and Foster Care Analysis and Reporting
 121 System (AFCARS) and the federal Administration for Children and
 122 Families.
- 123 c. A summary of the child abuse prevention data collected
 124 and reported to the National Child Abuse and Neglect Data System
 125 (NCANDS) and the federal Administration for Children and
 126 Families.
- 127 d. A summary detailing the timeliness of the adoption
 128 process for children adopted from within the child welfare
 129 system.
- 130 e. Recommendations, by state agency, for the further
 131 development and improvement of services and programs for the
 132 promotion of adoption, support of adoptive families, and
 133 prevention of child abuse and neglect.
- 134 f. Budget requests, adoption promotion and support needs,
 135 and child abuse prevention program needs by state agency.
- 136 6. Work with the direct-support organization established
 137 under s. 39.0011 to receive financial assistance.

138 (10)~~(9)~~ FUNDING AND SUBSEQUENT PLANS.—

139 (b) The office and the other agencies and organizations
 140 listed in paragraph (9) (a) ~~(8)~~~~(a)~~ shall readdress the state plan

141 and make necessary revisions every 5 years, at a minimum. Such
 142 revisions shall be submitted to the Speaker of the House of
 143 Representatives and the President of the Senate no later than
 144 June 30 of each year divisible by 5. At least biennially, the
 145 office shall review the state plan and make any necessary
 146 revisions based on changing needs and program evaluation
 147 results. An annual progress report shall be submitted to update
 148 the state plan in the years between the 5-year intervals. In
 149 order to avoid duplication of effort, these required plans may
 150 be made a part of or merged with other plans required by either
 151 the state or Federal Government, so long as the portions of the
 152 other state or Federal Government plan that constitute the state
 153 plan for the promotion of adoption, support of adoptive
 154 families, and prevention of child abuse, abandonment, and
 155 neglect are clearly identified as such and are provided to the
 156 Speaker of the House of Representatives and the President of the
 157 Senate as required above.

158 Section 3. Subsections (2) and (15) and paragraph (g) of
 159 subsection (67) of section 39.01, Florida Statutes, are amended
 160 to read:

161 39.01 Definitions.—When used in this chapter, unless the
 162 context otherwise requires:

163 (2) "Abuse" means any willful act or threatened act that
 164 results in any physical, mental, or sexual abuse, injury, or
 165 harm that causes or is likely to cause the child's physical,
 166 mental, or emotional health to be significantly impaired. Abuse
 167 of a child includes acts or omissions. Corporal discipline of a
 168 child by a parent or legal custodian for disciplinary purposes

169 does not in itself constitute abuse when it does not result in
 170 harm to the child.

171 (15) "Child who is found to be dependent" means a child
 172 who, pursuant to this chapter, is found by the court:

173 (a) To have been abandoned, abused, or neglected by the
 174 child's parent or parents or legal custodians;

175 (b) To have been surrendered to the department, the former
 176 Department of Health and Rehabilitative Services, or a licensed
 177 child-placing agency for purpose of adoption;

178 (c) To have been voluntarily placed with a licensed child-
 179 caring agency, a licensed child-placing agency, an adult
 180 relative, the department, or the former Department of Health and
 181 Rehabilitative Services, after which placement, under the
 182 requirements of this chapter, a case plan has expired and the
 183 parent or parents or legal custodians have failed to
 184 substantially comply with the requirements of the plan;

185 (d) To have been voluntarily placed with a licensed child-
 186 placing agency for the purposes of subsequent adoption, and a
 187 parent or parents have signed a consent pursuant to the Florida
 188 Rules of Juvenile Procedure;

189 (e) To have no parent or legal custodians capable of
 190 providing supervision and care; ~~or~~

191 (f) To be at substantial risk of imminent abuse,
 192 abandonment, or neglect by the parent or parents or legal
 193 custodians; or

194 (g) To have been sexually exploited and to have no parent,
 195 legal custodian, or responsible adult relative currently known
 196 and capable of providing the necessary and appropriate

197 supervision and care.

198 (67) "Sexual abuse of a child" means one or more of the
199 following acts:

200 (g) The sexual exploitation of a child, which includes
201 allowing, encouraging, or forcing a child to:

- 202 1. Solicit for or engage in prostitution; ~~or~~
- 203 2. Engage in a sexual performance, as defined by chapter
- 204 827; or
- 205 3. Participate in the trade of sex trafficking as provided
- 206 in s. 796.035.

207 Section 4. Subsection (2) of section 39.402, Florida
208 Statutes, is amended to read:

209 39.402 Placement in a shelter.—

210 (2) A child taken into custody may be placed or continued
211 in a shelter only if one or more of the criteria in subsection
212 (1) apply ~~applies~~ and the court has made a specific finding of
213 fact regarding the necessity for removal of the child from the
214 home and has made a determination that the provision of
215 appropriate and available services will not eliminate the need
216 for placement. If a child has been sexually exploited, the child
217 shall be placed in a facility that offers treatment for sexually
218 exploited children.

219 Section 5. Paragraph (d) of subsection (3) of section
220 39.521, Florida Statutes, is amended to read:

221 39.521 Disposition hearings; powers of disposition.—

222 (3) When any child is adjudicated by a court to be
223 dependent, the court shall determine the appropriate placement
224 for the child as follows:

225 (d) If the child cannot be safely placed in a nonlicensed
 226 placement, the court shall commit the child to the temporary
 227 legal custody of the department. Such commitment invests in the
 228 department all rights and responsibilities of a legal custodian.
 229 The department shall not return any child to the physical care
 230 and custody of the person from whom the child was removed,
 231 except for court-approved visitation periods, without the
 232 approval of the court. Any order for visitation or other contact
 233 must conform to the provisions of s. 39.0139. If a child is
 234 alleged to have been sexually exploited, the child shall be
 235 placed in a facility that offers treatment for sexually
 236 exploited children. The term of such commitment continues until
 237 terminated by the court or until the child reaches the age of
 238 18. After the child is committed to the temporary legal custody
 239 of the department, all further proceedings under this section
 240 are governed by this chapter.

241
 242 Protective supervision continues until the court terminates it
 243 or until the child reaches the age of 18, whichever date is
 244 first. Protective supervision shall be terminated by the court
 245 whenever the court determines that permanency has been achieved
 246 for the child, whether with a parent, another relative, or a
 247 legal custodian, and that protective supervision is no longer
 248 needed. The termination of supervision may be with or without
 249 retaining jurisdiction, at the court's discretion, and shall in
 250 either case be considered a permanency option for the child. The
 251 order terminating supervision by the department shall set forth
 252 the powers of the custodian of the child and shall include the

253 powers ordinarily granted to a guardian of the person of a minor
 254 unless otherwise specified. Upon the court's termination of
 255 supervision by the department, no further judicial reviews are
 256 required, so long as permanency has been established for the
 257 child.

258 Section 6. Section 39.524, Florida Statutes, is created to
 259 read:

260 39.524 Placement of sexually exploited children.-

261 (1) Except as provided in s. 39.407, any dependent child 6
 262 years of age or older who has been found to be a victim of
 263 sexual exploitation as defined in s. 39.01(67)(g) must be
 264 assessed for placement in a facility that is appropriate to
 265 serve sexually exploited children. The assessment shall be
 266 conducted by the department or its agent and shall incorporate
 267 and address current and historical information from any law
 268 enforcement reports; psychological testing or evaluation that
 269 has occurred; current and historical information from the
 270 guardian ad litem, if one has been assigned; current and
 271 historical information from any current therapist, teacher, or
 272 other professional who has knowledge of the child and has worked
 273 with the child; and any other information concerning the
 274 availability and suitability of appropriate placement.

275 (2) The results of the assessment described in subsection
 276 (1) and the actions taken as a result of the assessment must be
 277 included in the next judicial review of the child. At each
 278 subsequent judicial review, the court must be advised in writing
 279 of the status of the child's placement, with special reference

280 regarding the stability of the placement and the permanency
 281 planning for the child.

282 (3) Each facility shall report to the department its
 283 success in achieving permanency for children who have been
 284 sexually exploited and placed by the department at intervals
 285 that allow the current information to be provided to the court
 286 at each judicial review for the child.

287 (4) (a) The department shall address the child welfare
 288 service needs of sexually exploited children as a component of
 289 the department's master plan. This determination shall be made
 290 in consultation with local law enforcement, runaway and homeless
 291 youth program providers, local probation departments, lead
 292 agencies and subcontract providers, local guardians ad litem,
 293 public defenders, state attorney's offices, and child advocates
 294 and service providers who work directly with sexually exploited
 295 youth.

296 (b) The department shall develop guidelines for serving
 297 children who have been sexually exploited and shall submit a
 298 report to the President of the Senate and the Speaker of the
 299 House of Representatives detailing the department's master plan
 300 and guidelines by June 1, 2013. At a minimum, the plan must
 301 include:

302 1. The estimated number of children who have been sexually
 303 exploited who are in need of services currently and over the
 304 next 5 years.

305 2. Options for treating children who have been sexually
 306 exploited and recommendations on the best types of care for
 307 these children and reunification with the child's family, if

308 appropriate.

309 3. Recommendations of specific services needed, including,
 310 but not limited to, assessment, security, and crisis and
 311 behavioral health services for children who have been sexually
 312 exploited.

313 4. Recommendations concerning partnerships with law
 314 enforcement and other state and local government entities to
 315 best serve children who have been sexually exploited.

316 (c) The department may, to the extent that funds are
 317 available and in conjunction with local law enforcement
 318 officials, contract with an appropriate not-for-profit agency
 319 having experience working with sexually exploited children to
 320 train law enforcement officials who are likely to encounter
 321 sexually exploited children in the course of their law
 322 enforcement duties on the provisions of this section and how to
 323 identify and obtain appropriate services for sexually exploited
 324 children.

325 (5) By December 1 of each year, the department shall
 326 report to the Legislature on the placement of children in
 327 facilities that provide treatment for sexually exploited
 328 children during the year, including the criteria used to
 329 determine the placement of children, the number of children who
 330 were evaluated for placement, the number of children who were
 331 placed based upon the evaluation, and the number of children who
 332 were not placed.

333 Section 7. Section 409.1678, Florida Statutes, is created
 334 to read:

335 409.1678 Safe house services for children who are victims
 336 of sexual exploitation.-

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

338 (a) "Child advocate" means an employee of a short-term
 339 safe house who has been trained to work with and advocate for
 340 the needs of sexually exploited children. The advocate shall
 341 accompany the child to all court appearances, meetings with law
 342 enforcement, and the state attorney's office and shall serve as
 343 a liaison between the short-term safe house and the court.

344 (b) "Safe house" means a living environment that has set
 345 aside gender-specific, separate, and distinct living quarters
 346 for sexually exploited children who have been adjudicated
 347 dependent or delinquent and need to reside in a secure
 348 residential facility with staff members awake 24 hours a day. A
 349 safe house shall be operated by a licensed family foster home or
 350 residential child-caring agency as defined in s. 409.175,
 351 including a runaway youth center as defined in s. 409.441. Each
 352 facility must be appropriately licensed in this state as a
 353 residential child-caring agency as defined in s. 409.175 and
 354 must be accredited by July 1, 2013. A safe house serving
 355 children who have been sexually exploited must have available
 356 staff or contract personnel with the clinical expertise,
 357 credentials, and training to provide services identified in
 358 paragraph (2) (a).

359 (c) "Secure" means that a child is supervised 24 hours a
 360 day by staff members who are awake while on duty.

361 (d) "Sexually exploited child" means a dependent child who
 362 has suffered sexual exploitation as defined in s. 39.01(67) (g)

363 and is ineligible for relief and benefits under the federal
 364 Trafficking Victims Protection Act, 22 U.S.C. ss. 7101 et seq.

365 (e) "Short-term safe house" means a shelter operated by a
 366 licensed residential child-caring agency as defined in s.
 367 409.175, including a runaway youth center as defined in s.
 368 409.441, that has set aside gender-specific, separate, and
 369 distinct living quarters for sexually exploited children. In
 370 addition to shelter, the house shall provide services and care
 371 to sexually exploited children, including food, clothing,
 372 medical care, counseling, and appropriate crisis intervention
 373 services at the time they are taken into custody by law
 374 enforcement or the department.

375 (2) (a) The lead agency, not-for-profit agency, or local
 376 government entity providing safe-house services is responsible
 377 for security, crisis intervention services, general counseling
 378 and victim-witness counseling, a comprehensive assessment,
 379 residential care, transportation, access to behavioral health
 380 services, recreational activities, food, clothing, supplies,
 381 infant care, and miscellaneous expenses associated with caring
 382 for sexually exploited children; for necessary arrangement for
 383 or provision of educational services, including life skills
 384 services and planning services to successfully transition
 385 residents back to the community; and for ensuring necessary and
 386 appropriate health and dental care.

387 (b) This section does not prohibit any provider of these
 388 services from appropriately billing Medicaid for services
 389 rendered, from contracting with a local school district for
 390 educational services, or from obtaining federal or local funding

391 for services provided, as long as two or more funding sources do
 392 not pay for the same specific service that has been provided to
 393 a child.

394 (c) The lead agency, not-for-profit agency, or local
 395 government entity providing safe-house services has the legal
 396 authority for children served in a safe-house program, as
 397 provided in chapter 39 or this chapter, as appropriate, to
 398 enroll the child in school, to sign for a driver license for the
 399 child, to cosign loans and insurance for the child, to sign for
 400 medical treatment of the child, and to authorize other such
 401 activities.

402 Section 8. Paragraphs (e) and (j) of subsection (2) of
 403 section 409.175, Florida Statutes, are amended to read:

404 409.175 Licensure of family foster homes, residential
 405 child-caring agencies, and child-placing agencies; public
 406 records exemption.—

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

408 (e) "Family foster home" means a private residence in
 409 which children who are unattended by a parent or legal guardian
 410 are provided 24-hour care. Such homes include emergency shelter
 411 family homes, safe houses, and specialized foster homes for
 412 children with special needs. A person who cares for a child of a
 413 friend for a period not to exceed 90 days, a relative who cares
 414 for a child and does not receive reimbursement for such care
 415 from the state or federal government, or an adoptive home which
 416 has been approved by the department or by a licensed child-
 417 placing agency for children placed for adoption is not
 418 considered a family foster home.

419 (j) "Residential child-caring agency" means any person,
 420 corporation, or agency, public or private, other than the
 421 child's parent or legal guardian, that provides staffed 24-hour
 422 care for children in facilities maintained for that purpose,
 423 regardless of whether operated for profit or whether a fee is
 424 charged. Such residential child-caring agencies include, but are
 425 not limited to, maternity homes, runaway shelters, group homes
 426 that are administered by an agency, emergency shelters that are
 427 not in private residences, short-term safe houses, safe houses,
 428 and wilderness camps. Residential child-caring agencies do not
 429 include hospitals, boarding schools, summer or recreation camps,
 430 nursing homes, or facilities operated by a governmental agency
 431 for the training, treatment, or secure care of delinquent youth,
 432 or facilities licensed under s. 393.067 or s. 394.875 or chapter
 433 397.

434 Section 9. Paragraph (f) of subsection (2) of section
 435 796.07, Florida Statutes, is republished, and subsection (6) of
 436 that section is amended, to read:

437 796.07 Prohibiting prostitution and related acts, ~~etc.;~~
 438 ~~evidence; penalties; definitions.~~

439 (2) It is unlawful:

440 (f) To solicit, induce, entice, or procure another to
 441 commit prostitution, lewdness, or assignation.

442 (6) A person who violates paragraph (2)(f) shall be
 443 assessed a civil penalty of \$5,000 ~~\$500~~ if the violation results
 444 in any judicial disposition other than acquittal or dismissal.
 445 Of the proceeds from each penalty ~~penalties~~ assessed under this
 446 subsection, \$500 shall be paid to the circuit court

447 administrator for the sole purpose of paying the administrative
 448 costs of treatment-based drug court programs provided under s.
 449 397.334 and \$4,500 shall be paid to the Department of Children
 450 and Family Services for the sole purpose of funding services for
 451 sexually exploited children.

452 Section 10. Section 960.065, Florida Statutes, is amended
 453 to read:

454 960.065 Eligibility for awards.—

455 (1) Except as provided in subsection (2), the following
 456 persons shall be eligible for awards pursuant to this chapter:

457 (a) A victim.

458 (b) An intervenor.

459 (c) A surviving spouse, parent or guardian, sibling, or
 460 child of a deceased victim or intervenor.

461 (d) Any other person who is dependent for his or her
 462 principal support upon a deceased victim or intervenor.

463 (2) Any claim filed by or on behalf of a person who:

464 (a) Committed or aided in the commission of the crime upon
 465 which the claim for compensation was based;

466 (b) Was engaged in an unlawful activity at the time of the
 467 crime upon which the claim for compensation is based;

468 (c) Was in custody or confined, regardless of conviction,
 469 in a county or municipal detention facility, a state or federal
 470 correctional facility, or a juvenile detention or commitment
 471 facility at the time of the crime upon which the claim for
 472 compensation is based;

473 (d) Has been adjudicated as a habitual felony offender,
 474 habitual violent offender, or violent career criminal under s.

475 775.084; or

476 (e) Has been adjudicated guilty of a forcible felony
 477 offense as described in s. 776.08,

478
 479 is ineligible ~~shall not be eligible~~ for an award.

480 (3) Any claim filed by or on behalf of a person who was in
 481 custody or confined, regardless of adjudication, in a county or
 482 municipal facility, a state or federal correctional facility, or
 483 a juvenile detention, commitment, or assessment facility at the
 484 time of the crime upon which the claim is based, who has been
 485 adjudicated as a habitual felony offender under s. 775.084, or
 486 who has been adjudicated guilty of a forcible felony offense as
 487 described in s. 776.08, is ineligible ~~shall not be eligible~~ for
 488 an award. Notwithstanding the foregoing, upon a finding by the
 489 Crime Victims' Services Office of the existence of mitigating or
 490 special circumstances that would render such a disqualification
 491 unjust, an award may be approved. A decision that mitigating or
 492 special circumstances do not exist in a case subject to this
 493 section does ~~shall~~ not constitute final agency action subject to
 494 review pursuant to ss. 120.569 and 120.57.

495 (4) Payment may not be made under this chapter if the
 496 person who committed the crime upon which the claim is based
 497 will receive any direct or indirect financial benefit from such
 498 payment, unless such benefit is minimal or inconsequential.
 499 Payment may not be denied based on the victim's familial
 500 relationship to the offender or based upon the sharing of a
 501 residence by the victim and offender, except to prevent unjust
 502 enrichment of the offender.

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503 (5) A person is not ineligible for an award pursuant to
 504 paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c) if that
 505 person is a victim of sexual exploitation of a child as defined
 506 in s. 39.01(67)(g).

507 Section 11. This act shall take effect January 1, 2013.

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COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Health & Human Services
2 Committee

3 Representative Fresen offered the following:

4
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. This act may be cited as the "Florida Safe Harbor
8 Act."

9 Section 2. Subsections (4) through (12) of section 39.001,
10 Florida Statutes, are renumbered as subsections (5) through
11 (13), respectively, paragraph (c) of present subsection (7) and
12 paragraph (b) of present subsection (9) are amended, and a new
13 subsection (4) is added to that section, to read:

14 39.001 Purposes and intent; personnel standards and
15 screening.-

16 (4) SEXUAL EXPLOITATION SERVICES.-

17 (a) The Legislature recognizes that child sexual
18 exploitation is a serious problem nationwide and in this state.

19 The children at greatest risk of being sexually exploited are

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20 runaways and throwaways. Many of these children have a history
21 of abuse and neglect. The vulnerability of these children starts
22 with isolation from family and friends. Traffickers maintain
23 control of child victims through psychological manipulation,
24 force, drug addiction, or the exploitation of economic,
25 physical, or emotional vulnerability. Children exploited through
26 the sex trade often find it difficult to trust adults because of
27 their abusive experiences. These children make up a population
28 that is difficult to serve and even more difficult to
29 rehabilitate.

30 (b) The Legislature establishes the following goals for
31 the state related to the status and treatment of sexually
32 exploited children in the dependency process:

- 33 1. To ensure the safety of children.
34 2. To provide for the treatment of such children as
35 dependent children rather than as delinquents.
36 3. To sever the bond between exploited children and
37 traffickers and to reunite these children with their families or
38 provide them with appropriate guardians.
39 4. To enable such children to be willing and reliable
40 witnesses in the prosecution of traffickers.

41 (c) The Legislature finds that sexually exploited children
42 need special care and services in the dependency process,
43 including counseling, health care, substance abuse treatment,
44 educational opportunities, and a safe environment secure from
45 traffickers.

46 (d) The Legislature further finds that sexually exploited
47 children need the special care and services described in

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48 paragraph (c) independent of their citizenship, residency,
49 alien, or immigrant status. It is the intent of the Legislature
50 that this state provide such care and services to all sexually
51 exploited children in this state who are not otherwise receiving
52 comparable services, such as those under the federal Trafficking
53 Victims Protection Act, 22 U.S.C. ss. 7101 et seq.

54 (8)-(7) OFFICE OF ADOPTION AND CHILD PROTECTION.-

55 (c) The office is authorized and directed to:

56 1. Oversee the preparation and implementation of the state
57 plan established under subsection (9) (8) and revise and update
58 the state plan as necessary.

59 2. Provide for or make available continuing professional
60 education and training in the prevention of child abuse and
61 neglect.

62 3. Work to secure funding in the form of appropriations,
63 gifts, and grants from the state, the Federal Government, and
64 other public and private sources in order to ensure that
65 sufficient funds are available for the promotion of adoption,
66 support of adoptive families, and child abuse prevention
67 efforts.

68 4. Make recommendations pertaining to agreements or
69 contracts for the establishment and development of:

70 a. Programs and services for the promotion of adoption,
71 support of adoptive families, and prevention of child abuse and
72 neglect.

73 b. Training programs for the prevention of child abuse and
74 neglect.

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75 c. Multidisciplinary and discipline-specific training
76 programs for professionals with responsibilities affecting
77 children, young adults, and families.

78 d. Efforts to promote adoption.

79 e. Postadoptive services to support adoptive families.

80 5. Monitor, evaluate, and review the development and
81 quality of local and statewide services and programs for the
82 promotion of adoption, support of adoptive families, and
83 prevention of child abuse and neglect and shall publish and
84 distribute an annual report of its findings on or before January
85 1 of each year to the Governor, the Speaker of the House of
86 Representatives, the President of the Senate, the head of each
87 state agency affected by the report, and the appropriate
88 substantive committees of the Legislature. The report shall
89 include:

90 a. A summary of the activities of the office.

91 b. A summary of the adoption data collected and reported
92 to the federal Adoption and Foster Care Analysis and Reporting
93 System (AFCARS) and the federal Administration for Children and
94 Families.

95 c. A summary of the child abuse prevention data collected
96 and reported to the National Child Abuse and Neglect Data System
97 (NCANDS) and the federal Administration for Children and
98 Families.

99 d. A summary detailing the timeliness of the adoption
100 process for children adopted from within the child welfare
101 system.

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102 e. Recommendations, by state agency, for the further
103 development and improvement of services and programs for the
104 promotion of adoption, support of adoptive families, and
105 prevention of child abuse and neglect.

106 f. Budget requests, adoption promotion and support needs,
107 and child abuse prevention program needs by state agency.

108 6. Work with the direct-support organization established
109 under s. 39.0011 to receive financial assistance.

110 ~~(10)~~(9) FUNDING AND SUBSEQUENT PLANS.—

111 (b) The office and the other agencies and organizations
112 listed in paragraph ~~(9)~~(a) shall readdress the state plan
113 and make necessary revisions every 5 years, at a minimum. Such
114 revisions shall be submitted to the Speaker of the House of
115 Representatives and the President of the Senate no later than
116 June 30 of each year divisible by 5. At least biennially, the
117 office shall review the state plan and make any necessary
118 revisions based on changing needs and program evaluation
119 results. An annual progress report shall be submitted to update
120 the state plan in the years between the 5-year intervals. In
121 order to avoid duplication of effort, these required plans may
122 be made a part of or merged with other plans required by either
123 the state or Federal Government, so long as the portions of the
124 other state or Federal Government plan that constitute the state
125 plan for the promotion of adoption, support of adoptive
126 families, and prevention of child abuse, abandonment, and
127 neglect are clearly identified as such and are provided to the
128 Speaker of the House of Representatives and the President of the
129 Senate as required above.

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130 Section 3. Subsections (2), (15), and (67) of section
131 39.01, Florida Statutes, are amended to read:

132 39.01 Definitions.—When used in this chapter, unless the
133 context otherwise requires:

134 (2) "Abuse" means any willful act or threatened act that
135 results in any physical, mental, or sexual abuse, injury, or
136 harm that causes or is likely to cause the child's physical,
137 mental, or emotional health to be significantly impaired. Abuse
138 of a child includes acts or omissions. Corporal discipline of a
139 child by a parent or legal custodian for disciplinary purposes
140 does not in itself constitute abuse when it does not result in
141 harm to the child.

142 (15) "Child who is found to be dependent" means a child
143 who, pursuant to this chapter, is found by the court:

144 (a) To have been abandoned, abused, or neglected by the
145 child's parent or parents or legal custodians;

146 (b) To have been surrendered to the department, the former
147 Department of Health and Rehabilitative Services, or a licensed
148 child-placing agency for purpose of adoption;

149 (c) To have been voluntarily placed with a licensed child-
150 caring agency, a licensed child-placing agency, an adult
151 relative, the department, or the former Department of Health and
152 Rehabilitative Services, after which placement, under the
153 requirements of this chapter, a case plan has expired and the
154 parent or parents or legal custodians have failed to
155 substantially comply with the requirements of the plan;

156 (d) To have been voluntarily placed with a licensed child-
157 placing agency for the purposes of subsequent adoption, and a

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158 parent or parents have signed a consent pursuant to the Florida
159 Rules of Juvenile Procedure;

160 (e) To have no parent or legal custodians capable of
161 providing supervision and care; ~~or~~

162 (f) To be at substantial risk of imminent abuse,
163 abandonment, or neglect by the parent or parents or legal
164 custodians; or

165 (g) To have been sexually exploited and to have no parent,
166 legal custodian, or responsible adult relative currently known
167 and capable of providing the necessary and appropriate
168 supervision and care.

169 (67) "Sexual abuse of a child" for purposes of finding a
170 child to be dependent means one or more of the following acts:

171 (a) Any penetration, however slight, of the vagina or anal
172 opening of one person by the penis of another person, whether or
173 not there is the emission of semen.

174 (b) Any sexual contact between the genitals or anal
175 opening of one person and the mouth or tongue of another person.

176 (c) Any intrusion by one person into the genitals or anal
177 opening of another person, including the use of any object for
178 this purpose, except that this does not include any act intended
179 for a valid medical purpose.

180 (d) The intentional touching of the genitals or intimate
181 parts, including the breasts, genital area, groin, inner thighs,
182 and buttocks, or the clothing covering them, of either the child
183 or the perpetrator, except that this does not include:

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184 1. Any act which may reasonably be construed to be a
185 normal caregiver responsibility, any interaction with, or
186 affection for a child; or

187 2. Any act intended for a valid medical purpose.

188 (e) The intentional masturbation of the perpetrator's
189 genitals in the presence of a child.

190 (f) The intentional exposure of the perpetrator's genitals
191 in the presence of a child, or any other sexual act
192 intentionally perpetrated in the presence of a child, if such
193 exposure or sexual act is for the purpose of sexual arousal or
194 gratification, aggression, degradation, or other similar
195 purpose.

196 (g) The sexual exploitation of a child, which includes the
197 act of a child offering to engage in or engaging in
198 prostitution, provided that the child is not under arrest or is
199 not being prosecuted in a delinquency or criminal proceeding for
200 a violation of any offense in chapter 796 based on such
201 behavior; or allowing, encouraging, or forcing a child to:

202 1. Solicit for or engage in prostitution; ~~or~~

203 2. Engage in a sexual performance, as defined by chapter
204 827; or

205 3. Participate in the trade of sex trafficking as provided
206 in s. 796.035.

207 Section 4. Paragraph (b) of subsection (2) and paragraph
208 (b) of subsection (3) of section 39.401, Florida Statutes, are
209 amended to read:

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210 39.401 Taking a child alleged to be dependent into
211 custody; law enforcement officers and authorized agents of the
212 department.—

213 (2) If the law enforcement officer takes the child into
214 custody, that officer shall:

215 (b) Deliver the child to an authorized agent of the
216 department, stating the facts by reason of which the child was
217 taken into custody and sufficient information to establish
218 probable cause that the child is abandoned, abused, or
219 neglected, or otherwise dependent. For such a child whom there
220 is also probable cause to believe he or she has been sexually
221 exploited, the law enforcement officer shall deliver the child
222 to the department. The department may place the child in an
223 appropriate short-term safe house as provided for in s. 409.1678
224 if a short-term safe house is available.

225
226 For cases involving allegations of abandonment, abuse, or
227 neglect, or other dependency cases, within 3 days after such
228 release or within 3 days after delivering the child to an
229 authorized agent of the department, the law enforcement officer
230 who took the child into custody shall make a full written report
231 to the department.

232 (3) If the child is taken into custody by, or is delivered
233 to, an authorized agent of the department, the agent shall
234 review the facts supporting the removal with an attorney
235 representing the department. The purpose of the review is to
236 determine whether there is probable cause for the filing of a
237 shelter petition.

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238 (b) If the facts are sufficient and the child has not been
239 returned to the custody of the parent or legal custodian, the
240 department shall file the petition and schedule a hearing, and
241 the attorney representing the department shall request that a
242 shelter hearing be held within 24 hours after the removal of the
243 child. While awaiting the shelter hearing, the authorized agent
244 of the department may place the child in licensed shelter care,
245 or in a short-term safe house if the child is a sexually
246 exploited child, or may release the child to a parent or legal
247 custodian or responsible adult relative or the adoptive parent
248 of the child's sibling who shall be given priority consideration
249 over a licensed placement, or a responsible adult approved by
250 the department if this is in the best interests of the child.
251 Placement of a child which is not in a licensed shelter must be
252 preceded by a criminal history records check as required under
253 s. 39.0138. In addition, the department may authorize placement
254 of a housekeeper/homemaker in the home of a child alleged to be
255 dependent until the parent or legal custodian assumes care of
256 the child.

257 Section 5. Section 39.524, Florida Statutes, is created to
258 read:

259 39.524 Safe-harbor placement.-

260 (1) Except as provided in s. 39.407 or s. 985.801, a
261 dependent child 6 years of age or older who has been found to be
262 a victim of sexual exploitation as defined in s. 39.01(67)(g)
263 must be assessed for placement in a safe house as provided in s.
264 409.1678. The assessment shall be conducted by the department or
265 its agent and shall incorporate and address current and

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266 historical information from any law enforcement reports;
267 psychological testing or evaluation that has occurred; current
268 and historical information from the guardian ad litem, if one
269 has been assigned; current and historical information from any
270 current therapist, teacher, or other professional who has
271 knowledge of the child and has worked with the child; and any
272 other information concerning the availability and suitability of
273 safe-house placement. If such placement is determined to be
274 appropriate as a result of this procedure, the child may be
275 placed in a safe house, if one is available. As used in this
276 section, the term "available" as it relates to a placement means
277 a placement that is located within the circuit or that is
278 otherwise reasonably accessible.

279 (2) The results of the assessment described in subsection
280 (1) and the actions taken as a result of the assessment must be
281 included in the next judicial review of the child. At each
282 subsequent judicial review, the court must be advised in writing
283 of the status of the child's placement, with special reference
284 regarding the stability of the placement and the permanency
285 planning for the child.

286 (3) (a) By December 1 of each year, the department shall
287 report to the Legislature on the placement of children in safe
288 houses during the year, including the criteria used to determine
289 the placement of children, the number of children who were
290 evaluated for placement, the number of children who were placed
291 based upon the evaluation, and the number of children who were
292 not placed.

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293 (b) The department shall maintain data specifying the
294 number of children who were referred to a safe house for whom
295 placement was unavailable and the counties in which such
296 placement was unavailable. The department shall include this
297 data in its report under this subsection so that the Legislature
298 may consider this information in developing the General
299 Appropriations Act.

300 Section 6. Section 409.1678, Florida Statutes, is created
301 to read:

302 409.1678 Safe harbor for children who are victims of
303 sexual exploitation.-

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

305 (a) "Child advocate" means an employee of a short-term
306 safe house who has been trained to work with and advocate for
307 the needs of sexually exploited children. The advocate shall
308 accompany the child to all court appearances, meetings with law
309 enforcement officials, and the state attorney's office and shall
310 serve as a liaison between the short-term safe house and the
311 court.

312 (b) "Safe house" means a living environment that has set
313 aside gender-specific, separate, and distinct living quarters
314 for sexually exploited children who have been adjudicated
315 dependent or delinquent and need to reside in a secure
316 residential facility with staff members awake 24 hours a day. A
317 safe house shall be operated by a licensed family foster home or
318 residential child-caring agency as defined in s. 409.175,
319 including a runaway youth center as defined in s. 409.441. Each
320 facility must be appropriately licensed in this state as a

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321 residential child-caring agency as defined in s. 409.175 and
322 must be accredited by July 1, 2013. A safe house serving
323 children who have been sexually exploited must have available
324 staff or contract personnel who have the clinical expertise,
325 credentials, and training to provide services identified in
326 paragraph (2) (b) .

327 (c) "Secure" means that a facility providing services is
328 supervised 24 hours a day by staff members who are awake while
329 on duty.

330 (d) "Sexually exploited child" means a dependent child who
331 has suffered sexual exploitation as defined in s. 39.01(67)(g)
332 and is ineligible for relief and benefits under the federal
333 Trafficking Victims Protection Act, 22 U.S.C. ss. 7101 et seq.

334 (e) "Short-term safe house" means a shelter operated by a
335 licensed residential child-caring agency as defined in s.
336 409.175, including a runaway youth center as defined in s.
337 409.441, which has set aside gender-specific, separate, and
338 distinct living quarters for sexually exploited children. In
339 addition to shelter, the house shall provide services and care
340 to sexually exploited children, including food, clothing,
341 medical care, counseling, and appropriate crisis-intervention
342 services at the time they are taken into custody by law
343 enforcement officials or department personnel.

344 (2) (a) Notwithstanding any other provision of law,
345 pursuant to rules of the department, each circuit of the
346 department shall address the child welfare service needs of
347 sexually exploited children as a component of the circuit's
348 master plan. This determination shall be made in consultation

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349 with local law enforcement officials, runaway and homeless youth
350 program providers, local probation departments, local community-
351 based care and social services, local guardians ad litem, public
352 defenders, state attorney's offices, and child advocates and
353 services providers who work directly with sexually exploited
354 youth.

355 (b) The lead agency, not-for-profit agency, or local
356 governmental entity providing safe-house services is responsible
357 for security, crisis-intervention services, general counseling
358 and victim-witness counseling, a comprehensive assessment,
359 residential care, transportation, access to behavioral health
360 services, recreational activities, food, clothing, supplies,
361 infant care, and miscellaneous expenses associated with caring
362 for these children; for necessary arrangement for or provision
363 of educational services, including life skills services and
364 planning services for the success transition of residents back
365 to the community; and for ensuring necessary and appropriate
366 health and dental care.

367 (c) This section does not prohibit any provider of these
368 services from appropriately billing Medicaid for services
369 rendered, from contracting with a local school district for
370 educational services, or from obtaining federal or local funding
371 for services provided, as long as two or more funding sources do
372 not pay for the same specific service that has been provided to
373 a child.

374 (d) The lead agency, not-for-profit agency, or local
375 governmental entity providing safe-house services has the legal
376 authority for children served in a safe-house program, as

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377 provided in chapter 39 or this chapter, as appropriate, to
378 enroll the child in school, to sign for a driver license for the
379 child, to cosign loans and insurance for the child, to sign for
380 medical treatment of the child, and to authorize other such
381 activities.

382 (e) All of the services specified in this section may, to
383 the extent possible provided by law and with funding authorized,
384 be available to all sexually exploited children whether they are
385 accessed voluntarily, as a condition of probation, through a
386 diversion program, through a proceeding under chapter 39, or
387 through a referral from a local community-based care or social
388 service agency.

389 (3) The local circuit administrator may, to the extent
390 that funds are available, in conjunction with local law
391 enforcement officials, contract with an appropriate not-for-
392 profit agency having experience working with sexually exploited
393 children to train law enforcement officials who are likely to
394 encounter sexually exploited children in the course of their law
395 enforcement duties on the provisions of this section and how to
396 identify and obtain appropriate services for sexually exploited
397 children. Circuits may work cooperatively to provide such
398 training, and such training may be provided on a regional basis.
399 The department shall assist circuits in obtaining any available
400 funds for the purposes of conducting law enforcement training
401 from the Office of Juvenile Justice and Delinquency Prevention
402 of the United States Department of Justice.

403 (4) The department may adopt rules necessary to administer
404 this section.

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405 Section 7. Section 796.07, Florida Statutes, is amended to
406 read:

407 796.07 Prohibiting prostitution and related acts, ~~etc.,~~
408 ~~evidence; penalties; definitions.~~

409 (1) As used in this section:

410 (a) "Prostitution" means the giving or receiving of the
411 body for sexual activity for hire but excludes sexual activity
412 between spouses.

413 (b) "Lewdness" means any indecent or obscene act.

414 (c) "Assignment" means the making of any appointment or
415 engagement for prostitution or lewdness, or any act in
416 furtherance of such appointment or engagement.

417 (d) "Sexual activity" means oral, anal, or vaginal
418 penetration by, or union with, the sexual organ of another; anal
419 or vaginal penetration of another by any other object; or the
420 handling or fondling of the sexual organ of another for the
421 purpose of masturbation; however, the term does not include acts
422 done for bona fide medical purposes.

423 (2) It is unlawful:

424 (a) To own, establish, maintain, or operate any place,
425 structure, building, or conveyance for the purpose of lewdness,
426 assignation, or prostitution.

427 (b) To offer, or to offer or agree to secure, another for
428 the purpose of prostitution or for any other lewd or indecent
429 act.

430 (c) To receive, or to offer or agree to receive, any
431 person into any place, structure, building, or conveyance for

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432 the purpose of prostitution, lewdness, or assignation, or to
433 permit any person to remain there for such purpose.

434 (d) To direct, take, or transport, or to offer or agree to
435 direct, take, or transport, any person to any place, structure,
436 or building, or to any other person, with knowledge or
437 reasonable cause to believe that the purpose of such directing,
438 taking, or transporting is prostitution, lewdness, or
439 assignation.

440 (e) To offer to commit, or to commit, or to engage in,
441 prostitution, lewdness, or assignation.

442 (f) To solicit, induce, entice, or procure another to
443 commit prostitution, lewdness, or assignation.

444 (g) To reside in, enter, or remain in, any place,
445 structure, or building, or to enter or remain in any conveyance,
446 for the purpose of prostitution, lewdness, or assignation.

447 (h) To aid, abet, or participate in any of the acts or
448 things enumerated in this subsection.

449 (i) To purchase the services of any person engaged in
450 prostitution.

451 (3)(a) In the trial of a person charged with a violation
452 of this section, testimony concerning the reputation of any
453 place, structure, building, or conveyance involved in the
454 charge, testimony concerning the reputation of any person
455 residing in, operating, or frequenting such place, structure,
456 building, or conveyance, and testimony concerning the reputation
457 of the defendant is admissible in evidence in support of the
458 charge.

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459 (b) Notwithstanding any other provision of law, a police
460 officer may testify as an offended party in an action regarding
461 charges filed pursuant to this section.

462 (4) A person who violates any provision of this section
463 commits:

464 (a) A misdemeanor of the second degree for a first
465 violation, punishable as provided in s. 775.082 or s. 775.083.

466 (b) A misdemeanor of the first degree for a second
467 violation, punishable as provided in s. 775.082 or s. 775.083.

468 (c) A felony of the third degree for a third or subsequent
469 violation, punishable as provided in s. 775.082, s. 775.083, or
470 s. 775.084.

471 (5) A person who is charged with a third or subsequent
472 violation of this section shall be offered admission to a
473 pretrial intervention program or a substance-abuse treatment
474 program as provided in s. 948.08.

475 (6) A person who violates paragraph (2)(f) shall be
476 assessed a civil penalty of \$5,000 ~~\$500~~ if the violation results
477 in any judicial disposition other than acquittal or dismissal.
478 Of the proceeds from each penalty penalties assessed under this
479 subsection, the first \$500 shall be paid to the circuit court
480 administrator for the sole purpose of paying the administrative
481 costs of treatment-based drug court programs provided under s.
482 397.334. The remainder of the fine collected shall be deposited
483 to the Operations and Maintenance Trust Fund at the Department
484 of Children and Family Services for the sole purpose of funding
485 safe houses and short-term safe houses as provided in s.
486 409.1678.

Amendment No. 1

487 Section 8. Section 960.065, Florida Statutes, is amended
488 to read:

489 960.065 Eligibility for awards.—

490 (1) Except as provided in subsection (2), the following
491 persons shall be eligible for awards pursuant to this chapter:

492 (a) A victim.

493 (b) An intervenor.

494 (c) A surviving spouse, parent or guardian, sibling, or
495 child of a deceased victim or intervenor.

496 (d) Any other person who is dependent for his or her
497 principal support upon a deceased victim or intervenor.

498 (2) Any claim filed by or on behalf of a person who:

499 (a) Committed or aided in the commission of the crime upon
500 which the claim for compensation was based;

501 (b) Was engaged in an unlawful activity at the time of the
502 crime upon which the claim for compensation is based;

503 (c) Was in custody or confined, regardless of conviction,
504 in a county or municipal detention facility, a state or federal
505 correctional facility, or a juvenile detention or commitment
506 facility at the time of the crime upon which the claim for
507 compensation is based;

508 (d) Has been adjudicated as a habitual felony offender,
509 habitual violent offender, or violent career criminal under s.
510 775.084; or

511 (e) Has been adjudicated guilty of a forcible felony
512 offense as described in s. 776.08,

513

514 ~~is ineligible shall not be eligible~~ for an award.

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515 (3) Any claim filed by or on behalf of a person who was in
516 custody or confined, regardless of adjudication, in a county or
517 municipal facility, a state or federal correctional facility, or
518 a juvenile detention, commitment, or assessment facility at the
519 time of the crime upon which the claim is based, who has been
520 adjudicated as a habitual felony offender under s. 775.084, or
521 who has been adjudicated guilty of a forcible felony offense as
522 described in s. 776.08, renders the person ineligible ~~shall not~~
523 ~~be eligible~~ for an award. Notwithstanding the foregoing, upon a
524 finding by the Crime Victims' Services Office of the existence
525 of mitigating or special circumstances that would render such a
526 disqualification unjust, an award may be approved. A decision
527 that mitigating or special circumstances do not exist in a case
528 subject to this section does ~~shall~~ not constitute final agency
529 action subject to review pursuant to ss. 120.569 and 120.57.

530 (4) Payment may not be made under this chapter if the
531 person who committed the crime upon which the claim is based
532 will receive any direct or indirect financial benefit from such
533 payment, unless such benefit is minimal or inconsequential.
534 Payment may not be denied based on the victim's familial
535 relationship to the offender or based upon the sharing of a
536 residence by the victim and offender, except to prevent unjust
537 enrichment of the offender.

538 (5) A person is not ineligible for an award pursuant to
539 paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c) if that
540 person is a victim of sexual exploitation of a child as defined
541 in s. 39.01(67)(g).

Amendment No. 1

542 Section 9. Paragraph (b) of subsection (2) of section
543 985.115, Florida Statutes, is amended to read:

544 985.115 Release or delivery from custody.—

545 (2) Unless otherwise ordered by the court under s. 985.255
546 or s. 985.26, and unless there is a need to hold the child, a
547 person taking a child into custody shall attempt to release the
548 child as follows:

549 (b) Contingent upon specific appropriation, to a shelter
550 approved by the department or to an authorized agent or short-
551 term safe house under s. 39.401(2)(b).

552 Section 10. This act shall take effect January 1, 2013.

553

554

555

T I T L E A M E N D M E N T

556

Remove the entire title and insert:

557

A bill to be entitled

558

An act relating to sexual exploitation; providing a short title;

559

amending s. 39.001, F.S.; providing legislative intent and

560

goals; conforming cross-references; amending s. 39.01, F.S.;

561

revising the definitions of the terms "abuse," "child who is

562

found to be dependent," and "sexual abuse of a child"; amending

563

s. 39.401, F.S.; authorizing delivery of children alleged to be

564

dependent and sexually exploited to short-term safe houses;

565

creating s. 39.524, F.S.; requiring assessment of certain

566

children for placement in a safe house; providing for use of

567

such assessments; providing requirements for safe houses

568

receiving such children; requiring an annual report concerning

569

safe-house placements; creating s. 409.1678, F.S.; providing

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 99 (2012)

Amendment No. 1

570 definitions; requiring circuits of the Department of Children
571 and Family Services to address child welfare service needs of
572 sexually exploited children as a component of their master
573 plans; providing duties, responsibilities, and requirements for
574 safe houses and their operators; providing for training for law
575 enforcement officials who are likely to encounter sexually
576 exploited children; authorizing the Department of Children and
577 Family Services to adopt rules; amending s. 796.07, F.S.;
578 providing for an increased civil penalty for soliciting another
579 to commit prostitution or related acts; providing for the
580 disposition of proceeds; amending s. 960.065, F.S.; allowing
581 victim compensation for sexually exploited children; amending s.
582 985.115, F.S.; conforming a provision to changes made by the
583 act; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 529 Adult Day Care Centers
SPONSOR(S): Health & Human Services Access Subcommittee; Corcoran
TIED BILLS: IDEN./SIM. **BILLS:** CS/CS/SB 694

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	14 Y, 0 N, As CS	Guzzo	Schoolfield
2) Rulemaking & Regulation Subcommittee	14 Y, 1 N	Rubottom	Rubottom
3) Health & Human Services Committee		Guzzo <i>GH</i>	Gormley <i>CG</i>

SUMMARY ANALYSIS

The bill creates the "Specialized Alzheimer's Services Adult Day Care Act"(Act). The act imposes increased standards by creating a specialty license for adult day care centers (ADCCs) wishing to hold themselves out to the public as providing specialized care for individuals with Alzheimer's disease or other dementia related disorders. Adult day care centers currently advertising as providing specialty care for Alzheimer's disease or other dementia-related disorders will be required to obtain the specialty license or cease advertising as providing these specialty services. Under the Act, ADCCs wishing to obtain the specialty license will be required to meet certain standards of care and provide a program for dementia-specific, therapeutic activities.

The bill requires additional staff, increased monitoring, and training in order to hold an adult day care license for a center specializing in Alzheimer's disease or other dementia-related disorders. The bill also increases the requirements to become an operator of an ADCC specializing in Alzheimer's disease or other dementia-related disorders.

The bill has a fiscal impact which can be absorbed by the Agency for Health Care Administration. (See fiscal comments).

The bill has an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Alzheimer's Disease

There is an estimated 5.4 million people in the United States with Alzheimer's disease, including 5.2 million people aged 65 and older and 200,000 individuals under age 65 who have younger-onset Alzheimer's disease.¹ In addition, there is an estimated 459,806 individuals suffering from Alzheimer's disease in the state of Florida.²

By 2030, the segment of the United States population aged 65 years and older is expected to double; and the estimated 71 million older Americans will make up approximately 20 percent of the total population.³ By 2050, the number of people aged 65 and older with Alzheimer's disease is expected to triple to a projected 16 million people.⁴

Adult Day Care Centers - General

Adult day care centers (ADCCs) are regulated by the Agency for Health Care Administration (AHCA) pursuant to part II of chapter 408, F.S., and part III of chapter 429, F.S. An adult day care center is defined as "any building, buildings, or part of a building, whether operated for profit or not, in which is provided through its ownership or management, for a part of a day, basic services to three or more persons who are 18 years of age or older, who are not related to the owner or operator by blood or marriage, and who require such services."⁵

Nearly half of all patients in adult day care centers in the United States suffer from Alzheimer's disease or another form of dementia. Currently, there are 202 licensed ADCCs in the State of Florida.⁶ Section 429.90, F.S., directs AHCA to develop, establish, and enforce basic standards for ADCCs in order to assure that a program of therapeutic social and health activities and services is provided to adults who have functional impairments. Section 429.929, F.S., authorizes the Department of Elder Affairs, in conjunction with AHCA, to adopt rules to implement the provisions of part III of chapter 429, F.S.

Each center must offer a planned program of varied activities and services promoting and maintaining the health of participants and encouraging leisure activities, interaction and communication among participants on a daily basis. Such activities and services must be available during at least sixty-percent of the time the center is open.⁷

Participant Eligibility

Participant eligibility in ADCCs is limited to adults with functional impairments in need of a protective environment and a program of therapeutic social and health activities and services. Centers are prohibited from accepting participants who require medication during the time spent at the center and who are incapable of self-administration of medications, unless there is a person to provide this service

¹ Alzheimer's Association, 2011 Alzheimer's Disease Fact and Figures, located at http://www.alz.org/alzheimers_disease_facts_and_figures.asp

² Florida Department of Elder Affairs, 2011 Florida State Profile, located at http://elderaffairs.state.fl.us/english/pubs/stats/County_2011Projections/Florida_Map.html

³ Alzheimer's Association, 2011 Alzheimer's Disease Fact and Figures, located at http://www.alz.org/alzheimers_disease_facts_and_figures.asp

⁴ *Id.*

⁵ S. 429.901(1), F.S.

⁶ AHCA, *Staff Analysis and Economic Impact, House Bill Number 529* (December 15, 2011).

⁷ Rule 58A-6.008(1), F.A.C.

who is licensed to administer medications.⁸ Participants are required to provide a statement within forty-five days prior to admission signed by a physician documenting freedom from tuberculosis and freedom from signs and symptoms of other communicable diseases.⁹ Participants shall not be admitted or retained in a center if the required services are beyond those that the center is licensed to provide.¹⁰

Staffing Requirements

Adult day care centers are required to have one staff member for every six participants, and at no time may a center have less than two staff members present.¹¹ Staffing must be maintained at all times to meet the needs of the participants as required by the participant file.¹² The owner or operator may be counted as one of the required staff members if they provide direct services and are included in the work schedule for the center.¹³

Optional Supportive Services

Adult day care centers may choose to provide optional supportive services. If provided, such services must be administered by staff qualified to provide such services. One of the optional supportive services that an ADCC may choose to provide is adult day health care services for disabled adults or aged persons. If an ADCC chooses to provide this service it must comply with certain standards relating to the operation of the center.¹⁴ The center must have a registered nurse or licensed practical nurse (LPN) on site. If the center chooses an LPN, the LPN must be supervised in accordance with chapter 464, F.S. To be considered a qualified operator of an ADCC, providing optional supportive services, the operator must:¹⁵

- Hold a minimum of a Bachelor's degree in a health or social services or related field with one year of supervisory experience in a social or health service setting; or
- Hold a registered nurse license with one year of supervisory experience; or
- Have five years of supervisory experience in a social or health service setting.

Adult Day Care Centers-Alzheimer's Specific Requirements

Adult day care centers are required to provide the following Alzheimer's specific staff training:¹⁶

- Each employee must receive basic written information about interacting with participants who have Alzheimer's disease or other dementia-related disorders;
- Personnel whose responsibilities require them to have direct contact with participants who have Alzheimer's disease or other dementia-related disorders must complete initial training of at least one hour within the first three months of employment; and
- Employees who will be providing direct care to a participant who has Alzheimer's disease or other dementia-related disorders must complete an additional three hours of training within the first nine months of employment.

Current law requires ADCCs who claim to provide special care for individuals with Alzheimer's disease or other related disorders to disclose in its advertisements or in a separate document those services that distinguish the care as being applicable to such persons.¹⁷ At the time of survey, AHCA reviews

⁸ Rule 58A-6.006(1)(a), F.A.C.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Rule 58A-6.006(8), F.A.C.

¹² *Id.*

¹³ *Id.*

¹⁴ Rule 58A-6.010(6), F.A.C.

¹⁵ Rule 58A-6.010(6)(c), F.A.C.

¹⁶ S. 429.917(1), F.S.

¹⁷ S. 429.917(2), F.S.

documentation and advertisements relating to specialty care provided at the ADCC.¹⁸ There are no additional requirements placed on a center wishing to hold itself out as an ADCC providing such specialized services.¹⁹

Effect of Proposed Changes

The bill creates the “Specialized Alzheimer’s Services Adult Day Care Act”. The bill provides for an adult day care specialty license for ADCCs wishing to hold themselves out to the public as providing specialized care for individuals with Alzheimer’s disease or other dementia-related disorders. The bill requires additional staff, increased monitoring, and training in order to hold an adult day care license for a center specializing in Alzheimer’s or other dementia-related disorders.

The bill does not prohibit ADCCs who do not have the specialty license from advertising that they provide Alzheimer’s services, but it does prohibit them from claiming to be licensed to provide specialized Alzheimer’s services unless they receive the specialty license..

Adult day care centers seeking the specialty license must meet the following additional requirements beyond the standards contained in Part III of Chapter 429, Florida Statutes:

- Have a mission statement that includes a commitment to providing dementia-specific services;
- Disclose in the center’s advertisements or in a separate document the services that distinguish the care as being suitable for a person who has Alzheimer’s disease or a dementia-related disorder;
- Provide a program for dementia-specific, therapeutic activities;
- Maintain a staff-to-participant ratio of one staff member who provides direct services for every five participants. This is an increase from the current staff to patient ratio requirement of one staff member for every six participants under Rule 58A-6.006(8)(a), F.A.C.;
- Provide a program for therapeutic activity at least seventy-percent of the time that the center is open. This is an increase from the current requirement of sixty-percent under Rule 58A-6.008, F.A.C.;
- Provide hands-on assistance with activities of daily living, inclusive of the provision of urinary and bowel incontinence care;
- Use assessment tools that identify the participant’s cognitive deficits and identify the specialized and individualized needs of the participant and the caregiver. This assessment must be conducted upon the participants admission to the center and must be updated when the participant experiences a significant change, but no less frequently than annually;
- Create an individualized plan of care for each participant, which addresses the dementia-specific needs of the participant and the caregiver. The plan of care must be established upon the participants admission to the center and must be reviewed quarterly;
- Conduct a monthly health assessment of the participant;
- Complete a monthly narrative in the participant’s file regarding their status or progress toward meeting the goals indicated on the individualized plan of care;
- Assist in the referral or coordination of other dementia-specific services and resources needed by the participant or caregiver;
- Offer, facilitate, or provide referrals to a support group for caregivers; and
- Have a registered nurse or licensed practical nurse on site daily for at least seventy-five-percent of the time that the center is open.
- Provide dementia-specific educational materials regularly to participants, as appropriate, and their caregivers;
- Routinely conduct and document a count of all participants present in the center throughout each day;

¹⁸ AHCA, *Staff Analysis and Economic Impact, House Bill Number 529* (December 15, 2011).

¹⁹ *Id.*

- Be a secured unit or have working alarm or security devices installed on every door that is accessible to the participant and provides egress from the center or areas of the center designated for the provision of adult day care specialized Alzheimer's services;
- Not allow a participant to administer their own medication; and
- Not allow a participant to drive to or from the center.

The bill requires participant files to contain a data sheet, which must be completed within 45 days before or within 24 hours after admission to the ADCC. The data sheet must contain information regarding the status of the participant's enrollment in an identification or wandering-prevention program, including the name of the program and a current photograph of the participant.

The bill requires an ADCC to give to each participant or the participant's caregiver a copy of the participant's plan of care, and a copy of the policies and procedures of the center, which must include information pertaining to driving for those persons affected by Alzheimer's disease or dementia, available technology on wandering-prevention devices and identification devices, the Silver Alert program, and dementia-specific safety interventions and strategies that can be use in the home setting.

Training Requirements

Currently, ADCC staff must meet the following Alzheimer's specific training requirements:²⁰

- Personnel whose responsibilities require them to have direct contact with participants who have Alzheimer's disease or other dementia-related disorders must complete initial training of at least one hour within the first three months of employment; and
- Employees who will be providing direct care to a participant who has Alzheimer's disease or other dementia-related disorders must complete an additional three hours of training within the first nine months of employment.

The bill requires ADCC staff, hired on or after July 1, 2012, of facilities who hold the Alzheimer's specialty license to meet the following Alzheimer's specific training requirements:

- Personnel whose responsibilities require them to have direct contact with participants who have Alzheimer's disease or dementia-related disorders must complete four hours of dementia-specific training within the first three months of employment.
- Each employee who provides direct care to participants will be required to complete an additional four hours of dementia-specific training within the first six months of employment.

The bill requires the Department of Elderly Affairs or its designee to approve the training and adopt rules to establish standards for employees who are subject to this training, for trainers, and for the training itself.

Upon completing the required training the employee shall be issued a certificate that includes the name of the training provider, the topics covered, and the date and signature of the training provider. The certificate is evidence of completion of training in the identified topics, and the employee is not required to repeat training in those topics if the employee changes employment to a different ADCC.

Currently, ADCC staff members are required to be trained to implement the policies and procedures specified in the orientation and training plan.²¹ The orientation and training plan is a written plan developed and reviewed at least annually and implemented throughout the year which describes a coordinated program for staff training for each service and for orientation of each new staff member on center policies, procedures, assigned duties and responsibilities, which must begin no later than the first day of employment.²² The bill requires staff orientation to include procedures to locate a participant who has wandered from the center which must be reviewed regularly with all direct care staff;

²⁰ S. 429.917, F.S.

²¹ Rule 58A-6.007(2), F.A.C.

²² Rule 58A-6.002(o), F.A.C.

information on the Silver Alert program; and information regarding available products or programs used to identify participants or prevent them from wandering away from the center, their home, or other locations.

Operator Requirements

Currently, operators of ADCCs are not required to meet any educational or background experience requirements to qualify as an operator. In order to obtain the Alzheimer's specialty license, the bill requires ADCC operators who are hired on or after July 1, 2012 to meet the educational and experience requirements that are currently only applicable to ADCCs who chose to provide optional supportive services for disabled adults or aged persons. Adult day care center operators, or their designees, will be required to have a Bachelors degree in health care services, social services, or a related field, one year of supervisory experience in a social services or health care service setting, and have a minimum of one-year of experience in providing dementia-specific services. A person may also qualify to be an operator if they possess a license as a registered or practical nurse, have one year of supervisory experience in a social services or health care services setting, and have a minimum of one year of experience in providing dementia-specific services. Lastly, a person may qualify as an operator if they have five years of supervisory experience in social services or health care services, and a minimum of three years of experience in providing dementia-specific services.

Participant Eligibility

The bill creates additional admission requirements for participants seeking admittance in an ADCC holding the Alzheimer's specialty license. The additional admission requirements would prohibit a center having the specialty license from being able to admit participants other than those meeting the specific admission requirements. These specialty centers would not be able to service populations other than those participants.²³ The bill requires potential ADCC participants to meet the following pre-admission requirements:

- Require ongoing supervision to maintain the highest level of medical or custodial functioning and have a demonstrated need for a responsible party to oversee his or her care;
- Must not actively demonstrate aggressive behavior that places themselves or others at risk of harm; and
- Provide additional medical documentation signed by a licensed physician or a health care provider, which must include:
 - Any physical, health, or emotional conditions that require medical care;
 - A listing of the current prescribed and over-the-counter medications and dosages, diet restrictions, mobility restrictions, and other physical limitations; and
 - Proof that the person is free of the communicable form of tuberculosis and free of signs and symptoms of other communicable diseases.

The bill also requires the ADCC to make certain determinations regarding the centers ability to treat the potential participant before admission. The ADCC must determine whether:

- The medical, psychological, safety, and behavioral support and intervention required by the person can be provided by the center; and
- The resources required to assist with the person's acuity of care and support needed can be provided or coordinated by the center.

The bill requires ADCCs to coordinate and execute appropriate discharge procedures for participants who have had their enrollment involuntarily terminated due to medical or behavioral reasons.

²³ AHCA, *Staff Analysis and Economic Impact, House Bill Number 529* (December 15, 2011).

B. SECTION DIRECTORY:

- Section 1. Amends s. 429.917, F.S., relating to patients with Alzheimer's disease or other related disorders;
- Section 2. Creates s. 429.918, F.S., relating to the Specialized Alzheimer's Services License;
- Section 3. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

- 1. Revenues:
None.
- 2. Expenditures:
See fiscal comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

- 1. Revenues:
None.
- 2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will require more and different staff and expenses for adult day care centers wishing to obtain the Adult Day Care Specialized Alzheimer's Services License.

D. FISCAL COMMENTS:

The Agency for Health Care Administration expects this legislation to result in annual recurring expenditures of \$94,204. Licensure fees from the creation of the specialty license may be used to cover the cost of licensure and required surveys if increased appropriately.²⁴ The Agency for Health Care Administration can absorb the impact of this increase within their existing resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

- 1. Applicability of Municipality/County Mandates Provision:
Not applicable. This bill does not appear to affect county or municipal governments.
- 2. Other:
None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Department of Elderly Affairs to adopt rules.

²⁴ *Id.*

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 17, 2012, the Health and Human Services Access Subcommittee adopted a strike-all amendment to HB 529. The amendment:

- Prohibits an adult day care center from claiming to be licensed to provide specialized Alzheimer's services unless it receives the specialty license;
- Defines the term "ADRD participant";
- States that the licensure created by the bill is voluntary;
- Requires an adult day care center with the specialty license to provide ADRD participants with hands-on assistance with activities of daily living, inclusive of the provision of urinary and bowel incontinence care;
- Provides that only operators hired on or after July 1, 2012, have to meet the specified educational and experience requirements;
- Provides that a registered nurse or licensed practical nurse must be on site daily for at least seventy-five-percent of the time that the center is open, rather than during all hours of operation;
- Provides that only staff hired on or after July 1, 2012, have to complete the additional training requirements;
- Requires the Department of Elderly Affairs to approve the training required under the bill and provides rulemaking authority to the department to do so;
- Provides that employees must receive a certificate upon completion of the required training;
- Requires every employee to receive basic written information about interacting with ADRD participants;
- Clarifies that the bill does not prohibit an adult day care center that chooses not to become licensed from providing adult day care services to persons who have Alzheimer's disease or other dementia-related disorders; and
- Makes technical changes.

The bill was reported favorably as a Committee Substitute. This analysis reflects the Committee Substitute.

1 A bill to be entitled
 2 An act relating to adult day care centers; amending s.
 3 429.917, F.S.; prohibiting an adult day care center
 4 from claiming to be licensed to provide specialized
 5 Alzheimer's services under certain circumstances;
 6 creating s. 429.918, F.S.; providing a short title;
 7 providing definitions; providing for the voluntary
 8 licensure of adult day care centers that provide
 9 specialized Alzheimer's services; requiring an adult
 10 day care center seeking such licensure to meet
 11 specified criteria; providing educational and
 12 experience requirements for the operator of an adult
 13 day care center seeking licensure to provide
 14 specialized Alzheimer's services; providing criteria
 15 for staff training and supervision; requiring that the
 16 Department of Elderly Affairs approve the staff
 17 training; requiring the department to adopt rules;
 18 requiring that the employee be issued a certificate
 19 upon completion of the staff training; providing
 20 requirements for staff orientation; providing
 21 requirements for admission into such an adult day care
 22 center; requiring that a participant's file include a
 23 data sheet, which shall be completed within a certain
 24 timeframe; requiring that certain information be
 25 included in the data sheet; requiring that dementia-
 26 specific services be documented in a participant's
 27 file; requiring that a participant's plan of care be
 28 reviewed quarterly; requiring that certain notes be

29 entered into a participant's file; requiring the
 30 participant to provide the adult day care center with
 31 updated medical documentation; requiring the center to
 32 give each person who enrolls as a participant, or the
 33 caregiver, a copy of the participant's plan of care
 34 and safety information; requiring that the center
 35 coordinate and execute discharge procedures with a
 36 participant who has a documented diagnosis of
 37 Alzheimer's disease or a dementia-related disorder and
 38 the caregiver if the participant's enrollment in the
 39 center is involuntarily terminated; providing that the
 40 act does not prohibit an adult day care center that
 41 does not become licensed to provide specialized
 42 Alzheimer's services from providing adult day care
 43 services to persons who have Alzheimer's disease or
 44 other dementia-related disorders; authorizing the
 45 Department of Elderly Affairs to adopt rules;
 46 providing an effective date.

47

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

49

50 Section 1. Subsection (2) of section 429.917, Florida
 51 Statutes, is amended to read:

52 429.917 Patients with Alzheimer's disease or other related
 53 disorders; staff training requirements; certain disclosures.—

54 (2) A center licensed under this part which claims that it
 55 provides special care for persons who have Alzheimer's disease
 56 or other related disorders must disclose in its advertisements

57 | or in a separate document those services that distinguish the
 58 | care as being especially applicable to, or suitable for, such
 59 | persons. The center must give a copy of all such advertisements
 60 | or a copy of the document to each person who requests
 61 | information about the center and must maintain a copy of all
 62 | such advertisements and documents in its records. The agency
 63 | shall examine all such advertisements and documents in the
 64 | center's records as part of the license renewal procedure. An
 65 | adult day care center may not claim to be licensed to provide
 66 | specialized Alzheimer's services unless it has been licensed
 67 | pursuant to s. 429.918.

68 | Section 2. Section 429.918, Florida Statutes, is created
 69 | to read:

70 | 429.918 Specialized Alzheimer's services licensure.-

71 | (1) This section may be cited as the "Specialized
 72 | Alzheimer's Services Adult Day Care Act."

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

74 | (a) "ADRD participant" means a participant who has a
 75 | documented diagnosis of Alzheimer's disease or a dementia-
 76 | related disorder (ADRD) from a licensed physician or a health
 77 | care provider who is under the direct supervision of a licensed
 78 | physician.

79 | (b) "Dementia" means the loss of at least two intellectual
 80 | functions, such as thinking, remembering, and reasoning, which
 81 | is severe enough to interfere with a person's daily function.
 82 | The term does not describe a disease, but describes a group of
 83 | symptoms that may accompany certain diseases or physical
 84 | conditions.

85 (c) "Specialized Alzheimer's services" means therapeutic,
 86 behavioral, health, safety, and security interventions; clinical
 87 care; support services; and educational services that are
 88 customized for the specialized needs of an ADRD participant's
 89 caregiver and the participant who is affected by Alzheimer's
 90 disease or an irreversible, degenerative condition resulting in
 91 dementia.

92 (3) In addition to the standards required for licensure as
 93 an adult day care center under this part, an adult day care
 94 center may seek voluntary licensure under this section as a
 95 specialized Alzheimer's services licensee.

96 (4) An adult day care center seeking licensure under this
 97 section must:

98 (a) Have a mission statement that includes a commitment to
 99 proving dementia-specific services and disclose in the center's
 100 advertisements or in a separate document the services that
 101 distinguish the care as being suitable for a person who has
 102 Alzheimer's disease or a dementia-related disorder.

103 (b) Provide ADRD participants with a program for dementia-
 104 specific, therapeutic activities, including, but not limited to,
 105 physical, cognitive, and social activities appropriate for the
 106 ADRD participant's age, culture, and level of function.

107 (c) Maintain at all times a minimum staff-to-participant
 108 ratio of one staff member who provides direct services for every
 109 five ADRD participants.

110 (d) Provide ADRD participants with a program for
 111 therapeutic activity at least 70 percent of the time that the
 112 center is open.

113 (e) Provide ADRD participants with hands-on assistance
 114 with activities of daily living, inclusive of the provision of
 115 urinary and bowel incontinence care.

116 (f) Use assessment tools that identify the ADRD
 117 participant's cognitive deficits and identify the specialized
 118 and individualized needs of the ADRD participant and the
 119 caregiver. This assessment shall be conducted when the ADRD
 120 participant is initially admitted into the center and shall be
 121 updated when the ADRD participant experiences a significant
 122 change, but no less frequently than annually.

123 (g) Create an individualized plan of care for each ADRD
 124 participant which addresses the identified, dementia-specific
 125 needs of the ADRD participant and the caregiver. The plan of
 126 care shall be established when the ADRD participant is initially
 127 admitted into the center and reviewed at least quarterly.

128 (h) Conduct a monthly health assessment of each ADRD
 129 participant which includes, but is not limited to, the ADRD
 130 participant's weight, vital signs, and level of assistance
 131 needed with activities of daily living.

132 (i) Complete a monthly update in each ADRD participant's
 133 file regarding the ADRD participant's status or progress toward
 134 meeting the goals indicated on the individualized plan of care.

135 (j) Assist in the referral or coordination of other
 136 dementia-specific services and resources needed by the ADRD
 137 participant or the caregiver, such as medical services,
 138 counseling, medical planning, legal planning, financial
 139 planning, safety and security planning, disaster planning,
 140 driving assessment, transportation coordination, or wandering

141 prevention.

142 (k) Offer, facilitate, or provide referrals to a support
 143 group for persons who are caregivers to ADRD participants.

144 (l) Provide dementia-specific educational materials
 145 regularly to ADRD participants, as appropriate, and their
 146 caregivers.

147 (m) Routinely conduct and document a count of all ADRD
 148 participants present in the center throughout each day. This
 149 count must be compared to each ADRD participant's attendance
 150 record in order to ensure that an ADRD participant is not
 151 missing from the center.

152 (n) Be a secured unit or have working alarm or security
 153 devices installed on every door that is accessible to the ADRD
 154 participants and provides egress from the center or areas of the
 155 center designated for the provision of specialized Alzheimer's
 156 adult day care services.

157 (o) Not allow an ADRD participant to administer his or her
 158 own medication.

159 (p) Not allow an ADRD participant to drive himself or
 160 herself to or from the center.

161 (5) The operator of an adult day care center licensed
 162 under this section, and the operator's designee, as applicable,
 163 hired on or after July 1, 2012, shall:

164 (a) Have at least a bachelor's degree in health care
 165 services, social services, or a related field, at least 1 year
 166 of supervisory experience in a social services or health care
 167 services setting, and at least 1 year of experience in providing
 168 services to persons who have dementia;

169 (b) Be a registered or practical nurse licensed in this
 170 state, have at least 1 year of supervisory experience in a
 171 social services or health care services setting, and have at
 172 least 1 year of experience in providing services to persons who
 173 have dementia; or

174 (c) Have at least 5 years of supervisory experience in a
 175 social services or health care services setting and at least 3
 176 years of experience in providing services to persons who have
 177 dementia.

178 (6) (a) An adult day care center licensed under this
 179 section must provide the following staff training and
 180 supervision:

181 1. A registered nurse or licensed practical nurse must be
 182 on site daily for at least 75 percent of the time that the
 183 center is open to ADRD participants. Each licensed practical
 184 nurse who works at the center must be supervised in accordance
 185 with chapter 464.

186 2. Upon beginning employment with the center, each
 187 employee must receive basic written information about
 188 interacting with ADRD participants.

189 3. In addition to the information provided in subparagraph
 190 2., every employee hired on or after July 1, 2012, who has
 191 direct contact with ADRD participants shall complete 4 hours of
 192 dementia-specific training within 3 months after beginning
 193 employment.

194 4. In addition to the requirements of subparagraphs 2. and
 195 3., each employee hired on or after July 1, 2012, who provides
 196 direct care to ADRD participants shall complete an additional 4

197 hours of dementia-specific training within 6 months after
 198 beginning employment.

199 (b) The Department of Elderly Affairs or its designee
 200 shall approve the training required under this section. The
 201 department shall adopt rules to establish standards for
 202 employees who are subject to this training, for trainers, and
 203 for the training required in this section.

204 (c) Upon completing any training described in this
 205 section, the employee shall be issued a certificate that
 206 includes the name of the training provider, the topics covered,
 207 and the date and signature of the training provider. The
 208 certificate is evidence of completion of training in the
 209 identified topics, and the employee is not required to repeat
 210 training in those topics if the employee changes employment to a
 211 different adult day care center.

212 (d) Each employee hired on or after July 1, 2012, who
 213 provides direct care to ADRD participants, must receive an
 214 orientation plan that includes, at a minimum:

215 1. Procedures to locate an ADRD participant who has
 216 wandered from the center. These procedures shall be reviewed
 217 regularly with all direct care staff.

218 2. Information on the Silver Alert program in this state.

219 3. Information regarding available products or programs
 220 used to identify ADRD participants or prevent them from
 221 wandering away from the center, their homes, or other locations.

222 (7) (a) An ADRD participant admitted to an adult day care
 223 center licensed under this section must:

224 1. Require ongoing supervision to maintain the highest

225 level of medical or custodial functioning and have a
 226 demonstrated need for a responsible party to oversee his or her
 227 care.

228 2. Not actively demonstrate aggressive behavior that
 229 places himself, herself, or others at risk of harm.

230 3. Provide the following medical documentation signed by a
 231 licensed physician or a health care provider who is under the
 232 direct supervision of a licensed physician:

233 a. Any physical, health, or emotional condition that
 234 requires medical care.

235 b. A listing of the ADRD participant's current prescribed
 236 and over-the-counter medications and dosages, diet restrictions,
 237 mobility restrictions, and other physical limitations.

238 4. Provide documentation signed by a health care provider
 239 licensed in this state which indicates that the ADRD participant
 240 is free of the communicable form of tuberculosis and free of
 241 signs and symptoms of other communicable diseases.

242 (b) Before admitting an ADRD participant to an adult day
 243 care center licensed under this section, the center shall
 244 determine whether:

245 1. The medical, psychological, safety, and behavioral
 246 support and intervention required by the ADRD participant can be
 247 provided by the center.

248 2. The resources required to assist with the ADRD
 249 participant's acuity level of care and support needed can be
 250 provided or coordinated by the center.

251 (8) (a) An ADRD participant's file must include a data
 252 sheet, which must be completed within 45 days before or within

253 24 hours after admission to an adult day care center licensed
 254 under this section. The data sheet must contain:

255 1. Information regarding the status of the ADRD
 256 participant's enrollment in an identification or wandering-
 257 prevention program, including the name of the program; and

258 2. A current photograph of the ADRD participant.

259 (b) Dementia-specific services shall be documented in the
 260 ADRD participant's file.

261 (c) An ADRD participant's plan of care must be reviewed at
 262 least quarterly. Notes regarding services provided to the ADRD
 263 participant must be entered at least monthly in the ADRD
 264 participant's file, and must indicate the ADRD participant's
 265 status or progress toward achieving identified goals. Additional
 266 notes must be entered more frequently if indicated by the ADRD
 267 participant's condition.

268 (d) An ADRD participant shall annually provide the center
 269 with updated medical documentation required under subparagraphs
 270 (7)(a)3. and 4., and the center must place that documentation in
 271 the ADRD participant's file.

272 (9) An adult day care center licensed under this section
 273 must give to each person who enrolls as an ADRD participant in
 274 the center, or the caregiver, a copy of the ADRD participant's
 275 plan of care, as well as information regarding resources to
 276 assist in ensuring the safety and security of the ADRD
 277 participant, which must include, but need not be limited to,
 278 information pertaining to driving for those persons affected by
 279 dementia, available technology on wandering-prevention devices
 280 and identification devices, the Silver Alert program in this

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281 state, and dementia-specific safety interventions and strategies
 282 that can be used in the home setting.

283 (10) If an ADRD participant's enrollment in the center is
 284 involuntarily terminated due to medical or behavioral reasons,
 285 the center shall coordinate and execute appropriate discharge
 286 procedures with the ADRD participant and the caregiver.

287 (11) This section does not prohibit an adult day care
 288 center that does not become licensed under this section from
 289 providing adult day care services to persons who have
 290 Alzheimer's disease or other dementia-related disorders.

291 (12) The Department of Elderly Affairs may adopt rules to
 292 administer this section.

293 Section 3. This act shall take effect July 1, 2012.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Health & Human Services
2 Committee

3 Representative Corcoran offered the following:

4
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsection (2) of section 429.917, Florida
8 Statutes, is amended to read:

9 429.917 Patients with Alzheimer's disease or other related
10 disorders; staff training requirements; certain disclosures.-

11 (2) A center licensed under this part which claims that it
12 provides special care for persons who have Alzheimer's disease
13 or other related disorders must disclose in its advertisements
14 or in a separate document those services that distinguish the
15 care as being especially applicable to, or suitable for, such
16 persons. The center must give a copy of all such advertisements
17 or a copy of the document to each person who requests
18 information about the center and must maintain a copy of all
19 such advertisements and documents in its records. The agency

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20 shall examine all such advertisements and documents in the
21 center's records as part of the license renewal procedure. An
22 adult day care center may not claim to be licensed or designated
23 to provide specialized Alzheimer's services unless the adult day
24 care center's license has been designated as such pursuant to s.
25 429.918.

26 Section 2. Section 429.918, Florida Statutes, is created
27 to read:

28 429.918 Licensure designation as a specialized Alzheimer's
29 services adult day care center.-

30 (1) This act may be cited as the "Specialized Alzheimer's
31 Services Adult Day Care Act."

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

33 (a) "ADRD participant" means a participant who has a
34 documented diagnosis of Alzheimer's disease or a dementia-
35 related disorder (ADRD) from a licensed physician, licensed
36 physician assistant, or a licensed advanced registered nurse
37 practitioner.

38 (b) "Dementia" means the loss of at least two intellectual
39 functions, such as thinking, remembering, and reasoning, which
40 is severe enough to interfere with a person's daily function.
41 The term does not describe a disease, but describes a group of
42 symptoms that may accompany certain diseases or physical
43 conditions.

44 (c) "Specialized Alzheimer's services" means therapeutic,
45 behavioral, health, safety, and security interventions; clinical
46 care; support services; and educational services that are
47 customized for the specialized needs of a participant's

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48 caregiver and the participant who is affected by Alzheimer's
49 disease or an irreversible, degenerative condition resulting in
50 dementia.

51 (d) "Therapeutic activity" means an individual or group
52 activity that is intended to promote, maintain, or enhance the
53 ADRD participant's physical, cognitive, social, spiritual, or
54 emotional health.

55 (3) An adult day care center may apply to the agency to
56 have its license issued under s. 429.907, designated as a
57 "specialized Alzheimer's services adult day care center," if the
58 requirements under this section have been met.

59 (a) The adult day care center must notify the agency at
60 least 30 days prior to initial licensure under s. 429.907 or, if
61 already licensed, at least 6 months prior to the expiration of a
62 license issued under s. 429.907, that the adult day care center
63 is seeking a designation as a specialized Alzheimer's services
64 adult day care center.

65 (b) The agency, after receiving the notification pursuant
66 to paragraph (a), may make a determination at an initial
67 licensure inspection or at a licensure renewal inspection as to
68 whether the adult day care center meets the requirements of this
69 section to be designated as a specialized Alzheimer's services
70 adult day care center. If the agency determines that the adult
71 day care center meets the requirements of this section it must
72 designate the adult day care center as a specialized Alzheimer's
73 services adult day care center at the time of initial licensure
74 or at licensure renewal.

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75 (c) If the agency, during the initial or renewal
76 inspection, determines that the adult day care center has
77 committed an act under s. 429.911(2), the agency may deny the
78 request for the designation or revoke such designation.

79 (d) The agency may at any time revoke the designation if
80 the adult day care center fails to maintain the requirements
81 under this section.

82 (4) To obtain or maintain the designation under this
83 section, an adult day care center must:

84 (a) Have a mission statement that includes a commitment to
85 providing dementia-specific services and disclose in the
86 center's advertisements or in a separate document, which must be
87 made available to the public upon request, the services that
88 distinguish the care as being suitable for a person who has
89 Alzheimer's disease or a dementia-related disorder.

90 (b) Provide ADRD participants with a program for dementia-
91 specific, therapeutic activities, including, but not limited to,
92 physical, cognitive, and social activities appropriate for the
93 ADRD participant's age, culture, and level of function.

94 (c) Maintain at all times a minimum staff-to-participant
95 ratio of one staff member who provides direct services for every
96 five ADRD participants.

97 (d) Provide ADRD participants with a program for
98 therapeutic activity at least 70 percent of the time that the
99 center is open.

100 (e) Provide ADRD participants with hands-on assistance
101 with activities of daily living, inclusive of the provision of
102 urinary and bowel incontinence care.

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103 (f) Use assessment tools that identify the ADRD
104 participant's cognitive deficits and identify the specialized
105 and individualized needs of the ADRD participant and the
106 caregiver. This assessment shall be conducted when the ADRD
107 participant is initially admitted into the center and shall be
108 updated when the ADRD participant experiences a significant
109 change, but no less frequently than annually.

110 (g) Create an individualized plan of care for each ADRD
111 participant which addresses the identified, dementia-specific
112 needs of the ADRD participant and the caregiver. The plan of
113 care shall be established when the ADRD participant is initially
114 admitted into the center and reviewed at least quarterly.

115 (h) Conduct a monthly health assessment of each ADRD
116 participant which includes, but is not limited to, the ADRD
117 participant's weight, vital signs, and level of assistance
118 needed with activities of daily living.

119 (i) Complete a monthly update in each ADRD participant's
120 file regarding the ADRD participant's status or progress toward
121 meeting the goals indicated on the individualized plan of care.

122 (j) Assist in the referral or coordination of other
123 dementia-specific services and resources needed by the ADRD
124 participant or the caregiver, such as medical services,
125 counseling, medical planning, legal planning, financial
126 planning, safety and security planning, disaster planning,
127 driving assessment, transportation coordination, or wandering
128 prevention.

129 (k) Offer, facilitate, or provide referrals to a support
130 group for persons who are caregivers to ADRD participants.

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131 (1) Provide dementia-specific educational materials
132 regularly to ADRD participants, as appropriate, and their
133 caregivers.

134 (m) Routinely conduct and document a count of all ADRD
135 participants present in the center throughout each day. This
136 count must be compared to each ADRD participant's attendance
137 record in order to ensure that an ADRD participant is not
138 missing from the center.

139 (n) Be a secured unit or have working alarm or security
140 devices installed on every door that is accessible to the ADRD
141 participant and provides egress from the center or areas of the
142 center designated for the provision of adult day care -
143 specialized Alzheimer's services.

144 (o) Not allow an ADRD participant to administer his or her
145 own medication.

146 (p) Condition the ADRD participant's eligibility for
147 admission on whether the ADRD participant has a coordinated mode
148 of transportation to and from the adult day care center, to
149 ensure that the participant does not drive to or from the
150 center.

151 (5) (a) The operator of an adult day care center having a
152 license designated under this section, and the operator's
153 designee, as applicable, hired on or after July 1, 2012, shall:

154 1. Have at least a bachelor's degree in health care
155 services, social services, or a related field, 1 year of staff
156 supervisory experience in a social services or health care
157 services setting, and a minimum of 1 year of experience in
158 providing services to persons who have dementia;

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159 2. Be a registered or practical nurse licensed in this
160 state, have 1 year of staff supervisory experience in a social
161 services or health care services setting, and have a minimum of
162 1 year of experience in providing services to persons who have
163 dementia; or

164 3. Have 5 years of staff supervisory experience in a
165 social services or health care services setting and a minimum of
166 3 years of experience in providing services to persons who have
167 dementia.

168 (b) The owner must sign an affidavit under penalty of
169 perjury stating that he or she has verified that the operator,
170 and the operator's designee, if any, has completed the education
171 and experience requirements of this subsection.

172 (6) (a) An adult day care center having a license
173 designated under this section must provide the following staff
174 training and supervision:

175 1. A registered nurse or licensed practical nurse must be
176 on site daily for at least 75 percent of the time that the
177 center is open to ADRD participants. Each licensed practical
178 nurse who works at the center must be supervised in accordance
179 with chapter 464.

180 2. Upon beginning employment with the center, each
181 employee must receive and review basic written information about
182 interacting with ADRD participants.

183 3. In addition to the information provided in subparagraph
184 2., every employee hired on or after July 1, 2012, who has
185 direct contact with ADRD participants shall complete 4 hours of
186 dementia-specific training within 3 months after employment.

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187 4. In addition to the requirements of subparagraphs 2. and
188 3., each employee hired on or after July 1, 2012, who provides
189 direct care to ADRD participants shall complete an additional 4
190 hours of dementia-specific training within 6 months after
191 employment.

192 (b) The Department of Elderly Affairs or its designee
193 shall approve the training required under this section. The
194 department shall adopt rules to establish standards for
195 employees who are subject to this training, for trainers, and
196 for the training required in this section.

197 (c) Upon completing any training described in this
198 section, the employee shall be issued a certificate that
199 includes the name of the training provider, the topics covered,
200 and the date and signature of the training provider. The
201 certificate is evidence of completion of training in the
202 identified topics, and the employee is not required to repeat
203 training in those topics if the employee changes employment to a
204 different adult day care center.

205 (d) Each employee hired on or after July 1, 2012, who
206 provides direct care to ADRD participants, must receive and
207 review an orientation plan that includes, at a minimum:

208 1. Procedures to locate an ADRD participant who has
209 wandered from the center. These procedures shall be reviewed
210 regularly with all direct care staff.

211 2. Information on the Silver Alert program in this state.

212 3. Information regarding available products or programs
213 used to identify ADRD participants or prevent them from
214 wandering away from the center, their home, or other locations.

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215 (7) (a) An ADRD participant admitted to an adult day care
216 center having a license designated under this section, or the
217 caregiver when applicable, must:

218 1. Require ongoing supervision to maintain the highest
219 level of medical or custodial functioning and have a
220 demonstrated need for a responsible party to oversee his or her
221 care.

222 2. Not actively demonstrate aggressive behavior that
223 places himself, herself, or others at risk of harm.

224 3. Provide the following medical documentation signed by a
225 licensed physician, licensed physician assistant, or a licensed
226 advanced registered nurse practitioner:

227 a. Any physical, health, or emotional conditions that
228 require medical care.

229 b. A listing of the ADRD participant's current prescribed
230 and over-the-counter medications and dosages, diet restrictions,
231 mobility restrictions, and other physical limitations.

232 4. Provide documentation signed by a health care provider
233 licensed in this state which indicates that the ADRD participant
234 is free of the communicable form of tuberculosis and free of
235 signs and symptoms of other communicable diseases.

236 (b) Before admitting an ADRD participant to an adult day
237 care center that has a license designated under this section,
238 the center shall determine whether:

239 1. The medical, psychological, safety, and behavioral
240 support and intervention required by the ADRD participant can be
241 provided by the center.

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242 2. The resources required to assist with the ADRD
243 participant's acuity level of care and support needed can be
244 provided or coordinated by the center.

245 (8) (a) An ADRD participant's file must include a data
246 sheet, which must be completed within 45 days before or within
247 24 hours after admission to an adult day care center having a
248 license designated under this section. The data sheet must
249 contain:

250 1. Information regarding the status of the ADRD
251 participant's enrollment in an identification or wandering-
252 prevention program, including the name of the program; and

253 2. A current photograph of the ADRD participant.

254 (b) Dementia-specific services shall be documented in the
255 ADRD participant's file.

256 (c) Notes regarding services provided to the ADRD
257 participant must be entered at least monthly in the ADRD
258 participant's file, and must indicate the ADRD participant's
259 status or progress toward achieving identified goals. Additional
260 notes must be entered more frequently if indicated by the ADRD
261 participant's condition.

262 (d) An ADRD participant, or the participant's caregiver,
263 shall annually provide the center with updated medical
264 documentation required under subparagraphs (7) (a)3. and 4., and
265 the center must place that documentation in the ADRD
266 participant's file.

267 (9) An adult day care center having a license designated
268 under this section must give to each person who enrolls as an
269 ADRD participant in the center, or the caregiver, a copy of the

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270 ADRD participant's plan of care, as well as information
271 regarding resources to assist in ensuring the safety and
272 security of the ADRD participant, which must include, but need
273 not be limited to, information pertaining to driving for those
274 persons affected by dementia, available technology on wandering-
275 prevention devices and identification devices, the Silver Alert
276 program in this state, and dementia-specific safety
277 interventions and strategies that can be used in the home
278 setting.

279 (10) If an ADRD participant's enrollment in the center is
280 involuntarily terminated due to medical or behavioral reasons,
281 the center shall coordinate and execute appropriate discharge
282 procedures, to be determined by rule, with the ADRD participant
283 and the caregiver.

284 (11) This section does not prohibit an adult day care
285 center that is licensed pursuant to s. 429.907, and without a
286 designation under this section, from providing adult day care
287 services to persons who have Alzheimer's disease or other
288 dementia-related disorders.

289 (12) The Department of Elderly Affairs may adopt rules to
290 administer this section.

291 Section 3. This act shall take effect July 1, 2012.

292

293

294

T I T L E A M E N D M E N T

295

Remove the entire title and insert:

296

A bill to be entitled

Amendment No. 1

297 An act relating to adult day care centers; amending s.
298 429.917, F.S.; prohibiting an adult day care center
299 from claiming to be licensed or designated as a
300 specialized Alzheimer's services adult day care center
301 under certain circumstances; creating s. 429.918,
302 F.S.; providing a short title; providing definitions;
303 providing for the licensure designation of adult day
304 care centers that provide specialized Alzheimer's
305 services by the Agency for Health Care Administration;
306 providing for the denial or revocation of such
307 designation under certain circumstances; requiring an
308 adult day care center seeking such designation to meet
309 specified criteria; providing educational and
310 experience requirements for the operator of an adult
311 day care center seeking licensure designation as a
312 specialized Alzheimer's services adult day care
313 center; providing criteria for staff training and
314 supervision; requiring the Department of Elderly
315 Affairs to approve the staff training; requiring the
316 department to adopt rules; requiring that the employee
317 be issued a certificate upon completion of the staff
318 training; providing requirements for staff
319 orientation; providing requirements for admission into
320 such an adult day care center; requiring that a
321 participant's file include a data sheet, which shall
322 be completed within a certain timeframe; requiring
323 that certain information be included in the data
324 sheet; requiring that dementia-specific services be

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 529 (2012)

Amendment No. 1

325 documented in a participant's file; requiring that a
326 participant's plan of care be reviewed quarterly;
327 requiring that certain notes be entered into a
328 participant's file; requiring the participant, or
329 caregiver, to provide the adult day care center with
330 updated medical documentation; requiring the center to
331 give each person who enrolls as a participant, or the
332 caregiver, a copy of the participant's plan of care
333 and safety information; requiring that the center
334 coordinate and execute discharge procedures with a
335 participant who has a documented diagnosis of
336 Alzheimer's disease or a dementia-related disorder and
337 the caregiver if the participant's enrollment in the
338 center is involuntarily terminated; providing that the
339 act does not prohibit a licensed adult day care center
340 that does not receive such a designation from
341 providing adult day care services to persons who have
342 Alzheimer's disease or other dementia-related
343 disorders; authorizing the Department of Elderly
344 Affairs to adopt rules; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 621 Nursing Homes and Related Health Care Facilities

SPONSOR(S): Frishe

TIED BILLS: IDEN./SIM. BILLS: SB 482

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee	12 Y, 3 N	Guzzo	Calamas
2) Health Care Appropriations Subcommittee	13 Y, 1 N	Hicks	Pridgeon
3) Health & Human Services Committee		Guzzo <i>GG</i>	Gormley <i>CG</i>

SUMMARY ANALYSIS

Nursing homes and related health care facilities are regulated by the Agency for Health Care Administration (AHCA) under the Health Care Licensing Procedures Act (Act) in part II of chapter 408, F.S., and chapter 400, F.S. The bill streamlines regulations relating to nursing homes and related health care facilities through repeal of obsolete or duplicative provisions and reform of regulations. The bill makes the following changes to current law:

- Clarifies that nursing home residents are excluded from the landlord tenant laws of s. 83.42, F.S.
- Removes language requiring the director of nursing to sign the resident care plan.
- Repeals s. 400.145, F.S., to remove the requirement for nursing home facilities to furnish copies of resident records to the spouse, guardian, surrogate, or attorney of a resident upon receipt of a written request and amends s. 400.191, F.S., to retain language from s. 400.145, F.S., defining the amount a facility may charge for copying resident's records.
- Requires the licensee to maintain clinical records on each resident in accordance with accepted professional standards.
- Repeals s. 400.148, F.S., which created the Medicaid "Up-or-Out" Pilot project to improve the quality of care for Medicaid recipients in nursing homes and assisted living facilities with poor performance records.
- Removes the requirement for nursing home licensure applicants to submit a signed affidavit disclosing financial interest of controlling interest and allows applicants to submit controlling interest information if requested by AHCA.
- Removes duplicative language requiring nursing home applicants to submit data relating to the total number of beds, copies of any civil verdict or judgment involving the applicant rendered within 10 years preceding the application, and a plan for quality assurance and risk management.
- Removes duplicative language that allows AHCA to issue an inactive license to a nursing home for all or a portion of its beds.
- Removes language requiring a facility to be awarded a Gold Seal and have no Class I or Class II deficiencies during the past two years in order to provide other needed services.
- Adds language that outlines detailed requirements for facilities offering respite care.
- Reduces the Class II deficiency fine amount from \$7,500 to \$1,000 for facilities that fail to meet the minimum staffing requirements for two consecutive days.
- Adds language outlining minimum staffing requirements for facilities that provide care for persons under 21 years of age who are medically fragile or require skilled care.
- Removes the requirement for facilities to report grievance data to AHCA at the time of re-licensure and adds language allowing AHCA to review the grievance data during inspections.
- Removes the requirement for facilities to report adverse incidents to AHCA within one day of receiving an adverse incident report. The bill retains the requirement for facilities to submit a report to AHCA within 15 calendar days after an incident is determined to be an adverse incident.
- Removes the requirement for AHCA to adopt rules relating to the implementation of Do Not Resuscitate Orders for nursing home residents. These requirements are already contained in s. 401.45, F.S.
- Amends the definition of remuneration as it relates to home health agencies to allow providers to give away certain novelty items with an individual value of up to \$15.

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

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Nursing Homes

Licensure

Nursing homes are regulated by the Agency for Health Care Administration (AHCA) under the Health Care Licensing Procedures Act (Act) in part II of chapter 408, F.S. The Act contains uniform licensing standards for 29 provider types, including nursing homes, in areas such as licensure application requirements, ownership disclosure, staff background screening, inspections, administrative sanctions, license renewal notices, and bankruptcy and eviction notices.

In addition to the Act, nursing homes must comply with the requirements contained in the individual authorizing statutes of part II of chapter 400, F.S., which includes unique provisions for licensure beyond the uniform criteria. Pursuant to s. 408.832, F.S., in the case of conflict between the Act and an individual authorizing statute, the Act prevails. There are several references in authorizing statutes that conflict with or duplicate provisions in the Act. Chapter 2009-223, L.O.F., made changes to part II of chapter 408, F.S., which supersede components of the specific licensing statutes.

An application for nursing home licensure must include the following:

- A signed affidavit disclosing financial or ownership interest of a nursing home controlling interest in the last five years in any health or residential facility which has closed, filed bankruptcy, has a receiver appointed or an injunction placed against it, or been denied, suspended, or revoked by a regulatory agency.¹
- A plan for quality assurance and risk management.²
- The total number of beds including those certified for Medicare and Medicaid. This information is also required by s. 408.806(1)(d), F.S.
- Copies of any civil verdicts or judgments involving the applicant rendered within the last 10 years.

The bill amends s. 400.071(1)(b), F.S., to remove the requirement for prospective licensees to routinely submit a signed affidavit disclosing financial or ownership interest at the time of licensure and provides AHCA the authority to request the documents if needed.

The bill amends s. 400.071(5), F.S., to remove the requirement for prospective licensees to submit with their applications a plan for quality assurance and for conducting risk management. The plans for quality assurance and risk management are reviewed by AHCA as part of its licensure inspection process.³

The bill amends s. 400.071(1)(c), F.S., to remove to duplicative language requiring prospective licensees to submit the total number of beds including those certified for Medicare and Medicaid at the time of licensure. This information is also required under s. 408.806(1)(d), F.S.

The bill amends s. 400.071(1)(e), F.S., to remove the requirement for applicants to submit with their applications copies of civil verdicts or judgments involving the applicant rendered within the last 10 years and provides AHCA the authority to request the documents if needed.

¹ SS. 400.071(1)(b), and 400.111, F.S.

² S. 400.071(5), F.S.

³ S. 400.147(11), F.S.

The bill also amends s. 400.0712, F.S., relating to inactive licensure of nursing homes, to remove duplicative language. Inactive licenses may be issued by AHCA to nursing homes for all or a portion of its beds, pursuant to part II of chapter 400, F.S., and s. 400.0712(1), F.S.

Resident Transfer and Discharge

The landlord tenant laws under part II of chapter 83, F.S., apply generally to the rental of a dwelling unit.⁴ Nursing home facilities are governed by the specific transfer and discharge requirements contained in s. 400.0255, F.S, which apply to transfers and discharges that are initiated by the nursing home facility. Facilities are required to provide at least 30 days advance notice of a proposed transfer or discharge to the resident.⁵ The notice must be in writing and must contain all information required by state and federal law, rules, or regulations applicable to Medicaid or Medicare cases.⁶ Residents are entitled to a fair hearing to challenge a facility's proposed transfer or discharge.⁷ The Department of Children and Family Services' Office of Appeals Hearings is tasked with conducting the hearings. A hearing decision must be rendered within 90 days after receipt of request for the hearing.⁸

The bill adds language to clarify that nursing home residents are excluded from the landlord tenant laws found under part II of chapter 83, F.S. The transfer and discharge procedures under s. 400.0255, F.S., govern all transfers and discharges for residents of all facilities licensed under part II of chapter 400, F.S.

Administration and Management

Section 400.021(16), F.S., defines "resident care plan" as a written plan developed, maintained, and reviewed not less than quarterly by a registered nurse, which includes a comprehensive assessment of the needs of an individual resident. The resident care plan is required to be signed by the director of nursing or another registered nurse employed by the facility.

Section 400.145, F.S., requires nursing homes to furnish copies of resident records to the spouse, guardian, surrogate, proxy, or attorney of a resident upon receipt of a written request. The frequency of obtaining records and the fee the facility may charge are also defined in this section. Section 400.191, F.S., addresses the availability, distribution, and posting of reports and records. Resident rights are also provided under federal law pursuant to the federal Health Insurance Portability and Accountability Act (HIPAA). Under HIPAA, the resident or the residents' legal representative has the right to access all records, including clinical records, within 24 hours of a written or oral request.⁹ After receipt of his or her records, the resident may purchase photocopies of the records at a cost not to exceed the community standard for photocopies.¹⁰

Section 400.141(1)(j), F.S., requires licensees to maintain full patient records. AHCA Rule 59A-4.118, F.A.C., establishes certain requirements regarding the credentials of nursing home records personnel. Specifically, the rule requires nursing homes to employ or contract with a person who is eligible for certification as a registered record administrator or an accredited record technician by the American Health Information Management Association or is a graduate of a school of medical record science that is accredited jointly by the Council on Medical Education of the American Medical Association and the American Health Information Management Association. AHCA Rule 59A-4.118, F.A.C., was promulgated in 1994 and the credentialing organizations referred to in the rule presently do not exist as listed. There is also no authorizing statute that requires nursing homes to contract with a medical records consultant.

⁴ S. 83.41, F.S.

⁵ S. 400.0255(7), F.S.

⁶ S. 400.0255(8), F.S.

⁷ S. 400.0255(10)(a), F.S.

⁸ S. 400.0255(15), F.S.

⁹ 42 C.F.R. 483.10(b)(2)

¹⁰ *Id.*

Section 400.141(1)(v), F.S., requires facilities to 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. PPV is an infection that is caused by a bacterium and can result in infections of the middle ear, sinus infections, lung infections (pneumonia), blood stream infections, and meningitis.¹¹

The bill removes the requirement that the director of nursing or other administrative nurse sign the resident care plan.

The bill repeals s. 400.145, F.S., relating to copies of medical records. The bill amends s. 400.191, F.S., to retain the language from s. 400.145, F.S., defining the amount a facility may charge for copying resident's records. A resident's right to access clinical records is sufficiently addressed in the HIPAA.

The bill amends s. 400.141(1)(j), F.S., to include federal language regarding maintenance of medical records consistent with federal medical records regulations contained in Title 42, Code of Federal Regulations. Specifically, the federal regulations require nursing homes to maintain medical records in accordance with accepted professional standards and practices that are complete, accurately documented, readily accessible, and systematically organized.¹² The addition of these federal standards will require the repeal of AHCA Rule 59A-4.118, F.A.C., related to the credentials of medical records personnel. Industry estimates indicate an annual savings of \$335,000 to providers as a result of removing the requirement for facilities to secure the consultative services of Medical Records Practitioners.¹³

The bill removes obsolete language requiring facilities to vaccinate residents for PPV within 60 days after the effective date of the act which made this law. The bill retains language that requires new residents to be assessed for PPV within five working days after admission and if needed, vaccinated within 60 days.

Nursing homes are required to maintain records of all grievances, and to report to the agency, upon licensure renewal, various data regarding those grievances.¹⁴ The bill retains the requirement for nursing homes to maintain all grievance records, but removes the requirement that nursing homes report the grievance information at the time of relicensure. The bill requires nursing homes to maintain a report, subject to inspection by AHCA, of the total number of grievances handled.

Inspections and Deficiencies

Under s. 408.813, F.S., which provides the general licensure standards for all facilities regulated by AHCA, nursing homes may be subject to administrative fines imposed by the AHCA for certain types of violations. Each violation is classified according to the nature of the violation and the gravity of its probable effect on facility residents:

- Class "I" violations are those conditions or occurrences related to the operation and maintenance of a provider or to the care of clients, which AHCA determines present an imminent danger to the clients of the provider or a substantial probability that death or serious physical or emotional harm would occur. The condition or practice constituting a Class I violation must be abated or eliminated within 24 hours, unless a fixed period, as determined by AHCA, is required for correction. AHCA must impose an administrative fine for a cited Class I violation, notwithstanding the correction of the violation.
- Class "II" violations are those conditions or occurrences related to the operation and maintenance of a provider or to the care of clients which AHCA determines directly threaten the physical or emotional health, safety, or security of the clients, other than Class I violations. AHCA must impose an administrative fine, notwithstanding the correction of the violation.

¹¹ See Vaccines & Immunizations, Pneumococcal Disease Q&A, Department of Health and Human Services, Centers for Disease Control and Prevention, available at <http://www.cdc.gov/vaccines/vpd-vac/pneumo/dis-faqs.htm> (last viewed January 9, 2012).

¹² 42 C.F.R. 483.75

¹³ AHCA, *Staff Analysis and Economic Impact, House Bill Number 621* (January 10, 2012).

¹⁴ S. 400.1183(2), F.S.

- Class “III” violations are those conditions or occurrences related to the operation and maintenance of a provider or to the care of clients which AHCA determines indirectly or potentially threaten the physical or emotional health, safety, or security of clients, other than Class I or Class II violations. AHCA must impose an administrative fine and a citation for a Class III violation, which must specify the time within which the violation is required to be corrected. If a Class III violation is corrected within the time specified, a fine may not be imposed.
- Class “IV” violations are those conditions or occurrences related to the operation and maintenance of a provider or to required reports, forms, or documents that do not have the potential of negatively affecting clients. These violations are of a type that the AHCA determines do not threaten the health, safety, or security of clients. AHCA must impose an administrative fine and a citation for a Class IV violation, which must specify the time within which the violation is required to be corrected. If a Class IV violation is corrected within the time specified, a fine may not be imposed.

Section 400.19(3), F.S., requires AHCA to conduct at least one unannounced inspection every 15 months of nursing home facilities to determine compliance relating to quality and adequacy of care. If a deficiency is cited, AHCA must conduct a subsequent inspection to determine if the deficiency identified during inspection has been corrected. If the cited deficiency is a Class III or Class IV deficiency, AHCA may verify the correction without re-inspecting the facility if adequate written documentation has been received from the facility ensuring that the deficiency has been corrected. However, the Class III or IV deficiency must be unrelated to resident rights or resident care.¹⁵

The bill amends s. 400.19, F.S., to remove the requirement that Class III or Class IV deficiencies must be unrelated to resident rights or resident care in order for AHCA to be able to verify that the deficiency has been corrected without re-inspecting the facility. As a result, this section of law will be more consistent with federal nursing home regulations, which allow facilities to submit documentation of corrected deficiencies if the existing deficiencies do not jeopardize the health and safety of patients nor limit the facility’s capacity to render adequate care.¹⁶

Staffing Requirements

Nursing homes must comply with staff-to-resident ratios requirements. Under s. 400.141(1)(o), F.S., nursing homes are required to semiannually submit to AHCA 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. The ratio must be reported as an average of the most recent calendar quarter. Staff turnover must be reported for the most recent 12-month period. 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.

If a nursing home fails to comply with minimum staffing requirements for two consecutive days, the facility must cease new admissions until the staffing ratio has been achieved for six consecutive days. Failure to self-impose this moratorium on admissions results in a Class II deficiency cited by AHCA. All other citations for a Class II deficiency represent current ongoing non-compliance that AHCA determines has compromised a resident’s ability to maintain or reach his or her highest practicable physical, mental, and psychosocial well-being. Use of the Class II deficiency for a failure to cease admissions is an inconsistent use of a “Class II” deficiency in comparison to all other violations. No nursing homes were cited for this violation in 2011.¹⁷

The bill removes the requirements under s. 400.141(1)(o), F.S., for reporting staff-to-resident ratio information semiannually to AHCA.

¹⁵ S. 400.19(3), F.S.

¹⁶ 42 C.F.R. 488.28.

¹⁷ AHCA, *Staff Analysis and Economic Impact, House Bill Number 621* (December 20, 2011).

The bill modifies the penalty for nursing homes that fail to self-impose an admissions moratorium for insufficient staffing to a fine of \$1,000 instead of a Class II deficiency.

Pediatric Staffing Requirements

Section 400.23(5), F.S., requires AHCA, in collaboration with the Division of Children's Medical Services within the Department of Health (DOH), to adopt rules for minimum standards of care for persons under 21 years of age who reside in nursing home facilities. In 1997, Rule 59A-4.1295, F.A.C., was adopted to provide these additional standards of care for pediatric nursing homes which consist of the following:

- For residents who require **skilled care**, each nursing home must provide an average of 3.5 hours of nursing care per patient per day. A maximum of 1.5 hours may be provided by a certified nursing assistant (CNA), and no less than 1 hour of care must be provided by a licensed nurse.
- For residents who are **fragile**, each nursing home must provide an average of 5 hours of direct care per patient per day. A maximum of 1.5 hours of care may be provided by a CNA, and no less than 1.7 hours of care must be provided by a licensed nurse.

Section 400.23(3)(a), F.S., establishes general nursing home staffing standards. Until 2001, s. 400.23(3)(a) did not require a minimum number of licensed nurses or certified nursing assistants. When Rule 59A-4.1295, F.A.C., was adopted in 1997, it was in compliance with s. 400.23(3)(a), F.S., because there were no minimum staffing standards required in the statute at that time. However, the minimum staffing requirements in s. 400.23(3)(a), F.S., have changed since the rule language above was adopted.

In 2001, s. 400.23(3)(a), F.S., was amended to include a minimum staffing standard, which is still in effect today. Currently, s. 400.23(3)(a), F.S., establishes general nursing home staffing standards and requires at least 3.6 hours of licensed nursing and CNA direct care per resident per day. Minimums of 2.5 hours of direct care by a CNA and 1 hour of direct care by a licensed nurse are required. The minimum staffing requirements for pediatric nursing homes in Rule 59A-4.1295, F.A.C., are inconsistent with those required for general nursing homes in s. 400.23(3)(a), F.S. The rule limits CNA care to no more than 1.5 hours per day for both fragile and skilled patients, while the statute allows a minimum of 2.5 hours of CNA care per day.

The bill requires AHCA and the Children's Medical Services Network to adopt rules for minimum staffing requirements for nursing homes that serve individuals less than 21 years of age. Further, the bill provides that these rules are to apply in lieu of the standards contained in s. 400.23(3)(a), F.S. The staffing requirements are as follows:

- For individuals under age 21 who require **skilled care**, each nursing home facility must provide a minimum combined average of licensed nurses, respiratory therapists, and certified nursing assistants of 3.9 hours of direct care per resident per day.
- For individuals under age 21 who are **fragile**, each nursing home must include a minimum combined average of licensed nurses, respiratory therapists, and certified nursing assistances of 5.0 hours of direct care per resident per day.

Current General 400.23(3)(a)	Current Pediatric Skilled 59A-4.1295(8)(a)	HB 621 Pediatric Skilled	Current Pediatric Medically Fragile 59A-4.1295(8)(b)	HB 621 Pediatric Medically Fragile
Nurse – 1 hr.	Nurse – 1 hr. minimum	3.9 hrs.	Nurse – 1.7 hrs. minimum	5 hrs.
CNAs – 2.5 hrs. minimum	CNAs – 1.5 hrs. maximum	Can be all CNAs	CNAs – 1.5 hrs. maximum	Can be all CNAs

Do Not Resuscitate Orders

Section 400.142, F.S., requires AHCA to develop rules relating to implementation of do not resuscitate orders (DNRs) for nursing home residents. Criteria for DNRs are found in s. 401.45, F.S., which allows for emergency pre-hospital treatment to be provided by any licensee and provides that resuscitation may be withheld from a patient by an emergency medical technician (EMT) or paramedic if evidence of a DNR is presented.¹⁸ Section 401.45, F.S., also provides rule-making authority to DOH to implement this section and requires DOH, in consultation with the Department of Elderly Affairs and AHCA, to develop a standardized DNR identification system with devices that signify, when carried or worn, that the patient has been issued an order not to administer cardiopulmonary resuscitation by a physician.¹⁹

DOH developed Rule 64J-2.018, F.A.C., which became effective October, 1 2008, while AHCA has yet to promulgate any rules relating to the implementation of DNRs. Rule 64J-2.018, F.A.C., provides the following:²⁰

- An EMT or paramedic must withhold or withdraw cardiopulmonary resuscitation if presented with an original or completed copy of DH Form 1896 (Florida DNR Form).
- The DNR Order form must be printed on yellow paper and have the words “DO NOT RESUSCITATE ORDER” printed in black.
- A patient identification device is a miniature version of DH Form 1896 and is a voluntary device intended to provide convenient and portable DNR order form.
- The DNR order form and patient identification device must be signed by the patient’s physician.
- An EMT or paramedic must verify the identity of the patient in possession of the DNR order form or patient identification device by means of the patient’s driver license or a witness in the presence of the patient.
- During transport, the EMT must ensure that a copy of the DNR order form or the patient identification device accompanies the live patient.
- A DNR may be revoked at any time by the patient.

The bill removes the requirement for AHCA to promulgate rules related to the implementation of DNRs for nursing home residents. This requirement appears to be duplicative of DOH rulemaking authority in s. 401.45(5), F.S.

Internal Risk Management and Quality Assurance Program

Sections 400.147(10) and 400.0233, F.S., require nursing homes to report civil notices of intent to litigate and civil complaints filed with clerks of courts by a resident or representative of a resident. This information has been used to produce the Semi-Annual Report on Nursing Homes required by s. 400.195, F.S. However, s. 400.195, F.S., was repealed in 2010.

¹⁸ S. 401.45, F.S.

¹⁹ Id.

²⁰ Florida Department of Health Rule 64J-2.018, F.A.C.

Section 400.147(7), F.S., requires nursing homes to initiate an investigation and notify AHCA within one business day after the risk manager has received an incident report. The notification must be made in writing and be provided electronically, by facsimile device or overnight mail delivery.

The bill eliminates the requirement to report notices of intent to litigate and civil complaints. The bill also eliminates the requirement that nursing homes notify AHCA in writing when they initiate an investigation. However, providers must still initiate their own evaluation within one day. A full report is also still required to be sent to AHCA within 15 calendar days if the incident is determined to be an adverse incident.

Respite Care

Section 400.141(1)(f), F.S., allows nursing homes to provide respite care for people needing short-term or temporary nursing home services. Only nursing homes with standard licensure status with no Class I or Class II deficiencies in the past two years or having Gold Seal status may provide respite services. AHCA is authorized to promulgate rules for the provision of respite services.

The bill amends s. 400.141, F.S., to expand the ability of nursing homes to provide respite services not exceeding 60 days per year and individual stays may not exceed 14 days. The bill allows all licensed nursing homes to provide respite services without limitations based on prior deficiencies. The bill provides additional criteria for the provision of respite services. For each patient, the nursing home must:

- Have an abbreviated plan of care for each respite patient, covering nutrition, medication, physician orders, nursing assessments and dietary preferences;
- Have a contract that covers the services to be provided;
- Ensure patient release to the proper person; and
- Assume the duties of the patient's primary caregiver.

The bill provides that respite patients are exempt from discharge planning requirements, allowed to use his or her personal medication with a physician's order, and covered by the resident rights as delineated in s. 400.022, F.S., except those related to transfer, choice of physician, bed reservation policies, and discharge challenges. The bill requires prospective respite patients to provide certain medical information to the nursing home and entitles the patient to retain his or her personal physician.

"Up-or-Out" Program

The Medicaid "Up-or-Out" Quality of Care Contract Management Program authorized in s. 400.148, F.S., was created as a pilot program in 2001. The purpose of the program was to improve care in poor performing nursing homes and assisted living facilities by assigning trained medical personnel to facilities in select counties similar to Medicare models for managing the medical and supportive-care needs of long-term nursing home residents. The pilot was subject to appropriation; however, an appropriation was not allocated. Therefore, the program was never implemented.

Since the enactment of s. 400.148, F.S., new resources have become available to provide information relating to facility performance and to help consumers make informed choices for care. The nursing home guide is an available resource to assist consumers in finding quality care by allowing them to compare facilities' performance ratings.²¹ Consumers can also view a facility's "statement of deficiencies" online, which displays violations of regulations found during an inspection or investigation.²²

The bill repeals the Medicaid Up-or-Out Pilot Quality of Care Contract Management Program.

²¹ Florida's *Nursing Home Guide* available at <http://www.floridahealthfinder.gov/index.html> (last viewed January 9, 2012).

²² Agency for Health Care Administration, *Public Records Search, Statement of Deficiencies and Final Orders* available at [http://apps.ahca.myflorida.com/dm_web/\(S\(m0lde3n51dftvokbz23ycn5p\)\)/default.aspx](http://apps.ahca.myflorida.com/dm_web/(S(m0lde3n51dftvokbz23ycn5p))/default.aspx) (last viewed January 9, 2012).

Home Health Agencies

Section 400.174(6), F.S., requires AHCA to deny, revoke, or suspend the license of a home health agency and impose a fine of \$5,000 against a home health agency that:

- Gives remuneration for staffing services;
- Gives remuneration to an individual who is involved in the facilities discharge planning process;
- Gives cash, or its equivalent, to a Medicare or Medicaid beneficiary;
- Gives remuneration to a physician, member of the physician's staff, or an immediate family member of the physician without a medical director contract being in effect;

Section 400.462(27), F.S., defines "remuneration", as it relates to home health agencies, as any payment or other benefit made directly or indirectly, overtly or covertly, in cash or in kind. The bill amends the definition of remuneration to help clarify what is meant by remuneration as used in s. 400.174(6), F.S. The new language clarifies that the term remuneration does not apply to novelty items that have an individual value of up to \$15, provided the item is intended solely for presentation or is customarily given away for promotional, recognition, or advertising purposes. According to AHCA, this language should result in fewer complaints from home health agencies relating to other home health agencies that give items of minimal cost to advertise or promote their business.²³

B. SECTION DIRECTORY:

Section 1: Amends s. 83.42, F.S., relating to nursing home resident transfer.

Section 2: Amends s. 400.021, F.S., relating to nursing home resident care plans.

Section 3: Amends s. 400.0234, F.S. relating to availability of facility records for investigation of resident's rights violations and defenses.

Section 4: Amends s. 400.0239, F.S., relating to the quality of long-term care facility improvement trust fund.

Section 5: Amends s. 400.0255, F.S., relating to requirements for resident transfers and discharges.

Section 6: Amends s. 400.063, F.S., relating to resident protection.

Section 7: Amends s. 400.071, F.S., relating to application for licensure.

Section 8: Amends s. 400.0712, F.S., relating to inactive licensure.

Section 9: Amends s. 400.111, F.S., relating to disclosure of controlling interests.

Section 10: Amends s. 400.1183, F.S., relating to resident grievance procedures.

Section 11: Amends s. 400.141, F.S., relating to the administration and management of nursing home facilities.

Section 12: Amends s. 400.142, F.S., relating to emergency medication kits and orders not to resuscitate.

Section 13: Repeals s. 400.145, F.S., relating to records of care and treatment of residents; copies to be furnished.

Section 14: Amends s. 400.147, F.S., relating to the internal risk management and quality assurance program.

Section 15: Repeals s. 400.148, F.S., relating to Medicaid "Up-or-Out" quality of care contract management program.

Section 16: Amends s. 400.19, F.S., relating to the right of entry and inspection.

Section 17: Amends s. 400.191, F.S., relating to the availability, distribution, and posting of reports and records.

Section 18: Amends s. 400.23, F.S., relating to rules, evaluation and deficiencies and licensure status.

Section 19: Amends s. 400.462, F.S., relating to home health agency remuneration.

Section 20: Amends s. 429.294, F.S., relating to the availability of facility records for investigation of resident's rights, violations and penalties.

Section 21: Amends s. 430.80, F.S., relating to the implementation of a teaching nursing home pilot project.

²³ AHCA, *Staff Analysis and Economic Impact, House Bill Number 621* (December 20, 2011).

Section 22: Amends s. 430.81, F.S., relating to the implementation of a teaching agency for home and community based care.

Section 23: Amends s. 651.118, F.S., relating to the Agency for Health Care Administration; certificates of need; sheltered beds; and community beds.

Section 24: Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill is expected to result in estimated savings to providers of \$335,000 annually. The savings are the result of the elimination of rules regarding securing the services of a qualified Medical Records Practitioner on a consultation basis who is eligible for certification as a Registered Record Administrator or Accredited Records Technician. This savings is based upon an estimate that approximately 335 nursing homes spend \$1,000 annually to hire a consultant to meet this requirement.²⁴

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides appropriate rulemaking authority to the Agency for Health Care Administration to implement the provisions of the proposed legislation.

²⁴ AHCA, *Staff Analysis and Economic Impact, House Bill Number 621 (January 10, 2012)*.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to nursing homes and related health
 3 care facilities; amending s. 83.42, F.S.; clarifying
 4 that the transfer and discharge of facility residents
 5 are governed by nursing home law; amending s. 400.021,
 6 F.S.; deleting a requirement that a resident care plan
 7 be signed by certain persons; amending ss. 400.0234
 8 and 400.0239, F.S.; conforming provisions to changes
 9 made by the act; amending s. 400.0255, F.S.; revising
 10 provisions relating to hearings on resident transfer
 11 or discharge; amending s. 400.063, F.S.; deleting an
 12 obsolete cross-reference; amending s. 400.071, F.S.;
 13 deleting provisions requiring a license applicant to
 14 submit a signed affidavit relating to financial or
 15 ownership interests, the number of beds, copies of
 16 civil verdicts or judgments involving the applicant,
 17 and a plan for quality assurance and risk management;
 18 amending s. 400.0712, F.S.; revising provisions
 19 relating to the issuance of inactive licenses;
 20 amending s. 400.111, F.S.; providing that a licensee
 21 must provide certain information relating to financial
 22 or ownership interests if requested by the Agency for
 23 Health Care Administration; amending s. 400.1183,
 24 F.S.; revising requirements relating to facility
 25 grievance reports; amending s. 400.141, F.S.; revising
 26 provisions relating to the provision of respite care
 27 in a facility; deleting requirements for the
 28 submission of certain reports to the agency relating

29 to ownership interests, staffing ratios, and
 30 bankruptcy; deleting an obsolete provision; amending
 31 s. 400.142, F.S.; deleting the agency's authority to
 32 adopt rules relating to orders not to resuscitate;
 33 repealing s. 400.145, F.S., relating to resident
 34 records; amending s. 400.147, F.S.; revising
 35 provisions relating to incident reports; deleting
 36 certain reporting requirements; repealing s. 400.148,
 37 F.S., relating to the Medicaid "Up-or-Out" Quality of
 38 Care Contract Management Program; amending s. 400.19,
 39 F.S.; revising provisions relating to agency
 40 inspections; amending s. 400.191, F.S.; authorizing
 41 the facility to charge a fee for copies of resident
 42 records; amending s. 400.23, F.S.; specifying the
 43 content of rules relating to staffing requirements for
 44 residents under 21 years of age; amending s. 400.462,
 45 F.S.; revising the definition of "remuneration" to
 46 exclude items having a value of \$10 or less; amending
 47 ss. 429.294, 430.80, 430.81, and 651.118, F.S.;
 48 conforming cross-references; providing an effective
 49 date.

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

53 Section 1. Subsection (1) of section 83.42, Florida
 54 Statutes, is amended to read:

55 83.42 Exclusions from application of part.—This part does
 56 not apply to:

57 (1) Residency or detention in a facility, whether public
 58 or private, where ~~when~~ residence or detention is incidental to
 59 the provision of medical, geriatric, educational, counseling,
 60 religious, or similar services. For residents of a facility
 61 licensed under part II of chapter 400, the procedures provided
 62 under s. 400.0255 govern all transfers or discharges from such
 63 facilities.

64 Section 2. Subsection (16) of section 400.021, Florida
 65 Statutes, is amended to read:

66 400.021 Definitions.—When used in this part, unless the
 67 context otherwise requires, the term:

68 (16) "Resident care plan" means a written plan developed,
 69 maintained, and reviewed at least ~~not less than~~ quarterly by a
 70 registered nurse, with participation from other facility staff
 71 and the resident or his or her designee or legal representative,
 72 which includes a comprehensive assessment of the needs of an
 73 individual resident; the type and frequency of services required
 74 to provide the necessary care for the resident to attain or
 75 maintain the highest practicable physical, mental, and
 76 psychosocial well-being; a listing of services provided within
 77 or outside the facility to meet those needs; and an explanation
 78 of service goals. ~~The resident care plan must be signed by the~~
 79 ~~director of nursing or another registered nurse employed by the~~
 80 ~~facility to whom institutional responsibilities have been~~
 81 ~~delegated and by the resident, the resident's designee, or the~~
 82 ~~resident's legal representative. The facility may not use an~~
 83 ~~agency or temporary registered nurse to satisfy the foregoing~~
 84 ~~requirement and must document the institutional responsibilities~~

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85 ~~that have been delegated to the registered nurse.~~

86 Section 3. Subsection (1) of section 400.0234, Florida
87 Statutes, is amended to read:

88 400.0234 Availability of facility records for
89 investigation of resident's rights violations and defenses;
90 penalty.—

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

99 Section 4. Paragraph (g) of subsection (2) of section
100 400.0239, Florida Statutes, is amended to read:

101 400.0239 Quality of Long-Term Care Facility Improvement
102 Trust Fund.—

103 (2) Expenditures from the trust fund shall be allowable
104 for direct support of the following:

105 (g) Other initiatives authorized by the Centers for
106 Medicare and Medicaid Services for the use of federal civil
107 monetary penalties, ~~including projects recommended through the~~
108 ~~Medicaid "Up or Out" Quality of Care Contract Management Program~~
109 ~~pursuant to s. 400.148.~~

110 Section 5. Subsection (15) of section 400.0255, Florida
111 Statutes, is amended to read:

112 400.0255 Resident transfer or discharge; requirements and

113 procedures; hearings.-

114 (15)~~(a)~~ The department's Office of Appeals Hearings shall
 115 conduct hearings requested under this section.

116 (a) The office shall notify the facility of a resident's
 117 request for a hearing.

118 (b) The department shall, by rule, establish procedures to
 119 be used for ~~fair~~ hearings requested by residents. The ~~These~~
 120 procedures must ~~shall~~ be equivalent to the procedures used for
 121 ~~fair~~ hearings for other Medicaid cases brought pursuant to s.
 122 409.285 and applicable rules, chapter 10-2, part VI, Florida
 123 ~~Administrative Code~~. The burden of proof must be clear and
 124 convincing evidence. A hearing decision must be rendered within
 125 90 days after receipt of the request for hearing.

126 (c) If the hearing decision is favorable to the resident
 127 who has been transferred or discharged, the resident must be
 128 readmitted to the facility's first available bed.

129 (d) The decision of the hearing officer is ~~shall be~~ final.
 130 Any aggrieved party may appeal the decision to the district
 131 court of appeal in the appellate district where the facility is
 132 located. Review procedures shall be conducted in accordance with
 133 the Florida Rules of Appellate Procedure.

134 Section 6. Subsection (2) of section 400.063, Florida
 135 Statutes, is amended to read:

136 400.063 Resident protection.-

137 (2) The agency ~~is authorized to establish for each~~
 138 ~~facility~~, subject to intervention by the agency, may establish a
 139 separate bank account for the deposit to the credit of the
 140 agency of any moneys received from the Health Care Trust Fund or

141 any other moneys received for the maintenance and care of
 142 residents in the facility, and may ~~the agency is authorized to~~
 143 disburse moneys from such account to pay obligations incurred
 144 for the purposes of this section. The agency may ~~is authorized~~
 145 ~~to~~ requisition moneys from the Health Care Trust Fund in advance
 146 of an actual need for cash on the basis of an estimate by the
 147 agency of moneys to be spent under the authority of this
 148 section. A ~~Any~~ bank account established under this section need
 149 not be approved in advance of its creation as required by s.
 150 17.58, but must ~~shall~~ be secured by depository insurance equal
 151 to or greater than the balance of such account or by the pledge
 152 of collateral security ~~in conformance with criteria established~~
 153 ~~in s. 18.11~~. The agency shall notify the Chief Financial Officer
 154 of an ~~any such~~ account so established and ~~shall~~
 155 accounting to the Chief Financial Officer for all moneys
 156 deposited in such account.

157 Section 7. Subsections (1) and (5) of section 400.071,
 158 Florida Statutes, are amended to read:

159 400.071 Application for license.—

160 (1) In addition to the requirements of part II of chapter
 161 408, the application for a license must ~~shall~~ be under oath and
 162 ~~must~~ contain the following:

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

166 ~~(b) A signed affidavit disclosing any financial or~~
 167 ~~ownership interest that a controlling interest as defined in~~
 168 ~~part II of chapter 408 has held in the last 5 years in any~~

169 ~~entity licensed by this state or any other state to provide~~
 170 ~~health or residential care which has closed voluntarily or~~
 171 ~~involuntarily; has filed for bankruptcy; has had a receiver~~
 172 ~~appointed; has had a license denied, suspended, or revoked; or~~
 173 ~~has had an injunction issued against it which was initiated by a~~
 174 ~~regulatory agency. The affidavit must disclose the reason any~~
 175 ~~such entity was closed, whether voluntarily or involuntarily.~~

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

178 (b)-(d) Information relating to the applicant and employees
 179 which the agency requires by rule. The applicant must
 180 demonstrate that sufficient numbers of qualified staff, by
 181 training or experience, will be employed to properly care for
 182 the type and number of residents who will reside in the
 183 facility.

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

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

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197 Section 8. Section 400.0712, Florida Statutes, is amended
 198 to read:

199 400.0712 ~~Application for~~ Inactive license.—

200 ~~(1) As specified in this section, the agency may issue an~~
 201 ~~inactive license to a nursing home facility for all or a portion~~
 202 ~~of its beds. Any request by a licensee that a nursing home or~~
 203 ~~portion of a nursing home become inactive must be submitted to~~
 204 ~~the agency in the approved format. The facility may not initiate~~
 205 ~~any suspension of services, notify residents, or initiate~~
 206 ~~inactivity before receiving approval from the agency; and a~~
 207 ~~licensee that violates this provision may not be issued an~~
 208 ~~inactive license.~~

209 (1)(2) In addition to the powers granted under part II of
 210 chapter 408, the agency may issue an inactive license for a
 211 portion of the total beds of ~~to~~ a nursing home facility that
 212 chooses to use an unoccupied contiguous portion of the facility
 213 for an alternative use to meet the needs of elderly persons
 214 through the use of less restrictive, less institutional
 215 services.

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

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

223 (c) A facility ~~Nursing homes~~ that receives ~~receive~~ an
 224 inactive license to provide alternative services may ~~shall~~ not

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225 be given ~~receive~~ preference for participation in the Assisted
 226 Living for the Elderly Medicaid waiver.

227 ~~(2)(3)~~ The agency shall adopt rules ~~pursuant to ss.~~
 228 ~~120.536(1) and 120.54~~ necessary to administer ~~implement~~ this
 229 section.

230 Section 9. Section 400.111, Florida Statutes, is amended
 231 to read:

232 400.111 Disclosure of controlling interest.—In addition to
 233 the requirements of part II of chapter 408, the nursing home
 234 facility, if requested by the agency, licensee shall submit a
 235 signed affidavit disclosing any financial or ownership interest
 236 that a controlling interest has held within the last 5 years in
 237 any entity licensed by the state or any other state to provide
 238 health or residential care which ~~entity~~ has closed voluntarily
 239 or involuntarily; has filed for bankruptcy; has had a receiver
 240 appointed; has had a license denied, suspended, or revoked; or
 241 has had an injunction issued against it which was initiated by a
 242 regulatory agency. The affidavit must disclose the reason such
 243 entity was closed, whether voluntarily or involuntarily.

244 Section 10. Subsection (2) of section 400.1183, Florida
 245 Statutes, is amended to read:

246 400.1183 Resident grievance procedures.—

247 (2) Each nursing home facility shall maintain records of
 248 all grievances and a shall report, subject to agency inspection,
 249 of to the agency at the time of relicensure the total number of
 250 grievances handled ~~during the prior licensure period,~~ a
 251 categorization of the cases underlying the grievances, and the
 252 final disposition of the grievances.

253 Section 11. Section 400.141, Florida Statutes, is amended.
 254 to read:

255 400.141 Administration and management of nursing home
 256 facilities.—

257 (1) A nursing home facility must ~~Every licensed facility~~
 258 ~~shall~~ comply with all applicable standards and rules of the
 259 agency and must ~~shall~~:

260 (a) Be under the administrative direction and charge of a
 261 licensed administrator.

262 (b) Appoint a medical director licensed pursuant to
 263 chapter 458 or chapter 459. The agency may establish by rule
 264 more specific criteria for the appointment of a medical
 265 director.

266 (c) Have available the regular, consultative, and
 267 emergency services of state licensed physicians ~~licensed by the~~
 268 ~~state~~.

269 (d) Provide for resident use of a community pharmacy as
 270 specified in s. 400.022(1)(q). ~~Any other law to the contrary~~
 271 Notwithstanding any other law, a registered pharmacist licensed
 272 in this state who in Florida, ~~that~~ is under contract with a
 273 facility licensed under this chapter or chapter 429 must, ~~shall~~
 274 repackage a nursing facility resident's bulk prescription
 275 medication, which was ~~has been~~ packaged by another pharmacist
 276 licensed in any state, ~~in the United States~~ into a unit dose
 277 system compatible with the system used by the nursing home
 278 facility, if the pharmacist is requested to offer such service.

279 1. In order to be eligible for the repackaging, a resident
 280 or the resident's spouse must receive prescription medication

281 benefits provided through a former employer as part of his or
 282 her retirement benefits, a qualified pension plan as specified
 283 in s. 4972 of the Internal Revenue Code, a federal retirement
 284 program as specified under 5 C.F.R. s. 831, or a long-term care
 285 policy as defined in s. 627.9404(1).

286 2. A pharmacist who correctly repackages and relabels the
 287 medication and the ~~nursing~~ facility that ~~which~~ correctly
 288 administers such repackaged medication ~~under this paragraph~~ may
 289 not be held liable in any civil or administrative action arising
 290 from the repackaging.

291 3. In order to be eligible for the repackaging, a ~~nursing~~
 292 ~~facility~~ resident for whom the medication is to be repackaged
 293 must ~~shall~~ sign an informed consent form provided by the
 294 facility which includes an explanation of the repackaging
 295 process and ~~which~~ notifies the resident of the immunities from
 296 liability provided under ~~in~~ this paragraph.

297 4. A pharmacist who repackages and relabels the
 298 prescription medications, ~~as authorized under this paragraph,~~
 299 may charge a reasonable fee for costs resulting from the
 300 implementation of this provision.

301 (e) Provide ~~for the access of the facility residents with~~
 302 access to dental and other health-related services, recreational
 303 services, rehabilitative services, and social work services
 304 appropriate to their needs and conditions and not directly
 305 furnished by the licensee. If ~~When~~ a geriatric outpatient nurse
 306 clinic is conducted in accordance with rules adopted by the
 307 agency, outpatients attending such clinic may ~~shall~~ not be
 308 counted as part of the general resident population of the

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309 ~~nursing home~~ facility, nor may ~~shall~~ the nursing staff of the
 310 geriatric outpatient clinic be counted as part of the nursing
 311 staff of the facility, until the outpatient clinic load exceeds
 312 15 a day.

313 (f) Be allowed and encouraged by the agency to provide
 314 other needed services under certain conditions. If the facility
 315 has a standard licensure status, ~~and has had no class I or class~~
 316 ~~II deficiencies during the past 2 years or has been awarded a~~
 317 ~~Gold Seal under the program established in s. 400.235,~~ it may be
 318 encouraged ~~by the agency~~ to provide services, including, but not
 319 limited to, respite and adult day services, which enable
 320 individuals to move in and out of the facility. A facility is
 321 not subject to any additional licensure requirements for
 322 providing these services, under the following conditions:-

323 1. Respite care may be offered to persons in need of
 324 short-term or temporary nursing home services, if for each
 325 person admitted under the respite care program, the licensee:-

326 a. Has a contract that, at a minimum, specifies the
 327 services to be provided to the respite resident, and includes
 328 the charges for services, activities, equipment, emergency
 329 medical services, and the administration of medications. If
 330 multiple respite admissions for a single individual are
 331 anticipated, the original contract is valid for 1 year after the
 332 date of execution;

333 b. Has a written abbreviated plan of care that, at a
 334 minimum, includes nutritional requirements, medication orders,
 335 physician assessments and orders, nursing assessments, and
 336 dietary preferences. The physician or nursing assessments may

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337 | take the place of all other assessments required for full-time
 338 | residents; and

339 | c. Ensures that each respite resident is released to his
 340 | or her caregiver or an individual designated in writing by the
 341 | caregiver.

342 | 2. A person admitted under a respite care program is:

343 | a. Covered by the residents' rights set forth in s.
 344 | 400.022(1)(a)-(o) and (r)-(t). Funds or property of the respite
 345 | resident are not considered trust funds subject to s.
 346 | 400.022(1)(h) until the resident has been in the facility for
 347 | more than 14 consecutive days;

348 | b. Allowed to use his or her personal medications for the
 349 | respite stay if permitted by facility policy. The facility must
 350 | obtain a physician's order for the medications. The caregiver
 351 | may provide information regarding the medications as part of the
 352 | nursing assessment which must agree with the physician's order.
 353 | Medications shall be released with the respite resident upon
 354 | discharge in accordance with current physician's orders; and

355 | c. Exempt from rule requirements related to discharge
 356 | planning.

357 | 3. A person receiving respite care is entitled to reside
 358 | in the facility for a total of 60 days within a contract year or
 359 | calendar year if the contract is for less than 12 months.
 360 | However, each single stay may not exceed 14 days. If a stay
 361 | exceeds 14 consecutive days, the facility must comply with all
 362 | assessment and care planning requirements applicable to nursing
 363 | home residents.

364 | 4. The respite resident provided medical information from

365 a physician, physician assistant, or nurse practitioner and
 366 other information from the primary caregiver as may be required
 367 by the facility before or at the time of admission. The medical
 368 information must include a physician's order for respite care
 369 and proof of a physical examination by a licensed physician,
 370 physician assistant, or nurse practitioner. The physician's
 371 order and physical examination may be used to provide
 372 intermittent respite care for up to 12 months after the date the
 373 order is written.

374 5. A person receiving respite care resides in a licensed
 375 nursing home bed.

376 6. The facility assumes the duties of the primary
 377 caregiver. To ensure continuity of care and services, the
 378 respite resident is entitled to retain his or her personal
 379 physician and must have access to medically necessary services
 380 such as physical therapy, occupational therapy, or speech
 381 therapy, as needed. The facility must arrange for transportation
 382 to these services if necessary. Respite care must be provided in
 383 accordance with this part and rules adopted by the agency.
 384 ~~However, the agency shall, by rule, adopt modified requirements~~
 385 ~~for resident assessment, resident care plans, resident~~
 386 ~~contracts, physician orders, and other provisions, as~~
 387 ~~appropriate, for short-term or temporary nursing home services.~~

388 7. The agency allows shall allow for shared programming
 389 and staff in a facility that which meets minimum standards and
 390 offers services pursuant to this paragraph, but, if the facility
 391 is cited for deficiencies in patient care, the agency may
 392 require additional staff and programs appropriate to the needs

393 of service recipients. A person who receives respite care may
 394 not be counted as a resident of the facility for purposes of the
 395 facility's licensed capacity unless that person receives 24-hour
 396 respite care. A person receiving ~~either~~ respite care for 24
 397 hours or longer or adult day services must be included when
 398 calculating minimum staffing for the facility. Any costs and
 399 revenues generated by a ~~nursing home~~ facility from
 400 nonresidential programs or services must ~~shall~~ be excluded from
 401 the calculations of Medicaid per diems for nursing home
 402 institutional care reimbursement.

403 (g) If the facility has a standard license ~~or is a Gold~~
 404 ~~Seal facility~~, exceeds the minimum required hours of licensed
 405 nursing and certified nursing assistant direct care per resident
 406 per day, and is part of a continuing care facility licensed
 407 under chapter 651 or a retirement community that offers other
 408 services pursuant to part III of this chapter or part I or part
 409 III of chapter 429 on a single campus, be allowed to share
 410 programming and staff. At the time of inspection ~~and in the~~
 411 ~~semiannual report required pursuant to paragraph (e)~~, a
 412 continuing care facility or retirement community that uses this
 413 option must demonstrate through staffing records that minimum
 414 staffing requirements for the facility were met. Licensed nurses
 415 and certified nursing assistants who work in the ~~nursing home~~
 416 facility may be used to provide services elsewhere on campus if
 417 the facility exceeds the minimum number of direct care hours
 418 required per resident per day and the total number of residents
 419 receiving direct care services from a licensed nurse or a
 420 certified nursing assistant does not cause the facility to

421 violate the staffing ratios required under s. 400.23(3)(a).
 422 Compliance with the minimum staffing ratios must ~~shall~~ be based
 423 on the total number of residents receiving direct care services,
 424 regardless of where they reside on campus. If the facility
 425 receives a conditional license, it may not share staff until the
 426 conditional license status ends. This paragraph does not
 427 restrict the agency's authority under federal or state law to
 428 require additional staff if a facility is cited for deficiencies
 429 in care which are caused by an insufficient number of certified
 430 nursing assistants or licensed nurses. The agency may adopt
 431 rules for the documentation necessary to determine compliance
 432 with this provision.

433 (h) Maintain the facility premises and equipment and
 434 conduct its operations in a safe and sanitary manner.

435 (i) If the licensee furnishes food service, provide a
 436 wholesome and nourishing diet sufficient to meet generally
 437 accepted standards of proper nutrition for its residents and
 438 provide such therapeutic diets as may be prescribed by attending
 439 physicians. In adopting ~~making~~ rules to implement this
 440 paragraph, the agency shall be guided by standards recommended
 441 by nationally recognized professional groups and associations
 442 with knowledge of dietetics.

443 (j) Keep full records of resident admissions and
 444 discharges; medical and general health status, including medical
 445 records, personal and social history, and identity and address
 446 of next of kin or other persons who may have responsibility for
 447 the affairs of the resident ~~residents~~; and individual resident
 448 care plans, including, but not limited to, prescribed services,

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449 service frequency and duration, and service goals. The records
 450 must ~~shall~~ be open to agency inspection ~~by the agency~~. The
 451 licensee shall maintain clinical records on each resident in
 452 accordance with accepted professional standards and practices,
 453 which must be complete, accurately documented, readily
 454 accessible, and systematically organized.

455 (k) Keep such fiscal records of its operations and
 456 conditions as may be necessary to provide information pursuant
 457 to this part.

458 (l) Furnish copies of personnel records for employees
 459 affiliated with such facility, ~~to any other facility licensed by~~
 460 this state requesting this information pursuant to this part.
 461 Such information contained in the records may include, but is
 462 not limited to, disciplinary matters and reasons ~~any reason~~ for
 463 termination. A ~~Any~~ facility releasing such records pursuant to
 464 this part is ~~shall be~~ considered to be acting in good faith and
 465 may not be held liable for information contained in such
 466 records, absent a showing that the facility maliciously
 467 falsified such records.

468 (m) Publicly display a poster provided by the agency
 469 containing the names, addresses, and telephone numbers for the
 470 state's abuse hotline, the State Long-Term Care Ombudsman, the
 471 Agency for Health Care Administration consumer hotline, the
 472 Advocacy Center for Persons with Disabilities, the Florida
 473 Statewide Advocacy Council, and the Medicaid Fraud Control Unit,
 474 with a clear description of the assistance to be expected from
 475 each.

476 ~~(n) Submit to the agency the information specified in s.~~

477 ~~400.071(1)(b) for a management company within 30 days after the~~
 478 ~~effective date of the management agreement.~~

479 ~~(c)1. Submit semiannually to the agency, or more~~
 480 ~~frequently if requested by the agency, information regarding~~
 481 ~~facility staff-to-resident ratios, staff turnover, and staff~~
 482 ~~stability, including information regarding certified nursing~~
 483 ~~assistants, licensed nurses, the director of nursing, and the~~
 484 ~~facility administrator. For purposes of this reporting:~~

485 ~~a. Staff-to-resident ratios must be reported in the~~
 486 ~~categories specified in s. 400.23(3)(a) and applicable rules.~~
 487 ~~The ratio must be reported as an average for the most recent~~
 488 ~~calendar quarter.~~

489 ~~b. Staff turnover must be reported for the most recent 12-~~
 490 ~~month period ending on the last workday of the most recent~~
 491 ~~calendar quarter prior to the date the information is submitted.~~
 492 ~~The turnover rate must be computed quarterly, with the annual~~
 493 ~~rate being the cumulative sum of the quarterly rates. The~~
 494 ~~turnover rate is the total number of terminations or separations~~
 495 ~~experienced during the quarter, excluding any employee~~
 496 ~~terminated during a probationary period of 3 months or less,~~
 497 ~~divided by the total number of staff employed at the end of the~~
 498 ~~period for which the rate is computed, and expressed as a~~
 499 ~~percentage.~~

500 ~~e. The formula for determining staff stability is the~~
 501 ~~total number of employees that have been employed for more than~~
 502 ~~12 months, divided by the total number of employees employed at~~
 503 ~~the end of the most recent calendar quarter, and expressed as a~~
 504 ~~percentage.~~

505 (n) Comply with state minimum-staffing requirements:
 506 1.d. A ~~nursing~~ facility that has failed to comply with
 507 state minimum-staffing requirements for 2 consecutive days is
 508 prohibited from accepting new admissions until the facility has
 509 achieved the minimum-staffing requirements for ~~a period of 6~~
 510 consecutive days. For the purposes of this subparagraph ~~sub-~~
 511 ~~subparagraph~~, any person who was a resident of the facility and
 512 was absent from the facility for the purpose of receiving
 513 medical care at a separate location or was on a leave of absence
 514 is not considered a new admission. Failure by the facility to
 515 impose such an admissions moratorium is subject to a \$1,000 fine
 516 ~~constitutes a class II deficiency.~~
 517 2.e. A ~~nursing~~ facility that ~~which~~ does not have a
 518 conditional license may be cited for failure to comply with the
 519 standards in s. 400.23(3)(a)1.b. and c. only if it has failed to
 520 meet those standards on 2 consecutive days or if it has failed
 521 to meet at least 97 percent of those standards on any one day.
 522 3.f. A facility that ~~which~~ has a conditional license must
 523 be in compliance with the standards in s. 400.23(3)(a) at all
 524 times.
 525 ~~2. This paragraph does not limit the agency's ability to~~
 526 ~~impose a deficiency or take other actions if a facility does not~~
 527 ~~have enough staff to meet the residents' needs.~~
 528 (o) (p) Notify a licensed physician when a resident
 529 exhibits signs of dementia or cognitive impairment or has a
 530 change of condition in order to rule out the presence of an
 531 underlying physiological condition that may be contributing to
 532 such dementia or impairment. The notification must occur within

533 30 days after the acknowledgment of such signs by facility
 534 staff. If an underlying condition is determined to exist, the
 535 facility shall ~~arrange~~, with the appropriate health care
 536 provider, arrange for the necessary care and services to treat
 537 the condition.

538 (p)~~(q)~~ If the facility implements a dining and hospitality
 539 attendant program, ensure that the program is developed and
 540 implemented under the supervision of the facility director of
 541 nursing. A licensed nurse, licensed speech or occupational
 542 therapist, or a registered dietitian must conduct training of
 543 dining and hospitality attendants. A person employed by a
 544 facility as a dining and hospitality attendant must perform
 545 tasks under the direct supervision of a licensed nurse.

546 ~~(r) Report to the agency any filing for bankruptcy~~
 547 ~~protection by the facility or its parent corporation,~~
 548 ~~divestiture or spin-off of its assets, or corporate~~
 549 ~~reorganization within 30 days after the completion of such~~
 550 ~~activity.~~

551 (q)~~(s)~~ Maintain general and professional liability
 552 insurance coverage that is in force at all times. In lieu of
 553 such ~~general and professional liability insurance~~ coverage, a
 554 state-designated teaching nursing home and its affiliated
 555 assisted living facilities created under s. 430.80 may
 556 demonstrate proof of financial responsibility as provided in s.
 557 430.80(3)(g).

558 (r)~~(t)~~ Maintain in the medical record for each resident a
 559 daily chart of certified nursing assistant services provided to
 560 the resident. The certified nursing assistant who is caring for

561 | the resident must complete this record by the end of his or her
 562 | shift. The ~~This~~ record must indicate assistance with activities
 563 | of daily living, assistance with eating, and assistance with
 564 | drinking, and must record each offering of nutrition and
 565 | hydration for those residents whose plan of care or assessment
 566 | indicates a risk for malnutrition or dehydration.

567 | (s)~~(u)~~ Before November 30 of each year, subject to the
 568 | availability of an adequate supply of the necessary vaccine,
 569 | provide for immunizations against influenza viruses to all its
 570 | consenting residents in accordance with the recommendations of
 571 | the United States Centers for Disease Control and Prevention,
 572 | subject to exemptions for medical contraindications and
 573 | religious or personal beliefs. Subject to these exemptions, any
 574 | consenting person who becomes a resident of the facility after
 575 | November 30 but before March 31 of the following year must be
 576 | immunized within 5 working days after becoming a resident.
 577 | Immunization may ~~shall~~ not be provided to any resident who
 578 | provides documentation that he or she has been immunized as
 579 | required by this paragraph. This paragraph does not prohibit a
 580 | resident from receiving the immunization from his or her
 581 | personal physician if he or she so chooses. A resident who
 582 | chooses to receive the immunization from his or her personal
 583 | physician shall provide proof of immunization to the facility.
 584 | The agency may adopt and enforce any rules necessary to
 585 | administer ~~comply with or implement~~ this paragraph.

586 | (t)~~(v)~~ Assess all residents for eligibility for
 587 | pneumococcal polysaccharide vaccination (PPV) ~~and vaccinate~~
 588 | ~~residents when indicated within 60 days after the effective date~~

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589 ~~of this act in accordance with the recommendations of the United~~
 590 ~~States Centers for Disease Control and Prevention, subject to~~
 591 ~~exemptions for medical contraindications and religious or~~
 592 ~~personal beliefs. Residents admitted after the effective date of~~
 593 ~~this act shall be assessed within 5 working days after of~~
 594 admission and, if ~~when~~ indicated, vaccinate such residents
 595 ~~vaccinated~~ within 60 days in accordance with the recommendations
 596 of the United States Centers for Disease Control and Prevention,
 597 subject to exemptions for medical contraindications and
 598 religious or personal beliefs. Immunization may ~~shall~~ not be
 599 provided to any resident who provides documentation that he or
 600 she has been immunized as required by this paragraph. This
 601 paragraph does not prohibit a resident from receiving the
 602 immunization from his or her personal physician if he or she so
 603 chooses. A resident who chooses to receive the immunization from
 604 his or her personal physician shall provide proof of
 605 immunization to the facility. The agency may adopt and enforce
 606 any rules necessary to administer ~~comply with or implement~~ this
 607 paragraph.

608 (u) ~~(w)~~ Annually encourage and promote to its employees the
 609 benefits associated with immunizations against influenza viruses
 610 in accordance with the recommendations of the United States
 611 Centers for Disease Control and Prevention. The agency may adopt
 612 and enforce any rules necessary to administer ~~comply with or~~
 613 ~~implement~~ this paragraph.

614
 615 This subsection does not limit the agency's ability to impose a
 616 deficiency or take other actions if a facility does not have

617 enough staff to meet residents' needs.

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

623 Section 12. Subsection (3) of section 400.142, Florida
 624 Statutes, is amended to read:

625 400.142 Emergency medication kits; orders not to
 626 resuscitate.—

627 (3) Facility staff may withhold or withdraw
 628 cardiopulmonary resuscitation if presented with an order not to
 629 resuscitate executed pursuant to s. 401.45. ~~The agency shall~~
 630 ~~adopt rules providing for the implementation of such orders.~~
 631 Facility staff and facilities are ~~shall~~ not ~~be~~ subject to
 632 criminal prosecution or civil liability, or ~~nor~~ be considered to
 633 have engaged in negligent or unprofessional conduct, for
 634 withholding or withdrawing cardiopulmonary resuscitation
 635 pursuant to such ~~an order and rules adopted by the agency.~~ The
 636 absence of an order not to resuscitate executed pursuant to s.
 637 401.45 does not preclude a physician from withholding or
 638 withdrawing cardiopulmonary resuscitation as otherwise permitted
 639 by law.

640 Section 13. Section 400.145, Florida Statutes, is
 641 repealed.

642 Section 14. Subsections (7) through (10) of section
 643 400.147, Florida Statutes, are amended, and present subsections
 644 (11) through (15) of that section are redesignated as

645 subsections (9) through (13), respectively, to read:

646 400.147 Internal risk management and quality assurance
647 program.-

648 (7) The nursing home facility shall initiate an
649 investigation ~~and shall notify the agency~~ within 1 business day
650 after the risk manager or his or her designee has received a
651 report pursuant to paragraph (1)(d). The facility must complete
652 the investigation and submit a report to the agency within 15
653 calendar days after an incident is determined to be an adverse
654 incident. ~~The notification must be made in writing and be~~
655 ~~provided electronically, by facsimile device or overnight mail~~
656 ~~delivery.~~ The agency shall develop a form for the report which
657 ~~notification~~ must include the name of the risk manager,
658 information regarding the identity of the affected resident, the
659 type of adverse incident, the initiation of an investigation by
660 the facility, and whether the events causing or resulting in the
661 adverse incident represent a potential risk to any other
662 resident. The report ~~notification~~ is confidential as provided by
663 law and is not discoverable or admissible in any civil or
664 administrative action, except in disciplinary proceedings by the
665 agency or the appropriate regulatory board. The agency may
666 investigate, as it deems appropriate, any such incident and
667 prescribe measures that must or may be taken in response to the
668 incident. The agency shall review each report ~~incident~~ and
669 determine whether it potentially involved conduct by the health
670 care professional who is subject to disciplinary action, in
671 which case the provisions of s. 456.073 shall apply.

672 ~~(8)(a) Each facility shall complete the investigation and~~

673 | ~~submit an adverse incident report to the agency for each adverse~~
 674 | ~~incident within 15 calendar days after its occurrence. If, after~~
 675 | ~~a complete investigation, the risk manager determines that the~~
 676 | ~~incident was not an adverse incident as defined in subsection~~
 677 | ~~(5), the facility shall include this information in the report.~~
 678 | ~~The agency shall develop a form for reporting this information.~~

679 | ~~(b) The information reported to the agency pursuant to~~
 680 | ~~paragraph (a) which relates to persons licensed under chapter~~
 681 | ~~458, chapter 459, chapter 461, or chapter 466 shall be reviewed~~
 682 | ~~by the agency. The agency shall determine whether any of the~~
 683 | ~~incidents potentially involved conduct by a health care~~
 684 | ~~professional who is subject to disciplinary action, in which~~
 685 | ~~case the provisions of s. 456.073 shall apply.~~

686 | ~~(c) The report submitted to the agency must also contain~~
 687 | ~~the name of the risk manager of the facility.~~

688 | ~~(d) The adverse incident report is confidential as~~
 689 | ~~provided by law and is not discoverable or admissible in any~~
 690 | ~~civil or administrative action, except in disciplinary~~
 691 | ~~proceedings by the agency or the appropriate regulatory board.~~

692 | (8)~~(9)~~ Abuse, neglect, or exploitation must be reported to
 693 | the agency as required by 42 C.F.R. s. 483.13(c) and to the
 694 | department as required by chapters 39 and 415.

695 | ~~(10) By the 10th of each month, each facility subject to~~
 696 | ~~this section shall report any notice received pursuant to s.~~
 697 | ~~400.0233(2) and each initial complaint that was filed with the~~
 698 | ~~clerk of the court and served on the facility during the~~
 699 | ~~previous month by a resident or a resident's family member,~~
 700 | ~~guardian, conservator, or personal legal representative. The~~

701 ~~report must include the name of the resident, the resident's~~
 702 ~~date of birth and social security number, the Medicaid~~
 703 ~~identification number for Medicaid-eligible persons, the date or~~
 704 ~~dates of the incident leading to the claim or dates of~~
 705 ~~residency, if applicable, and the type of injury or violation of~~
 706 ~~rights alleged to have occurred. Each facility shall also submit~~
 707 ~~a copy of the notices received pursuant to s. 400.0233(2) and~~
 708 ~~complaints filed with the clerk of the court. This report is~~
 709 ~~confidential as provided by law and is not discoverable or~~
 710 ~~admissible in any civil or administrative action, except in such~~
 711 ~~actions brought by the agency to enforce the provisions of this~~
 712 ~~part.~~

713 Section 15. Section 400.148, Florida Statutes, is
 714 repealed.

715 Section 16. Subsection (3) of section 400.19, Florida
 716 Statutes, is amended to read:

717 400.19 Right of entry and inspection.—

718 (3) The agency shall ~~every 15 months~~ conduct at least one
 719 unannounced inspection every 15 months to determine the
 720 licensee's compliance ~~by the licensee~~ with statutes, and related
 721 ~~with rules promulgated under the provisions of these statutes,~~
 722 governing minimum standards of construction, quality and
 723 adequacy of care, and rights of residents. The survey must ~~shall~~
 724 be conducted every 6 months for the next 2-year period if the
 725 nursing home facility has been cited for a class I deficiency,
 726 has been cited for two or more class II deficiencies arising
 727 from separate surveys or investigations within a 60-day period,
 728 or has had three or more substantiated complaints within a 6-

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729 month period, each resulting in at least one class I or class II
 730 deficiency. In addition to any other fees or fines under ~~in~~ this
 731 part, the agency shall assess a fine for each facility that is
 732 subject to the 6-month survey cycle. The fine for the 2-year
 733 period is ~~shall be~~ \$6,000, one-half to be paid at the completion
 734 of each survey. The agency may adjust this fine by the change in
 735 the Consumer Price Index, based on the 12 months immediately
 736 preceding the increase, to cover the cost of the additional
 737 surveys. The agency shall verify through subsequent inspection
 738 that any deficiency identified during inspection is corrected.
 739 However, the agency may verify the correction of a class III or
 740 class IV deficiency ~~unrelated to resident rights or resident~~
 741 ~~care~~ without reinspecting the facility if adequate written
 742 documentation has been received from the facility, which
 743 provides assurance that the deficiency has been corrected. The
 744 giving or causing to be given of advance notice of such
 745 unannounced inspections by an employee of the agency to any
 746 unauthorized person shall constitute cause for suspension of at
 747 least ~~not fewer than~~ 5 working days according to the provisions
 748 of chapter 110.

749 Section 17. Present subsection (6) of section 400.191,
 750 Florida Statutes, is renumbered as subsection (7), and a new
 751 subsection (6) is added to that section, to read:

752 400.191 Availability, distribution, and posting of reports
 753 and records.—

754 (6) A nursing home facility may charge a reasonable fee
 755 for copying resident records. The fee may not exceed \$1 per page
 756 for the first 25 pages and 25 cents per page for each page in

757 excess of 25 pages.

758 Section 18. Subsection (5) of section 400.23, Florida
759 Statutes, is amended to read:

760 400.23 Rules; evaluation and deficiencies; licensure
761 status.—

762 (5) The agency, in collaboration with the Division of
763 Children's Medical Services of the Department of Health, must,
764 ~~no later than December 31, 1993,~~ adopt rules for:

765 (a) Minimum standards of care for persons under 21 years
766 of age who reside in nursing home facilities. The rules must
767 include a methodology for reviewing a nursing home facility
768 under ss. 408.031-408.045 which serves only persons under 21
769 years of age. A facility may be exempted ~~exempt~~ from these
770 standards for specific persons between 18 and 21 years of age,
771 if the person's physician agrees that minimum standards of care
772 based on age are not necessary.

773 (b) Minimum staffing requirements for each nursing home
774 facility that serves persons under 21 years of age, which apply
775 in lieu of the standards contained in subsection (3).

776 1. For persons under 21 years of age who require skilled
777 care, the requirements must include a minimum combined average
778 of 3.9 hours of direct care per resident per day provided by
779 licensed nurses, respiratory therapists, respiratory care
780 practitioners, and certified nursing assistants.

781 2. For persons under 21 years of age who are medically
782 fragile, the requirements must include a minimum combined
783 average of 5 hours of direct care per resident per day provided
784 by licensed nurses, respiratory therapists, respiratory care

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785 practitioners, and certified nursing assistants.

786 Section 19. Subsection (27) of section 400.462, Florida
787 Statutes, is amended to read:

788 400.462 Definitions.—As used in this part, the term:

789 (27) "Remuneration" means any payment or other benefit
790 made directly or indirectly, overtly or covertly, in cash or in
791 kind. However, if the term is used in any provision of law
792 relating to health care providers, the term does not apply to an
793 item that has an individual value of up to \$15, including, but
794 not limited to, a plaque, a certificate, a trophy, or a novelty
795 item that is intended solely for presentation or is customarily
796 given away solely for promotional, recognition, or advertising
797 purposes.

798 Section 20. Subsection (1) of section 429.294, Florida
799 Statutes, is amended to read:

800 429.294 Availability of facility records for investigation
801 of resident's rights violations and defenses; penalty.—

802 (1) Failure to provide complete copies of a resident's
803 records, including, but not limited to, all medical records and
804 the resident's chart, within the control or possession of the
805 facility within 10 days, ~~is in accordance with the provisions of~~
806 ~~s. 400.145, shall constitute~~ evidence of failure of that party
807 to comply with good faith discovery requirements and waives
808 ~~shall waive~~ the good faith certificate and presuit notice
809 requirements under this part by the requesting party.

810 Section 21. Paragraph (g) of subsection (3) of section
811 430.80, Florida Statutes, is amended to read:

812 430.80 Implementation of a teaching nursing home pilot

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813 project.-

814 (3) To be designated as a teaching nursing home, a nursing
815 home licensee must, at a minimum:

816 (g) Maintain insurance coverage pursuant to s.
817 400.141(1)(g) ~~400.141(1)(s)~~ or proof of financial responsibility
818 in a minimum amount of \$750,000. Such proof of financial
819 responsibility may include:

- 820 1. Maintaining an escrow account consisting of cash or
821 assets eligible for deposit in accordance with s. 625.52; or
- 822 2. Obtaining and maintaining pursuant to chapter 675 an
823 unexpired, irrevocable, nontransferable and nonassignable letter
824 of credit issued by any bank or savings association organized
825 and existing under the laws of this state or any bank or savings
826 association organized under the laws of the United States which
827 ~~that~~ has its principal place of business in this state or has a
828 branch office that ~~which~~ is authorized to receive deposits in
829 this state. The letter of credit shall be used to satisfy the
830 obligation of the facility to the claimant upon presentment of a
831 final judgment indicating liability and awarding damages to be
832 paid by the facility or upon presentment of a settlement
833 agreement signed by all parties to the agreement if ~~when~~ such
834 final judgment or settlement is a result of a liability claim
835 against the facility.

836 Section 22. Paragraph (h) of subsection (2) of section
837 430.81, Florida Statutes, is amended to read:

838 430.81 Implementation of a teaching agency for home and
839 community-based care.-

840 (2) The Department of Elderly Affairs may designate a home

HB 621

2012

841 health agency as a teaching agency for home and community-based
 842 care if the home health agency:

843 (h) Maintains insurance coverage pursuant to s.
 844 400.141(1)(g) ~~400.141(1)(s)~~ or proof of financial responsibility
 845 in a minimum amount of \$750,000. Such proof of financial
 846 responsibility may include:

847 1. Maintaining an escrow account consisting of cash or
 848 assets eligible for deposit in accordance with s. 625.52; or

849 2. Obtaining and maintaining, pursuant to chapter 675, an
 850 unexpired, irrevocable, nontransferable, and nonassignable
 851 letter of credit issued by any bank or savings association
 852 authorized to do business in this state. This letter of credit
 853 shall be used to satisfy the obligation of the agency to the
 854 claimant upon presentation of a final judgment indicating
 855 liability and awarding damages to be paid by the facility or
 856 upon presentment of a settlement agreement signed by all parties
 857 to the agreement if ~~when~~ such final judgment or settlement is a
 858 result of a liability claim against the agency.

859 Section 23. Subsection (13) of section 651.118, Florida
 860 Statutes, is amended to read:

861 651.118 Agency for Health Care Administration;
 862 certificates of need; sheltered beds; community beds.—

863 (13) Residents, as defined in this chapter, are not
 864 considered new admissions for the purpose of s. 400.141(1)(n)
 865 ~~400.141(1)(o)~~1.d.

866 Section 24. This act shall take effect July 1, 2012.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 621 (2012)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Health & Human Services
2 Committee
3 Representative Frishe offered the following:
4

Amendment (with title amendment)

6 Remove lines 86-98
7
8
9

10 -----
11 **T I T L E A M E N D M E N T**

12 Remove lines 7-9 and insert:
13 be signed by certain persons; amending s. 400.0239, F.S.;
14 conforming a provision to changes made by the; amending s.
15 400.0255, F.S.; revising
16

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 621 (2012)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Health & Human Services
2 Committee
3 Representative Frishe offered the following:

4
5 **Amendment**

6 Remove line 587 and insert:
7 pneumococcal ~~polysaccharide~~ vaccination ~~(PPV)~~ or revaccination
8 ~~and vaccinate~~

9

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Health & Human Services
 2 Committee
 3 Representative Frishe offered the following:

Amendment (with title amendment)

Remove lines 640-654 and insert:

Section 14. Subsections (7) through (10) of section
 400.147, Florida Statutes, are amended, and present subsections
 (11) through (15) of that section are redesignated as
 subsections (9) through (13), respectively, to read:

400.147 Internal risk management and quality assurance
 program.—

(7) The nursing home 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 facility must complete
 the investigation and submit a report to the agency within 15
 calendar days after the adverse incident occurred. ~~The
 notification must be made in writing and be~~

Amendment No. 3

20
21
22
23
24
25
26
27

T I T L E A M E N D M E N T

Remove lines 33-34 and insert:
amending s. 400.147, F.S.; revising

Amendment No. 4

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Health & Human Services
2 Committee

3 Representative Frishe offered the following:

4
5 **Amendment**

6 Remove lines 773-785 and insert:

7 (b) Minimum staffing requirements for persons under 21
8 years of age who reside in nursing home facilities, which apply
9 in lieu of the requirements contained in subsection (3).

10 1. For persons under 21 who require skilled care:

11 a. A minimum combined average of 3.9 hours of direct care
12 per resident per day provided by licensed nurses, respiratory
13 therapists, respiratory care practitioners, and certified
14 nursing assistants.

15 b. A minimum licensed nursing staffing of 1.0 hour of
16 direct care per resident per day.

17 c. No more than 1.5 hours of certified nursing assistant
18 care per resident per day may be counted in determining the
19 minimum direct care hours required.

Amendment No. 4

- 20 2. For persons under 21 who are medically fragile:
21 a. A minimum combined average of 5.0 hours of direct care
22 per resident per day provided by licensed nurses, respiratory
23 therapists, respiratory care practitioners, and certified
24 nursing assistants.
25 b. A minimum licensed nursing staffing of 1.7 hours of
26 direct care per resident per day.
27 c. No more than 1.5 hours of certified nursing assistant
28 care per resident per day may be counted in determining the
29 minimum direct care hours required.
30 d. There shall be one registered nurse on duty, on the
31 site 24 hours per day on the unit where children reside.

32

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 621 (2012)

Amendment No. 5

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Health & Human Services
2 Committee

3 Representative Frishe offered the following:

4
5 **Amendment (with title amendment)**

6 Remove lines 798-809
7
8
9

10 -----
11 **T I T L E A M E N D M E N T**

12 Remove line 47 and insert:
13 ss. 430.80, 430.81, and 651.118, F.S.;

Amendment No. 6

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Health & Human Services
 2 Committee

3 Representative Frishe offered the following:

4
 5 **Amendment (with title amendment)**

6 Between lines 858 and 859, insert:

7 Section 23. Paragraph (a) of subsection (2) of section
 8 468.1695, Florida Statutes, is amended to read:

9 468.1695 Licensure by examination.—

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

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

Amendment No. 6

19 2. Has fulfilled the requirements of a college-affiliated
20 or university-affiliated internship in nursing home
21 administration or of a 1,000-hour nursing home administrator-in-
22 training program prescribed by the board; or
23
24
25

26 -----

27 **T I T L E A M E N D M E N T**

28 Remove line 48 and insert:
29 conforming cross-references; amending s. 468.1695, F.S.;
30 providing that a health services administration or equivalent
31 major shall satisfy the education requirements for nursing home
32 administrator applicants; providing an effective
33

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 655 Biomedical Research
SPONSOR(S): Coley
TIED BILLS: HB 657 IDEN./SIM. BILLS: SB 616

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Rows include Health & Human Services Access Subcommittee, Health Care Appropriations Subcommittee, and Health & Human Services Committee.

SUMMARY ANALYSIS

The James and Esther King Biomedical Research Program and William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program award competitive grants and fellowships for biomedical research. The grants are awarded based on criteria and standards developed by the Biomedical Research Advisory Council (Council) and are reviewed by independent peer review panels. The bill makes operational changes to both programs; but does not alter the appropriations to either program.

The bill exempts grant programs under the purview of the Council from the Administrative Procedures Act pursuant to Chapter 120, F.S. The bill adjusts the membership appointment terms to the Council allowing for staggered terms. The bill strikes permissive language outlining the responsibilities of the Council, such that the Council will no longer be responsible for "developing and supervising research peer review panels". The bill provides the Council flexibility by allowing it to solicit applications for any of the three types of research grants allowed every funding cycle. The bill increases the amount of time any balance that is not dispersed from the Biomedical Research Trust Fund within DOH may carry forward from three to five years.

The bill consolidates duplicative annual progress reports submitted by the King Program and the Bankhead-Coley Program into one report that requires a fiscal-year progress report of program activities and changes the date that the report must be submitted from February 1 to December 15. The bill requires that the progress report include: the state ranking received from the National Institutes of Health and recommendations to further the programs mission. The bill updates the name of an organization that sits on the Council and FL CURED from the Florida/Puerto Rico Affiliate of the American Heart Association to the Greater Southeast Affiliate of the American Heart Association.

The bill has no fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Biomedical Research Programs

The 1999 Legislature established the Lawton Chiles Endowment Fund as a result of its settlements with the tobacco industry to enhance or support expansions in children's health care programs, child welfare programs, community-based health and human service initiatives, and biomedical research. Section 215.5602, Florida Statutes, establishes the James and Esther King Biomedical Research Program (King Program) within the Department of Health (DOH) funded from interest earnings on the endowment fund, tobacco surcharge, and General Revenue Fund.¹ The funds appropriated to the program are devoted to awarding competitive grants and fellowships in research relating to prevention, diagnosis, and treatment of tobacco-related illnesses, including cancer, cardiovascular disease, stroke and pulmonary disease.

In 2004, the Legislature created the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program (Bankhead-Coley Program).² The Bankhead-Coley Program is established within DOH and is funded by an annual appropriation from the General Revenue Fund.³ The purpose of the Bankhead-Coley Program is to advance progress towards cures for cancer and cancer-related illnesses through grants awarded through a peer-reviewed process.

Also in 2004, the Legislature created the Florida Center for Universal Research to Eradicate Disease (FL CURED).⁴ The purpose of FL CURED is to coordinate, improve, expand, and monitor all biomedical research programs within the state, facilitate funding opportunities, and foster improved technology transfer of research findings into clinical trials and widespread public use.⁵

The research grants and fellowships for biomedical research are awarded based on criteria and standards developed by the Biomedical Research Advisory Council (Council) created within DOH and reviewed by independent peer review panels.⁶ The Council is directed to award grants for the King Program and the Bankhead-Coley Program.

The Council consists of eleven members:⁷

- Chief Executive Officer of the Florida Division of the American Cancer Society, or designee;
- Chief Executive Officer of the Florida/Puerto Rico Affiliate of the American Heart Association or designee;
- Chief Executive Officer of the American Lung Association of Florida or designee;
- Four Governor appointees, of which, two members must have expertise in the field of biomedical research; a member from an in-state research university; and a member representing the general population of the state;
- Two Senate appointees, of which, a member possessing expertise in the field of behavioral or social research and a member representing a cancer program approved by the American College of Surgeons; and
- Two House appointees, of which, a member from a professional medical organization, and a member representing a cancer program approved by the American College of Surgeons.

¹ Section 215.5602(1) and (12), F.S.

² Chapter 2004-2, L.O.F.

³ Section 215.5602(12), F.S.

⁴ Chapter 2004-2, L.O.F.

⁵ Section 381.855(1), F.S.

⁶ Sections 215.5602(3) and 381.922(3)(b), F.S.

⁷ Section 215.5602(3), F.S.

The Council is to advise the State Surgeon General as to the direction and scope of the biomedical research program in addition to:⁸

- Providing advice on program priorities and emphases;
- Providing advice on the overall program budget;
- Participating in periodic program evaluation;
- Assisting in the development of guidelines to ensure fairness, neutrality, and adherence to the principles of merit and quality in the conduct of the program;
- Assisting in the development of linkages with other private and public entities and officials;
- Developing criteria and standards for the award of research grants;
- Developing administrative procedures for the solicitation, reviewing and awarding of grants and fellowships to ensure impartial, high-quality peer review system;
- Developing and supervising research peer review panels;
- Reviewing reports of peer review panels and making recommendations for grants and fellowships;
- Developing and providing oversight regarding mechanisms to disseminate research results.

Members of the council are to serve without compensation, but may receive reimbursement for travel and other necessary expenses incurred in the performance of their official duties.

The Council is required to submit an annual progress report on the state of biomedical in this state to the Florida Center for Universal Research to Eradicate Disease (FL CURED) and to the Governor, the State Surgeon General, and the Speaker of the House of Representatives by February 1. The report must include:⁹

- A list of research projects awarded;
- A list of recipients;
- A list of publications supported awards;
- The total amount of biomedical research funding currently flowing into the state;
- New grants that were funded based on research supported by awarded grants or fellowships; and
- Progress in the prevention, diagnosis, treatment, and cure of diseases related to tobacco use, including cancer, cardiovascular disease, stroke, and pulmonary disease.

The independent peer review panel is required to evaluate three types of awards:

- Investigator-initiated research grants;
- Institutional research grants;
- Predoctoral and postdoctoral research fellowships.

The award applications are reviewed on the basis of scientific merit to ensure that all proposals for research funding are appropriate and are evaluated fairly.¹⁰ The peer review panel process reviews the content of each proposal and establishes a scientific priority score. The priority score is considered in the review process by the Council who makes a recommendation to the State Surgeon General as to what grants or fellowships should be awarded. The Council and peer review panels are directed to establish and follow rigorous guidelines for ethical conduct and adhere to a strict policy with regard to conflict of interest.¹¹

Sections 215.5602(7) and 381.922(3)(c), F.S., provides that the meetings of the Council and the peer review panels are subject to the public records and public meetings requirements.

⁸ Section 215.5602(4), F.S.

⁹ Section 215.5602(10), F.S.

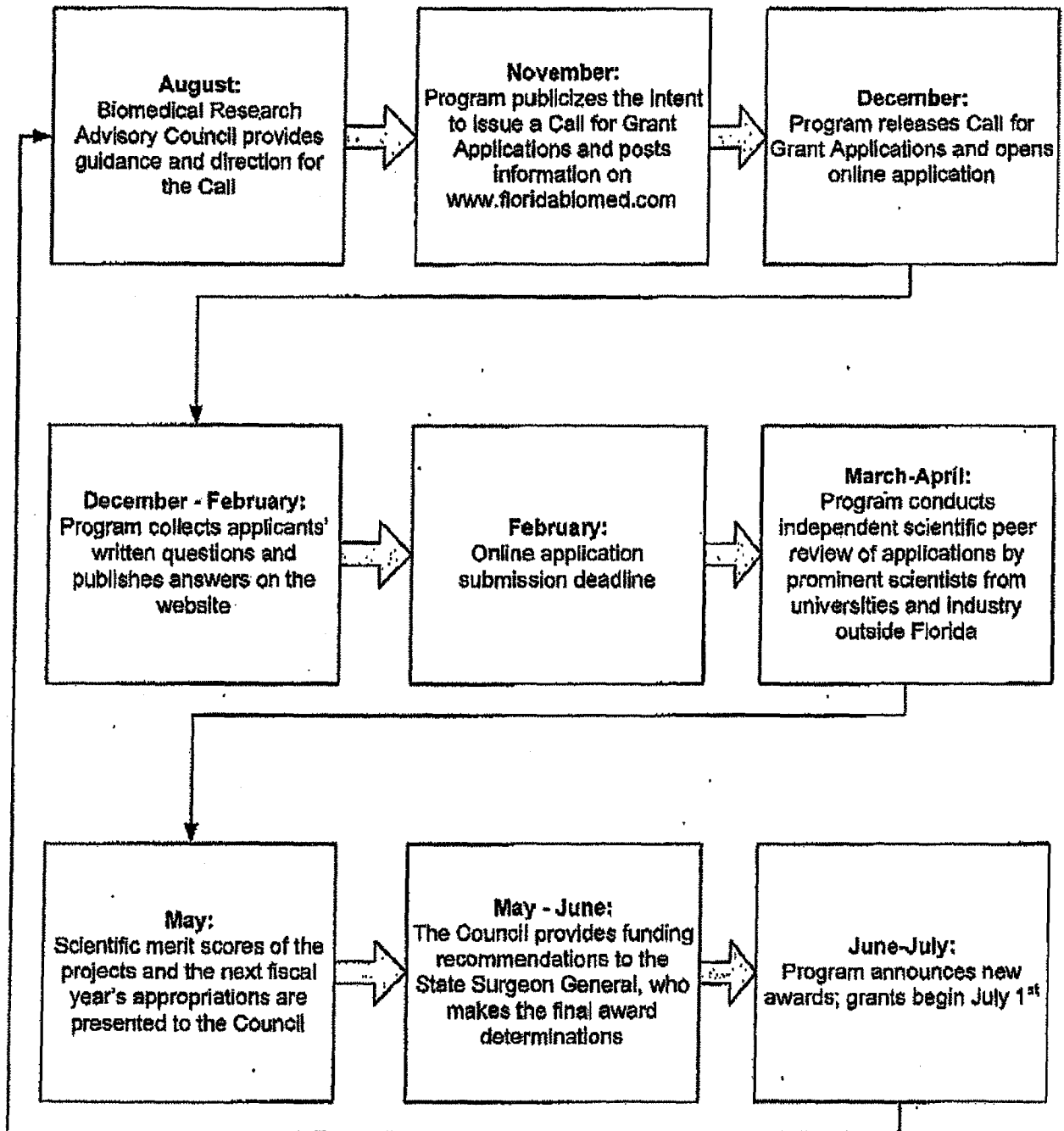
¹⁰ Sections 215.5602(6) and 381.922(3)(b), F.S.

¹¹ Sections 215.5602(7) and 381.922(3)(c), F.S.

Annual Grant Funding Cycle

The annual funding cycle for the King and Bankhead-Coley Programs take 12-months to complete.¹² The Call for Grant Applications (the Call) is usually done once per year in December, but may occur more frequently. Having the Call in December, allows researchers time to write their proposals and for DOH to convene peer-review panels and present the results of the Call to the Advisory Council by May after the state budget is passed.

The James & Esther King and Bankhead-Coley Research Programs Annual Grant Funding Cycle



¹² Per letter from DOH staff dated September 21, 2009 on file with Health & Human Services Access Subcommittee staff.
STORAGE NAME: h0655d.HHSC.DOCX
DATE: 2/14/2012

Effects of Proposed Changes

The bill adjust the membership appointment terms to the Council allowing for staggered terms, such that the first two Governor appointees, and the first Senate and House appointees made on or after July 1, 2012 are for a term of two years instead of three years. According to DOH, Council member appointments tend to run in parallel, resulting in multiple members rotating off of the Council at the same time.¹³

The bill strikes permissive language outlining the responsibilities of the Council, such that the Council will no longer be responsible for “developing and supervising research peer review panels”. According to DOH, Council members intentionally do not have any contact with peer review panels in order to avoid any real or perceived conflict of interest, or allegations of bias or undue influence and believe that a separation between the peer review panels and the Council is the best practice for merit-based, independent grant review.¹⁴ The bill reassigns the duty of appointing peer review panel membership from being the responsibility of the State Surgeon General in consultation with the Council to being the responsibility of DOH. According to DOH, recruiting and assigning peer reviewers is a function and awarded through the competitive bid process to a professional grant management services vendor.¹⁵ Furthermore, neither the Council nor the State Surgeon General has direct involvement in selecting a peer reviewer and utilizing an outside vendor avoids any real or perceived conflict of interest, or allegations of bias or undue influence.

The bill provides flexibility as to the type of grants that may be awarded. Currently, the Council is required to consider funding three types of research grants: investigator-initiated, institutional, and pre-doctoral and postdoctoral fellowships. According to DOH, traditionally pre-and postdoctoral fellowships are not recommended for funding because support is already provided through current funding practices (i.e., senior investigators receive funding and hire pre-and postdoctoral fellows to assist with projects.) The bill allows the Council to solicit applications for one or any combination of the three types of research grants every funding cycle.

The bill increases the amount of time any balance that is not dispersed from the Biomedical Research Trust Fund within DOH may carry forward from 3 to 5 years. According to DOH, this will allow them to offer longer grant periods to researchers enabling them to conduct clinical trials that are more likely to result in a marketable product and is consistent with grant timeframes seen in other research programs such as the National Institutes of Health.¹⁶ In Fiscal Year 2010-2011, approximately \$25.2M in the Biomedical Research Trust Fund was carried forward.¹⁷

The bill exempts grant programs under the purview of the Council from the Administrative Procedures Act pursuant to Chapter 120, F.S. According to DOH, the program has operated without a rule since 2007, because current law provides permissibility to the department to adopt rules.¹⁸ Current law states, “The department, after consultation with the council, may adopt rules as necessary to implement this section.”¹⁹ In 2007, DOH repealed ch. 64H-1.001, F.A.C. Additionally, the Council prefers to operate without rules to assure flexibility in the grant process allowing them to respond quickly to changing research priorities at the federal level in order to maximize the state’s ability to compete for federal grants.²⁰

¹³ Department of Health, Bill Analysis, Economic Statement and Fiscal Note, House Bill 655, dated December 21, 2011, on file with Health & Human Services Access Subcommittee staff.

¹⁴ *Id.*

¹⁵ DOH has a 3-year contract the Lytmos Group, LLC, for \$8.3M that expires September 30, 2013. Email correspondence with DOH budget staff on file with Health & Human Services Access Subcommittee staff.

¹⁶ Department of Health, Bill Analysis, Economic Statement and Fiscal Note, House Bill 655, dated December 21, 2011, on file with Health & Human Services Access Subcommittee staff.

¹⁷ Email correspondence with DOH budget staff dated January 5, 2012, on file with Health & Human Services Access Subcommittee staff.

¹⁸ *Id.*

¹⁹ Section 215.5602(9), F.S.

²⁰ *Id.*

The bill consolidates duplicative annual progress reports submitted by the King Program and the Bankhead-Coley Program into one report that requires a fiscal-year progress report of program activities and changes the date that the report must be submitted from February 1 to December 15. The bill requires that the progress report include the state ranking received from the National Institutes of Health and recommendations to further the programs mission. The bill updates the name of an organization that sits on the Council and FL CURED from the Florida/Puerto Rico Affiliate of the American Heart Association to the Greater Southeast Affiliate of the American Heart Association.

B. SECTION DIRECTORY:

Section 1. Amends s. 20.435, F.S., relating to Department of Health trust funds.

Section 2. Amends s. 215.5602, F.S., relating to the James and Esther King Biomedical Research Program.

Section 3. Amends s. 381.922, F.S., relating to William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program.

Section 4. Amends s. 381.855, F.S., relating to Florida Center for Universal Research to Eradicate Disease.

Section 5. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None identified.

2. Expenditures:

None identified.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None identified.

2. Expenditures:

None identified.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides an exemption to the grant programs under the purview of the Council from the requirements of chapter 120, F.S., the Administrative Procedures Act. This bill is tied to a public records bill, House Bill 657, which provides an exemption from public records and public meeting required by chapter 120, F.S., for peer review panels.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to biomedical research; amending s.
 3 20.435, F.S.; extending the period during which
 4 certain expenditures may be made from the Biomedical
 5 Research Trust Fund; amending s. 215.5602, F.S.,
 6 relating to James and Esther King Biomedical Research
 7 Program; revising the composition, terms, and duties
 8 of the Biomedical Research Advisory Council; providing
 9 that certain types of applications may, rather than
 10 shall, be considered for funding under the program;
 11 exempting grant programs under the purview of the
 12 council from ch. 120, F.S.; requiring the council to
 13 submit a progress report and specifying contents
 14 thereof; amending s. 381.922, F.S., relating to
 15 William G. "Bill" Bankhead, Jr., and David Coley
 16 Cancer Research Program; providing that certain types
 17 of applications may, rather than shall, be considered
 18 for funding under the program; removing a requirement
 19 for a report to the Governor and the Legislature;
 20 amending s. 381.855, F.S., relating to Florida Center
 21 for Universal Research to Eradicate Disease; revising
 22 composition of an advisory council; providing an
 23 effective date.

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

26
 27 Section 1. Paragraph (c) of subsection (8) of section
 28 20.435, Florida Statutes, is amended to read:

29 20.435 Department of Health; trust funds.—The following
 30 trust funds shall be administered by the Department of Health:

31 (8) Biomedical Research Trust Fund.

32 (c) Notwithstanding s. 216.301 and pursuant to s. 216.351,
 33 any balance of any appropriation from the Biomedical Research
 34 Trust Fund which is not disbursed but which is obligated
 35 pursuant to contract or committed to be expended may be carried
 36 forward for up to 5 ~~3~~ years following the effective date of the
 37 original appropriation.

38 Section 2. Paragraph (a) of subsection (3), paragraph (b)
 39 of subsection (5), and subsections (4), (6), (9), and (10) of
 40 section 215.5602, Florida Statutes, are amended to read:

41 215.5602 James and Esther King Biomedical Research
 42 Program.—

43 (3) There is created within the Department of Health the
 44 Biomedical Research Advisory Council.

45 (a) The council shall consist of 11 members, including:
 46 the chief executive officer of the Florida Division of the
 47 American Cancer Society, or a designee; the chief executive
 48 officer of the Greater Southeast Florida/Puerto Rico ~~Puerto Rico~~ Affiliate
 49 of the American Heart Association, or a designee; and the chief
 50 executive officer of the American Lung Association of Florida,
 51 or a designee. The remaining 8 members of the council shall be
 52 appointed as follows:

53 1. The Governor shall appoint four members, two members
 54 with expertise in the field of biomedical research, one member
 55 from a research university in the state, and one member
 56 representing the general population of the state.

57 2. The President of the Senate shall appoint two members,
 58 one member with expertise in the field of behavioral or social
 59 research and one representative from a cancer program approved
 60 by the American College of Surgeons.

61 3. The Speaker of the House of Representatives shall
 62 appoint two members, one member from a professional medical
 63 organization and one representative from a cancer program
 64 approved by the American College of Surgeons.

65
 66 In making these appointments, the Governor, the President of the
 67 Senate, and the Speaker of the House of Representatives shall
 68 select primarily, but not exclusively, Floridians with
 69 biomedical and lay expertise in the general areas of cancer,
 70 cardiovascular disease, stroke, and pulmonary disease. The
 71 appointments shall be for a 3-year term and shall reflect the
 72 diversity of the state's population. An appointed member may not
 73 serve more than two consecutive terms. The first two
 74 appointments by the Governor and the first appointment by the
 75 President of the Senate and the Speaker of the House of
 76 Representatives on or after July 1, 2012, shall be for a term of
 77 2 years.

78 (4) The council shall advise the State Surgeon General as
 79 to the direction and scope of the biomedical research program.
 80 The responsibilities of the council may include, but are not
 81 limited to:

- 82 (a) Providing advice on program priorities and emphases.
- 83 (b) Providing advice on the overall program budget.
- 84 (c) Participating in periodic program evaluation.

85 (d) Assisting in the development of guidelines to ensure
 86 fairness, neutrality, and adherence to the principles of merit
 87 and quality in the conduct of the program.

88 (e) Assisting in the development of appropriate linkages
 89 to nonacademic entities, such as voluntary organizations, health
 90 care delivery institutions, industry, government agencies, and
 91 public officials.

92 (f) Developing criteria and standards for the award of
 93 research grants.

94 (g) Developing administrative procedures relating to
 95 solicitation, review, and award of research grants and
 96 fellowships, to ensure an impartial, high-quality peer review
 97 system.

98 ~~(h) Developing and supervising research peer review~~
 99 ~~panels.~~

100 (h) ~~(i)~~ Reviewing reports of peer review panels and making
 101 recommendations for research grants and fellowships.

102 (i) ~~(j)~~ Developing and providing oversight regarding
 103 mechanisms for the dissemination of research results.

104 (5)

105 (b) Grants and fellowships shall be awarded by the State
 106 Surgeon General, after consultation with the council, on the
 107 basis of scientific merit, as determined by an open competitive
 108 peer review process that ensures objectivity, consistency, and
 109 high quality. The following types of applications may ~~shall~~ be
 110 considered for funding:

- 111 1. Investigator-initiated research grants.
- 112 2. Institutional research grants.

113 3. Predoctoral and postdoctoral research fellowships.

114 (6) To ensure that all proposals for research funding are
 115 appropriate and are evaluated fairly on the basis of scientific
 116 merit, the Department of Health State Surgeon General, ~~in~~
 117 ~~consultation with the council~~, shall appoint a peer review panel
 118 of independent, scientifically qualified individuals to review
 119 the scientific content of each proposal and establish its
 120 scientific priority score. The priority scores shall be
 121 forwarded to the council and must be considered in determining
 122 which proposals shall be recommended for funding.

123 (9) The grant programs under the purview of the council
 124 are exempt from chapter 120 department, ~~after consultation with~~
 125 ~~the council~~, may adopt rules as necessary to implement this
 126 section.

127 (10) The council shall submit a fiscal-year ~~an annual~~
 128 progress report on the programs under its purview ~~state of~~
 129 ~~biomedical research in this state~~ to the Florida Center for
 130 Universal Research to Eradicate Disease and to the Governor, the
 131 State Surgeon General, the President of the Senate, and the
 132 Speaker of the House of Representatives by December 15 ~~February~~
 133 4. The report must include:

134 (a) A list of research projects supported by grants or
 135 fellowships awarded under the program.

136 (b) A list of recipients of program grants or fellowships.

137 (c) A list of publications in peer reviewed journals
 138 involving research supported by grants or fellowships awarded
 139 under the program.

140 (d) The state ranking and total amount of biomedical

141 | research funding currently flowing into the state from the
 142 | National Institutes of Health.

143 | (e) New grants for biomedical research which were funded
 144 | based on research supported by grants or fellowships awarded
 145 | under the program.

146 | (f) Progress towards program goals, particularly in the
 147 | prevention, diagnosis, treatment, and cure of diseases related
 148 | to tobacco use, including cancer, cardiovascular disease,
 149 | stroke, and pulmonary disease.

150 | (g) Recommendations that further the program's mission.

151 | Section 3. Paragraph (a) of subsection (3) and present
 152 | subsection (4) of section 381.922, Florida Statutes, are
 153 | amended, and subsection (5) is renumbered as subsection (4) of
 154 | that section, to read:

155 | 381.922 William G. "Bill" Bankhead, Jr., and David Coley
 156 | Cancer Research Program.—

157 | (3)(a) Applications for funding for cancer research may be
 158 | submitted by any university or established research institute in
 159 | the state. All qualified investigators in the state, regardless
 160 | of institutional affiliation, shall have equal access and
 161 | opportunity to compete for the research funding. Collaborative
 162 | proposals, including those that advance the program's goals
 163 | enumerated in subsection (2), may be given preference. Grants
 164 | shall be awarded by the State Surgeon General, after
 165 | consultation with the Biomedical Research Advisory Council, on
 166 | the basis of scientific merit, as determined by an open,
 167 | competitive peer review process that ensures objectivity,
 168 | consistency, and high quality. The following types of

169 applications may ~~shall~~ be considered for funding:

- 170 1. Investigator-initiated research grants.
- 171 2. Institutional research grants.
- 172 3. Collaborative research grants, including those that
- 173 advance the finding of cures through basic or applied research.

174 ~~(4) By December 15 of each year, the Department of Health~~
 175 ~~shall submit to the Governor, the President of the Senate, and~~
 176 ~~the Speaker of the House of Representatives a report indicating~~
 177 ~~progress towards the program's mission and making~~
 178 ~~recommendations that further its purpose.~~

179 Section 4. Paragraph (a) of subsection (5) of section
 180 381.855, Florida Statutes, is amended to read:

181 381.855 Florida Center for Universal Research to Eradicate
 182 Disease.—

183 (5) There is established within the center an advisory
 184 council that shall meet at least annually.

185 (a) The council shall consist of one representative from a
 186 Florida not-for-profit institution engaged in basic and clinical
 187 biomedical research and education which receives more than \$10
 188 million in annual grant funding from the National Institutes of
 189 Health, to be appointed by the State Surgeon General from a
 190 different institution each term, and one representative from and
 191 appointed by each of the following entities:

- 192 1. Enterprise Florida, Inc.
- 193 2. BioFlorida.
- 194 3. The Biomedical Research Advisory Council.
- 195 4. The Florida Medical Foundation.
- 196 5. Pharmaceutical Research and Manufacturers of America.

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- 197 | 6. The American Cancer Society, Florida Division, Inc.
198 | 7. The American Heart Association, Greater Southeast
199 | Affiliate.
200 | 8. The American Lung Association of Florida.
201 | 9. The American Diabetes Association, South Coastal
202 | Region.
203 | 10. The Alzheimer's Association.
204 | 11. The Epilepsy Foundation.
205 | 12. The National Parkinson Foundation.
206 | 13. The Florida Public Health Institute, Inc.
207 | 14. The Florida Research Consortium.
208 | Section 5. This act shall take effect July 1, 2012.

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COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Health & Human Services
2 Committee
3 Representative Coley offered the following:
4

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:
7

8 Section 1. Paragraph (c) of subsection (8) of section
9 20.435, Florida Statutes, is amended to read:

10 20.435 Department of Health; trust funds.—The following
11 trust funds shall be administered by the Department of Health:

12 (8) Biomedical Research Trust Fund.

13 (c) Notwithstanding s. 216.301 and pursuant to s. 216.351,
14 any balance of any appropriation from the Biomedical Research
15 Trust Fund which is not disbursed but which is obligated
16 pursuant to contract or committed to be expended may be carried
17 forward for up to 5 3 years following the effective date of the
18 original appropriation.

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19 Section 2. Paragraph (a) of subsection (3), paragraph (b)
20 of subsection (5), and subsections (4), (6), (7), (9), and (10)
21 of section 215.5602, Florida Statutes, are amended to read:

22 215.5602 James and Esther King Biomedical Research
23 Program.—

24 (3) There is created within the Department of Health the
25 Biomedical Research Advisory Council.

26 (a) The council shall consist of 11 members, including:
27 the chief executive officer of the Florida Division of the
28 American Cancer Society, or a designee; the chief executive
29 officer of the Greater Southeast Florida/Puerto Rico Affiliate
30 of the American Heart Association, or a designee; and the chief
31 executive officer of the American Lung Association of Florida,
32 or a designee. The remaining 8 members of the council shall be
33 appointed as follows:

34 1. The Governor shall appoint four members, two members
35 with expertise in the field of biomedical research, one member
36 from a research university in the state, and one member
37 representing the general population of the state.

38 2. The President of the Senate shall appoint two members,
39 one member with expertise in the field of behavioral or social
40 research and one representative from a cancer program approved
41 by the American College of Surgeons.

42 3. The Speaker of the House of Representatives shall
43 appoint two members, one member from a professional medical
44 organization and one representative from a cancer program
45 approved by the American College of Surgeons.

46

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47 In making these appointments, the Governor, the President of the
48 Senate, and the Speaker of the House of Representatives shall
49 select primarily, but not exclusively, Floridians with
50 biomedical and lay expertise in the general areas of cancer,
51 cardiovascular disease, stroke, and pulmonary disease. The
52 appointments shall be for a 3-year term and shall reflect the
53 diversity of the state's population. An appointed member may not
54 serve more than two consecutive terms. The first two
55 appointments by the Governor and the first appointment by the
56 President of the Senate and the Speaker of the House of
57 Representatives on or after July 1, 2012, shall be for a term of
58 2 years.

59 (4) The council shall advise the State Surgeon General as
60 to the direction and scope of the biomedical research program.
61 The responsibilities of the council may include, but are not
62 limited to:

63 (a) Providing advice on program priorities and emphases.

64 (b) Providing advice on the overall program budget.

65 (c) Participating in periodic program evaluation.

66 (d) Assisting in the development of guidelines to ensure
67 fairness, neutrality, and adherence to the principles of merit
68 and quality in the conduct of the program.

69 (e) Assisting in the development of appropriate linkages
70 to nonacademic entities, such as voluntary organizations, health
71 care delivery institutions, industry, government agencies, and
72 public officials.

73 (f) Developing criteria and standards for the award of
74 research grants.

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75 (g) Developing guidelines ~~administrative procedures~~
76 relating to solicitation, review, and award of research grants
77 and fellowships, to ensure an impartial, high-quality peer
78 review system.

79 ~~(h) Developing and supervising research peer review~~
80 ~~panels.~~

81 ~~(h)~~(i) Reviewing reports of peer review panels and making
82 recommendations for research grants and fellowships.

83 ~~(i)~~(j) Developing and providing oversight regarding
84 mechanisms for the dissemination of research results.

85 (5)

86 (b) Grants and fellowships shall be awarded by the State
87 Surgeon General, after consultation with the council, on the
88 basis of scientific merit, as determined by the competitively
89 open peer-reviewed process to ensure an open competitive peer
90 ~~review process that ensures~~ objectivity, consistency, and high
91 quality. The following types of applications may ~~shall~~ be
92 considered for funding:

- 93 1. Investigator-initiated research grants.
- 94 2. Institutional research grants.
- 95 3. Predoctoral and postdoctoral research fellowships.

96 (6) To ensure that all proposals for research funding are
97 appropriate and are evaluated fairly on the basis of scientific
98 merit, the Department of Health ~~State Surgeon General, in~~
99 ~~consultation with the council,~~ shall appoint a peer review
100 panels ~~panel~~ of independent, scientifically qualified
101 individuals to review the scientific merit ~~content~~ of each
102 proposal and establish its scientific priority score. The

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103 priority scores shall be forwarded to the council and must be
104 considered in determining which proposals shall be recommended
105 for funding.

106 (7) The council and the peer review panels ~~panel~~ shall
107 establish and follow rigorous guidelines for ethical conduct and
108 adhere to a strict policy with regard to conflict of interest. A
109 member of the council or a panel may not participate in any
110 discussion or decision of the council or a panel with respect to
111 a research proposal by any firm, entity, or agency with which
112 the member is associated as a member of the governing body or as
113 an employee, or with which the member has entered into a
114 contractual arrangement. ~~Meetings of the council and the peer
115 review panels shall be subject to the provisions of chapter 119,
116 s. 286.011, and s. 24, Art. I of the State Constitution.~~

117 (9) The grant programs under the purview of the council
118 are exempt from chapter 120 department, after consultation with
119 the council, may adopt rules as necessary to implement this
120 section.

121 (10) The council shall submit a fiscal-year ~~an annual~~
122 progress report on the programs under its purview ~~state of~~
123 ~~biomedical research in this state~~ to the Florida Center for
124 Universal Research to Eradicate Disease and to the Governor, the
125 State Surgeon General, the President of the Senate, and the
126 Speaker of the House of Representatives by December 15 ~~February~~
127 ~~1~~. The report must include:

128 (a) A list of research projects supported by grants or
129 fellowships awarded under the program.

130 (b) A list of recipients of program grants or fellowships.

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131 (c) A list of publications in peer reviewed journals
132 involving research supported by grants or fellowships awarded
133 under the program.

134 (d) The state ranking and total amount of biomedical
135 research funding currently flowing into the state from the
136 National Institutes of Health.

137 (e) New grants for biomedical research which were funded
138 based on research supported by grants or fellowships awarded
139 under the program.

140 (f) Progress towards programmatic goals, particularly in
141 the prevention, diagnosis, treatment, and cure of diseases
142 related to tobacco use, including cancer, cardiovascular
143 disease, stroke, and pulmonary disease.

144 (g) Recommendations to further the missions of the
145 programs.

146 Section 3. Subsection (3) and present subsection (4) of
147 section 381.922, Florida Statutes, are amended, and subsection
148 (5) is renumbered as subsection (4) of that section, to read:

149 381.922 William G. "Bill" Bankhead, Jr., and David Coley
150 Cancer Research Program.—

151 (3)(a) Applications for funding for cancer research may be
152 submitted by any university or established research institute in
153 the state. All qualified investigators in the state, regardless
154 of institutional affiliation, shall have equal access and
155 opportunity to compete for the research funding. Collaborative
156 proposals, including those that advance the program's goals
157 enumerated in subsection (2), may be given preference. Grants
158 shall be awarded by the department ~~State Surgeon General~~, after

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159 consultation with the Biomedical Research Advisory Council, on
160 the basis of scientific merit, as determined by the
161 competitively open peer-reviewed process to ensure an open,
162 ~~competitive peer review process that ensures~~ objectivity,
163 consistency, and high quality. The following types of
164 applications may ~~shall~~ be considered for funding:

- 165 1. Investigator-initiated research grants.
- 166 2. Institutional research grants.
- 167 3. Collaborative research grants, including those that
168 advance the finding of cures through basic or applied research.

169 (b) ~~In order~~ To ensure that all proposals for research
170 funding are appropriate and are evaluated fairly on the basis of
171 scientific merit, the department State Surgeon General, in
172 ~~consultation with the council,~~ shall appoint a peer review
173 panels ~~panel~~ of independent, scientifically qualified
174 individuals to review the scientific merit ~~content~~ of each
175 proposal and establish its priority score. The priority scores
176 shall be forwarded to the council and must be considered in
177 determining which proposals shall be recommended for funding.

178 (c) The council and the peer review panels ~~panel~~ shall
179 establish and follow rigorous guidelines for ethical conduct and
180 adhere to a strict policy with regard to conflicts of interest.
181 A member of the council or a panel may not participate in any
182 discussion or decision of the council or a panel with respect to
183 a research proposal by any firm, entity, or agency with which
184 the member is associated as a member of the governing body or as
185 an employee or with which the member has entered into a
186 contractual arrangement. ~~Meetings of the council and the peer~~

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187 ~~review panels are subject to chapter 119, s. 286.011, and s. 24,~~
188 ~~Art. I of the State Constitution.~~

189 ~~(4) By December 15 of each year, the Department of Health~~
190 ~~shall submit to the Governor, the President of the Senate, and~~
191 ~~the Speaker of the House of Representatives a report indicating~~
192 ~~progress towards the program's mission and making~~
193 ~~recommendations that further its purpose.~~

194 Section 4. Paragraph (a) of subsection (5) of section
195 381.855, Florida Statutes, is amended to read:

196 381.855 Florida Center for Universal Research to Eradicate
197 Disease.—

198 (5) There is established within the center an advisory
199 council that shall meet at least annually.

200 (a) The council shall consist of one representative from a
201 Florida not-for-profit institution engaged in basic and clinical
202 biomedical research and education which receives more than \$10
203 million in annual grant funding from the National Institutes of
204 Health, to be appointed by the State Surgeon General from a
205 different institution each term, and one representative from and
206 appointed by each of the following entities:

- 207 1. Enterprise Florida, Inc.
- 208 2. BioFlorida.
- 209 3. The Biomedical Research Advisory Council.
- 210 4. The Florida Medical Foundation.
- 211 5. Pharmaceutical Research and Manufacturers of America.
- 212 6. The American Cancer Society, Florida Division, Inc.
- 213 7. The American Heart Association, Greater Southeast
214 Affiliate.

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- 215 8. The American Lung Association of Florida.
216 9. The American Diabetes Association, South Coastal
217 Region.
218 10. The Alzheimer's Association.
219 11. The Epilepsy Foundation.
220 12. The National Parkinson Foundation.
221 13. The Florida Public Health Institute, Inc.
222 14. The Florida Research Consortium.
223 Section 5. This act shall take effect July 1, 2012.
224
225

T I T L E A M E N D M E N T

228 Remove the entire title and insert:

229 A bill to be entitled

230 An act relating to biomedical research; amending s.
231 20.435, F.S.; extending the period during which
232 certain expenditures may be made from the Biomedical
233 Research Trust Fund; amending s. 215.5602, F.S.,
234 relating to James and Esther King Biomedical Research
235 Program; revising the composition, terms, and duties
236 of the Biomedical Research Advisory Council; providing
237 that certain types of applications may, rather than
238 shall, be considered for funding under the program;
239 exempting grant programs under the purview of the
240 council from ch. 120, F.S.; requiring the council to
241 submit a progress report and specifying contents
242 thereof; amending s. 381.922, F.S., relating to

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 655 (2012)

Amendment No.1

243 William G. "Bill" Bankhead, Jr., and David Coley
244 Cancer Research Program; providing that certain types
245 of applications may, rather than shall, be considered
246 for funding under the program; removing a requirement
247 for a report to the Governor and the Legislature;
248 amending s. 381.855, F.S., relating to Florida Center
249 for Universal Research to Eradicate Disease; revising
250 composition of an advisory council; providing an
251 effective date.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 655 (2012)

Amendment No. 1a

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Health & Human Services
2 Committee

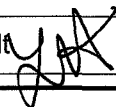

3 Representative Gonzalez offered the following:

4
5 **Amendment to Amendment (937079) by Representative Coley**

6 Remove line 44 of the amendment and insert:
7 organization or from a comprehensive cardiovascular program with
8 experience in biomedical research approved by the College of
9 Cardiology and one representative from a cancer program

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 657 Pub. Rec./Biomedical Research
SPONSOR(S): Health & Human Services Access Subcommittee; Coley
TIED BILLS: HB 655 **IDEN./SIM. BILLS:** SB 1856

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	15 Y, 0 N, As CS	Holt	Schoolfield
2) Government Operations Subcommittee	12 Y, 2 N	Williamson	Williamson
3) Health & Human Services Committee		Holt 	Gormley 

SUMMARY ANALYSIS

Current law provides that when peer review panels convene to evaluate grant or fellowship applications submitted to the James and Esther King Biomedical Research Program or to the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program the meetings are open and noticed to the public and any records generated, including the grant applications that are being reviewed, are considered public and must be made available for public viewing.

The bill creates public record and public meeting exemptions for peer review panels. The bill provides that public record and public meeting exemptions granted to a peer review panel are subject to the Open Government Sunset Review Act and will be repealed on October, 2, 2017, unless saved from repeal by reenactment by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

The bill provides an effective date that is contingent upon the passage of House Bill 655 or similar legislation.

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates public record and public meeting exemptions; thus, it appears to require a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records and Open Meetings Laws

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of the executive branch and local government be open and noticed to the public.

The Legislature may, however, provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24 of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its stated purpose. In addition, the State Constitution requires enactment of the exemption by a two-thirds vote of the members present and voting.¹

Public policy regarding access to government records and meetings also is addressed in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Section 286.011, F.S., requires that all state, county, or municipal meetings be open and noticed to the public.

Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

Public record and public meeting exemptions are subject to a scheduled repeal on October 2nd in the fifth year after enactment, unless the Legislature acts to reenact the exemption.³

James and Esther King and Bankhead-Coley Research Programs

The James and Esther King Biomedical Research Program (King Program) is established within the Florida Department of Health (DOH) and is funded by the proceeds of the Lawton Chiles Endowment Fund, cigarette surcharge, and the General Revenue Fund.⁴ The purpose of the King Program is to provide an annual and perpetual source of funding in order to support research initiatives that address the health care problems of Floridians in the areas of tobacco-related cancer, cardiovascular disease, stroke, and pulmonary disease.⁵ The funds appropriated to the King Program are to be used to award research grants and fellowships.⁶

¹ FLA CONST., article I, s. 24(c)

² See s. 119.15, F.S.

³ Section 119.15(3), F.S.

⁴ Sections 215.5602(1) and (12), F.S.

⁵ Section 215.5602, F.S.

⁶ Section 215.5602(2), F.S.

The William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program (Bankhead-Coley Program) is established within DOH and is funded by an annual appropriation from the General Revenue Fund.⁷ The purpose of the Bankhead-Coley Program is to advance progress towards cures for cancer and cancer-related illnesses through grants awarded through a peer-reviewed process.

The research grants and fellowships are awarded based on criteria and standards developed by the Biomedical Research Advisory Council (Council) created within DOH and subject to review by independent peer review panels.⁸ The Council is directed to award grants for the King Program and the Bankhead-Coley Program.

The peer review panel is required to evaluate grant or fellowship applications on the basis of scientific merit as determined by an open competitive peer review panel to ensure that all proposals for research funding are appropriate and are evaluated fairly on the basis of scientific merit.⁹ The peer review panel process reviews the content of each proposal and establishes a scientific priority score. The priority score is considered in the review process by the Council who makes recommendations to the State Surgeon General as to what grants or fellowships should be awarded. The Council and peer review panels are directed to establish and follow rigorous guidelines for ethical conduct and adhere to a strict policy with regard to conflict of interest.¹⁰

Sections 215.5602(7) and 381.922(3)(c), F.S., provides that the meetings of the Council and the peer review panels are subject to public records and public meetings requirements.

Effect of Proposed Changes

The bill creates a public meeting exemption for meetings of a peer review panel. Additionally, the bill provides that records generated at exempt meetings, including grant applications, are confidential and exempt¹¹ from public records requirements. The bill provides that the public record and public meeting exemptions are subject to the Open Government Sunset Review Act and will repeal on October, 2, 2017, unless saved from repeal by reenactment by the Legislature. Finally, it provides a public necessity statement as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1 amends s. 215.5602, F.S., relating to James and Esther King Biomedical Research Program.

Section 2 amends s. 381.922, F.S., relating to William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program.

Section 3 provides a public necessity statement.

Section 4 provides an effective date that is contingent upon the passage of HB 655 or similar legislation.

⁷ Section 215.5602(12), F.S.

⁸ Sections 215.5602(3) and 381.922(3)(b), F.S.

⁹ Sections 215.5602(6) and 381.922(3)(b), F.S.

¹⁰ Sections 215.5602(7) and 381.922(3)(c), F.S.

¹¹ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None identified.
2. Expenditures:
None identified.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None identified
2. Expenditures:
None identified.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None identified.

D. FISCAL COMMENTS:

None identified.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:
Not applicable. This bill does not appear to affect county or municipal governments.
2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates new exemptions; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates new exemptions; thus, it includes a public necessity statement.

Exemption Bills

Article I, s. 24(c) of the State Constitution provides that an exemption must be created by general law and the law must contain only exemptions from public record or public meeting requirements. Lines 35 – 45 and lines 65 – 75 of the bill make clarifying changes and remove superfluous language; however, it is unclear whether such changes would be deemed substantive in nature.

B. RULE-MAKING AUTHORITY:

The bill will exempt DOH from having to adopt rules and provide public notice of meetings.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 3 – 5 and 15 – 17 of the title of the bill provide that it is deleting an exemption from public records and meetings requirements for meetings of the Biomedical Research Advisory Council; however, the bill does not delete a current exemption for the Council. Instead, the bill removes superfluous language providing that meetings of the council and the peer review panels are subject to public records and public meetings requirements. As such, the sponsor may want to consider an amendment to correct the title of the bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 11, 2012, the Health & Human Services Access Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all includes explicit language that meets the statutory requirements for a public records and meetings exemption for peer review panels, such that, the strike-all:

- Provides an explicit exemption for peer review panels from the requirements of ss. 119.07(1) and 286.011, F.S., and s. 24, Art. I of the State Constitution;
- Provides that the repeal occurs at the end of 5 years and the exemption is subject to the Open Sunset Review Act such that it must be reviewed and saved by the Legislature through reenactment; and
- Provides more specificity to the public necessity statement.

This analysis is drafted to the committee substitute.

1 A bill to be entitled
2 An act relating to public meetings and public records;
3 amending s. 215.5602, F.S.; deleting an exemption from
4 public records and meeting requirements for meetings
5 of the Biomedical Research Advisory Council; providing
6 an exemption from public meeting requirements for
7 meetings of a peer review panel under the James and
8 Esther King Biomedical Research Program; providing an
9 exemption from public records requirements for records
10 generated during such meeting; providing an exemption
11 from public records requirements for research
12 applications provided to, and reviewed by, the peer
13 review panel; providing for legislative review and
14 repeal of the exemptions; amending s. 381.922, F.S.;
15 deleting an exemption from public records and meeting
16 requirements for meetings of the Biomedical Research
17 Advisory Council; providing an exemption from public
18 meeting requirements for meetings of a peer review
19 panel under the William G. "Bill" Bankhead, Jr., and
20 David Coley Cancer Research Program; providing an
21 exemption from public records requirements for records
22 generated during such meeting; providing an exemption
23 from public records requirements for research
24 applications provided to, and reviewed by, the peer
25 review panel; providing for legislative review and
26 repeal of the exemptions; providing a statement of
27 public necessity; providing an effective date.
28

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

30

31 Section 1. Subsection (7) of section 215.5602, Florida
 32 Statutes, is amended to read:

33 215.5602 James and Esther King Biomedical Research
 34 Program.—

35 (7) (a) The council and the peer review panel shall
 36 establish and follow rigorous guidelines for ethical conduct and
 37 adhere to a strict policy with regard to conflict of interest. A
 38 member of the council or panel may not participate in any
 39 council or panel discussion or decision with respect to a
 40 research proposal by any firm, entity, or agency with which the
 41 member is associated as a member of the governing body or as an
 42 employee, or with which the member has entered into a
 43 contractual arrangement. ~~Meetings of the council and the peer~~
 44 ~~review panels shall be subject to the provisions of chapter 119,~~
 45 ~~s. 286.011, and s. 24, Art. I of the State Constitution.~~

46 (b) Meetings of the peer review panel are exempt from s.
 47 286.011 and s. 24(b), Art. I of the State Constitution.

48 (c) Any records generated during a meeting of the peer
 49 review panel which is closed to the public under paragraph (b)
 50 are confidential and exempt from s. 119.07(1) and s. 24(a), Art.
 51 I of the State Constitution.

52 (d) Research applications held by the peer review panel
 53 are confidential and exempt from s. 119.07(1) and s. 24(a), Art.
 54 I of the State Constitution.

55 (e) Paragraphs (b), (c), and (d) are subject to the Open
 56 Government Sunset Review Act in accordance with s. 119.15 and

57 shall stand repealed on October 2, 2017, unless reviewed and
 58 saved from repeal through reenactment by the Legislature.

59 Section 2. Paragraph (c) of subsection (3) of section
 60 381.922, Florida Statutes, is amended, and paragraphs (d), (e),
 61 (f), and (g) are added to that subsection, to read:

62 381.922 William G. "Bill" Bankhead, Jr., and David Coley
 63 Cancer Research Program.—

64 (3)

65 (c) The council and the peer review panel shall establish
 66 and follow rigorous guidelines for ethical conduct and adhere to
 67 a strict policy with regard to conflicts of interest. A member
 68 of the council or panel may not participate in any council or
 69 panel discussion or decision with respect to a research proposal
 70 by any firm, entity, or agency with which the member is
 71 associated as a member of the governing body or as an employee
 72 or with which the member has entered into a contractual
 73 arrangement. ~~Meetings of the council and the peer review panels~~
 74 ~~are subject to chapter 119, s. 286.011, and s. 24, Art. I of the~~
 75 ~~State Constitution.~~

76 (d) Meetings of the peer review panel are exempt from s.
 77 286.011 and s. 24(b), Art. I of the State Constitution.

78 (e) Any records generated during a meeting of the peer
 79 review panel which is closed to the public under paragraph (b)
 80 are confidential and exempt from s. 119.07(1) and s. 24(a), Art.
 81 I of the State Constitution.

82 (f) Research applications held by the peer review panel
 83 are confidential and exempt from s. 119.07(1) and s. 24(a), Art.
 84 I of the State Constitution.

85 (g) Paragraphs (d), (e), and (f) are subject to the Open
 86 Government Sunset Review Act in accordance with s. 119.15 and
 87 shall stand repealed on October 2, 2017, unless reviewed and
 88 saved from repeal through reenactment by the Legislature.

89 Section 3. It is the finding of the Legislature that it is
 90 a public necessity that information discussed by a peer review
 91 panel regarding the funding of a biomedical grant proposal under
 92 the James and Esther King Biomedical Research Program or under
 93 the William G. "Bill" Bankhead, Jr., and David Coley Cancer
 94 Research Program be made exempt from the requirements of s.
 95 286.011, Florida Statutes, and s. 24(b), Art. I of the State
 96 Constitution. It is also the finding of the Legislature that it
 97 is a public necessity that any records generated during a
 98 meeting of the peer review panel under the James and Esther King
 99 Biomedical Research Program or under the William G. "Bill"
 100 Bankhead, Jr., and David Coley Cancer Research Program which is
 101 closed to the public be made confidential and exempt from the
 102 requirements of s. 119.07(1), Florida Statutes, and s. 24(a),
 103 Art. I of the State Constitution. It is also the finding of the
 104 Legislature that it is a public necessity that research
 105 applications provided to, and reviewed by, the peer review panel
 106 under the James and Esther King Biomedical Research Program or
 107 under the William G. "Bill" Bankhead, Jr., and David Coley
 108 Cancer Research Program be made confidential and exempt from the
 109 requirements of s. 119.07(1), Florida Statutes, and s. 24(a),
 110 Art. I of the State Constitution. The Legislature finds that
 111 maintaining confidentiality is a hallmark of scientific peer
 112 review when awarding grants, is practiced by the National

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113 Science Foundation and the National Institutes of Health, and
 114 allows for candid exchanges between reviewers critiquing
 115 proposals submitted for funding. Consequently, the Legislature
 116 finds that research applications provided to, and reviewed by,
 117 such peer review panels must be held confidential and exempt
 118 from public records requirements. The Legislature further finds
 119 that closing access to meetings of scientific peer review panels
 120 serves a public good by ensuring that decisions are based upon
 121 merit without bias or undue influence. Further, the Legislature
 122 finds that records generated during meetings of the peer review
 123 panels which are closed to the public must be protected for the
 124 same reasons that justify the closing of such meetings.

125 Section 4. This act shall take effect on the same date
 126 that HB 655 or similar legislation takes effect, if such
 127 legislation is adopted in the same legislative session or an
 128 extension thereof and becomes law.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Health & Human Services
2 Committee

3 Representative Coley offered the following:
4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Exemptions from public records and public
8 meetings requirements; peer review panels.-

9 (1) That portion of a meeting of the peer review panel in
10 which applications for biomedical research grants under s.
11 215.5602, Florida Statutes, or s. 381.922, Florida Statutes, are
12 discussed are exempt from s. 286.011, Florida Statutes, and s.
13 24(b), Art. I of the State Constitution.

14 (2) Any records generated by the peer review panel
15 relating to review of applications for biomedical research
16 grants, except final recommendations, are confidential and
17 exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Art. I
18 of the State Constitution.

Amendment No. 1

19 (3) Research applications held by the peer review panel
20 are confidential and exempt from s. 119.07(1), Florida Statutes,
21 and s. 24(a), Art. I of the State Constitution.

22 (4) Information that is held confidential and exempt under
23 this section may be disclosed with the express written consent
24 of the individual to whom the information pertains or the
25 individual's legally authorized representative, or by court
26 order upon showing good cause.

27 (5) Subsections (1), (2), (3), and (4) are subject to the
28 Open Government Sunset Review Act in accordance with s. 119.15,
29 Florida Statutes, and shall stand repealed on October 2, 2017,
30 unless reviewed and saved from repeal through reenactment by the
31 Legislature.

32 Section 2. The Legislature finds that it is a public
33 necessity that meetings of peer review panels under the James
34 and Esther King Biomedical Research Program and the William G.
35 "Bill" Bankhead, Jr., and David Coley Cancer Research Program,
36 any records generated thereby, and any research grant
37 applications held by such peer review panels be held
38 confidential and exempt from disclosure. The research grant
39 applications contain information of a confidential nature,
40 including ideas and processes the disclosure of which could
41 injure the affected researcher. Maintaining confidentiality is a
42 hallmark of scientific peer review when awarding grants, is
43 practiced by the National Science Foundation and the National
44 Institutes of Health, and allows for candid exchanges between
45 reviewers critiquing proposals. The Legislature further finds
46 that closing access to meetings of scientific peer review panels

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Amendment No. 1

47 serves a public good by ensuring that decisions are based upon
48 merit without bias or undue influence. Further, the Legislature
49 finds that records generated during meetings of the peer review
50 panels which are closed to the public must be protected for the
51 same reasons that justify the closing of such meetings.

52 Section 3. This act shall take effect on the same date
53 that HB 655 or similar legislation takes effect, if such
54 legislation is adopted in the same legislative session or an
55 extension thereof and becomes law.

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58

59

T I T L E A M E N D M E N T

60

Remove the entire title and insert:

61

A bill to be entitled

62

An act relating to public meetings and public records;
63 providing an exemption from public meeting

64

requirements for meetings of a peer review panel under
65 the James and Esther King Biomedical Research Program
66 and the William G. "Bill" Bankhead, Jr., and David

67

Coley Cancer Research Program; providing an exemption
68 from public records requirements for records generated

69

during such meeting; providing an exemption from

70

public records requirements for research grant

71

applications provided to, and reviewed by, the peer

72

review panel; providing for legislative review and

73

repeal of the exemptions; providing a statement of

COMMITTEE/SUBCOMMITTEE AMENDMENT



Bill No. CS/HB 657 (2012)

Amendment No. 1

74 public necessity; providing a contingent effective
75 date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 787 Nursing Home Facilities
SPONSOR(S): Health & Human Services Quality Subcommittee; Trujillo
TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee	13 Y, 0 N, As CS	Guzzo	Calamas
2) Health & Human Services Committee		Guzzo 	Gormley 

SUMMARY ANALYSIS

The bill expands the ability of nursing homes to provide additional services to nonresidents of nursing home facilities. Currently, nursing homes must have a standard license, have no class I or class II deficiencies in the previous two years, or have been awarded a Gold Seal, to provide additional services like respite and adult day services. The bill allows all licensed nursing homes to provide additional services, without limitation based on prior deficiencies or recognition as a Gold Seal facility, including respite, adult day services, and therapeutic spa services.

The bill creates the following regulations and provisions for overnight respite care in nursing homes:

- Facilities must have a written abbreviated plan of care and a contract;
- Prospective respite care recipients must provide medical information to the facility;
- Respite care recipients may bring their medications from home if permitted by the facility; and
- Respite care recipients may reside in the facility for 60 days within a contract or calendar year, provided each stay does not exceed 14 consecutive days.

The bill adds to the list of professionals authorized to staff a geriatric outpatient clinic. Currently, geriatric outpatient clinics must be staffed by a registered nurse or a physician assistant. The bill allows a licensed practical nurse under the direct supervision of a registered nurse, advanced registered nurse practitioner, physician assistant, or physician to staff a geriatric outpatient clinic.

The bill also removes the requirement for resident care plans to be signed by the director of nursing or another registered nurse employed by the facility. The resident care plan is written and developed by a registered nurse with participation from other staff and the resident, so the requirement for a signature is not necessary.

Currently, nursing home facilities that meet the following requirements are allowed to share programming and staff.

- Be a part of a continuing care facility or a retirement community that operates on a single campus;
- Have a standard license or have been awarded a Gold Seal; and
- Exceed the minimum required hours of licensed nursing and certified nursing assistant direct care.

Facilities that choose to do so must be able to demonstrate compliance with the minimum staffing ratios at the time of inspection and in the semiannual report. The bill eliminates the requirement to prove compliance with staffing ratios in the semiannual report. Facilities will still be required to demonstrate at the time of inspection that minimum staffing requirements are met. The bill also removes the requirement for the facility to be a Gold Seal facility to be able to share programming and staff.

Finally, the bill allows nursing homes to use a portion of their sheltered nursing home beds to provide assisted living services without giving up their certificate of need for those beds. Current law allows for such flexibility, but the beds must be used to provide extended congregate care rather than standard assisted living care.

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

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Nursing Homes

Geriatric Outpatient Clinics

A geriatric outpatient clinic is a site for providing outpatient health care to individuals at least 60 years of age. Geriatric outpatient clinics must be staffed by a registered nurse, or a physician assistant.¹

Resident Care Plans

A resident care plan is a written plan developed, maintained, and reviewed not less than quarterly by a registered nurse, with participation from other facility staff and the resident. The resident care plan must include the following:²

- A comprehensive assessment of the needs of a resident;
- The type and frequency of services required to provide the necessary care for the resident to attain or maintain the highest level of physical, mental, and psychosocial well-being;
- A list of services provided within or outside the facility to meet those needs; and
- An explanation of service goals.

The resident care plan is required to be signed by the director of nursing or another registered nurse employed by the facility and by the resident, the resident's designee, or the resident's legal representative.³

Shared Programming and Staff

Currently, nursing home facilities that meet the following requirements are allowed to share programming and staff.⁴

- Be a part of a continuing care facility or a retirement community that operates on a single campus;
- Have a standard license or have been awarded a Gold Seal; and
- Exceed the minimum required hours of licensed nursing and certified nursing assistant direct care.

If the above requirements are met, licensed nurses and certified nursing assistants who work in the facility may be used to provide services elsewhere on campus. Facilities that choose to do so must be able to demonstrate compliance with the minimum staffing ratios at the time of inspection and in the semiannual report.

¹ S. 400.021(8), F.S.

² S. 400.021(16), F.S.

³ *Id.*

⁴ S. 400.141(1)(g), F.S.

Respite Care

Section 400.141(1)(f), F.S., allows nursing homes to provide other needed services, including, but not limited to, adult day services, and respite care for people needing short-term or temporary nursing home services. Respite care means admission to a nursing home for the purpose of providing a short period of rest, 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.⁵ Only nursing homes with standard licensure status with no Class I or Class II deficiencies in the past two years or having Gold Seal status may provide respite services. Respite care is required to be provided in accordance with rules adopted by the Agency for Health Care Administration (AHCA) and AHCA may modify requirements by rule for resident assessment, resident care plans, resident contracts, physician orders, and other provisions for short term or temporary nursing home services.

Sheltered Beds

Section 651.118, F.S., contains provisions relating to AHCA's ability to issue certificates of need for sheltered nursing home beds. Sheltered nursing home beds are those for which a certificate of need has been issued to construct nursing home beds for the exclusive use of the prospective residents of the facility.⁶

Currently, AHCA allows sheltered nursing home beds to be used as extended congregate care beds.⁷ Extended congregate care means assistance and care that is beyond that of personal services.⁸ The beds must be in a distinct area of the nursing home which can be adapted to meet the requirements for extended congregate care.

Adult Day Care Services

Section 429.905(2), F.S., allows licensed assisted living facilities (ALFs), hospitals, and nursing homes to provide adult day care services during the day to adults who are not residents of the facility without being licensed as an adult day care center. AHCA is required to monitor the facility during the regular inspection and at least biennially to ensure adequate space and sufficient staff is provided. However, if an ALF, hospital, or nursing home holds itself out to the public as an adult day care center, it must be licensed as such.

Section 429.901, F.S., defines "adult day care center" as providing basic services, *for a part of the day*, to three or more individuals who are at least 18 years of age, who are not related to the owner or operator by blood or marriage, and who require such services. Currently, AHCA interprets the provision of day care services to be services rendered during a *business day*.⁹ Rule 58A-6.002, F.A.C., defines "daily attendance" as the number of participants who, during any one *calendar or business day*, attend the center. According to AHCA, they have informed the public, and denied request for centers wishing to provide services during late-night hours.¹⁰

Effect of Proposed Changes

Nursing Homes

Geriatric Outpatient Clinics

The bill adds to the list of professionals authorized to staff a geriatric outpatient clinic. Currently, geriatric outpatient clinics must be staffed by a registered nurse or a physician assistant. The bill allows

⁵ S. 400.021(15), F.S.

⁶ S. 651.118(3), F.S.

⁷ S. 651.118(8), F.S.

⁸ S. 429.02(11), F.S.

⁹ AHCA, *Staff Analysis and Economic Impact, House Bill Number 787* (January 28, 2012); Rule 58A-6.002(g), F.A.C.

¹⁰ *Id.*

a licensed practical nurse under the direct supervision of a registered nurse, advanced registered nurse practitioner, physician assistant, or physician to staff a geriatric outpatient clinic.

Resident Care Plans

The bill removes the requirement for resident care plans to be signed by the director of nursing or another registered nurse employed by the facility. The resident care plan is written and developed by a registered nurse with participation from other staff and the resident.

Shared Programming and Staff

Facilities that choose to share programming and staff are required to prove compliance with minimum staffing requirements at the time of inspection and in the semiannual report. The bill eliminates the requirement to prove compliance with staffing requirements in the semiannual report. Facilities will still be required to demonstrate at the time of inspection that minimum staffing requirements are met. The bill also removes the requirement for the facility to be a Gold Seal facility to be able to share programming and staff. This will allow more facilities with a standard license to participate in shared staffing and be able to move staff to areas where they feel they are needed, provided they are in compliance with the minimum staffing requirements.

Respite Care

The bill amends s. 400.141, F.S., to expand the ability of nursing homes to provide additional services to nonresidents of nursing home facilities.

Currently, nursing homes must have a standard license, have no class I or class II deficiencies in the previous two years, or have been awarded a Gold Seal to provide additional services including, but not limited to, respite, and adult day services. The bill allows all licensed nursing homes to provide additional services without limitation based on prior deficiencies or recognition as a Gold Seal facility. As a result, more facilities with a standard license will have the opportunity to provide these services to clients.

In addition to respite, and adult day services the bill allows for the provision of therapeutic spa services, and defines such services to mean bathing, nail, hair care, and other similar services related to personal hygiene.

The bill creates s. 400.172, F.S., to include the following regulations and provisions for overnight respite care in nursing homes:

- Requires facilities to have a written abbreviated plan of care and a contract;
- Requires prospective respite care recipients to provide medical information to the facility;
- Allows respite care recipients to bring their medications from home if permitted by the facility; and
- Allows respite care recipients to reside in the facility for 60 days within a contract or calendar year, provided each stay does not exceed 14 consecutive days.

Sheltered Beds

The bill amends s. 651.118(8), F.S., to allow sheltered beds to be used not only to provide extended congregate care, but standard and limited nursing services as well. This will result in nursing homes being able to utilize their sheltered beds to provide care to individuals with various levels of acuity.

Adult Day Care Services

The bill amends s. 429.905(2), F.S., defining the term “day” as any portion of a 24-hour day. As a result, ALFs, hospitals and nursing homes will be able to provide adult day services at any time during

a 24-hour day. According to AHCA, adult day care centers are inspected during day-time hours.¹¹ The change will also require inspections of centers and facilities during non-daytime hours, including evenings and weekends. AHCA currently inspects various facility types during evening and weekend hours, but this would require inspections during the hours these facilities choose to perform such services.

B. SECTION DIRECTORY:

Section 1: Amends s. 400.021, F.S., relating to geriatric outpatient clinics, resident care plans, and therapeutic spa services.

Section 2: Amends s. 400.141, F.S., relating to administration and management of nursing home facilities.

Section 3: Creates s. 400.172, F.S., relating to respite care provided in nursing home facilities.

Section 4: Amends s. 429.905, F.S., relating to exemptions; monitoring of adult day care center programs collocated with assisted living facilities or licensed nursing home facilities.

Section 5: Amends s. 651.118, F.S., relating to the Agency for Health Care Administration; certificates of need; sheltered beds; and community beds.

Section 6: Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

¹¹ AHCA, *Staff Analysis and Economic Impact, House Bill Number 787* (January 28, 2012).

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 31, 2012, the Health and Human Services Quality Subcommittee adopted an amendment to HB 787. The amendment retains current law relating to the certificate of need moratorium on new nursing home beds by removing section 5 from the bill.

1 A bill to be entitled
 2 An act relating to nursing home facilities; amending
 3 s. 400.021, F.S.; revising definitions of the terms
 4 "geriatric outpatient clinic" and "resident care plan"
 5 and defining the term "therapeutic spa services";
 6 amending s. 400.141, F.S.; revising provisions
 7 relating to other needed services provided by licensed
 8 nursing home facilities, including respite care, adult
 9 day, and therapeutic spa services; revising provisions
 10 relating to facilities eligible to share programming
 11 and staff; deleting requirements for the submission of
 12 certain reports to the Agency for Health Care
 13 Administration; creating s. 400.172, F.S.; providing
 14 requirements for a nursing home facility operated by a
 15 licensee that provides respite care services;
 16 providing for rights of persons receiving respite care
 17 in nursing home facilities; requiring a prospective
 18 respite care recipient to provide certain information
 19 to the nursing home facility; amending s. 429.905,
 20 F.S.; defining the term "day" for purposes of day care
 21 services provided to adults who are not residents;
 22 amending s. 651.118, F.S.; providing a funding
 23 limitation on sheltered nursing home beds used to
 24 provide assisted living, rather than extended
 25 congregate care services; authorizing certain sharing
 26 of areas, services, and staff between such sheltered
 27 beds and nursing home beds in those facilities;
 28 providing an effective date.

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WHEREAS, the Legislature recognizes that the use of nursing homes has decreased over the past decade because of alternatives that are now available to consumers, and

WHEREAS, nursing homes continue to be a valuable resource and should be used to the fullest extent possible to provide traditional nursing care to the most impaired persons as well as providing services to frail or disabled persons who choose to remain in the community or who may need a less skilled level of care, and

WHEREAS, regulatory requirements should be flexible enough to allow nursing homes to diversify but continue to include sufficient protections to ensure the best care possible to consumers, NOW, THEREFORE,

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

Section 1. Subsections (8) and (16) of section 400.021, Florida Statutes, are amended, and subsection (19) is added to that section, to read:

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

(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, or a licensed practical nurse under the direct supervision of a registered nurse, advanced registered nurse practitioner, physician assistant, or physician.

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

75 (19) "Therapeutic spa services" means bathing, nail, and
 76 hair care services and other similar services related to
 77 personal hygiene.

78 Section 2. Paragraphs (f) and (g) of subsection (1) of
 79 section 400.141, Florida Statutes, are amended to read:

80 400.141 Administration and management of nursing home
 81 facilities.—

82 (1) Every licensed facility shall comply with all
 83 applicable standards and rules of the agency and shall:

84 (f) Be allowed and encouraged by the agency to provide

85 | other needed services under certain conditions. If the facility
 86 | has a standard licensure status, ~~and has had no class I or class~~
 87 | ~~II deficiencies during the past 2 years or has been awarded a~~
 88 | ~~Gold Seal under the program established in s. 400.235,~~ it may be
 89 | ~~encouraged by the agency to~~ provide services, including, but not
 90 | limited to, respite, therapeutic spa, and adult day services to
 91 | nonresidents, ~~which enable individuals to move in and out of the~~
 92 | facility. A facility is not subject to any additional licensure
 93 | requirements for providing these services. Respite care may be
 94 | offered to persons in need of short-term or temporary nursing
 95 | home services. Respite care must be provided in accordance with
 96 | this part ~~and rules adopted by the agency. However, the agency~~
 97 | ~~shall, by rule, adopt modified requirements for resident~~
 98 | ~~assessment, resident care plans, resident contracts, physician~~
 99 | ~~orders, and other provisions, as appropriate, for short-term or~~
 100 | ~~temporary nursing home services.~~ Providers of adult day services
 101 | must comply with the requirements of s. 429.905(2). The agency
 102 | shall allow for shared programming and staff in a facility which
 103 | meets minimum standards and offers services pursuant to this
 104 | paragraph, but, if the facility is cited for deficiencies in
 105 | patient care, may require additional staff and programs
 106 | appropriate to the needs of service recipients. A person who
 107 | receives respite care may not be counted as a resident of the
 108 | facility for purposes of the facility's licensed capacity unless
 109 | that person receives 24-hour respite care. A person receiving
 110 | either respite care for 24 hours or longer or adult day services
 111 | must be included when calculating minimum staffing for the
 112 | facility. Any costs and revenues generated by a nursing home

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113 facility from nonresidential programs or services shall be
 114 excluded from the calculations of Medicaid per diems for nursing
 115 home institutional care reimbursement.

116 (g) If the facility has a standard license ~~or is a Gold~~
 117 ~~Seal facility~~, exceeds the minimum required hours of licensed
 118 nursing and certified nursing assistant direct care per resident
 119 per day, and is part of a continuing care facility licensed
 120 under chapter 651 or a retirement community that offers other
 121 services pursuant to part III of this chapter or part I or part
 122 III of chapter 429 on a single campus, be allowed to share
 123 programming and staff. At the time of inspection ~~and in the~~
 124 ~~semiannual report required pursuant to paragraph (e)~~, a
 125 continuing care facility or retirement community that uses this
 126 option must demonstrate through staffing records that minimum
 127 staffing requirements for the facility were met. Licensed nurses
 128 and certified nursing assistants who work in the ~~nursing home~~
 129 facility may be used to provide services elsewhere on campus if
 130 the facility exceeds the minimum number of direct care hours
 131 required per resident per day and the total number of residents
 132 receiving direct care services from a licensed nurse or a
 133 certified nursing assistant does not cause the facility to
 134 violate the staffing ratios required under s. 400.23(3)(a).
 135 Compliance with the minimum staffing ratios must ~~shall~~ be based
 136 on the total number of residents receiving direct care services,
 137 regardless of where they reside on campus. If the facility
 138 receives a conditional license, it may not share staff until the
 139 conditional license status ends. This paragraph does not
 140 restrict the agency's authority under federal or state law to

141 require additional staff if a facility is cited for deficiencies
 142 in care which are caused by an insufficient number of certified
 143 nursing assistants or licensed nurses. The agency may adopt
 144 rules for the documentation necessary to determine compliance
 145 with this provision.

146 Section 3. Section 400.172, Florida Statutes, is created
 147 to read:

148 400.172 Respite care provided in nursing home facilities.-

149 (1) For each person admitted for respite care as
 150 authorized under s. 400.141(1)(f), a nursing home facility
 151 operated by a licensee must:

152 (a) Have a written abbreviated plan of care that, at a
 153 minimum, includes nutritional requirements, medication orders,
 154 physician orders, nursing assessments, and dietary preferences.
 155 The nursing or physician assessments may take the place of all
 156 other assessments required for full-time residents.

157 (b) Have a contract that, at a minimum, specifies the
 158 services to be provided to a resident receiving respite care,
 159 including charges for services, activities, equipment, emergency
 160 medical services, and the administration of medications. If
 161 multiple admissions for a single person for respite care are
 162 anticipated, the original contract is valid for 1 year after the
 163 date the contract is executed.

164 (c) Ensure that each resident is released to his or her
 165 caregiver or an individual designated in writing by the
 166 caregiver.

167 (2) A person admitted under the respite care program
 168 shall:

169 (a) Be exempt from department rules relating to the
 170 discharge planning process.

171 (b) Be covered by the residents' rights specified in s.
 172 400.022(1)(a)-(o) and (r)-(t). Funds or property of the resident
 173 are not be considered trust funds subject to the requirements of
 174 s. 400.022(1)(h) until the resident has been in the facility for
 175 more than 14 consecutive days.

176 (c) Be allowed to use his or her personal medications
 177 during the respite stay if permitted by facility policy. The
 178 facility must obtain a physician's order for the medications.
 179 The caregiver may provide information regarding the medications
 180 as part of the nursing assessment and that information must
 181 agree with the physician's order. Medications shall be released
 182 with the resident upon discharge in accordance with current
 183 physician's orders.

184 (d) Be entitled to reside in the facility for a total of
 185 60 days within a contract year or for a total of 60 days within
 186 a calendar year if the contract is for less than 12 months.
 187 However, each single stay may not exceed 14 days. If a stay
 188 exceeds 14 consecutive days, the facility must comply with all
 189 assessment and care planning requirements applicable to nursing
 190 home residents.

191 (e) Reside in a licensed nursing home bed.

192 (3) A prospective respite care resident must provide
 193 medical information from a physician, physician assistant, or
 194 nurse practitioner and any other information provided by the
 195 primary caregiver required by the facility before or when the
 196 person is admitted to receive respite care. The medical

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197 information must include a physician's order for respite care
 198 and proof of a physical examination by a licensed physician,
 199 physician assistant, or nurse practitioner. The physician's
 200 order and physical examination may be used to provide
 201 intermittent respite care for up to 12 months after the date the
 202 order is written.

203 (4) The facility shall assume the duties of the primary
 204 caregiver. To ensure continuity of care and services, the
 205 resident may retain his or her personal physician and shall have
 206 access to medically necessary services such as physical therapy,
 207 occupational therapy, or speech therapy, as needed. The facility
 208 shall arrange for transportation of the resident to these
 209 services, if necessary.

210 Section 4. Subsection (2) of section 429.905, Florida
 211 Statutes, is amended to read:

212 429.905 Exemptions; monitoring of adult day care center
 213 programs colocated with assisted living facilities or licensed
 214 nursing home facilities.—

215 (2) A licensed assisted living facility, a licensed
 216 hospital, or a licensed nursing home facility may provide
 217 services during the day which include, but are not limited to,
 218 social, health, therapeutic, recreational, nutritional, and
 219 respite services, to adults who are not residents. Such a
 220 facility need not be licensed as an adult day care center;
 221 however, the agency must monitor the facility during the regular
 222 inspection and at least biennially to ensure adequate space and
 223 sufficient staff. If an assisted living facility, a hospital, or
 224 a nursing home holds itself out to the public as an adult day

225 care center, it must be licensed as such and meet all standards
 226 prescribed by statute and rule. For the purpose of this
 227 subsection, the term "day" means any portion of a 24-hour day.

228 Section 5. Subsection (8) of section 651.118, Florida
 229 Statutes, is amended to read:

230 651.118 Agency for Health Care Administration;
 231 certificates of need; sheltered beds; community beds.—

232 (8) A provider may petition the Agency for Health Care
 233 Administration to use a designated number of sheltered nursing
 234 home beds to provide assisted living ~~extended congregate care as~~
 235 ~~defined in s. 429.02~~ if the beds are in a distinct area of the
 236 nursing home which can be adapted to meet the requirements for
 237 an assisted living facility as defined in s. 429.02 ~~extended~~
 238 ~~congregate care~~. The provider may subsequently use such beds as
 239 sheltered beds after notifying the agency of the intended
 240 change. Any sheltered beds used to provide assisted living
 241 ~~extended congregate care~~ pursuant to this subsection may not
 242 qualify for funding under the Medicaid waiver. Any sheltered
 243 beds used to provide assisted living ~~extended congregate care~~
 244 pursuant to this subsection may share common areas, services,
 245 and staff with beds designated for nursing home care, provided
 246 that all of the beds are under common ownership. For the
 247 purposes of this subsection, fire and life safety codes
 248 applicable to nursing home facilities shall apply.

249 Section 6. This act shall take effect July 1, 2012.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 787 (2012)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Health & Human Services
2 Committee

3 Representative Trujillo offered the following:

4
5 **Amendment (with title amendment)**

6 Between lines 209 and 210, insert:

7 Section 4. Paragraph (t) is added to subsection (3) of
8 section 408.036, Florida Statutes, to read:

9 408.036 Projects subject to review; exemptions.—

10 (3) EXEMPTIONS.—Upon request, the following projects are
11 subject to exemption from the provisions of subsection (1):

12 (t) For the creation of a pilot project in planning
13 subdistrict 4-1, subdistrict 4-2, or subdistrict 4-3 for the
14 construction of a nursing home with up to and including 150
15 beds, where the nursing home is affiliated with an accredited
16 nursing school offering Bachelor of Science, Master of Science,
17 and Doctor of Science degree programs within a private
18 accredited university, where the nursing home will be
19 constructed on or abutting the private accredited university.

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Amendment No.

20 The nursing home, once licensed, must at all times have an
21 affiliation with the private accredited university and must
22 employ or otherwise make positions available for the education
23 and training of nursing students in the field of long-term care
24 or geriatric nursing. Notwithstanding any moratorium, existing
25 or planned, on new construction of nursing home beds, the pilot
26 project may proceed with construction, licensure, and operation.
27 Construction must begin within 11 months after this paragraph
28 becomes law. This paragraph expires June 30, 2014.

31 -----
32 **T I T L E A M E N D M E N T**

33 Remove line 19 and insert:

34 to the nursing home facility; amending s. 408.036,
35 F.S.; providing an exemption from certain certificate
36 of need requirements to provide for the creation of a
37 pilot project in any of specified Agency for Health
38 Care Administration subdistricts; requiring the
39 nursing home to be affiliated with an accredited
40 nursing school that offers certain degree programs;
41 providing requirements for affiliation with a private
42 accredited university and for location and staffing of
43 the nursing home; providing for the pilot project to
44 proceed notwithstanding any moratorium under certain
45 conditions; providing for expiration of the exemption;
46 amending s. 429.905,

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 943 Background Screening

SPONSOR(S): Criminal Justice Subcommittee; Health & Human Services Subcommittee; Holder and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 320

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	15 Y, 0 N, As CS	Guzzo	Schoolfield
2) Criminal Justice Subcommittee	14 Y, 0 N, As CS	Thomas	Cunningham
3) Health & Human Services Committee		Guzzo <i>AG</i>	Gormley <i>CG</i>

SUMMARY ANALYSIS

In 2010, the Legislature substantially rewrote the requirements and procedures for background screening of individuals and businesses that deal primarily with vulnerable populations. In 2011, the Legislature passed CS/SB 1992, which further implemented the 2010 legislation, however, this bill was vetoed by the Governor. The bill contains many of the provisions contained in the vetoed bill, while addressing the concerns of the Governor.

The bill creates the Care Provider Background Screening Clearinghouse (Clearinghouse) to create a single "program" of screening individuals and will allow for the results of criminal history checks of persons acting as covered care providers to be shared among the specified agencies. Once a person's screening record is in the Clearinghouse, that person will avoid the need for many future state screens and related fees.

The bill exempts from screening or rescreening: mental health personnel working in hospitals with less than 15 hours of direct contact with adult patients per week in a hospital; Certified Nursing Assistant applicants who have successfully passed background screening within 90 days of applying for certification; law enforcement officers who work or volunteer in summer camps and other facilities regulated under ch. 409, F.S., such as foster group homes and residential child-caring agencies; and certain volunteers, relatives of clients, and attorneys who provide services through a direct service provider that has a contractual relationship with the Department of Elderly Affairs.

The bill also:

- Requires electronic fingerprinting vendors to use technology systems that are compliant with the systems used by the Florida Department of Law Enforcement.
- Allows employers to hire an employee for training and orientation before the screening is complete, provided the employee does not have any contact with clients until successful completion of the screening.

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

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background Screening

Florida has one of the largest vulnerable populations in the country with over 25% of the state's population over the age of 65, and many more children and disabled adults. These vulnerable populations require special care because they are at an increased risk of abuse.

In 1995, the Legislature created standard procedures for the screening of prospective employees, owners, operators, contractors, and volunteers where the Legislature had determined it necessary to conduct criminal history background screenings to protect vulnerable persons. Chapter 435, F.S., outlines the screening requirements. The Florida Department of Law Enforcement (FDLE) processes criminal history checks for the screening entity. In 2010, the Legislature substantially rewrote the requirements and procedures for background screening of these persons and businesses.¹ Major changes made by the 2010 legislation include:

- No person who is required to be screened may begin work until the screening has been completed.
- All Level 1² screenings were increased to Level 2³ screenings.
- By July 1, 2012, all fingerprints submitted to FDLE must be submitted electronically.
- Certain personnel that were not being screened were required to begin Level 2 screening.
- The addition of serious crimes that disqualify an individual from employment working with vulnerable populations.
- Authorization for agencies to request the retention of fingerprints by FDLE.
- That an exemption for a disqualifying felony may not be granted until at least three years after the completion of all sentencing sanctions for that felony.
- That all exemptions from disqualification may be granted only by the agency head.

Level 2 background screenings cost \$43.25 (the \$24 state fee, plus an additional \$19.25 for electronic fingerprints) or \$30.25 (\$24 plus \$6.25 for hard copy fingerprints).⁴

Mental Health Personnel

"Mental health personnel" are required to be Level 2 screened. "Mental health personnel" includes program directors, clinicians, staff, and volunteers working in public or private mental health programs and facilities who have direct contact with individuals.⁵ Volunteers that have less than ten hours per month of contact with patients are not required to be screened so long as they remain in the line of sight of someone who has been Level 2 screened while having direct contact with patients.⁶

Effect of Proposed Changes

The bill amends s. 394.4572(1), F.S., to restore an exemption from screening removed in 2010 for mental health personnel with 15 hours or less direct contact with patients per week in a hospital

¹ Chapter 2010-114, L.O.F.

² Section 435.03, F.S. Level 1 screenings are name-based demographic screenings that must include, but are not limited to, employment history checks and statewide criminal correspondence checks through FDLE. Level 1 screenings may also include local criminal records checks through local law enforcement agencies. A person undergoing a Level 1 screening must not have been found guilty of any of the listed offenses.

³ Section 435.04, F.S. A Level 2 screening consists of a fingerprint-based search of FDLE and the Federal Bureau of Investigation databases for state and national criminal arrest records. Any person undergoing a Level 2 screening must not have been found guilty of any of the listed offenses.

⁴ *Criminal History Record Checks/Background Checks Fact Sheet* October 7, 2011. Available at <http://www.fdle.state.fl.us/Content/getdoc/39b8f116-6d8b-4024-9a70-5d8cd2e34aa5/FAQ.aspx> (last visited February 8, 2012).

⁵ Section 394.4572(1)(a), F.S.

⁶ Section 394.4572(1)(c), F.S.

licensed pursuant to ch. 395, F.S., provided that the person is not listed on the FDLE Career Offender database⁷ or the Dru Sjodin National Sex Offender Public Website.⁸ The exemption is not available to persons working in a mental health facility where the primary purpose of the facility is the treatment of minors.

Agency for Health Care Administration Rescreening Schedule

Persons screened under the Agency for Health Care Administration (AHCA) must be rescreened every five years. In 2010, authority was given to AHCA to establish by rule a staggered schedule for the rescreening of all persons who have a controlling interest in, are employed by, or contract with a licensee on July 31, 2010. All such persons must be rescreened by July 31, 2015.

Effect of Proposed Changes

The bill amends s. 408.809, F.S., to add the rescreening staggered schedule to statute, thereby eliminating the need for a rule. The bill also amends this statute to limit an exemption from the screening process to persons whose background screening results have not been retained in the Care provider Background Screening Clearinghouse created by this bill.

Summer Camps

Summer camps are not licensed by the state but summer camp owners, operators, employees, and volunteers are required to be Level 2 screened.⁹ Volunteers that have less than ten hours per month of contact with children are not required to be screened provided while having direct contact with children they remain in the line of sight of someone who has been Level 2 screened.¹⁰

Effect of Proposed Changes

The bill amends s. 409.1757, F.S., to add law enforcement officers with active certification to those licensed persons who do not have to be screened for purposes of ch. 409, F.S. The exemption applies to active sworn law enforcement officers who work or volunteer in summer camps and other facilities regulated under ch. 409, F.S., such as foster group homes and residential child-caring agencies.

Consumer-Directed Care

The Consumer-Directed Care (CDC) Program¹¹ established under AHCA provides an alternative to institutional care. These alternatives include in-home and community-based care. The program allows recipients of in-home and community-based services the opportunity to select the services they need and the providers they want, including family and friends. The stated intent of the CDC Program is "to give such individuals more choices in and greater control over the purchased long-term care services they receive."¹²

Persons who provide care under the CDC Program must undergo level 2 background screening pursuant to ch. 435, F.S.¹³ Other regulatory and care programs under AHCA screen individuals pursuant to ch. 435, F.S., but **also** s. 408.809, F.S.¹⁴ It is believed to be an oversight that the provisions of s. 408.809, F.S., are not applicable for those providing services under the CDC Program.

Effect of Proposed Changes

The bill amends s. 409.221(4)(i), F.S., to provide that persons providing services under the CDC Program will be background screened pursuant to ch. 435, F.S., **and** s. 408.809, F.S.

⁷ This search is free and can be made at <http://www.fdle.state.fl.us/coflyer/home.asp> (last visited February 8, 2012).

⁸ This search is free and can be made at <http://www.nsopw.gov> (last visited February 8, 2012).

⁹ Section 409.175(2)(i) and (k), F.S.

¹⁰ Section 409.175(2)(i), F.S.

¹¹ Section 409.221, F.S.

¹² Section 409.221(3), F.S.

¹³ Section 409.221(4)(i), F.S.

¹⁴ See for example s. 400.215(1), F.S., (nursing homes); s. 400.512, F.S., (home health agencies); and s. 400.6065, F.S., (hospices).

The Department of Elderly Affairs

The Department of Elderly Affairs (DOEA) is the designated state unit on aging as defined in the Older Americans Act (OAA) of 1965.¹⁵ As such, DOEA's role is to administer the state's OAA allotment and grants, and to advocate, coordinate, and plan all elder services.¹⁶ The OAA requires states to provide elder services through a coordinated service delivery system through designated Area Agencies on Aging. Chapter 430, F.S., requires DOEA to fund service delivery "lead agencies" that coordinate and provide a variety of oversight and elder support services at the consumer level in the counties within each planning and service area. DOEA is 94 percent privatized through contracts with local entities and utilizes over 45,000 volunteers to deliver information and services to elders.¹⁷ Many of the volunteers are elders themselves.¹⁸

The 2010 revision of the background screening laws created s. 430.0402, F.S., requiring Level 2 background screenings for "direct services providers" who provide services through a contractual relationship with DOEA.¹⁹ A "direct service provider" is defined as a person who pursuant to a program to provide services to the elderly, has direct, face-to-face contact with a client while providing services to the client or has access to the client's living areas or to the client's funds or personal property.²⁰ Volunteers are specifically included as "direct service providers."²¹

The statute contains no exception from background screening for a volunteer who has occasional or limited contact with elders. In other statutes, there are exceptions for volunteers who are in brief or occasional contact with vulnerable populations. For example, s. 393.0655(1), F.S., exempts from screening a volunteer who assists with persons with developmental disabilities if the volunteer assists less than 10 hours per month and a person who has been screened is always present and has the volunteer within his or her line of sight.²²

Area Agencies on Aging and Elder Care Services are entities who contract with DOEA to provide services to elders. Representatives of several of these entities report that the requirement of Level 2 background screening of volunteers has dramatically reduced the number of volunteers, potentially impacting the availability of services to elders.²³ The Meals on Wheels program is dependent on volunteers, and the program is currently losing volunteers who cannot afford to pay for the cost of a Level 2 background screening. Senior centers, congregate meal sites, and health and wellness programs are also dependent on volunteers.

The provisions of the 2010 legislation also impacts Home Care for the Elderly (HCE)²⁴ caregivers. Many HCE caregivers are family members. These family members receive a monthly stipend of \$106 to help care for a family member at home. The stipend is used to pay for incontinence products, nutritional supplements, respite care, and other needed products and services. The new Level 2 background screening requirement is applicable to these family members who act as caregivers.

Effect of Proposed Changes

The bill amends s. 430.0402, F.S., to revise the definition of direct service provider to include only individuals who have direct, face-to-face contact with a client and have access to the client's living

¹⁵ Section 305(a)(1)(c), Older Americans Act.

¹⁶ Section 430.04(1), F.S.

¹⁷ Department of Elder Affairs, Summary of Programs and Services (2011), available at <http://elderaffairs.state.fl.us/doea/pubs/sops.html> (last visited February 8, 2012).

¹⁸ *Id.*

¹⁹ Section 34, ch. 2010-114, L.O.F.

²⁰ Section 430.04(1)(b), F.S.

²¹ *Id.*

²² See e.g. s. 394.4572(1)(a), F.S. (contact with persons held for mental health treatment), and s. 409.175(2), F.S. (contact with children).

²³ Meetings with Health and Human Services Committee staff in November and December of 2010, and correspondence on file with the Committee.

²⁴ Department of Elder Affairs, Summary of Programs and Services (2011), available at <http://elderaffairs.state.fl.us/doea/pubs/sops.html> (last visited February 8, 2012).

areas, funds, personal property, or personal identification information as defined in s. 817.568, F.S. Current law defines a direct service provider as having client contact or living area/property access.

The bill creates an exemption from background screening for the following:

- Volunteers who assist on an intermittent basis for less than 20 hours per month and who are not listed on the FDLE Career Offender database²⁵ or the Dru Sjodin National Sex Offender Public Website.²⁶
- Relatives.²⁷
- Attorneys in good standing with the Florida Bar.

The bill provides an exemption from additional background screening for an individual who becomes a direct care provider and provides services within the scope of his or her license. The exemption applies to a person who was previously screened by the Agency for Health Care Administration as a condition of licensure or employment. Such individuals would include owners, administrators, and employees of such entities as nursing homes, assisted living facilities, home health agencies, and adult day care establishments.²⁸

The bill provides time frames for screenings by DOEA:

- Individuals serving as direct service providers on July 31, 2011, must be screened by July 1, 2013.
- DOEA may adopt rules to establish a schedule to stagger the implementation of the required screenings over a 1-year period, beginning July 1, 2012, through July 1, 2013.
- Individuals shall be rescreened every 5 years following the date of his or her last background screening unless the individual's fingerprints are continuously retained and monitored by FDLE in the federal fingerprint retention program.

The bill removes "any authorizing statutes, if the offense was a felony" from the list of disqualifying offenses for direct services providers. The term "authorizing statute" is not defined by ch. 430, F.S. The term is defined in s. 408.803, F.S., and relates to entities regulated by the Agency for Health Care Administration.

Care Provider Background Screening Clearinghouse

Many different agencies, programs, employers, and professionals serve vulnerable populations in Florida. Personnel working with those entities and serving vulnerable persons are subject to background screening. However, due to restrictions placed on the sharing of criminal history information, persons who work for more than one agency or employer or change jobs, or wish to volunteer for such an entity, often must undergo a new and duplicative background screening and fingerprinting. This proves frustrating to those involved and leads to the payment of additional fees.

Policies imposed by the Federal Bureau of Investigation (FBI) prevent the sharing of criminal history information except within a given "program." Since each regulatory area is covered by a different controlling statute and screenings are done for separate purposes, the screenings have been viewed as separate "program" areas and sharing of results has not been allowed. In addition, screenings are only as good as the date they are run. Arrests or convictions occurring after the screening are not known until the person is rescreened or self-reports.

²⁵ This search is free and can be made at <http://www.fdle.state.fl.us/coflyer/home.asp> (last visited February 8, 2012).

²⁶ This search is free and can be made at <http://www.nsopw.gov> (last visited February 8, 2012).

²⁷ The bill provides a definition of the term "relative" as it relates to this exemption to mean an individual who is the father, mother, stepfather, stepmother, son, daughter, brother, sister, grandmother, grandfather, great-grandmother, great-grandfather, grandson, granddaughter, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister of the client.

²⁸ For a complete list of entities, see s. 408.802, F.S.

Effect of Proposed Changes

The bill creates the Care Provider Background Screening Clearinghouse (Clearinghouse) in s. 435.12, F.S. The purpose of the Clearinghouse is to create a single "program" of screening individuals who have direct contact with vulnerable persons. The Clearinghouse is created under AHCA and is to be implemented in consultation with FDLE. The Clearinghouse is a secure internet web-based system and is to be implemented by September 30, 2013, and allows for the results of criminal history checks of persons acting as covered care providers to be shared among the specified agencies.²⁹

Fingerprints of the care providers will be retained by FDLE, meaning the electronically scanned image of the print will be stored digitally. FDLE will search the retained prints against incoming Florida arrests and must report the results to AHCA for inclusion in the Clearinghouse, thus avoiding the need for future state screens and related fees. A digital photograph of the person screened will be taken at the time the fingerprints are taken and retained by FDLE in electronic format, as well. This enables accurate identification of the person when they change jobs or are otherwise presented with a situation requiring screening and enables the new employer to access the Clearinghouse to verify that the person has been screened, is in the Clearinghouse, and is who they say they are. Retained fingerprints must be resubmitted for a FBI national criminal history check every five years until such time as the FBI implements its own retention program. Once the FBI implements its retention program, the need for any future screening by the specified agencies of persons in the Clearinghouse will be eliminated.

The bill does not require the rescreening of persons just to be entered into the Clearinghouse, but their fingerprints will be placed into the Clearinghouse once they are required to be rescreened by the operation of other screening laws. Once a person's fingerprints are in the Clearinghouse, they will not have to be reprinted in order to send their fingerprints to the FBI (avoiding further fees).

Electronic Screening Vendors

By July 1, 2012, all fingerprints submitted to FDLE must be submitted electronically.³⁰ An agency may by rule require fingerprints to be submitted electronically prior to that date.³¹ An agency may contract with one or more vendors to perform all or part of the electronic fingerprinting and must ensure that each vendor is qualified and will ensure the integrity and security of all personal information.³²

Effect of Proposed Changes

The bill amends s. 435.04, F.S., to require vendors that perform electronic fingerprinting to:

- Meet certain technical standards that are compatible with technology used by FDLE; and
- Have the ability to communicate electronically with the relevant state agency and to provide a photograph of the applicant taken at the time the fingerprints are submitted.

Employment Prior to Screening

Currently an employer may not "hire, select, or otherwise allow an employee to have contact with any vulnerable person that would place the employee in a role that requires background screening" until the person has successfully completed the background screening.³³ The language creates uncertainty whether a person can be hired for the purpose of training and orientation prior to successfully completing the background screening.

²⁹ "Specified agency" means the Department of Health, the Department of Children and Families, the Agency for Health Care Administration, the Department of Elder Affairs, the Department of Juvenile Justice, and the Agency for Persons with Disabilities, when these agencies are conducting state and national criminal history background screening on persons who work with children, elderly or disabled persons.

³⁰ Section 435.04(1)(b), F.S.

³¹ Section 435.04(1)(d), F.S.

³² Section 435.04(1)(c), F.S.

³³ Section 435.06(2)(a), F.S.

Effect of Proposed Changes

The bill amends s. 435.06(2), F.S., to provide that an employer may hire an employee to a position that requires background screening before the employee completes the screening process for training and orientation purposes. However, the employee may not have direct contact with vulnerable persons until the screening process is successfully completed.

Screening of Health Care Professionals

Presently many health care professionals licensed by the Department of Health (DOH) are required to submit fingerprints upon initial licensure or renewal. These professions are regulated under chapters 458 (medical practice), 459 (osteopathic medicine), 460 (chiropractic medicine), 461 (podiatric medicine), 464 (nursing), or s. 465.022 (pharmacies), F.S.

Effect of Proposed Changes

The bill creates s. 456.0135, F.S., to provide that after January 1, 2013, such fingerprints must be submitted electronically under FDLE procedures and through an approved vendor. For subsequent renewals, FDLE will submit the retained fingerprints to the FBI for a national criminal history check, avoiding the need for the professional to have her or his fingerprints taken again.

Certified Nursing Assistants

Certified Nursing Assistants (CNAs) provide care and assistance to persons with their activities of daily living.³⁴ To become a CNA, an individual must:

- Demonstrate a minimum competency to read and write.
- Successfully pass the Level 2 background screening described in s. 400.215, F.S.³⁵
- Meet one of the following requirements:
 - Successfully complete an approved training program and examination.
 - Achieve a minimum score, on the nursing assistant competency examination, be 18 years old, and have a high school degree or the equivalent.

Only CNAs may be employed in nursing homes to provide nursing assistance.³⁶ However, there are limited exceptions for a person to begin working as a CNA for up to four months prior to certification when the person is enrolled in a CNA program, is a CNA in another state, or has preliminarily passed the CNA exam.³⁷ Such individuals must be background screened pursuant to s. 400.215, F.S., before beginning work as a CNA in a nursing home.

Effect of Proposed Changes

The bill amends s. 464.203(1), F.S., to provide that if an applicant for CNA certification has successfully passed the background screening required by s. 400.215, F.S., or s. 408.809, F.S., within 90 days of applying for the certification, and the person's background screening results are not retained in the Clearinghouse, the Board of Nursing shall waive the requirement that the applicant pass another background screening.

Qualified Entities

A "qualified entity" is a business or organization that provides care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities.³⁸ Qualified entities that register with FDLE may screen personnel and employees through the submission of

³⁴ Section 464.201(5), F.S.

³⁵ The background screening required by s. 400.215, F.S., refers to the screening described in s. 408.809, F.S., and is identical to the background screening required by s. 430.0402, F.S., except that the following are also disqualifying offenses: s. 741.28, F.S., relating to domestic violence, s. 831.30, F.S., relating to fraud in obtaining medicinal drugs, and s. 831.31, F.S., relating to the sale, manufacture, delivery, or possession with the intent to sell, manufacture, or deliver any counterfeit controlled substance, if the offense was a felony.

³⁶ Section 400.211, F.S.

³⁷ *Id.*

³⁸ Section 943.0542(1), F.S.

fingerprints. Each request must be voluntary and conform to the requirements of the National Child Protection Act of 1993, as amended.³⁹

Effect of Proposed Changes

The bill amends s. 943.05(2)(h)2., F.S., to provide that qualified entities electing to participate in the fingerprint retention and search process must timely remit fees by a payment mechanism approved by the FDLE. Failure to pay the fees on a timely basis may result in the refusal by FDLE to permit the qualified entity to continue to participate in the fingerprint retention and search process until all fees owed are paid.

Fingerprints and FDLE

The Criminal Justice Information Program is established within FDLE.⁴⁰ The program maintains a system able to transmit criminal justice information to and between criminal justice agencies and a statewide automated fingerprint identification system.⁴¹ Fingerprints submitted to FDLE for a background screening must be done in a manner established by FDLE.⁴² Any related fees must be borne by the person or entity submitting the request, or as provided by law.⁴³

Effect of Proposed Changes

The bill amends s. 943.053, F.S., to require fingerprints submitted for background checks be taken by a law enforcement agency employee, a government agency employee, a qualified electronic fingerprint service provider, or a private employer. Such prints may not be taken by the subject of the criminal history check.

The bill provides that a vendor, entity, or agency (except for criminal justice agencies) submitting fingerprints must enter into an agreement with FDLE. Such agreements must require:

- Compliance with FDLE specified standards;
- Persons with responsibility for submitting fingerprints to be qualified to do so; and
- Collection and timely submission of fees.

Expunction and Sealing of Criminal History Records

Florida courts generally have jurisdiction over the maintenance and correction of judicial records containing criminal history information. However, the Legislature has provided some conditions, responsibilities, and duties regarding the expunction⁴⁴ and sealing⁴⁵ of such records. An expunged criminal history record must be destroyed by any criminal justice agency having custody of such record, except for records in the custody of FDLE.⁴⁶ Such a record retained by FDLE is confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.⁴⁷ The person who is the subject of the expunged record may lawfully deny or fail to acknowledge the arrests covered by the expunged record, with limited exceptions.⁴⁸ One such exception is when the person is "seeking to be employed or licensed by or to contract with the Department of Children and Family Services, the Agency for Health Care Administration, the Agency for Persons with Disabilities, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly."⁴⁹

Similar conditions exist for the sealing of a criminal history record. A criminal history record sealed by a court is confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the

³⁹ Section 943.0542(2), F.S.

⁴⁰ Section 943.05, F.S.

⁴¹ Section 943.05(2), F.S.

⁴² Section 943.053(12), F.S.

⁴³ *Id.*

⁴⁴ Section 943.0585, F.S.

⁴⁵ Section 943.059, F.S.

⁴⁶ Section 943.0585(4), F.S.

⁴⁷ *Id.*

⁴⁸ Section 943.0585(4)(a), F.S.

⁴⁹ Section 943.0585(4)(a)5., F.S.

State Constitution, and “is available only to the person who is the subject of the record, to the subject’s attorney, to criminal justice agencies for their respective criminal justice purposes,” and to certain entities “for their respective licensing, access authorization, and employment purposes.”⁵⁰ The person who is the subject of the sealed record may lawfully deny or fail to acknowledge the arrests covered by the sealed record, with limited exceptions.⁵¹ One such exception is when the person is “seeking to be employed or licensed by or to contract with the Department of Children and Family Services, the Agency for Health Care Administration, the Agency for Persons with Disabilities, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly.”⁵²

Effect of Proposed Changes

The bills amends ss. 943.0585(4)(a)5. and 943.059(4)(a)5., F.S., to add DOH and DOEA to the list of agencies where persons must disclose the existence of expunged or sealed criminal history records for licensing, access authorization, and employment purposes.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 394.4572, F.S., relating to screening of mental health personnel.
- Section 2:** Amends s. 408.809, F.S., relating to background screening; prohibited offenses.
- Section 3:** Amends s. 409.1757, F.S., relating to persons not required to be reprinted or rescreened.
- Section 4:** Amends s. 409.221, F.S., relating to the consumer-directed care program.
- Section 5:** Amends s. 430.0402, F.S., relating to screening of direct service providers.
- Section 6:** Amends s. 435.02, F.S., relating to definitions.
- Section 7:** Amends s. 435.04, F.S., relating to Level 2 screening standards.
- Section 8:** Amends s. 435.06, F.S., relating to exclusion from employment.
- Section 9:** Creates s. 435.12, F.S., relating to the Care Provider Background Screening Clearinghouse.
- Section 10:** Creates s. 456.0135, F.S., relating to general background screening provisions.
- Section 11:** Amends s. 464.203, F.S., relating to certified nursing assistants; certification requirements.
- Section 12:** Amends s. 943.05, F.S., relating to Criminal Justice Information Program; duties; crime reports.
- Section 13:** Amends s. 943.053, F.S., relating to dissemination of criminal justice information; fees.
- Section 14:** Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.
- Section 15:** Amends s. 943.059, F.S., relating to court-ordered sealing of criminal history records.
- Section 16:** Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have a significant impact on state revenues. The bill is designed to reduce the number of duplicative screenings over the coming years, so there will be a corresponding reduction in the collected fees. However, it is not anticipated that this will represent a large percentage of those collections.

2. Expenditures:

The bill does not appear to have any impact on state expenditures. The bill is designed to reduce the number of duplicative screenings over the coming years, so there will be a corresponding

⁵⁰ Section 943.059(4), F.S.

⁵¹ Section 943.059(4)(a), F.S.

⁵² Section 943.059(4)(a)5., F.S.

reduction in the related workload. However, the creation of the Clearinghouse and the retention of fingerprints will increase related workload. It is anticipated that such workload will be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will reduce the number of persons who will need to undergo background screening prior to working with vulnerable persons. The Level 2 screenings cost \$43.25 (the \$24 state fee, plus an additional \$19.25 for electronic fingerprints) or \$30.25 (\$24 plus \$6.25 for hard copy fingerprints).⁵³

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of Elderly Affairs is given rule-making authority to establish a schedule to stagger the implementation of the required background screenings over a 1-year period, beginning July 1, 2012, through July 1, 2013. This authority appears to be adequate under ch. 120, F.S.

The Agency for Health Care Administration and the Department of Law Enforcement are given rule-making authority to adopt any forms or procedures needed to implement the Care Provider Background Screening Clearinghouse created by the bill. This authority appears to be adequate under ch. 120, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

⁵³ *Criminal History Record Checks/Background Checks Fact Sheet* October 7, 2011. Available at <http://www.fdle.state.fl.us/Content/getdoc/39b8f116-6d8b-4024-9a70-5d8cd2e34aa5/FAQ.aspx> (last visited January 23, 2012).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 17, 2012, the Health and Human Services Access Subcommittee adopted two amendments to HB 943. The amendments:

- Create an exemption from level 2 background screening for direct service provider volunteers that serve on an intermittent basis for less than 20 hours per week, provided the volunteers are not listed on the Department of Law Enforcement Career Offender Search or the Dru Sjodin National Sex Offender Public Website.
- Provide a detailed definition of “Relatives” as it pertains to direct service providers who are exempt from level 2 background screening.
- Change the dates in the rescreening schedule to conform to current law.

The bill was reported favorably as a Committee Substitute.

On January 25, 2012, the Criminal Justice Subcommittee adopted seven amendments to the bill and reported the bill favorably as a committee substitute. The amendments:

- Create the Care Provider Background Screening Clearinghouse to be managed by AHCA and amend related statutes to conform.
- Remove from the bill a provision authorizing private schools to seek an exemption from disqualification for its personnel and remove the proposed background screening workgroup.
- Revise the provision in the bill providing an exemption from background screening for mental health personnel working in a licensed hospital who work on an intermittent basis for less than 15 hours per week with direct contact with patients. The amendment leaves the exemption in place, provided that the person is not listed on the FDLE Career Offender database or the Dru Sjodin National Sex Offender Public Website.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

1 A bill to be entitled
 2 An act relating to background screening; amending s.
 3 394.4572, F.S.; providing that mental health personnel
 4 working in a facility licensed under ch. 395, F.S.,
 5 who work on an intermittent basis for less than 15
 6 hours per week of direct, face-to-face contact with
 7 patients are exempt from the fingerprinting and
 8 screening requirements under certain conditions;
 9 providing an exception; amending s. 408.809, F.S.;
 10 providing additional conditions for a person to
 11 satisfy screening requirements; eliminating a rule
 12 that requires the Agency for Health Care
 13 Administration to stagger rescreening schedules;
 14 providing a rescreening schedule; amending s.
 15 409.1757, F.S.; adding law enforcement officers who
 16 have a good moral character to the list of
 17 professionals who are not required to be
 18 refingerprinted or rescreened; amending s. 409.221,
 19 F.S.; revising provisions relating to background
 20 screening for persons rendering care in the consumer-
 21 directed care program; amending s. 430.0402, F.S.;
 22 including a person who has access to a client's
 23 personal identification information within the
 24 definition of the term "direct service provider";
 25 exempting certain professionals licensed by the
 26 Department of Health, attorneys in good standing,
 27 relatives of clients, and volunteers who assist on an
 28 intermittent basis for less than 20 hours per month

29 from level 2 background screening; excepting certain
 30 licensed professionals and persons screened as a
 31 licensure requirement from further screening under
 32 certain circumstances; requiring direct service
 33 providers working as of a certain date to be screened
 34 within a specified period; providing a phase-in for
 35 screening direct service providers; requiring that
 36 employers of direct service providers and certain
 37 other individuals be rescreened every 5 years unless
 38 fingerprints are retained electronically by the
 39 Department of Law Enforcement; removing an offense
 40 from the list of disqualifying offenses for purposes
 41 of background screening; amending s. 435.02, F.S.;
 42 revising and providing definitions relating to
 43 employment screening; amending s. 435.04, F.S.;
 44 requiring vendors who submit fingerprints on behalf of
 45 employers to meet specified criteria; amending s.
 46 435.06, F.S.; authorizing an employer to hire an
 47 employee to a position that otherwise requires
 48 background screening before the completion of the
 49 screening process for the purpose of training the
 50 employee; prohibiting the employee from having direct
 51 contact with vulnerable persons until the screening
 52 process is complete; creating s. 435.12, F.S.;
 53 creating the Care Provider Background Screening
 54 Clearinghouse under the Agency for Health Care
 55 Administration, in consultation with the Department of
 56 Law Enforcement; providing rulemaking authority;

57 providing for the implementation and operation of the
 58 clearinghouse; providing for the results of certain
 59 criminal history checks to be shared among specified
 60 agencies; providing for retention of fingerprints;
 61 providing for the registration of employers; providing
 62 an exemption for certain employees who have undergone
 63 a criminal history check before the clearinghouse is
 64 operational; creating s. 456.0135, F.S.; requiring an
 65 application for initial licensure or license renewal
 66 in a profession regulated by the Department of Health
 67 to include fingerprints submitted by an approved
 68 vendor after a specified date; providing procedures
 69 and conditions for retention of fingerprints;
 70 requiring the applicant to pay the costs of
 71 fingerprint processing; amending s. 464.203, F.S.;
 72 requiring the Board of Nursing to waive background
 73 screening requirements for certain certified nursing
 74 assistants; amending s. 943.05, F.S.; providing
 75 procedures for qualified entities participating in the
 76 Criminal Justice Information Program that elect to
 77 participate in the fingerprint retention and search
 78 process; providing for the imposition of fees for
 79 processing fingerprints; authorizing the Department of
 80 Law Enforcement to exclude certain entities from
 81 participation for failure to timely remit fingerprint
 82 processing fees; amending s. 943.053, F.S.; providing
 83 procedures for the submission of fingerprints by
 84 private vendors, private entities, and public agencies

85 for certain criminal history checks; requiring the
 86 vendor, entity, or agency to enter into an agreement
 87 with the Department of Law Enforcement specifying
 88 standards for electronic submission of fingerprints;
 89 exempting specified criminal justice agencies from the
 90 requirement for an agreement; providing procedures for
 91 the vendor, entity, or agency to collect certain fees
 92 and to remit those fees to the Department of Law
 93 Enforcement; authorizing the Department of Law
 94 Enforcement to exclude certain entities from
 95 participation for failure to timely remit fingerprint
 96 processing fees; amending s. 943.0585, F.S.; revising
 97 provisions relating to the court-ordered expunction of
 98 criminal history records; amending s. 943.059, F.S.;
 99 revising provisions relating to the court-ordered
 100 sealing of criminal history records; providing an
 101 effective date.

102

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

104

105 Section 1. Paragraph (d) is added to subsection (1) of
 106 section 394.4572, Florida Statutes, to read:

107 394.4572 Screening of mental health personnel.—

108 (1)

109 (d) Mental health personnel working in a facility licensed
 110 under chapter 395 who work on an intermittent basis for less
 111 than 15 hours per week of direct, face-to-face contact with
 112 patients, and who are not listed on the Department of Law

113 Enforcement Career Offender Search or the Dru Sjodin National
 114 Sex Offender Public Website, are exempt from the fingerprinting
 115 and screening requirements, except that persons working in a
 116 mental health facility where the primary purpose of the facility
 117 is the mental health treatment of minors must be fingerprinted
 118 and meet screening requirements.

119 Section 2. Section 408.809, Florida Statutes, is amended
 120 to read:

121 408.809 Background screening; prohibited offenses.—

122 (1) Level 2 background screening pursuant to chapter 435
 123 must be conducted through the agency on each of the following
 124 persons, who are considered employees for the purposes of
 125 conducting screening under chapter 435:

126 (a) The licensee, if an individual.

127 (b) The administrator or a similarly titled person who is
 128 responsible for the day-to-day operation of the provider.

129 (c) The financial officer or similarly titled individual
 130 who is responsible for the financial operation of the licensee
 131 or provider.

132 (d) Any person who is a controlling interest if the agency
 133 has reason to believe that such person has been convicted of any
 134 offense prohibited by s. 435.04. For each controlling interest
 135 who has been convicted of any such offense, the licensee shall
 136 submit to the agency a description and explanation of the
 137 conviction at the time of license application.

138 (e) Any person, as required by authorizing statutes,
 139 seeking employment with a licensee or provider who is expected
 140 to, or whose responsibilities may require him or her to, provide

141 | personal care or services directly to clients or have access to
 142 | client funds, personal property, or living areas; and any
 143 | person, as required by authorizing statutes, contracting with a
 144 | licensee or provider whose responsibilities require him or her
 145 | to provide personal care or personal services directly to
 146 | clients. Evidence of contractor screening may be retained by the
 147 | contractor's employer or the licensee.

148 | (2) Every 5 years following his or her licensure,
 149 | employment, or entry into a contract in a capacity that under
 150 | subsection (1) would require level 2 background screening under
 151 | chapter 435, each such person must submit to level 2 background
 152 | rescreening as a condition of retaining such license or
 153 | continuing in such employment or contractual status. For any
 154 | such rescreening, the agency shall request the Department of Law
 155 | Enforcement to forward the person's fingerprints to the Federal
 156 | Bureau of Investigation for a national criminal history record
 157 | check. If the fingerprints of such a person are not retained by
 158 | the Department of Law Enforcement under s. 943.05(2)(g), the
 159 | person must file a complete set of fingerprints with the agency
 160 | and the agency shall forward the fingerprints to the Department
 161 | of Law Enforcement for state processing, and the Department of
 162 | Law Enforcement shall forward the fingerprints to the Federal
 163 | Bureau of Investigation for a national criminal history record
 164 | check. The fingerprints may be retained by the Department of Law
 165 | Enforcement under s. 943.05(2)(g). The cost of the state and
 166 | national criminal history records checks required by level 2
 167 | screening may be borne by the licensee or the person
 168 | fingerprinted. Until the person's background screening results

169 are retained in the clearinghouse created under s. 435.12, the
 170 agency may accept as satisfying the requirements of this section
 171 proof of compliance with level 2 screening standards submitted
 172 within the previous 5 years to meet any provider or professional
 173 licensure requirements of the agency, the Department of Health,
 174 the Department of Elderly Affairs, the Agency for Persons with
 175 Disabilities, the Department of Children and Family Services, or
 176 the Department of Financial Services for an applicant for a
 177 certificate of authority or provisional certificate of authority
 178 to operate a continuing care retirement community under chapter
 179 651, provided that:

180 (a) The screening standards and disqualifying offenses for
 181 the prior screening are equivalent to those specified in s.
 182 435.04 and this section;

183 (b) satisfies the requirements of this section if The
 184 person subject to screening has not had a break in service from
 185 a position that requires level 2 screening been unemployed for
 186 more than 90 days; and

187 (c) Such proof is accompanied, under penalty of perjury,
 188 by an affidavit of compliance with the provisions of chapter 435
 189 and this section using forms provided by the agency.

190 (3) All fingerprints must be provided in electronic
 191 format. Screening results shall be reviewed by the agency with
 192 respect to the offenses specified in s. 435.04 and this section,
 193 and the qualifying or disqualifying status of the person named
 194 in the request shall be maintained in a database. The qualifying
 195 or disqualifying status of the person named in the request shall
 196 be posted on a secure website for retrieval by the licensee or

197 designated agent on the licensee's behalf.

198 (4) In addition to the offenses listed in s. 435.04, all
 199 persons required to undergo background screening pursuant to
 200 this part or authorizing statutes must not have an arrest
 201 awaiting final disposition for, must not have been found guilty
 202 of, regardless of adjudication, or entered a plea of nolo
 203 contendere or guilty to, and must not have been adjudicated
 204 delinquent and the record not have been sealed or expunged for
 205 any of the following offenses or any similar offense of another
 206 jurisdiction:

207 (a) Any authorizing statutes, if the offense was a felony.

208 (b) This chapter, if the offense was a felony.

209 (c) Section 409.920, relating to Medicaid provider fraud.

210 (d) Section 409.9201, relating to Medicaid fraud.

211 (e) Section 741.28, relating to domestic violence.

212 (f) Section 817.034, relating to fraudulent acts through
 213 mail, wire, radio, electromagnetic, photoelectronic, or
 214 photooptical systems.

215 (g) Section 817.234, relating to false and fraudulent
 216 insurance claims.

217 (h) Section 817.505, relating to patient brokering.

218 (i) Section 817.568, relating to criminal use of personal
 219 identification information.

220 (j) Section 817.60, relating to obtaining a credit card
 221 through fraudulent means.

222 (k) Section 817.61, relating to fraudulent use of credit
 223 cards, if the offense was a felony.

224 (l) Section 831.01, relating to forgery.

225 (m) Section 831.02, relating to uttering forged
 226 instruments.

227 (n) Section 831.07, relating to forging bank bills,
 228 checks, drafts, or promissory notes.

229 (o) Section 831.09, relating to uttering forged bank
 230 bills, checks, drafts, or promissory notes.

231 (p) Section 831.30, relating to fraud in obtaining
 232 medicinal drugs.

233 (q) Section 831.31, relating to the sale, manufacture,
 234 delivery, or possession with the intent to sell, manufacture, or
 235 deliver any counterfeit controlled substance, if the offense was
 236 a felony.

237 (5) A person who serves as a controlling interest of, is
 238 employed by, or contracts with a licensee on July 31, 2010, who
 239 has been screened and qualified according to standards specified
 240 in s. 435.03 or s. 435.04 must be rescreened by July 31, 2015 in
 241 compliance with the following schedule. ~~The agency may adopt~~
 242 ~~rules to establish a schedule to stagger the implementation of~~
 243 ~~the required rescreening over the 5-year period, beginning July~~
 244 ~~31, 2010, through July 31, 2015.~~ If, upon rescreening, such
 245 person has a disqualifying offense that was not a disqualifying
 246 offense at the time of the last screening, but is a current
 247 disqualifying offense and was committed before the last
 248 screening, he or she may apply for an exemption from the
 249 appropriate licensing agency and, if agreed to by the employer,
 250 may continue to perform his or her duties until the licensing
 251 agency renders a decision on the application for exemption if
 252 the person is eligible to apply for an exemption and the

253 exemption request is received by the agency within 30 days after
 254 receipt of the rescreening results by the person. The
 255 rescreening schedule shall be:

256 (a) Individuals for whom the last screening was conducted
 257 on or before December 31, 2004, must be rescreened by July 31,
 258 2013.

259 (b) Individuals for whom the last screening conducted was
 260 between January 1, 2005, and December 31, 2008, must be
 261 rescreened by July 31, 2014.

262 (c) Individuals for whom the last screening conducted was
 263 between January 1, 2009, through July 31, 2011, must be
 264 rescreened by July 31, 2015.

265 ~~(6)-(5)~~ The costs associated with obtaining the required
 266 screening must be borne by the licensee or the person subject to
 267 screening. Licensees may reimburse persons for these costs. The
 268 Department of Law Enforcement shall charge the agency for
 269 screening pursuant to s. 943.053(3). The agency shall establish
 270 a schedule of fees to cover the costs of screening.

271 ~~(7)-(6)~~(a) As provided in chapter 435, the agency may grant
 272 an exemption from disqualification to a person who is subject to
 273 this section and who:

- 274 1. Does not have an active professional license or
- 275 certification from the Department of Health; or
- 276 2. Has an active professional license or certification
- 277 from the Department of Health but is not providing a service
- 278 within the scope of that license or certification.

279 (b) As provided in chapter 435, the appropriate regulatory
 280 board within the Department of Health, or the department itself

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281 if there is no board, may grant an exemption from
 282 disqualification to a person who is subject to this section and
 283 who has received a professional license or certification from
 284 the Department of Health or a regulatory board within that
 285 department and that person is providing a service within the
 286 scope of his or her licensed or certified practice.

287 ~~(8)(7)~~ The agency and the Department of Health may adopt
 288 rules pursuant to ss. 120.536(1) and 120.54 to implement this
 289 section, chapter 435, and authorizing statutes requiring
 290 background screening and to implement and adopt criteria
 291 relating to retaining fingerprints pursuant to s. 943.05(2).

292 ~~(9)(8)~~ There is no unemployment compensation or other
 293 monetary liability on the part of, and no cause of action for
 294 damages arising against, an employer that, upon notice of a
 295 disqualifying offense listed under chapter 435 or this section,
 296 terminates the person against whom the report was issued,
 297 whether or not that person has filed for an exemption with the
 298 Department of Health or the agency.

299 Section 3. Section 409.1757, Florida Statutes, is amended
 300 to read:

301 409.1757 Persons not required to be refingerprinted or
 302 rescreened.~~Any provision of law to the contrary~~
 303 notwithstanding, human resource personnel who have been
 304 fingerprinted or screened pursuant to chapters 393, 394, 397,
 305 402, and this chapter, ~~and~~ teachers who have been fingerprinted
 306 pursuant to chapter 1012, and law enforcement officers who meet
 307 the requirements of s. 943.13, who have not been unemployed for
 308 more than 90 days thereafter, and who under the penalty of

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309 | perjury attest to the completion of such fingerprinting or
 310 | screening and to compliance with ~~the provisions of~~ this section
 311 | and the standards for good moral character as contained in such
 312 | provisions as ss. 110.1127(3), 393.0655(1), 394.457(6), 397.451,
 313 | 402.305(2), ~~and~~ 409.175(6), and 943.13(7), are ~~shall~~ not be
 314 | required to be refingerprinted or rescreened in order to comply
 315 | with any caretaker screening or fingerprinting requirements.

316 | Section 4. Paragraph (i) of subsection (4) of section
 317 | 409.221, Florida Statutes, is amended to read:

318 | 409.221 Consumer-directed care program.—

319 | (4) CONSUMER-DIRECTED CARE.—

320 | (i) Background screening requirements.—All persons who
 321 | render care under this section must undergo level 2 background
 322 | screening pursuant to chapter 435 and s. 408.809. The agency
 323 | shall, as allowable, reimburse consumer-employed caregivers for
 324 | the cost of conducting background screening as required by this
 325 | section. For purposes of this section, a person who has
 326 | undergone screening, who is qualified for employment under this
 327 | section and applicable rule, and who has not been unemployed for
 328 | more than 90 days following such screening is not required to be
 329 | rescreened. Such person must attest under penalty of perjury to
 330 | not having been convicted of a disqualifying offense since
 331 | completing such screening.

332 | Section 5. Section 430.0402, Florida Statutes, is amended
 333 | to read:

334 | 430.0402 Screening of direct service providers.—

335 | (1) (a) Except as provided in subsection (2), level 2
 336 | background screening pursuant to chapter 435 is required for

337 direct service providers. Background screening includes
 338 employment history checks as provided in s. 435.03(1) and local
 339 criminal records checks through local law enforcement agencies.

340 (b) For purposes of this section, the term "direct service
 341 provider" means a person 18 years of age or older who, pursuant
 342 to a program to provide services to the elderly, has direct,
 343 face-to-face contact with a client while providing services to
 344 the client and ~~or~~ has access to the client's living areas, ~~or to~~
 345 ~~the client's funds, or personal property, or personal~~
 346 identification information as defined in s. 817.568. The term
 347 includes coordinators, managers, and supervisors of residential
 348 facilities and volunteers.

349 (2) Level 2 background screening pursuant to chapter 435
 350 and this section is not required for the following direct
 351 service providers:

352 (a)1. Licensed physicians, nurses, or other professionals
 353 licensed by the Department of Health who have been fingerprinted
 354 and undergone background screening as part of their licensure;
 355 and

356 2. Attorneys in good standing with The Florida Bar; are
 357 ~~not subject to background screening~~

358
 359 if they are providing a service that is within the scope of
 360 their licensed practice.

361 (b) Relatives. For purposes of this section, the term
 362 "relative" means an individual who is the father, mother,
 363 stepfather, stepmother, son, daughter, brother, sister,
 364 grandmother, grandfather, great-grandmother, great-grandfather,

365 grandson, granddaughter, uncle, aunt, first cousin, nephew,
 366 niece, husband, wife, father-in-law, mother-in-law, son-in-law,
 367 daughter-in-law, brother-in-law, sister-in-law, stepson,
 368 stepdaughter, stepbrother, stepsister, half-brother, or half-
 369 sister of the client.

370 (c) Volunteers who assist on an intermittent basis for
 371 less than 20 hours per month and who are not listed on the
 372 Department of Law Enforcement Career Offender Search or the Dru
 373 Sjodin National Sex Offender Public Website.

374 1. The program that provides services to the elderly is
 375 responsible for verifying that the volunteer is not listed on
 376 either database.

377 2. Once the department is participating as a specified
 378 agency in the clearinghouse created under s. 435.12, the
 379 provider shall forward the volunteer information to the
 380 Department of Elderly Affairs if the volunteer is not listed in
 381 either database specified in subparagraph 1. The department must
 382 then perform a check of the clearinghouse. If a disqualification
 383 is identified in the clearinghouse, the volunteer must undergo
 384 level 2 background screening pursuant to chapter 435 and this
 385 section.

386 (3) Until the department is participating as a specified
 387 agency in the clearinghouse created under s. 435.12, the
 388 department may not require additional level 2 screening if the
 389 individual is qualified for licensure or employment by the
 390 Agency for Health Care Administration pursuant to the agency's
 391 background screening standards under s. 408.809 and the
 392 individual is providing a service that is within the scope of

393 his or her licensed practice or employment.

394 ~~(4)-(3)~~ Refusal on the part of an employer to dismiss a
 395 manager, supervisor, or direct service provider who has been
 396 found to be in noncompliance with standards of this section
 397 shall result in the automatic denial, termination, or revocation
 398 of the license or certification, rate agreement, purchase order,
 399 or contract, in addition to any other remedies authorized by
 400 law.

401 (5) Individuals serving as direct service providers on
 402 July 31, 2011, must be screened by July 1, 2013. The department
 403 may adopt rules to establish a schedule to stagger the
 404 implementation of the required screening over a 1-year period,
 405 beginning July 1, 2012, through July 1, 2013.

406 (6) An employer of a direct service provider who
 407 previously qualified for employment or volunteer work under
 408 Level 1 screening standards or an individual who is required to
 409 be screened according to the level 2 screening standards
 410 contained in chapter 435, pursuant to this section, shall be
 411 rescreened every 5 years following the date of his or her last
 412 background screening or exemption, unless such individual's
 413 fingerprints are continuously retained and monitored by the
 414 Department of Law Enforcement in the federal fingerprint
 415 retention program according to the procedures specified in s.
 416 943.05.

417 ~~(7)-(4)~~ The background screening conducted pursuant to this
 418 section must ensure that, in addition to the disqualifying
 419 offenses listed in s. 435.04, no person subject to the
 420 provisions of this section has an arrest awaiting final

421 disposition for, has been found guilty of, regardless of
 422 adjudication, or entered a plea of nolo contendere or guilty to,
 423 or has been adjudicated delinquent and the record has not been
 424 sealed or expunged for, any offense prohibited under any of the
 425 following provisions of state law or similar law of another
 426 jurisdiction:

427 ~~(a) Any authorizing statutes, if the offense was a felony.~~

428 (a)~~(b)~~ Section 409.920, relating to Medicaid provider
 429 fraud.

430 (b)~~(e)~~ Section 409.9201, relating to Medicaid fraud.

431 (c)~~(d)~~ Section 817.034, relating to fraudulent acts
 432 through mail, wire, radio, electromagnetic, photoelectronic, or
 433 photooptical systems.

434 (d)~~(e)~~ Section 817.234, relating to false and fraudulent
 435 insurance claims.

436 (e)~~(f)~~ Section 817.505, relating to patient brokering.

437 (f)~~(g)~~ Section 817.568, relating to criminal use of
 438 personal identification information.

439 (g)~~(h)~~ Section 817.60, relating to obtaining a credit card
 440 through fraudulent means.

441 (h)~~(i)~~ Section 817.61, relating to fraudulent use of
 442 credit cards, if the offense was a felony.

443 (i)~~(j)~~ Section 831.01, relating to forgery.

444 (j)~~(k)~~ Section 831.02, relating to uttering forged
 445 instruments.

446 (k)~~(l)~~ Section 831.07, relating to forging bank bills,
 447 checks, drafts, or promissory notes.

448 (l)~~(m)~~ Section 831.09, relating to uttering forged bank

449 bills, checks, drafts, or promissory notes.

450 Section 6. Section 435.02, Florida Statutes, is amended to
451 read:

452 435.02 Definitions.—For the purposes of this chapter, the
453 term:

454 (1) "Agency" means any state, county, or municipal agency
455 that grants licenses or registration permitting the operation of
456 an employer or is itself an employer or that otherwise
457 facilitates the screening of employees pursuant to this chapter.
458 If there is no state agency or the municipal or county agency
459 chooses not to conduct employment screening, "agency" means the
460 Department of Children and Family Services.

461 (2) "Employee" means any person required by law to be
462 screened pursuant to this chapter, including, but not limited
463 to, persons who are contractors, licensees, or volunteers.

464 (3) "Employer" means any person or entity required by law
465 to conduct screening of employees pursuant to this chapter.

466 (4) "Employment" means any activity or service sought to
467 be performed by an employee which requires the employee to be
468 screened pursuant to this chapter.

469 (5) "Specified agency" means the Department of Health, the
470 Department of Children and Family Services, the Agency for
471 Health Care Administration, the Department of Elderly Affairs,
472 the Department of Juvenile Justice, and the Agency for Persons
473 with Disabilities when these agencies are conducting state and
474 national criminal history background screening on persons who
475 work with children or persons who are elderly or disabled.

476 (6)~~(5)~~ "Vulnerable person" means a minor as defined in s.

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477 1.01 or a vulnerable adult as defined in s. 415.102.

478 Section 7. Paragraph (e) is added to subsection (1) of
479 section 435.04, Florida Statutes, to read:

480 435.04 Level 2 screening standards.—

481 (1)

482 (e) Vendors who submit fingerprints on behalf of employers
483 must:

484 1. Meet the requirements of s. 943.053; and

485 2. Have the ability to communicate electronically with the
486 state agency accepting screening results from the Department of
487 Law Enforcement and provide a photograph of the applicant taken
488 at the time the fingerprints are submitted.

489 Section 8. Paragraph (d) is added to subsection (2) of
490 section 435.06, Florida Statutes, to read:

491 435.06 Exclusion from employment.—

492 (2)

493 (d) An employer may hire an employee to a position that
494 requires background screening before the employee completes the
495 screening process for training and orientation purposes.

496 However, the employee may not have direct contact with
497 vulnerable persons until the screening process is completed and
498 the employee demonstrates that he or she exhibits no behaviors
499 that warrant the denial or termination of employment.

500 Section 9. Section 435.12, Florida Statutes, is created to
501 read:

502 435.12 Care Provider Background Screening Clearinghouse.—

503 (1) The Agency for Health Care Administration in
504 consultation with the Department of Law Enforcement shall create

505 a secure web-based system, which shall be known as the "Care
 506 Provider Background Screening Clearinghouse" or "clearinghouse,"
 507 and which shall be implemented to the full extent practicable no
 508 later than September 30, 2013, subject to the specified agencies
 509 being funded and equipped to participate in such program. The
 510 clearinghouse shall allow the results of criminal history checks
 511 provided to the specified agencies for screening of persons
 512 qualified as care providers under s. 943.0542 to be shared among
 513 the specified agencies when a person has applied to volunteer,
 514 be employed, be licensed, or enter into a contract that requires
 515 a state and national fingerprint-based criminal history check.
 516 The Agency for Health Care Administration and the Department of
 517 Law Enforcement may adopt rules to create forms or implement
 518 procedures needed to carry out this section.

519 (2) (a) To ensure that the information in the clearinghouse
 520 is current, the fingerprints of an employee required to be
 521 screened by a specified agency and included in the clearinghouse
 522 must be:

523 1. Retained by the Department of Law Enforcement pursuant
 524 to s. 943.05(2)(g) and (h) and (3), and the Department of Law
 525 Enforcement must report the results of searching those
 526 fingerprints against state incoming arrest fingerprint
 527 submissions to the Agency for Health Care Administration for
 528 inclusion in the clearinghouse.

529 2. Resubmitted for a Federal Bureau of Investigation
 530 national criminal history check every 5 years until such time as
 531 the fingerprints are retained by the Federal Bureau of
 532 Investigation.

533 3. Subject to retention on a 5-year renewal basis with
534 fees collected at the time of initial submission or resubmission
535 of fingerprints.

536 (b) Until such time as the fingerprints are retained at
537 the Federal Bureau of Investigation, an employee with a break in
538 service of more than 90 days from a position that requires
539 screening by a specified agency must submit to a national
540 screening if the person returns to a position that requires
541 screening by a specified agency.

542 (c) An employer of persons subject to screening by a
543 specified agency must register with the clearinghouse and
544 maintain the employment status of all employees within the
545 clearinghouse. Initial employment status and any changes in
546 status must be reported within 10 business days.

547 (3) An employee who has undergone a fingerprint-based
548 criminal history check by a specified agency before the
549 clearinghouse is operational is not required to be checked again
550 solely for the purpose of entry in the clearinghouse. Every
551 employee who is or will become subject to fingerprint-based
552 criminal history checks to be eligible to be licensed, have
553 their license renewed, or meet screening or rescreening
554 requirements by a specified agency once the specified agency
555 participates in the clearinghouse shall be subject to the
556 requirements of this section with respect to entry of records in
557 the clearinghouse and retention of fingerprints for reporting
558 the results of searching against state incoming arrest
559 fingerprint submissions.

560 Section 10. Section 456.0135, Florida Statutes, is created

561 to read:

562 456.0135 General background screening provisions.—
 563 (1) An application for initial licensure or license
 564 renewal received on or after January 1, 2013, under chapter 458,
 565 chapter 459, chapter 460, chapter 461, or chapter 464, or s.
 566 465.022 shall include fingerprints pursuant to procedures
 567 established by the department through a vendor approved by the
 568 Department of Law Enforcement and fees imposed for the initial
 569 screening and retention of fingerprints. Fingerprints must be
 570 submitted electronically to the Department of Law Enforcement
 571 for state processing and the Department of Law Enforcement shall
 572 forward the fingerprints to the Federal Bureau of Investigation
 573 for national processing. Each board, or the department if there
 574 is no board, shall screen the results to determine if an
 575 applicant meets licensure requirements. For any subsequent
 576 renewal of the applicant's license, the department shall request
 577 the Department of Law Enforcement to forward the retained
 578 fingerprints of the applicant to the Federal Bureau of
 579 Investigation for a national criminal history check.
 580 (2) All fingerprints submitted to the Department of Law
 581 Enforcement as required under subsection (1) shall be retained
 582 by the Department of Law Enforcement as provided under s.
 583 943.05(2)(g) and (h) and (3). The department shall notify the
 584 Department of Law Enforcement regarding any person whose
 585 fingerprints have been retained but who is no longer licensed.
 586 (3) The costs of fingerprint processing, including the
 587 cost for retaining fingerprints, shall be borne by the applicant
 588 subject to the background screening.

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589 Section 11. Subsection (1) of section 464.203, Florida
 590 Statutes, is amended to read:

591 464.203 Certified nursing assistants; certification
 592 requirement.—

593 (1) The board shall issue a certificate to practice as a
 594 certified nursing assistant to any person who demonstrates a
 595 minimum competency to read and write and successfully passes the
 596 required background screening pursuant to s. 400.215. If the
 597 person has successfully passed the required background screening
 598 pursuant to s. 400.215 or s. 408.809 within 90 days before
 599 applying for a certificate to practice and the person's
 600 background screening results are not retained in the
 601 clearinghouse created under s. 435.12, the board shall waive the
 602 requirement that the applicant successfully pass an additional
 603 background screening pursuant to s. 400.215. The person must
 604 also meet ~~and meets~~ one of the following requirements:

605 (a) Has successfully completed an approved training
 606 program and achieved a minimum score, established by rule of the
 607 board, on the nursing assistant competency examination, which
 608 consists of a written portion and skills-demonstration portion
 609 approved by the board and administered at a site and by
 610 personnel approved by the department.

611 (b) Has achieved a minimum score, established by rule of
 612 the board, on the nursing assistant competency examination,
 613 which consists of a written portion and skills-demonstration
 614 portion, approved by the board and administered at a site and by
 615 personnel approved by the department and:

616 1. Has a high school diploma, or its equivalent; or

617 2. Is at least 18 years of age.

618 (c) Is currently certified in another state; is listed on
 619 that state's certified nursing assistant registry; and has not
 620 been found to have committed abuse, neglect, or exploitation in
 621 that state.

622 (d) Has completed the curriculum developed by the
 623 Department of Education and achieved a minimum score,
 624 established by rule of the board, on the nursing assistant
 625 competency examination, which consists of a written portion and
 626 skills-demonstration portion, approved by the board and
 627 administered at a site and by personnel approved by the
 628 department.

629 Section 12. Paragraph (h) of subsection (2) of section
 630 943.05, Florida Statutes, is amended to read:

631 943.05 Criminal Justice Information Program; duties; crime
 632 reports.—

633 (2) The program shall:

634 (h) For each agency or qualified entity that officially
 635 requests retention of fingerprints or for which retention is
 636 otherwise required by law, search all arrest fingerprint
 637 submissions received under s. 943.051 against the fingerprints
 638 retained in the statewide automated fingerprint identification
 639 system under paragraph (g).

640 1. Any arrest record that is identified with the retained
 641 fingerprints of a person subject to background screening as
 642 provided in paragraph (g) shall be reported to the appropriate
 643 agency or qualified entity.

644 2. To participate in this search process, agencies or

645 | qualified entities must notify each person fingerprinted that
 646 | his or her fingerprints will be retained, pay an annual fee to
 647 | the department, and inform the department of any change in the
 648 | affiliation, employment, or contractual status of each person
 649 | whose fingerprints are retained under paragraph (g) if such
 650 | change removes or eliminates the agency or qualified entity's
 651 | basis or need for receiving reports of any arrest of that
 652 | person, so that the agency or qualified entity is not obligated
 653 | to pay the upcoming annual fee for the retention and searching
 654 | of that person's fingerprints to the department. The department
 655 | shall adopt a rule setting the amount of the annual fee to be
 656 | imposed upon each participating agency or qualified entity for
 657 | performing these searches and establishing the procedures for
 658 | the retention of fingerprints and the dissemination of search
 659 | results. The fee may be borne by the agency, qualified entity,
 660 | or person subject to fingerprint retention or as otherwise
 661 | provided by law. Consistent with the recognition of criminal
 662 | justice agencies expressed in s. 943.053(3), these services
 663 | shall be provided to criminal justice agencies for criminal
 664 | justice purposes free of charge. Qualified entities that elect
 665 | to participate in the fingerprint retention and search process
 666 | are required to timely remit the fee to the department by a
 667 | payment mechanism approved by the department. If requested by
 668 | the qualified entity, and with the approval of the department,
 669 | such fees may be timely remitted to the department by a
 670 | qualified entity upon receipt of an invoice for such fees from
 671 | the department. Failure of a qualified entity to pay the amount
 672 | due on a timely basis or as invoiced by the department may

673 result in the refusal by the department to permit the qualified
 674 entity to continue to participate in the fingerprint retention
 675 and search process until all fees due and owing are paid.

676 3. Agencies that participate in the fingerprint retention
 677 and search process may adopt rules pursuant to ss. 120.536(1)
 678 and 120.54 to require employers to keep the agency informed of
 679 any change in the affiliation, employment, or contractual status
 680 of each person whose fingerprints are retained under paragraph
 681 (g) if such change removes or eliminates the agency's basis or
 682 need for receiving reports of any arrest of that person, so that
 683 the agency is not obligated to pay the upcoming annual fee for
 684 the retention and searching of that person's fingerprints to the
 685 department.

686 Section 13. Subsection (12) of section 943.053, Florida
 687 Statutes, is amended, and subsection (13) is added to that
 688 section, to read:

689 943.053 Dissemination of criminal justice information;
 690 fees.—

691 (12) Notwithstanding any other provision of law, when a
 692 criminal history check or a duty to disclose the absence of a
 693 criminal history check is mandated by state law, or when a
 694 privilege or benefit is conferred by state law in return for
 695 exercising an option of conducting a criminal history check, the
 696 referenced criminal history check, whether it is an initial or
 697 renewal check, shall include a Florida criminal history provided
 698 by the department as set forth in this section. Such Florida
 699 criminal history information may be provided by a private vendor
 700 only if that information is directly obtained from the

701 department for each request. When a national criminal history
 702 check is required or authorized by state law, the national
 703 criminal history check shall be submitted by and through the
 704 department in the manner established by the department for such
 705 checks, unless otherwise required by federal law. The fee for
 706 criminal history information as established by state law or, in
 707 the case of national checks, by the Federal Government, shall be
 708 borne by the person or entity submitting the request, or as
 709 provided by law. Criminal history information provided by any
 710 other governmental entity of this state or any private entity
 711 shall not be substituted for criminal history information
 712 provided by the department when the criminal history check or a
 713 duty to disclose the absence of a criminal history check is
 714 required by statute or is made a condition of a privilege or
 715 benefit by law. When fingerprints are required or permitted to
 716 be used as a basis for identification in conducting such a
 717 criminal history check, the fingerprints must be taken by a law
 718 enforcement agency employee, a government agency employee, a
 719 qualified electronic fingerprint service provider, or a private
 720 employer. Fingerprints taken by the subject of the criminal
 721 history check may not be accepted or used for the purpose of
 722 identification in conducting the criminal history check.

723 (13)(a) For the department to accept an electronic
 724 fingerprint submission from:

725 1. A private vendor engaged in the business of providing
 726 electronic fingerprint submission; or

727 2. A private entity or public agency that submits the
 728 fingerprints of its own employees, volunteers, contractors,

729 associates, or applicants for the purpose of conducting a
 730 required or permitted criminal history background check,
 731
 732 the vendor, entity, or agency submitting the fingerprints must
 733 enter into an agreement with the department that at a minimum
 734 obligates the vendor, entity, or agency to comply with certain
 735 specified standards to ensure that all persons having direct or
 736 indirect responsibility for taking, identifying, and
 737 electronically submitting fingerprints are qualified to do so
 738 and will ensure the integrity and security of all personal
 739 information gathered from the persons whose fingerprints are
 740 submitted.

741 (b) Such standards shall include, but need not be limited
 742 to, requiring that:

743 1. All persons responsible for taking fingerprints and
 744 collecting personal identifying information from the persons
 745 being fingerprinted to meet current written state and federal
 746 guidelines for identity verification and for recording legible
 747 fingerprints;

748 2. The department and the Federal Bureau of
 749 Investigation's technical standards for the electronic
 750 submission of fingerprints are satisfied;

751 3. The fingerprint images electronically submitted satisfy
 752 the department's and the Federal Bureau of Investigation's
 753 quality standards; and

754 4. A person may not take his or her own fingerprints for
 755 submission to the department.

756 (c) The requirement for entering into an agreement with

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757 the department for this purpose does not apply to criminal
 758 justice agencies as defined at s. 943.045(10).

759 (d) The agreement with the department must require the
 760 vendor, entity, or agency to collect from the person or entity
 761 on whose behalf the fingerprints are submitted the fees
 762 prescribed by state and federal law for processing the
 763 fingerprints for a criminal history check. The agreement must
 764 provide that such fees be timely remitted to the department by a
 765 payment mechanism approved by the department. If requested by
 766 the vendor, entity, or agency, and with the approval of the
 767 department, such fees may be timely remitted to the department
 768 by a vendor, entity, or agency upon receipt of an invoice for
 769 such fees from the department. Failure of a vendor, entity, or
 770 agency to pay the amount due on a timely basis or as invoiced by
 771 the department may result in the refusal by the department to
 772 accept future fingerprint submissions until all fees due and
 773 owing are paid.

774 Section 14. Paragraph (a) of subsection (4) of section
 775 943.0585, Florida Statutes, is amended to read:

776 943.0585 Court-ordered expunction of criminal history
 777 records.—The courts of this state have jurisdiction over their
 778 own procedures, including the maintenance, expunction, and
 779 correction of judicial records containing criminal history
 780 information to the extent such procedures are not inconsistent
 781 with the conditions, responsibilities, and duties established by
 782 this section. Any court of competent jurisdiction may order a
 783 criminal justice agency to expunge the criminal history record
 784 of a minor or an adult who complies with the requirements of

785 | this section. The court shall not order a criminal justice
786 | agency to expunge a criminal history record until the person
787 | seeking to expunge a criminal history record has applied for and
788 | received a certificate of eligibility for expunction pursuant to
789 | subsection (2). A criminal history record that relates to a
790 | violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
791 | s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
792 | 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
793 | 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
794 | any violation specified as a predicate offense for registration
795 | as a sexual predator pursuant to s. 775.21, without regard to
796 | whether that offense alone is sufficient to require such
797 | registration, or for registration as a sexual offender pursuant
798 | to s. 943.0435, may not be expunged, without regard to whether
799 | adjudication was withheld, if the defendant was found guilty of
800 | or pled guilty or nolo contendere to the offense, or if the
801 | defendant, as a minor, was found to have committed, or pled
802 | guilty or nolo contendere to committing, the offense as a
803 | delinquent act. The court may only order expunction of a
804 | criminal history record pertaining to one arrest or one incident
805 | of alleged criminal activity, except as provided in this
806 | section. The court may, at its sole discretion, order the
807 | expunction of a criminal history record pertaining to more than
808 | one arrest if the additional arrests directly relate to the
809 | original arrest. If the court intends to order the expunction of
810 | records pertaining to such additional arrests, such intent must
811 | be specified in the order. A criminal justice agency may not
812 | expunge any record pertaining to such additional arrests if the

813 order to expunge does not articulate the intention of the court
 814 to expunge a record pertaining to more than one arrest. This
 815 section does not prevent the court from ordering the expunction
 816 of only a portion of a criminal history record pertaining to one
 817 arrest or one incident of alleged criminal activity.

818 Notwithstanding any law to the contrary, a criminal justice
 819 agency may comply with laws, court orders, and official requests
 820 of other jurisdictions relating to expunction, correction, or
 821 confidential handling of criminal history records or information
 822 derived therefrom. This section does not confer any right to the
 823 expunction of any criminal history record, and any request for
 824 expunction of a criminal history record may be denied at the
 825 sole discretion of the court.

826 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
 827 criminal history record of a minor or an adult which is ordered
 828 expunged by a court of competent jurisdiction pursuant to this
 829 section must be physically destroyed or obliterated by any
 830 criminal justice agency having custody of such record; except
 831 that any criminal history record in the custody of the
 832 department must be retained in all cases. A criminal history
 833 record ordered expunged that is retained by the department is
 834 confidential and exempt from the provisions of s. 119.07(1) and
 835 s. 24(a), Art. I of the State Constitution and not available to
 836 any person or entity except upon order of a court of competent
 837 jurisdiction. A criminal justice agency may retain a notation
 838 indicating compliance with an order to expunge.

839 (a) The person who is the subject of a criminal history
 840 record that is expunged under this section or under other

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841 provisions of law, including former s. 893.14, former s. 901.33,
 842 and former s. 943.058, may lawfully deny or fail to acknowledge
 843 the arrests covered by the expunged record, except when the
 844 subject of the record:

- 845 1. Is a candidate for employment with a criminal justice
 846 agency;
- 847 2. Is a defendant in a criminal prosecution;
- 848 3. Concurrently or subsequently petitions for relief under
 849 this section or s. 943.059;
- 850 4. Is a candidate for admission to The Florida Bar;
- 851 5. Is seeking to be employed or licensed by or to contract
 852 with the Department of Children and Family Services, the Agency
 853 for Health Care Administration, the Agency for Persons with
 854 Disabilities, the Department of Health, the Department of
 855 Elderly Affairs, or the Department of Juvenile Justice or to be
 856 employed or used by such contractor or licensee in a sensitive
 857 position having direct contact with children, the
 858 developmentally disabled, ~~the aged, or the elderly as provided~~
 859 ~~in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.~~
 860 ~~402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5),~~
 861 ~~chapter 916, s. 985.644, chapter 400, or chapter 429;~~
- 862 6. Is seeking to be employed or licensed by the Department
 863 of Education, any district school board, any university
 864 laboratory school, any charter school, any private or parochial
 865 school, or any local governmental entity that licenses child
 866 care facilities; or
- 867 7. Is seeking authorization from a seaport listed in s.
 868 311.09 for employment within or access to one or more of such

869 seaports pursuant to s. 311.12.
 870 Section 15. Paragraph (a) of subsection (4) of section
 871 943.059, Florida Statutes, is amended to read:
 872 943.059 Court-ordered sealing of criminal history
 873 records.—The courts of this state shall continue to have
 874 jurisdiction over their own procedures, including the
 875 maintenance, sealing, and correction of judicial records
 876 containing criminal history information to the extent such
 877 procedures are not inconsistent with the conditions,
 878 responsibilities, and duties established by this section. Any
 879 court of competent jurisdiction may order a criminal justice
 880 agency to seal the criminal history record of a minor or an
 881 adult who complies with the requirements of this section. The
 882 court shall not order a criminal justice agency to seal a
 883 criminal history record until the person seeking to seal a
 884 criminal history record has applied for and received a
 885 certificate of eligibility for sealing pursuant to subsection
 886 (2). A criminal history record that relates to a violation of s.
 887 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
 888 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
 889 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
 890 916.1075, a violation enumerated in s. 907.041, or any violation
 891 specified as a predicate offense for registration as a sexual
 892 predator pursuant to s. 775.21, without regard to whether that
 893 offense alone is sufficient to require such registration, or for
 894 registration as a sexual offender pursuant to s. 943.0435, may
 895 not be sealed, without regard to whether adjudication was
 896 withheld, if the defendant was found guilty of or pled guilty or

897 nolo contendere to the offense, or if the defendant, as a minor,
 898 was found to have committed or pled guilty or nolo contendere to
 899 committing the offense as a delinquent act. The court may only
 900 order sealing of a criminal history record pertaining to one
 901 arrest or one incident of alleged criminal activity, except as
 902 provided in this section. The court may, at its sole discretion,
 903 order the sealing of a criminal history record pertaining to
 904 more than one arrest if the additional arrests directly relate
 905 to the original arrest. If the court intends to order the
 906 sealing of records pertaining to such additional arrests, such
 907 intent must be specified in the order. A criminal justice agency
 908 may not seal any record pertaining to such additional arrests if
 909 the order to seal does not articulate the intention of the court
 910 to seal records pertaining to more than one arrest. This section
 911 does not prevent the court from ordering the sealing of only a
 912 portion of a criminal history record pertaining to one arrest or
 913 one incident of alleged criminal activity. Notwithstanding any
 914 law to the contrary, a criminal justice agency may comply with
 915 laws, court orders, and official requests of other jurisdictions
 916 relating to sealing, correction, or confidential handling of
 917 criminal history records or information derived therefrom. This
 918 section does not confer any right to the sealing of any criminal
 919 history record, and any request for sealing a criminal history
 920 record may be denied at the sole discretion of the court.

921 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
 922 history record of a minor or an adult which is ordered sealed by
 923 a court of competent jurisdiction pursuant to this section is
 924 confidential and exempt from the provisions of s. 119.07(1) and

925 s. 24(a), Art. I of the State Constitution and is available only
 926 to the person who is the subject of the record, to the subject's
 927 attorney, to criminal justice agencies for their respective
 928 criminal justice purposes, which include conducting a criminal
 929 history background check for approval of firearms purchases or
 930 transfers as authorized by state or federal law, to judges in
 931 the state courts system for the purpose of assisting them in
 932 their case-related decisionmaking responsibilities, as set forth
 933 in s. 943.053(5), or to those entities set forth in
 934 subparagraphs (a)1., 4., 5., 6., and 8. for their respective
 935 licensing, access authorization, and employment purposes.

936 (a) The subject of a criminal history record sealed under
 937 this section or under other provisions of law, including former
 938 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
 939 deny or fail to acknowledge the arrests covered by the sealed
 940 record, except when the subject of the record:

- 941 1. Is a candidate for employment with a criminal justice
 942 agency;
- 943 2. Is a defendant in a criminal prosecution;
- 944 3. Concurrently or subsequently petitions for relief under
 945 this section or s. 943.0585;
- 946 4. Is a candidate for admission to The Florida Bar;
- 947 5. Is seeking to be employed or licensed by or to contract
 948 with the Department of Children and Family Services, the Agency
 949 for Health Care Administration, the Agency for Persons with
 950 Disabilities, the Department of Health, the Department of
 951 Elderly Affairs, or the Department of Juvenile Justice or to be
 952 employed or used by such contractor or licensee in a sensitive

953 position having direct contact with children, the
 954 developmentally disabled, ~~the aged,~~ or the elderly as ~~provided~~
 955 ~~in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.~~
 956 ~~402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5), s.~~
 957 ~~415.103, chapter 916, s. 985.644, chapter 400, or chapter 429;~~

958 6. Is seeking to be employed or licensed by the Department
 959 of Education, any district school board, any university
 960 laboratory school, any charter school, any private or parochial
 961 school, or any local governmental entity that licenses child
 962 care facilities;

963 7. Is attempting to purchase a firearm from a licensed
 964 importer, licensed manufacturer, or licensed dealer and is
 965 subject to a criminal history check under state or federal law;
 966 or

967 8. Is seeking authorization from a Florida seaport
 968 identified in s. 311.09 for employment within or access to one
 969 or more of such seaports pursuant to s. 311.12.

970 Section 16. This act shall take effect upon becoming a
 971 law.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 943 (2012)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Health & Human Services
2 Committee

3 Representative Holder offered the following:

4
5 **Amendment (with title amendment)**

6 Between lines 331 and 332, insert:

7 Section 5. Present subsections (7) through (26) of section
8 413.20, Florida Statutes, are renumbered as subsections (8)
9 through (27), respectively, and a new subsection (7) is added to
10 that section, to read:

11 413.20 Definitions.—As used in this part, the term:

12 (7) "Service provider" means a person or entity who
13 provides pursuant to this part employment services, supported
14 employment services, independent living services, self-
15 employment services, personal assistance services, vocational
16 evaluation or tutorial services, or rehabilitation technology
17 services, on a contractual or fee-for-service basis to
18 vulnerable persons as defined in s. 435.02.

Amendment No. 1

19 Section 6. Section 413.208, Florida Statutes, is amended
20 to read:

21 413.208 Service providers; quality assurance; ~~and~~ fitness
22 for responsibilities; background screening.-

23 (1) Service providers must register with the division. To
24 qualify for registration, the division must ~~of Vocational~~
25 ~~Rehabilitation shall certify providers of direct service and~~
26 ensure that the service provider maintains ~~they maintain~~ an
27 internal system of quality assurance, has ~~have~~ proven functional
28 systems, and is ~~are~~ subject to a due-diligence inquiry as to its
29 ~~their~~ fitness to undertake service responsibilities, ~~regardless~~
30 ~~of whether a contract for services is procured competitively or~~
31 ~~noncompetitively~~.

32 (2) (a) As a condition of registration under this section,
33 level 2 background screening pursuant to chapter 435 must be
34 conducted by the division on each of the following persons:

35 1. The administrator or a similarly titled person who is
36 responsible for the day-to-day operation of the service
37 provider.

38 2. The financial officer or similarly titled individual
39 who is responsible for the financial operation of the service
40 provider.

41 3. Any person employed by, or otherwise engaged on the
42 behalf of, a service provider who is expected to have direct,
43 face-to-face contact with a vulnerable person as defined in s.
44 435.02 while providing services to the person and have access to
45 the person's living areas, funds, personal property, or personal
46 identification information as defined in s. 817.568.

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Amendment No. 1

47 4. A director of the service provider.

48 (b) Level 2 background screening pursuant to chapter 435
49 is not required for the following persons:

50 1. A licensed physician, nurse, or other professional who
51 is licensed by the Department of Health and who has undergone
52 fingerprinting and background screening as part of such
53 licensure if providing a service that is within the scope of her
54 or his licensed practice.

55 2. A relative of the vulnerable person receiving services.
56 For purposes of this section, the term "relative" means an
57 individual who is the father, mother, stepfather, stepmother,
58 son, daughter, brother, sister, grandmother, grandfather, great-
59 grandmother, great-grandfather, grandson, granddaughter, uncle,
60 aunt, first cousin, nephew, niece, husband, wife, father-in-law,
61 mother-in-law, son-in-law, daughter-in-law, brother-in-law,
62 sister-in-law, stepson, stepdaughter, stepbrother, stepsister,
63 half-brother, or half-sister of the vulnerable person.

64 (c) Service providers are responsible for initiating and
65 completing the background screening as a condition of
66 registration.

67 (d)1. Every 5 years following initial screening, each
68 person subject to background screening under this section must
69 submit to level 2 background rescreening as a condition of the
70 service provider retaining such registration.

71 2. Until the person's background screening results are
72 retained in the clearinghouse created under s. 435.12, the
73 division may accept as satisfying the requirements of this
74 section proof of compliance with level 2 screening standards

Amendment No. 1

75 submitted within the previous 5 years to meet any provider or
76 professional licensure requirements of the Agency for Health
77 Care Administration, the Department of Health, the Department of
78 Elderly Affairs, the Agency for Persons with Disabilities, or
79 the Department of Children and Family Services, provided:

80 a. The screening standards and disqualifying offenses for
81 the prior screening are equivalent to those specified in s.
82 435.04 and this section;

83 b. The person subject to screening has not had a break in
84 service from a position that requires level 2 screening for more
85 than 90 days; and

86 c. Such proof is accompanied, under penalty of perjury, by
87 an affidavit of compliance with the provisions of chapter 435
88 and this section.

89 (e) In addition to the disqualifying offenses listed in s.
90 435.04, all persons subject to undergo background screening
91 pursuant to this section must not have an arrest awaiting final
92 disposition for, must not have been found guilty of, regardless
93 of adjudication, or entered a plea of nolo contendere or guilty
94 to, and must not have been adjudicated delinquent, and the
95 record has not been expunged for, any offense prohibited under
96 any of the following provisions or similar law of another
97 jurisdiction:

98 1. Section 409.920, relating to Medicaid provider fraud.

99 2. Section 409.9201, relating to Medicaid fraud.

100 3. Section 741.28, relating to domestic violence.

Amendment No. 1

101 4. Section 817.034, relating to fraudulent acts through
102 mail, wire, radio, electromagnetic, photoelectronic, or
103 photooptical systems.

104 5. Section 817.234, relating to false and fraudulent
105 insurance claims.

106 6. Section 817.505, relating to patient brokering.

107 7. Section 817.568, relating to criminal use of personal
108 identification information.

109 8. Section 817.60, relating to obtaining a credit card
110 through fraudulent means.

111 9. Section 817.61, relating to fraudulent use of credit
112 cards, if the offense was a felony.

113 10. Section 831.01, relating to forgery.

114 11. Section 831.02, relating to uttering forged
115 instruments.

116 12. Section 831.07, relating to forging bank bills,
117 checks, drafts, or promissory notes.

118 13. Section 831.09, relating to uttering forged bank
119 bills, checks, drafts, or promissory notes.

120 14. Section 831.31, relating to the sale, manufacture,
121 delivery, or possession with the intent to sell, manufacture, or
122 deliver any counterfeit controlled substance, if the offense was
123 a felony.

124 (f) The division may grant an exemption from
125 disqualification from this section only as provided in s.
126 435.07.

127 (3) The cost of the state and national criminal history
128 records checks required by level 2 screening and their retention

Amendment No. 1

129 shall be borne by the service provider or the person being
130 screened.

131 (4) (a) The division shall deny, suspend, terminate, or
132 revoke a registration, rate agreement, purchase order, referral,
133 contract, or other agreement, or pursue other remedies in
134 addition to or in lieu of denial, suspension, termination, or
135 revocation, for failure to comply with this section.

136 (b) If the division has reasonable cause to believe that
137 grounds for denial or termination of registration exist, it
138 shall provide written notification to the person affected,
139 identifying the specific record that indicates noncompliance
140 with the standards in this section.

141 (c) Refusal on the part of a provider to remove from
142 contact with any vulnerable person a person who is employed by,
143 or otherwise engaged on behalf of, the provider and who is found
144 to be not in compliance with the standards of this section shall
145 result in revocation of the service provider's registration and
146 contract.

147 Section 7. The background screening requirements of
148 section 6 of this act do not apply to existing registrants with
149 the Division of Vocational Rehabilitation in effect before
150 October 1, 2012. Such requirements apply to all registrants with
151 the division which are renewed or entered into on or after
152 October 1, 2012.

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Amendment No. 1

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T I T L E A M E N D M E N T

Remove line 21 and insert:
directed care program; amending s. 413.20, F.S., relating to
general vocational rehabilitation programs; providing a
definition; amending s. 413.208, F.S.; requiring registration of
service providers; requiring background screening and
rescreening of certain persons having contact with vulnerable
persons; providing exemptions from background screening;
providing disqualifying offenses; providing that the cost of
screening shall be borne by the provider or the person being
screened; providing conditions for the denial of registration;
providing for notice of denial or termination; requiring
providers to remove persons who have not successfully passed
screening; providing for applicability; amending s. 430.0402,
F.S.;

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 943 (2012)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Health & Human Services
2 Committee

3 Representative Holder offered the following:

4
5 **Amendment**

6 Remove line 470 and insert:

7 Department of Children and Family Services, the Division of
8 Vocational Rehabilitation within the Department of Education,
9 the Agency for

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 943 (2012)

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Health & Human Services
2 Committee

3 Representative Holder offered the following:

4
5 **Amendment (with title amendment)**

6 Remove lines 562-579 and insert:

7 456.0135 General background screening provisions.-

8 (1) An application for initial licensure received on or
9 after January 1, 2013, under chapter 458, chapter 459, chapter
10 460, chapter 461, or chapter 464, or s. 465.022 shall include
11 fingerprints pursuant to procedures established by the
12 department through a vendor approved by the Department of Law
13 Enforcement and fees imposed for the initial screening and
14 retention of fingerprints. Fingerprints must be submitted
15 electronically to the Department of Law Enforcement for state
16 processing and the Department of Law Enforcement shall forward
17 the fingerprints to the Federal Bureau of Investigation for
18 national processing. Each board, or the department if there is
19 no board, shall screen the results to determine if an applicant

Amendment No. 3

20 meets licensure requirements. For any subsequent renewal of the
21 applicant's license that requires a national criminal history
22 check, the department shall request the Department of Law
23 Enforcement to forward the retained fingerprints of the
24 applicant to the Federal Bureau of Investigation.

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T I T L E A M E N D M E N T

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Remove line 65 and insert:

32

application for initial licensure

33

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 943 (2012)

Amendment No. 4

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Health & Human Services
Committee

Representative Holder offered the following:

Amendment

Remove lines 851-861 and insert:

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the ~~developmentally disabled, the aged, or the elderly as provided in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5), chapter 916, s. 985.644, chapter 400, or chapter 429;~~

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 943 (2012)

Amendment No. 4

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 943 (2012)

Amendment No. 5

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Health & Human Services
2 Committee

3 Representative Holder offered the following:

4
5 **Amendment**

6 Remove lines 947-957 and insert:

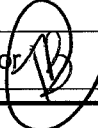

7 5. Is seeking to be employed or licensed by or to contract
8 with the Department of Children and Family Services, the
9 Division of Vocational Rehabilitation within the Department of
10 Education, the Agency for Health Care Administration, the Agency
11 for Persons with Disabilities, the Department of Health, the
12 Department of Elderly Affairs, or the Department of Juvenile
13 Justice or to be employed or used by such contractor or licensee
14 in a sensitive position having direct contact with children, the
15 ~~developmentally disabled, the aged, or the elderly as provided~~
16 ~~in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.~~
17 ~~402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5), s.~~
18 ~~415.103, chapter 916, s. 985.644, chapter 400, or chapter 429;~~

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1229 Reorganization of the Department of Children and Family Services

SPONSOR(S): Health & Human Services Access Subcommittee; Drake

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	9 Y, 4 N, As CS	Batchelor	Schoolfield
2) Health & Human Services Committee		Batchelor 	Gormley 

SUMMARY ANALYSIS

HB 1229 amends s. 20.04, F.S. and substantially rewords s. 20.19, F.S., to provide for the reorganization of the Department of Children and Families (department). The 2007 Legislature directed the department to begin the process of reorganization subject to further legislative review and approval. The bill places in statute the reorganization plans of the department. The bill makes the following changes:

- Replaces the title "Department of Children and Family Services" with the "Department of Children and Families" in ss. 20.04, 20.19, and 420.622, F.S.
- Integrates the substance abuse and mental health programs into the department, by deleting statutory responsibilities of the directors for these programs and eliminating the director's direct line authority over circuit program staff.
- Retains the appointment of assistant secretaries as needed.
- Deletes a mandate for the appointment of an Assistant Secretary for Substance Abuse and Mental Health and a Director for Substance Abuse and Mental Health. Retains flexibility and authority for the Department Secretary to appoint managers and administrators as needed for operating the department.
- Deletes the establishment of 8 program offices and provides for certain services to be provided by the department.
- Changes the sub-state structure of the department by eliminating service districts and providing that services will be delivered through organizational units known as circuits, which must be aligned with judicial circuits.
- Establishes an unspecified number of regions which are comprised of multiple circuits which are in geographical proximity to each other.
- Provides the department with discretion on the establishment of community alliances, partnerships and advisory groups.
- Deletes provisions relating to the establishment of a prototype region.
- Deletes a duplicative competitive bidding exemption for health services.
- Deletes the requirement that the Executive Director of the state Office of Homelessness be appointed by the Governor.

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

This bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Department of Children and Families

The Department of Children and Family Services (department) is created and its organizational structure established in section 20.19, Florida Statutes. In 2007, the Legislature authorized the department through Chapter 2007-174 Laws of Florida, to begin a process of reorganization and change the organizational structure in specific areas subject to further Legislative review.

Legislative Direction for Reorganization

The 2007 Legislature directed the department to begin the process of reorganization to improve efficiency and effectiveness.¹ The legislation in Chapter 2007-174, Laws of Florida directed that the reorganization:

- Shall integrate substance abuse and mental health programs into the overall department structure and priorities;
- May plan for realignment of the department districts to conform to judicial circuits;
- May phase in organizational changes to ensure children are not adversely affected;
- May establish community partnerships with the department at the request of local communities;
- Provide the department Secretary with the discretion to establish advisory groups at the state level as necessary.

The 2007 legislation also authorized the department to begin using the name Department of Children and Families instead of Department of Children and Family Services. The changes to the department structure which were authorized in Laws of Florida have yet to be codified into statute.²

*Current Organizational Structure:*³

The Secretary of the department is appointed by the Governor. The staff offices under the Secretary include: General Counsel, Inspector General, Chief of Staff and the Executive Offices of the Secretary (Communications, Executive Communications, Legislative Affairs, and External Affairs), and Children's Legal Services.

The Deputy Secretary which is required by statute⁴, oversees all operational and business units. The Deputy Secretary position supervises three Assistant Secretaries:

- The Assistant Secretary for Administration, which oversees all business functions, including Information Technology, General Services, Human Resources, Finance, Accounting and Budget, and Contract Administration.
- The Assistant Secretary for Substance Abuse and Mental Health oversees staff offices with expertise in these program areas, as well as exercising line authority over all state mental health hospitals, both directly operated and contracted. This position is required by statute to be appointed by the Secretary.⁵

¹Chapter 2007-174, L.O.F.

²The authority for reorganization has been reauthorized each year since 2007 by resetting the expiration dates in Chapters 2009-82, 2010-153, 2011-47, L.O.F.

³ Email from Amanda Prater, DCF dated January 26, 2012, on file with committee.

⁴ S.20.19(2)(b), F.S.

⁵ s.20.19(2)(c)1., F.S.

- The Assistant Secretary for Operations oversees all programmatic staff offices: Family and Community Services (encompassing the Hotline, Interstate Compact for Children, Domestic Violence, Child Care, Adult Protective Services, Homelessness, and Child Welfare), Economic Self-Sufficiency (ACCESS), and Refugee Services. Each of these offices are currently named in statute and are required to have a Director who is appointed by the Secretary.

*Service Regions*⁶

The department administers programs and services through 20 circuit offices (aligned with judicial circuits) which operate within six larger service regions⁷. The Assistant Secretary for Operations also has direct line authority to the field, overseeing six Regional Managing Directors, corresponding to the six service regions of the department. Within each Region, the Regional Managing Directors oversee a small staff complement, which includes a Client Relations Coordinator, and a Regional Community Development Administrator which interfaces with the community and stakeholders on key department initiatives, as well as Program Administrators in Family and Community Services and Economic Self Sufficiency, and associated field managers, supervisors and direct service employees.

Effect of Proposed Changes

The bill changes the name of the “Department of Children and Family Services” to the “Department of Children and Families” in ss. 20.04, 20.19, and 420.622, F.S.

The bill amends current law by changing service districts to organizational units and provides that the department will administer programs through organizational units, known as circuits, which conform to the geographic boundaries of judicial circuits prescribed in s. 26.021, F.S. There are currently 20 circuit offices.

The bill provides for the creation of an unspecified number of regions, consisting of multiple circuits in the same geographic area. The bill language provides the department with unlimited flexibility as to the number of region offices to establish. The department currently operates with 6 regions. Region offices provide management oversight to circuits and consolidate administrative activities.

The bill deletes a mandate to appoint an Assistant Secretary for Substance Abuse and Mental Health. The Assistant Secretary for Substance Abuse and Mental Health is one of three assistant secretary positions currently established and the only one specifically required in the department structure. The bill also deletes a mandate to appoint a Director for Substance Abuse and Mental Health. The Director for Substance Abuse and Mental Health is also the only director position that is specifically mentioned in statute as it relates to the department. Deleting these mandates does not prohibit the Secretary from appointing these positions and places them on the same level in statute as the other Assistant Secretary and Director positions.

The bill integrates the substance abuse and mental health programs into the department; by deleting statutory responsibilities of the directors of the programs and eliminating the directors direct line authority over circuit program staff. This will codify in statute actions already taken by the department to integrate these programs under the authority of Chapter 2007-174, L.O.F.

The bill deletes the requirement that the Executive Director of the Office on Homelessness be appointed by the Governor. The Executive Director will be appointed by the Secretary of the department.

⁶ Email from Amanda Prater, DCF dated January 26, 2012, on file with committee.

⁷ S.20.19 (5), F.S. directs the department to administer programs through 15 service districts and specified sub-districts. This was modified into the current circuit regions structure under the authority of Chapter 2007-174, L.O.F. The region structure began as a prototype authorized in s. 20.19(7), F.S. which became known as the Suncoast region, headquartered in Tampa.

The bill deletes language establishing 8 program offices and program directors that correlate with those offices. Instead the bill requires the department to provide the following services and changes the family safety service to the name child welfare.

- Adult Protection;
- Child Care Regulation;
- Child Welfare;
- Domestic Violence;
- Economic Self-Sufficiency;
- Homelessness;
- Mental Health;
- Refugees;
- Substance Abuse.

The department also provides services to the homeless under the Office on Homelessness. Homeless services may need to be added to the above list to clarify that these services are authorized.

The bill retains current language that permits the Secretary to consolidate, reconstruct, or rearrange offices in consultation with the Executive Office of the Governor.⁸ However, the bill does not specify how many offices the department may have. This may require further clarification since it is not clear which offices the bill is referring to.

The bill provides the department with discretion on the establishment of community alliances/partnerships and provides for their duties. The department reports that community alliances never developed as intended in some locations while in other locations strong alliances were created.⁹ The bill deletes the specification of initial membership of a community alliance in s. 20.19(6)(d), F.S., and replaces it with a more general description of the organizations who should be included in the alliance and requires membership to reflect the diversity of the community.

The bill deletes authority for a prototype region structure in current law, s. 20.19(7), F.S. The region structure prototype was established and has evolved into the current six region structure of the department.

The bill also deletes exemption language for competitive bids for health services involving examination, diagnosis and treatment. This is duplicative language since the exemption already exists in s. 287.057(3)(f), F.S.

The bill makes conforming changes to certain sections of statute and directs the legislature to adopt conforming legislation during the 2013 regular session.

B. SECTION DIRECTORY:

Section 1: Amends s. 20.04, F.S., relating to Structure of the Executive Branch.

Section 2: Amends s. 20.19, F.S., relating to Department of Children and Family Services.

Section 3: Amends s. 20.43, F.S., relating to the Department of Health.

Section 4: Amends s. 420.622, F.S., relating to State Office on Homelessness; Council on Homelessness.

Section 5: Amends s. 394.78, F.S., relating to Operation and administration; personnel standards; procedures for audit and monitoring of service providers; resolution of disputes.

⁸ s. 20.19(4)(c), F.S.

⁹ Department of Children and Families analysis of HB 1229, December 28, 2011.

Section 6: Creates an unnumbered section of law relating to adopting legislation to conform to the provisions of this act.

Section 7: Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill removes the establishment of 8 program offices and the program directors that correlate with those offices. The bill retains current law that permits the Secretary in conjunction with the Executive Office of the Governor to consolidate, reconstruct, or rearrange offices. The bill does not establish what offices the department will have so it is unclear what offices could be consolidated, reconstructed or rearranged.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 30, 2012, the Health and Human Services Access Subcommittee adopted a strike all amendment to House Bill 1229. The strike all amendment does the following:

- Retains current statute relating to the Mission and Purpose of DCF.
- Deletes a mandate to appoint an Assistant Secretary for Substance Abuse and Mental Health.
- Deletes a mandate to appointment a Director of Substance Abuse and Mental Health.
- Adds Homelessness to the services provided by DCF.
- Retains current law providing that each fiscal year DCF is to develop projections for the number of child abuse cases and include in DCF's legislative budget request a specific appropriation for the number of child protective investigators and caseworkers.
- Retains current law providing that the state attorney for each judicial circuit, the public defender of each judicial circuit, or their designees, may be appointed to the community alliance.

The bill was reportedly favorably as a Committee Substitute. This analysis reflects the Committee Substitute.

CS/HB 1229

2012

1 A bill to be entitled
2 An act relating to the reorganization of the
3 Department of Children and Family Services; amending
4 s. 20.04, F.S.; changing the name of the Department of
5 Children and Family Services to the Department of
6 Children and Families; authorizing the department to
7 restructure its organizational units to establish
8 circuits, which are aligned geographically with
9 judicial circuits, and regions, which include multiple
10 circuits in geographical proximity to each other;
11 revising requirements relating to community alliances;
12 deleting provisions relating to service districts, the
13 prototype region, and the procurement of health
14 services; amending s. 20.19, F.S.; deleting provisions
15 relating to the appointment of an Assistant Secretary
16 for Substance Abuse and Mental Health; deleting
17 provisions relating to the appointment of a Program
18 Director for Substance Abuse and a Program Director
19 for Mental Health; deleting provisions establishing
20 service districts; revising provisions relating to the
21 structure of and services provided by the department;
22 amending s. 20.43, F.S.; revising provisions aligning
23 the boundaries of service areas for the Department of
24 Health to those of the service districts of the
25 department to conform to changes made by this act;
26 amending s. 420.622, F.S.; deleting authority of the
27 Governor to appoint the executive director of the
28 State Office on Homelessness; amending s. 394.78,

29 F.S.; deleting obsolete references; providing for
 30 future legislation to conform the Florida Statutes to
 31 changes made by the act; providing an effective date.

32

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

34

35 Section 1. Subsections (3) and (4) and paragraph (b) of
 36 subsection (7) of section 20.04, Florida Statutes, are amended
 37 to read:

38 20.04 Structure of executive branch.—The executive branch
 39 of state government is structured as follows:

40 (3) For their internal structure, all departments, except
 41 for the Department of Financial Services, the Department of
 42 Children and Families ~~Family Services~~, the Department of
 43 Corrections, the Department of Management Services, the
 44 Department of Revenue, and the Department of Transportation,
 45 must adhere to the following standard terms:

46 (a) The principal unit of the department is the
 47 "division." Each division is headed by a "director."

48 (b) The principal unit of the division is the "bureau."
 49 Each bureau is headed by a "chief."

50 (c) The principal unit of the bureau is the "section."
 51 Each section is headed by an "administrator."

52 (d) If further subdivision is necessary, sections may be
 53 divided into "subsections," which are headed by "supervisors."

54 (4) Within the Department of Children and Families ~~Family~~
 55 ~~Services~~ there are organizational units called "circuits" and
 56 "regions." Each circuit is aligned geographically with each

57 | judicial circuit, and each region comprises multiple circuits
 58 | which are in geographical proximity to each other "program
 59 | offices," ~~headed by program directors.~~

60 | (7)

61 | (b) Within the limitations of this subsection, the head of
 62 | the department may recommend the establishment of additional
 63 | divisions, bureaus, sections, and subsections of the department
 64 | to promote efficient and effective operation of the department.
 65 | However, additional divisions, or offices in the Department of
 66 | Children and Families ~~Family Services~~, the Department of
 67 | Corrections, and the Department of Transportation, may be
 68 | established only by specific statutory enactment. New bureaus,
 69 | sections, and subsections of departments may be initiated by a
 70 | department and established as recommended by the Department of
 71 | Management Services and approved by the Executive Office of the
 72 | Governor, or may be established by specific statutory enactment.

73 | Section 2. Section 20.19, Florida Statutes, is amended to
 74 | read:

75 | 20.19 Department of Children and Families ~~Family~~
 76 | ~~Services~~.—There is created a Department of Children and Families
 77 | ~~Family Services~~.

78 | (1) MISSION AND PURPOSE.—

79 | (a) The mission of the Department of Children and Families
 80 | ~~Family Services~~ is to work in partnership with local communities
 81 | to ensure the safety, well-being, and self-sufficiency of the
 82 | people served.

83 | (b) The department shall develop a strategic plan for
 84 | fulfilling its mission and establish a set of measurable goals,

85 objectives, performance standards, and quality assurance
 86 requirements to ensure that the department is accountable to the
 87 people of Florida.

88 (c) To the extent allowed by law and within specific
 89 appropriations, the department shall deliver services by
 90 contract through private providers.

91 (2) SECRETARY OF CHILDREN AND FAMILIES ~~FAMILY SERVICES~~;
 92 DEPUTY SECRETARY.—

93 (a) The head of the department is the Secretary of
 94 Children and Families ~~Family Services~~. The secretary is
 95 appointed by the Governor, subject to confirmation by the
 96 Senate. The secretary serves at the pleasure of the Governor.

97 (b) The secretary shall appoint a deputy secretary who
 98 shall act in the absence of the secretary. The deputy secretary
 99 is directly responsible to the secretary, performs such duties
 100 as are assigned by the secretary, and serves at the pleasure of
 101 the secretary.

102 ~~(c)1. The secretary shall appoint an Assistant Secretary~~
 103 ~~for Substance Abuse and Mental Health. The assistant secretary~~
 104 ~~shall serve at the pleasure of the secretary and must have~~
 105 ~~expertise in both areas of responsibility.~~

106 ~~2. The secretary shall appoint a Program Director for~~
 107 ~~Substance Abuse and a Program Director for Mental Health who~~
 108 ~~have the requisite expertise and experience in their respective~~
 109 ~~fields to head the state's Substance Abuse and Mental Health~~
 110 ~~programs.~~

111 ~~a. Each program director shall have line authority over~~
 112 ~~all district substance abuse and mental health program~~

113 ~~management staff.~~

114 ~~b. The assistant secretary shall enter into a memorandum~~
 115 ~~of understanding with each district or region administrator,~~
 116 ~~which must be approved by the secretary or the secretary's~~
 117 ~~designee, describing the working relationships within each~~
 118 ~~geographic area.~~

119 ~~c. The mental health institutions shall report to the~~
 120 ~~Program Director for Mental Health.~~

121 ~~d. Each program director shall have direct control over~~
 122 ~~the program's budget and contracts for services. Support staff~~
 123 ~~necessary to manage budget and contracting functions within the~~
 124 ~~department shall be placed under the supervision of the program~~
 125 ~~directors.~~

126 ~~(d) The secretary has the authority and responsibility to~~
 127 ~~ensure that the mission of the department is fulfilled in~~
 128 ~~accordance with state and federal laws, rules, and regulations.~~

129 ~~(3) PROGRAM DIRECTORS. The secretary shall appoint program~~
 130 ~~directors who serve at the pleasure of the secretary. The~~
 131 ~~secretary may delegate to the program directors responsibilities~~
 132 ~~for the management, policy, program, and fiscal functions of the~~
 133 ~~department.~~

134 ~~(3)(4) SERVICES PROVIDED PROGRAM OFFICES AND SUPPORT~~
 135 ~~OFFICES.-~~

136 (a) The department shall provide services relating to: ~~is~~
 137 ~~authorized to establish program offices and support offices,~~
 138 ~~each of which shall be headed by a director or other management~~
 139 ~~position who shall be appointed by and serves at the pleasure of~~
 140 ~~the secretary.~~

141 ~~(b) The following program offices are established:~~

- 142 1. Adult protection Services.
- 143 2. Child care regulation Services.
- 144 3. Child welfare.
- 145 ~~4.3.~~ Domestic violence.
- 146 ~~5.4.~~ Economic self-sufficiency Services.
- 147 ~~5.~~ Family Safety.
- 148 6. Homelessness.
- 149 ~~7.6.~~ Mental health.
- 150 ~~8.7.~~ Refugees ~~Refugee Services~~.
- 151 ~~9.8.~~ Substance abuse.

152 ~~(b)(c)~~ Program offices and support Offices of the
 153 department may be consolidated, restructured, or rearranged by
 154 the secretary, in consultation with the Executive Office of the
 155 Governor, provided any such consolidation, restructuring, or
 156 rearranging is capable of meeting functions and activities and
 157 achieving outcomes as delineated in state and federal laws,
 158 rules, and regulations. The secretary may appoint additional
 159 managers and administrators as he or she determines are
 160 necessary for the effective management of the department.

161 ~~(5) SERVICE DISTRICTS.~~

162 ~~(a) The department shall plan and administer its programs~~
 163 ~~of family services through service districts and subdistricts~~
 164 ~~composed of the following counties:~~

- 165 1. ~~District 1. Escambia, Santa Rosa, Okaloosa, and Walton~~
 166 ~~Counties.~~
- 167 2. ~~District 2, Subdistrict A. Holmes, Washington, Bay,~~
 168 ~~Jackson, Calhoun, and Gulf Counties.~~

- 169 ~~3. District 2, Subdistrict B. Gadsden, Liberty, Franklin,~~
 170 ~~Leon, Wakulla, Jefferson, Madison, and Taylor Counties.~~
- 171 ~~4. District 3. Hamilton, Suwannee, Lafayette, Dixie,~~
 172 ~~Columbia, Gilchrist, Levy, Union, Bradford, Putnam, and Alachua~~
 173 ~~Counties.~~
- 174 ~~5. District 4. Baker, Nassau, Duval, Clay, and St. Johns~~
 175 ~~Counties.~~
- 176 ~~6. District 5. Pasco and Pinellas Counties.~~
- 177 ~~7. District 6. Hillsborough and Manatee Counties.~~
- 178 ~~8. District 7, Subdistrict A. Seminole, Orange, and~~
 179 ~~Osceola Counties.~~
- 180 ~~9. District 7, Subdistrict B. Brevard County.~~
- 181 ~~10. District 8, Subdistrict A. Sarasota and DeSoto~~
 182 ~~Counties.~~
- 183 ~~11. District 8, Subdistrict B. Charlotte, Lee, Glades,~~
 184 ~~Hendry, and Collier Counties.~~
- 185 ~~12. District 9. Palm Beach County.~~
- 186 ~~13. District 10. Broward County.~~
- 187 ~~14. District 11, Subdistrict A. Miami Dade County.~~
- 188 ~~15. District 11, Subdistrict B. Monroe County.~~
- 189 ~~16. District 12. Flagler and Volusia Counties.~~
- 190 ~~17. District 13. Marion, Citrus, Hernando, Sumter, and~~
 191 ~~Lake Counties.~~
- 192 ~~18. District 14. Polk, Hardee, and Highlands Counties.~~
- 193 ~~19. District 15. Indian River, Okeechobee, St. Lucie, and~~
 194 ~~Martin Counties.~~
- 195 ~~(b) The secretary shall appoint a district administrator~~
 196 ~~for each of the service districts. The district administrator~~

197 | ~~shall serve at the pleasure of the secretary and shall perform~~
 198 | ~~such duties as assigned by the secretary.~~

199 | (c) Each fiscal year the secretary shall, in consultation
 200 | with the relevant employee representatives, develop projections
 201 | of the number of child abuse and neglect cases and shall include
 202 | in the department's legislative budget request a specific
 203 | appropriation for funds and positions for the next fiscal year
 204 | in order to provide an adequate number of full-time equivalent:

205 | 1. Child protection investigation workers so that
 206 | caseloads do not exceed the Child Welfare League Standards by
 207 | more than two cases; and

208 | 2. Child protection case workers so that caseloads do not
 209 | exceed the Child Welfare League Standards by more than two
 210 | cases.

211 | (4)~~(6)~~ COMMUNITY ALLIANCES.—

212 | (a) The department may ~~shall~~, in consultation with local
 213 | communities, establish a community alliance of the stakeholders,
 214 | community leaders, client representatives and funders of human
 215 | services in each county to provide a focal point for community
 216 | participation and governance of community-based services. An
 217 | alliance may cover more than one county when such arrangement is
 218 | determined to provide for more effective representation. The
 219 | community alliance shall represent the diversity of the
 220 | community.

221 | (b) The duties of the community alliance ~~shall~~ include,
 222 | but are not ~~necessarily~~ be limited to:

223 | 1. Joint planning for resource utilization in the
 224 | community, including resources appropriated to the department

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225 and any funds that local funding sources choose to provide.

226 2. Needs assessment and establishment of community
227 priorities for service delivery.

228 3. Determining community outcome goals to supplement
229 state-required outcomes.

230 4. Serving as a catalyst for community resource
231 development.

232 5. Providing for community education and advocacy on
233 issues related to delivery of services.

234 6. Promoting prevention and early intervention services.
235 (c) The department shall ensure, to the greatest extent
236 possible, that the formation of each community alliance builds
237 on the strengths of the existing community human services
238 infrastructure.

239 (d) The initial membership of the community alliance in a
240 county shall be composed of the following:

241 1. A representative from the department ~~The district~~
242 ~~administrator.~~

243 2. A representative from county government.

244 3. A representative from the school district.

245 4. A representative from the county United Way.

246 5. A representative from the county sheriff's office.

247 6. A representative from the circuit court corresponding
248 to the county.

249 7. A representative from the county children's board, if
250 one exists.

251 (e) At any time after the initial meeting of the community
252 alliance, the community alliance shall adopt bylaws and may

253 | increase the membership of the alliance to include the state
 254 | attorney for the judicial circuit in which the community
 255 | alliance is located, or his or her designee, the public defender
 256 | for the judicial circuit in which the community alliance is
 257 | located, or his or her designee, and other individuals and
 258 | organizations who represent funding organizations, are community
 259 | leaders, have knowledge of community-based service issues, or
 260 | otherwise represent perspectives that will enable them to
 261 | accomplish the duties listed in paragraph (b), if, in the
 262 | judgment of the alliance, such change is necessary to adequately
 263 | represent the diversity of the population within the community
 264 | alliance service circuits ~~districts~~.

265 | (f) A member of the community alliance, other than a
 266 | member specified in paragraph (d), may not receive payment for
 267 | contractual services from the department or a community-based
 268 | care lead agency.

269 | (g) Members of the community alliances shall serve without
 270 | compensation, but are entitled to receive reimbursement for per
 271 | diem and travel expenses, as provided in s. 112.061. Payment may
 272 | also be authorized for preapproved child care expenses or lost
 273 | wages for members who are consumers of the department's services
 274 | and for preapproved child care expenses for other members who
 275 | demonstrate hardship.

276 | (h) Members of a community alliance are subject to the
 277 | provisions of part III of chapter 112, the Code of Ethics for
 278 | Public Officers and Employees.

279 | (i) Actions taken by a community alliance must be
 280 | consistent with department policy and state and federal laws,

281 rules, and regulations.

282 (j) Alliance members shall annually submit a disclosure
 283 statement of services interests to the department's inspector
 284 general. Any member who has an interest in a matter under
 285 consideration by the alliance must abstain from voting on that
 286 matter.

287 (k) All alliance meetings are open to the public pursuant
 288 to s. 286.011 and the public records provision of s. 119.07(1).

289 ~~(7) PROTOTYPE REGION.~~

290 ~~(a) Notwithstanding the provisions of this section, the~~
 291 ~~department may consolidate the management and administrative~~
 292 ~~structure or function of the geographic area that includes the~~
 293 ~~counties in the sixth, twelfth, and thirteenth judicial circuits~~
 294 ~~as defined in s. 26.021. The department shall evaluate the~~
 295 ~~efficiency and effectiveness of the operation of the prototype~~
 296 ~~region and upon a determination that there has been a~~
 297 ~~demonstrated improvement in management and oversight of services~~
 298 ~~or cost savings from more efficient administration of services,~~
 299 ~~the secretary may consolidate management and administration of~~
 300 ~~additional areas of the state. Any such additional consolidation~~
 301 ~~shall comply with the provisions of subsection (5) unless~~
 302 ~~legislative authorization to the contrary is provided.~~

303 ~~(b) Within the prototype region, the budget transfer~~
 304 ~~authority defined in paragraph (5) (b) shall apply to the~~
 305 ~~consolidated geographic area.~~

306 ~~(c) The department is authorized to contract for~~
 307 ~~children's services with a lead agency in each county of the~~
 308 ~~prototype area, except that the lead agency contract may cover~~

309 ~~more than one county when it is determined that such coverage~~
 310 ~~will provide more effective or efficient services. The duties of~~
 311 ~~the lead agency shall include, but not necessarily be limited~~
 312 ~~to:~~

313 ~~1. Directing and coordinating the program and children's~~
 314 ~~services within the scope of its contract.~~

315 ~~2. Providing or contracting for the provision of core~~
 316 ~~services, including intake and eligibility, assessment, service~~
 317 ~~planning, and case management.~~

318 ~~3. Creating a service provider network capable of~~
 319 ~~delivering the services contained in client service plans, which~~
 320 ~~shall include identifying the necessary services, the necessary~~
 321 ~~volume of services, and possible utilization patterns and~~
 322 ~~negotiating rates and expectations with providers.~~

323 ~~4. Managing and monitoring of provider contracts and~~
 324 ~~subcontracts.~~

325 ~~5. Developing and implementing an effective bill payment~~
 326 ~~mechanism to ensure all providers are paid in a timely fashion.~~

327 ~~6. Providing or arranging for administrative services~~
 328 ~~necessary to support service delivery.~~

329 ~~7. Utilizing departmentally approved training and meeting~~
 330 ~~departmentally defined credentials and standards.~~

331 ~~8. Providing for performance measurement in accordance~~
 332 ~~with the department's quality assurance program and providing~~
 333 ~~for quality improvement and performance measurement.~~

334 ~~9. Developing and maintaining effective interagency~~
 335 ~~collaboration to optimize service delivery.~~

336 ~~10. Ensuring that all federal and state reporting~~

337 ~~requirements are met.~~

338 ~~11. Operating a consumer complaint and grievance process.~~

339 ~~12. Ensuring that services are coordinated and not~~
 340 ~~duplicated with other major payors, such as the local schools~~
 341 ~~and Medicaid.~~

342 ~~13. Any other duties or responsibilities defined in s.~~
 343 ~~409.1671 related to community-based care.~~

344 (5) ~~(8)~~ CONSULTATION WITH COUNTIES ON MANDATED PROGRAMS.—It
 345 is the intent of the Legislature that when county governments
 346 are required by law to participate in the funding of programs,
 347 the department shall consult with designated representatives of
 348 county governments in developing policies and service delivery
 349 plans for those programs.

350 ~~(9) PROCUREMENT OF HEALTH SERVICES. Nothing contained in~~
 351 ~~chapter 287 shall require competitive bids for health services~~
 352 ~~involving examination, diagnosis, or treatment.~~

353 Section 3. Subsection (5) of section 20.43, Florida
 354 Statutes, is amended to read:

355 20.43 Department of Health.—There is created a Department
 356 of Health.

357 (5) The department shall plan and administer its public
 358 health programs through its county health departments and may,
 359 for administrative purposes and efficient service delivery,
 360 establish up to 15 service areas to carry out such duties as may
 361 be prescribed by the State Surgeon General. The boundaries of
 362 the service areas shall ~~be the same as, or combinations of, the~~
 363 ~~service districts of the Department of Children and Family~~
 364 ~~Services established in s. 20.19 and, to the extent practicable,~~

365 ~~shall~~ take into consideration the boundaries of the jobs and
 366 education regional boards.

367 Section 4. Subsection (1) of section 420.622, Florida
 368 Statutes, is amended to read:

369 420.622 State Office on Homelessness; Council on
 370 Homelessness.—

371 (1) The State Office on Homelessness is created within the
 372 Department of Children and Families ~~Family Services~~ to provide
 373 interagency, council, and other related coordination on issues
 374 relating to homelessness. ~~An executive director of the office~~
 375 ~~shall be appointed by the Governor.~~

376 Section 5. Subsection (6) of section 394.78, Florida
 377 Statutes, is renumbered as subsection (5), and subsection (4)
 378 and present subsection (5) of that section are amended to read:

379 394.78 Operation and administration; personnel standards;
 380 procedures for audit and monitoring of service providers;
 381 resolution of disputes.—

382 (4) The department shall monitor service providers for
 383 compliance with contracts and applicable state and federal
 384 regulations. ~~A representative of the district health and human~~
 385 ~~services board shall be represented on the monitoring team.~~

386 ~~(5) In unresolved disputes regarding this part or rules~~
 387 ~~established pursuant to this part, providers and district health~~
 388 ~~and human services boards shall adhere to formal procedures~~
 389 ~~specified under s. 20.19(8)(n).~~

390 Section 6. During the 2013 Regular Session of the
 391 Legislature, the Legislature shall adopt legislation to conform
 392 the Florida Statutes to the provisions of this act.

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Section 7. This act shall take effect July 1, 2012.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1229 (2012)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Health & Human Services
2 Committee

3 Representative Drake offered the following:

4
5 **Amendment**

6 Remove lines 81-82 and insert:

7 to protect the vulnerable, promote strong and economically
8 self-sufficient families, and advance personal and family
9 recovery and resiliency.

10

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1229 (2012)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Health & Human Services
2 Committee
3 Representative Drake offered the following:

4
5 **Amendment**

6 Remove line 136 and insert:

7 (a) The department, through offices, shall provide services
8 relating to:

9
10