ed under the provisions of those statutes, governing minimum standards of construction, quality and adequacy of care, and rights of residents. The department shall verify through subsequent inspection that any deficiency identified during the annual inspection is corrected. The giving or causing to be given of advance notice of such unannounced inspections by an employee of the department to any unauthorized person shall constitute cause for suspension of not fewer than 5 working days according to the provisions of chapter 110.

(4) The department shall conduct unannounced onsite facility reviews following written verification of licensee noncompliance in instances in which a nursing home ombudsman council, pursuant to ss. 400.311 and 400.317, has received a complaint and has documented deficiencies in resident care or in the physical plant of the facility that threaten the health, safety, or security of residents, or when the department documents through inspection that conditions in a facility present a direct or indirect threat to the health, safety, or security of residents. However, the department shall conduct four or more unannounced onsite reviews within a 12-month period of each facility which has a conditional rating. Deficiencies related to physical plant do not require follow-up reviews after the department has determined that correction of the deficiency has been accomplished and that the correction is of the nature that continued compliance can be reasonably expected.

History.—s. 18, ch. 69-206; ss. 12, 35, ch. 69-100; s. 17, ch. 70-361; s. 3, ch. 76-168; s. 5, ch. 76-201; s. 1, ch. 77-457; ss. 35, 36, ch. 79-190; ss. 13, 18, ch. 80-186; ss. 2, 3, ch. 81-318; ss. 12, 19, ch. 82-148; ss. 76, 78, 83, ch. 83-181.

Note.—Expires October 1, 1993, pursuant to s. 83, ch. 83-181, and is scheduled for review pursuant to s. 11.61 in advance of that date.

1400.191 Availability, distribution, and posting of reports and records.—

(1) The department shall, within 60 days from the date of an annual inspection visit or within 30 days from the date of any interim visit, forward the results of all inspections of nursing home facilities to:

(a) The district ombudsman council in whose district the inspected facility is located.

(b) At least one public library or, in the absence of a public library, the county seat in the county in which the inspected facility is located.

(c) The district administrator of the department in whose district the inspected facility is located.

(d) The board.

(2) Each nursing home facility licensee shall maintain as public information, available upon request, records of all cost and inspection reports pertaining to that facility that have been filed with, or issued by, any governmental agency. Copies of such reports shall be retained in such records for not less than 5 years from the date the reports are filed or issued.

(3) Any records, reports, or documents which by state or federal law or regulation are deemed confidential may not be distributed or made available for purposes of compliance with this section unless and until such confidential status expires.

(4) Any records of a nursing home facility determined by the department to be necessary and essential to establish lawful compliance with any rules or standards shall be made available to the department on the premises of the facility.

(5) Every nursing home facility licensee shall:

(a) Post, in a sufficient number of prominent positions in the nursing home so as to be accessible to all residents and to the general public, a concise summary of the last inspection report pertaining to the nursing home and issued by the department, with references to the page numbers of the full reports, noting any deficiencies found by the department and the actions taken by the licensee to rectify such deficiencies and indicating in such summaries where the full reports may be inspected in the nursing home.

(b) Upon request, provide to any person who has completed a written application with an intent to be admitted to, or to any relative, spouse, or guardian of such person, a copy of the last inspection report pertaining to the nursing home and issued by the department, provided the person requesting the report agrees to pay a reasonable charge to cover copying costs.

History.—s. 6, ch. 76-201; ss. 2, 12, ch. 80-198; s. 250, ch. 81-259; s. 2, ch. 81-318; ss. 6, 22, ch. 82-182; ss. 27, 76, 83, ch. 83-181.

Note.—Expires October 1, 1993, pursuant to s. 83, ch. 83-181, and is scheduled for review pursuant to s. 11.61 in advance of that date.

1400.20 Licensed nursing home administrator required; limitation on number of facilities to be subject to administrator's supervision.—

(1) No nursing home shall operate except under the supervision of a licensed nursing home administrator, and no person shall be a nursing home administrator unless he is the holder of a current license as provided by law.

(2) If the facilities involved are of a class or classes found by the Department of Health and Rehabilitative Services to be of a character, size, and type of operation making it reasonable for a single administrator, manager, or supervisor to perform such functions effectively for more than one facility, such administrator, manager, or supervisor of a facility may function as an administrator, manager, or supervisor for not more than three facilities. As part of the classifications made pursuant to this section, the department shall determine and fix specific limits on the number of facilities of particular classes which may be supervised by the same individual acting as administrator, manager, or supervisor. No administrator, manager, or supervisor shall accept employment in violation of this subsection, and no licensee of a facility shall knowingly employ any person in violation thereof.

History.—s. 19, ch. 69-306; ss. 18, ch. 70-361; s. 3, ch. 76-168; s. 242, ch. 77-147; s. 83, ch. 83-181; s. 12, ch. 87-290; s. 2, ch. 88-289; s. 1, ch. 89-361.

Note.—Expires October 1, 1993, pursuant to s. 83, ch. 83-181, and is scheduled for review pursuant to s. 11.61 in advance of that date.

1400.211 Persons employed as nursing assistants; certification requirement.—

(1) No person who is not certified pursuant to this section, other than a registered nurse or practical nurse licensed in accordance with the provisions of chapter 464, or an applicant for such license who is permitted to practice nursing in accordance with rules promulgated by the Board of Nursing pursuant to chapter 464, may serve as a nursing assistant in any nursing home. The
Department of Education shall issue a certificate to any person who:
(a) Has successfully completed a nursing assistant program from a state-approved school or program; or
(b) Is at least 18 years of age and has demonstrated to the Department of Education, through such procedures as the department may develop, that he is competent and capable of providing services as a nursing assistant at a nursing home. If testing is used to assess the competency and skill of an applicant for certification, an oral examination shall be administered upon request.
(2) Any candidate for certification under paragraph (1)(b) who, prior to receiving instruction, satisfactorily demonstrates the competency and skill required for certification shall be exempt from related classroom attendance requirements.
(3) After September 30, 1984, no person shall be employed as a nursing assistant in a nursing home unless he is certified in accordance with this section or is enrolled or agrees to enroll in an approved certification program approved by the Department of Education for nursing assistants offered in his community or in the community where the nursing home is located. However, any person employed as a nursing assistant on July 1, 1983, shall meet certification requirements by October 1, 1986. Within 7 working days of employing an uncertified aide or one who is not enrolled in an approved program leading to certification, the nursing home facility licensee shall submit to the district school board an application to enroll the new employee in a certification program. A copy of such application shall be retained in the employee’s file.
(4) The Department of Education may adopt such rules as are necessary to carry out this section.

History.—ss. 2, 3, ch. 82-163; ss. 29, 79, 82, 83, ch. 83-181.

Note.—Expires October 1, 1993, pursuant to s. 83, ch. 83-181, and is scheduled for review pursuant to s. 11.01 in advance of that date.

400.23 Rules; minimum standards; evaluation and rating system; fee for review of plans.—
(1) It is the intent of the Legislature that rules published and enforced pursuant to this part shall include standards by which a reasonable and consistent quality of resident care may be ensured and the results of such resident care can be measured and by which safe and sanitary nursing homes can be provided. It is further intended that a minimum amount of the time of professionals providing nursing home care be required to ensure compliance with the reporting requirements of these rules.
(2) Pursuant to the intention of the Legislature, the department shall publish and enforce rules to implement the provisions of this part, which shall include reasonable and fair minimum standards in relation to:
(a) The location and construction of the facility, including fire and life safety, plumbing, heating, lighting, ventilation, and other housing conditions which will ensure the health, safety, and comfort of residents, including an adequate call system. In making such rules, the department shall be guided by standards recommended by nationally recognized reputable professional groups and associations with knowledge of such subject matters. The department shall update or revise such standards as the need arises. All nursing homes must comply with those life safety code requirements and building code standards applicable at the time of approval of their construction plans. The department may require alterations to a building if it determines that an existing condition constitutes a distinct hazard to life, health, or safety. The department shall promulgate fair and reasonable rules setting forth conditions under which existing facilities undergoing additions, alterations, conversions, renovations, or repairs shall be required to comply with the most recent updated or revised standards.
(b) The number and qualifications of all personnel, including management, medical, and nursing personnel, and aides, orderlies, and support personnel, having responsibility for any part of the care given residents.
(c) All sanitary conditions within the facility and its surroundings, including water supply, sewage disposal, food handling, and general hygiene which will ensure the health and comfort of residents.
(d) The equipment essential to the health and welfare of the residents.
(3) The department shall, at least annually, evaluate all nursing home facilities and make a determination as to the degree of compliance by each licensee with minimum standards under this part and the rules promulgated thereunder as a basis for assigning a rating to that facility. The department shall base its evaluation on the most recent annual inspection report, taking into consideration findings from other official reports, surveys, interviews, investigations, and inspections.
(a) A facility shall be assigned a superior rating if the department determines that the licensee is in compliance with the minimum standards under this part and the rules promulgated thereunder and the licensee exceeds minimum standards in the following areas as provided for in paragraph (b):
1. Nursing service;
2. Staffing ratio of aides and orderlies;
3. Preservice training of aides and orderlies;
4. Inservice training of aides and orderlies;
5. Dietary or nutritional services;
6. Physical environment;
7. Housekeeping and maintenance;
8. Physical and restorative therapy;
9. Recreational therapy;
10. Social services;
11. Self-help activities;
12. Professional consultant services;
13. Activities and volunteer services, and
(b) The department shall categorize areas listed in paragraph (a) into two levels. Areas designated by the department as “Level I” shall be those areas which are essential to maintaining the health, safety, or security of residents. Areas designated by the department as “Level II” shall be those areas which are less directly related to the health, safety, or security of residents but which are important to the overall quality of care and services...
provided by nursing home facilities. In promulgating any rules pursuant to the provisions of this section, the department may divide the areas listed in paragraph (a) into subareas for the purpose of appropriate categorization according to Levels I and II. In order to achieve a superior rating, a licensee shall exceed minimum standards established for all Level I areas and a majority of Level II areas and shall comply with minimum standards for the remaining Level II areas. Within a reasonable period specified by the department, deficient Level II areas shall be corrected by a licensee in order to qualify for a superior rating. The assessment by the department of the degree of compliance by a licensee with this paragraph shall take into consideration the needs and limitations of residents in the facility. The needs and limitations of residents shall be determined by the department after consultation with the licensee.

(c) In making its determination as to the degree of compliance with the areas specified in paragraph (a) and the overall quality of care and services, the department shall consider the results of interviews and surveys of a representative sampling of residents, families of residents, ombudsman council members in the district in which the facility is located, guardians of residents, and staff of the nursing home facility.

(d) A licensee receiving a superior rating for a facility shall have the words "superior facility" marked in block letters not less than 1 inch in height on its license. A licensee for a facility which meets, but does not exceed, minimum standards in all areas prescribed by the department shall receive a standard license. A licensee for a facility which is not in compliance with minimum standards shall receive a conditional rating and shall have the words "conditional rating" marked in block letters not less than 1 inch in height on its license. A list of the deficiencies of the facility in terms of not meeting minimum standards shall be posted in a prominent place that is in clear and unobstructed public view at or near the place where residents are being admitted to that facility. Licensees receiving a conditional rating for a facility shall prepare, within 10 working days of rating, a plan for correction of all deficiencies and shall submit the plan to the department for approval. Correction of all deficiencies, within the period approved by the department, shall result in termination of the conditional rating. Failure to correct the deficiencies, within a reasonable period approved by the department, shall be grounds for the imposition of sanctions pursuant to this part.

(e) Each licensee shall post its license in a prominent place that is in clear and unobstructed public view at or near the place where residents are being admitted to the facility. A licensee with a superior rating may advertise its rating in any nonpermanent medium and in accordance with rules adopted by the department. A list of the facilities receiving a superior rating shall be distributed to the state and district ombudsman councils.

(f) Not later than January 1, 1981, the department shall adopt rules which:

1. Establish uniform procedures for the evaluation of facilities.
2. Provide minimum standards in the areas referenced in paragraph (a);
3. Provide criteria for determining when a licensee has exceeded minimum standards for a facility, and
4. Address other areas necessary for carrying out the intent of this section.

(g) A superior rating shall automatically expire after 1 year from date of issuance. A superior rating may be revoked at any time for failure to exceed minimum standards specified for any Level I area. Deficient Level II areas shall be corrected to the point of meeting or exceeding minimum standards as provided for in paragraph (b) within a reasonable period determined by the department, or the superior rating shall be revoked.

(h) A superior rating is not transferable to another license.

(4) The department shall promulgate rules to provide that, when the minimum standards established under subsection (2) are not met, such deficiencies shall be classified according to the nature of the deficiency. The department shall indicate the classification on the face of the notice of deficiencies as follows:

(a) Class I deficiencies are those which the department determines present an imminent danger to the residents or guests of the nursing home facility or a substantial probability that death or serious physical harm would result therefrom. The condition or practice constituting a class I violation shall be abated or eliminated immediately, unless a fixed period of time, as determined by the department, is required for correction. Notwithstanding the provisions of s. 400.121(2), a class I deficiency is subject to a civil penalty in an amount not less than $1,000 and not exceeding $5,000 for each and every deficiency. A fine may be levied notwithstanding the correction of the deficiency.

(b) Class II deficiencies are those which the department determines have a direct or immediate relationship to the health, safety, or security of the nursing home facility residents, other than class I deficiencies. A class II deficiency is subject to a civil penalty in an amount not less than $500 and not exceeding $1,000 for each and every deficiency. A citation for a class II deficiency shall specify the time within which the deficiency is required to be corrected. If a class II deficiency is corrected within the time specified, no civil penalty shall be imposed, unless it is a repeated offense.

(c) Class III deficiencies are those which the department determines to have an indirect or potential relationship to the health, safety, or security of the nursing home facility residents, other than class I or II deficiencies. A class III deficiency shall be subject to a civil penalty of not less than $100 and not exceeding $500 for each and every deficiency. A citation for a class III deficiency shall specify the time within which the deficiency is required to be corrected. If a class III deficiency is corrected within the time specified, no civil penalty shall be imposed, unless it is a repeated offense.

(5) Civil penalties paid by any licensee under the provisions of subsection (4) shall be deposited in the Resident Protection Trust Fund and expended as provided in s. 400.063.

(6) The department shall approve or disapprove the plans and specifications within 60 days after receipt of the final plans and specifications. The department may be granted one 15-day extension for the review period,
when the department disapproves plans and specifications, the department may delegate to that office deemed to have approved the plans and specifications. Fee payment shall accompany the initial submission of plans and specifications. Notwithstanding any other provisions of law to the contrary, all money received by the department pursuant to the provisions of this section shall be deemed to be trust funds, to be held and applied solely for the operations required under this section.

(7) When the department determines that a county or municipality is qualified to inspect and review plans and specifications, the department may delegate to that county or municipality the authority to review and approve plans and specifications based upon the statewide standards of the department. The time limits for approval or disapproval of final plans and specifications by the department established in subsection (6) shall apply to the county or municipality. When such county or municipal approval is used in lieu of departmental approval, the fees charged by the department for such services shall be waived.

History.--s. 22, ch. 69-309; ss. 19, 35, ch. 69-106; s. 19, ch. 70-361; s. 3, ch. 75-168; s. 7, ch. 76-201; s. 2, ch. 76-202; s. 2, ch. 77-198; s. 13, ch. 77-401; s. 1, ch. 77-407; s. 1, ch. 78-330; ss. 8, 9, ch. 79-298; s. 3, ch. 80-198; s. 1, ch. 80-211; s. 25, ch. 81-258; ss. 2, 3, ch. 81-318; ss. 30, 79, 83, ch. 83-181.

1400.241 Prohibited acts; penalties for violations.--

(1) It is unlawful for any person or public body to establish, conduct, manage, or operate a home as defined in this part without obtaining a valid current license. It is unlawful for any person or public body to offer or advertise to the public, in any way by any medium whatever, nursing home care or service or custodial services without obtaining a valid current license. It is unlawful for any holder of a license issued pursuant to the provisions of this part to advertise or hold out to the public that it holds a license for a facility other than that for which it actually holds a license.

(2) It is unlawful for any person or public body to offer or advertise to the public, in any way by any medium whatever, nursing home care or service or custodial services without obtaining a valid current license. It is unlawful for any holder of a license issued pursuant to the provisions of this part to advertise or hold out to the public that it holds a license for a facility other than that for which it actually holds a license.

(3) A violation of any provision of this part or of any minimum standard, rule, or regulation adopted pursuant thereto constitutes a misdemeanor, punishable as provided in s. 775.082 or s. 775.083. Each day of a continuing violation shall be considered a separate offense.

History.--s. 11, ch. 79-361; s. 347, ch. 71-136; s. 3, ch. 75-168; s. 1, ch. 77-407; ss. 2, 3, ch. 81-318; ss. 30, 79, 83, ch. 83-181.

Note.--Expedites October 1, 1989, pursuant to s. 83, ch. 83-181, and is scheduled for review pursuant to s. 11.61 in advance of that date.

1400.29 Annual report of nursing home facilities.--The department shall publish an annual report on or before January 1 of each year, which shall be available to the public and which shall include, but not be limited to:

(1) A list by name and address of all nursing home facilities in this state.

(2) Whether such nursing home facilities are proprietary or nonproprietary.

(3) The rating of each nursing home facility.

(4) The name of the owner or owners.

(5) The total number of beds.

(6) The number of private and semiprivate rooms.

(7) The religious affiliation, if any, of such nursing home facility.

(8) The languages spoken by the administrator and staff of such nursing home facility.

(9) Whether or not such nursing home facility accepts recipients of Title XVII (Medicaid) or Title XIX (Medicaid) of the Social Security Act.

(10) Recreational and other programs available.

History.--ss. 9, ch. 76-201; s. 2, ch. 81-318; ss. 32, 79, 83, ch. 83-181.

Note.--Expires October 1, 1993, pursuant to s. 83, ch. 83-181, and is scheduled for review pursuant to s. 11.61 in advance of that date.

1400.301 Legislative intent; long-term care facilities.--

(1) The Legislature finds and declares that conditions in nursing homes in this state are such that the personal and health care needs of residents are not assured either by regulation of the Department of Health and Rehabilitative Services or the good faith of the nursing home industry. Furthermore, there is no formal mechanism whereby a nursing home resident or his representative may make a complaint against a nursing home facility or its employees. The Legislature declares that concerned citizens are more effective advocates of the rights of others than governmental agencies. It is the intent of the Legislature, therefore, to provide an alternative to the present method of correcting nursing home deficiencies, by establishing voluntary citizen ombudsman councils at the state and district levels to discover, investigate, and determine the presence of abuse or neglect in nursing home facilities and to receive, investigate, and resolve complaints against nursing home facilities. To ensure that the effectiveness and efficiency of such investigations are not impeded by administrative or delay, the Legislature intends that ombudsman councils not be required to obtain warrants in order to enter into or to conduct administrative inspections of nursing home facilities. It is the intent of the Legislature that the environment in nursing home facilities should be conducive to the dignity and independence
of residents and that investigations by ombudsman councils should further the enforcement of laws and regulations that safeguard the health, safety, and welfare of residents.

(2) The Legislature further finds that procedures for discovering and investigating the presence of abuse or neglect and for receiving and investigating complaints through the mechanism of the state and district ombudsman councils should be extended to include complaints relating to adult congregate living facilities and adult foster homes. Those facilities shall hereinafter be referred to as "long-term care facilities."

History.—s. 2, ch. 75-233; s. 5, ch. 76-168; s. 6, ch. 77-401; s. 1, ch. 77-457; ss. 4, 12, ch. 80-186; ss. 4, 6, ch. 81-184; ss. 2, 3, ch. 81-318; s. 4, ch. 82-46; ss. 13, 19, ch. 82-148; ss. 32, 79, 80, ch. 83-191.

Note.—Expired October 1, 1993, pursuant to s. 33, ch. 83-181, and is scheduled for review pursuant to s. 11.61 in advance of that date.

1400.304 Establishment of a State Nursing Home and Long-Term Care Facility Ombudsman Council; duties; membership.—

(1) There is created in the office of the Governor a State Nursing Home and Long-Term Care Facility Ombudsman Council.

(2) The duties of the state ombudsman council shall be to:

(a) Help establish and coordinate the district ombudsman councils throughout the state.

(b) Serve as an appellate body in receiving from the district ombudsman councils complaints not resolved at the district level. The state ombudsman council may enter any nursing home or long-term care facility involved in an appeal, pursuant to the conditions specified in s. 400.307(3). Members who are associated with a nursing home or long-term care facility which is under investigation by a council may not participate in the investigation or in an appeal.

(c) Develop procedures to discover, investigate, and determine the existence of abuse or neglect in any nursing home or long-term care facility. Investigations may consist, in part, of one or more onsite administrative inspections.

(d) Develop procedures for eliciting, receiving, responding to, and resolving complaints made by, and on behalf of, nursing home and long-term care facility residents.

(e) Elicit and coordinate state, local, and voluntary organizational assistance for the purpose of improving the care received by residents of a nursing home or long-term care facility.

(f) Prepare an annual report to the President of the Senate, the Speaker of the House, and the Governor containing an appraisal of the problems of nursing home and long-term care facility residents and recommendations for improving nursing home and long-term care facility care and treatment.

(3) The state ombudsman council shall be composed of 12 members appointed by the Governor, to include the following: one physician who includes elderly patients in his practice; one registered nurse who has geriatric experience, if possible; one nursing home administrator; one licensed pharmacist; one dietitian; two representatives who are, or who represent, nursing home residents; one representative who is a resident of, or who represents residents of, an adult congregate living facility; one representative who is a resident of, or who represents residents of, an adult foster home; one owner or operator of an adult congregate living facility; one attorney; and one professional social worker. In no case may any employee of the Department of Health and Rehabilitative Services serve as a member or as an ex officio member of the council. The Governor shall elicit nominations from related professional organizations. Except for the nursing home administrator, the adult congregate living facility owner or operator, the registered nurse, and the licensed pharmacist, each member of the state ombudsman council shall certify to having no association with a nursing home or long-term care facility for reward or profit.

(4) All members shall serve for 2-year terms. A member may be reappointed thereafter. Any vacancy which occurs shall be filled by the Governor. If an appointment is not made within 120 days after a vacancy occurs, the vacancy shall be filled by a majority vote of the council. The term of any member missing three consecutive regular meetings without cause shall be declared vacant.

(5) The state ombudsman council shall elect from its second-year members a chairman for a term of 1 year. No person may serve more than two consecutive terms as chairman.

(6) The state ombudsman council shall meet upon the call of the chairman, at least quarterly or more frequently as needed.

(7) (a) Members shall receive no compensation but shall be reimbursed for per diem and travel expenses as provided for in s. 112.061.

(b) The department shall make a separate and distinct request for an appropriation for all expenses for the council. Such request may be combined into a specific appropriation for council expenses or included in a specific appropriation with other expenses in the Governor's recommended budget or in the appropriations acts. If a legislative appropriation for such expenses is made, the department shall reimburse expenses for individual advisory councils and committees in strict accordance with the appropriations and intent of the Legislature. The provisions of s. 216.292 notwithstanding, no transfer of appropriations may be made which increases the appropriation made by the Legislature for any advisory council and committee expenses.

(8) The state ombudsman council is authorized to call upon appropriate agencies of state government for such professional assistance as may be needed in the discharge of its duties, including assistance from any adult protective services programs of the department as provided for under s. 409.026 and ss. 415.101-415.112.

(9) The state ombudsman council shall enter into a cooperative agreement with the statewide and district human rights advocacy committees, as defined in s. 20.19(6) and (7), for the purpose of coordinating advocacy services provided to residents of nursing home and long-term care facilities.
1400.307 District nursing home and long-term care facility ombudsman councils; duties; membership.—
(1) There shall be at least one nursing home and long-term care facility ombudsman council in each of the districts of the department.
(2) The duties of the district ombudsman council are:
(a) To serve as a third-party mechanism for protecting the health, safety, welfare, and civil and human rights of residents of a nursing home or long-term care facility.
(b) To discover, investigate, and determine the existence of abuse or neglect in any nursing home or long-term care facility and to use the procedures provided for in ss. 415.101-415.112 when applicable. Investigations may consist, in part, of one or more onsite administrative inspections.
(c) To elicit, receive, respond to, and resolve complaints made by, or on behalf of, nursing home or long-term care facility residents.
(d) To review, for their effect on the rights of nursing home or long-term care facility residents, all existing or proposed rules and regulations relating to nursing home or long-term care facilities.
(e) To review personal property and money accounts of Medicaid residents pursuant to an investigation to obtain information regarding a specific complaint or problem.
(f) In order to carry out the duties specified in subsection (2), the district ombudsman council is authorized, pursuant to ss. 400.19(1) and 400.434, to enter any nursing home or long-term care facility without notice or first obtaining a warrant, subject to the provisions of s. 400.314(5).
(4) Each district ombudsman council shall be composed of 15 members from the district, to include the following: one physician licensed pursuant to chapter 458 or chapter 459 whose practice includes a substantial number of geriatric patients; one registered nurse who has geriatric experience, if possible; one nursing home administrator; one owner or operator of an adult congregate living facility; one licensed pharmacist; one dietitian; five nursing home residents or representative consumer advocates for nursing home residents; two long-term care facility residents or representative consumer advocates for long-term care facility residents; one attorney; and one professional social worker. In no case shall an employee of the Department of Health and Rehabilitative Services serve as a member or as an ex officio member of a council. Except for the nursing home administrator, adult congregate living facility owner or operator, pharmacist, and nurse, each member of the council shall certify to having no association with a nursing home or long-term care facility for reward or profit. Any member who has an affiliation with a nursing home, adult congregate living facility, or adult foster home may not participate in any investigation or inspection of any facility with which he has such affiliation.
(5) All members shall serve 2-year terms. A member may be reappointed thereafter. Upon expiration of a term and in case of any other vacancy, the council shall appoint a replacement by majority vote of the council, subject to the approval of the Governor. If no action is taken by the Governor to approve or disapprove the replacement of a member within 30 days after the council has notified the appointment, the appointment of the replacement shall be considered approved. The term of any member missing three consecutive regular meetings without cause shall be declared vacant.
(6) The district ombudsman council shall elect from its second-year members a chairman for a term of 1 year. In no case shall a person who is an owner, administrator, operator, or employee of a nursing home or long-term care facility, as defined in s. 400.301(2), be elected as chairman of the council. The chairman shall select a secretary from among the members of the council. The secretary shall chair the council in the absence of the chairman.
(7) The district ombudsman council shall meet upon the call of the chairman, at least once a month or more frequently as needed to handle emergency situations.
(8)(a) A member of a district ombudsman council shall receive no compensation but shall be reimbursed for travel expenses both within and outside the county of residence in accordance with the provisions of s. 112.061.
(b) The department shall make a separate and distinct request for an appropriation for all expenses for each council which shall indicate the proposed distribution of such expenses among districts. Such request may be combined into a specific appropriation for councils or included in a specific appropriation with other expenses in the Governor's recommended budget or in the appropriations acts. If a legislative appropriation for such expenses is made, the department shall reimburse expenses for individual advisory councils and committees in strict accordance with the appropriations and intent of the Legislature. The provisions of s. 216.292 notwithstanding, no transfer of appropriations shall be made which increases the appropriation made by the Legislature for advisory council and committee expenses.
(9) The district ombudsman councils are authorized to call upon appropriate agencies of state government for such professional assistance as may be needed in the discharge of their duties. All state agencies shall cooperate with the district ombudsman councils in providing requested information and agency representatives at council meetings.

1400.311 Procedures for receiving complaints.—
(1) The State Ombudsman Council shall establish
state and district procedures for receiving complaints against a nursing home or long-term care facility or its employee.

(2) These procedures shall be posted in full view in every nursing home or long-term care facility. Every resident or representative of a resident shall receive, upon admission to a nursing home or long-term care facility, a printed copy of the procedures of the state and the district ombudsman councils.

History.--s. 28, ch. 75-233; s. 3, ch. 76-168; s. 9, ch. 77-401; s. 1, ch. 77-457; ss. 7, 12, ch. 80-198; ss. 4, 6, ch. 81-184; ss. 2, 3, ch. 81-318; s. 4, ch. 82-46; ss. 36, 75, 83, ch. 83-181.

1400.314 Investigations by state and district nursing home and long-term care facility ombudsman councils.

(1) A district ombudsman council shall investigate any complaint of a resident or representative of a resident based on an action by an administrator or employee of a nursing home or long-term care facility which might be:

(a) Contrary to law.
(b) Unreasonable, unfair, oppressive, or unnecessarily discriminatory, even though in accordance with law.
(c) Based on a mistake of fact.
(d) Based on improper or irrelevant grounds.
(e) Unaccompanied by an adequate statement of reasons.
(f) Performed in an inefficient manner.
(g) Otherwise erroneous.

(2) In an investigation, both the state and district ombudsman councils have the authority to hold hearings.

(3) Subsequent to an appeal from a district ombudsman council, the state ombudsman council may investigate any nursing home or long-term care facility.

(4) In addition to any specific investigation made pursuant to a complaint, the district ombudsman council shall conduct, at least annually, an investigation, which shall consist, in part, of an onsite administrative inspection of each nursing home or long-term care facility within its jurisdiction.

(5) Any onsite administrative inspection conducted by an ombudsman council shall be subject to the following:

(a) All inspections shall be at times and for durations necessary to produce the information required to carry out the duties of the council.
(b) No advance notice of an inspection shall be provided to any nursing home or long-term care facility except that notice of follow-up inspections on specific problems may be provided.
(c) Inspections shall be conducted in a manner which will impose no unreasonable burden on nursing homes or long-term care facilities, consistent with the underlying purposes of this part. Unnecessary duplication of efforts among council members or the councils shall be reduced to the extent possible.
(d) Any ombudsman council member physically present for the inspection shall identify himself and the statutory authority for his inspection of the facility.

(e) Inspections may not unreasonably interfere with the programs and activities of clients within the facility. Ombudsman council members shall respect the rights of residents.

(f) All inspections shall be limited to compliance with parts I and II of this chapter and 42 U.S.C. s. 1396(a) et seq. and any rules or regulations promulgated pursuant to such laws.

(g) No ombudsman council member shall enter a single-family residential unit within a long-term care facility without the permission of the resident or the representative of the resident.

(h) Any inspection resulting from a specific complaint made to an ombudsman council concerning a facility shall be conducted within a reasonable time after the complaint is made.

(6) An inspection may not be accomplished by forcible entry. Refusal of a nursing home or long-term care facility to allow entry of any ombudsman council member constitutes a violation of part I or part II of this chapter.

History.--s. 28, ch. 75-233; s. 3, ch. 76-168; s. 10, ch. 77-401; s. 1, ch. 77-457; ss. 8, 12, ch. 80-198; ss. 4, 6, ch. 81-184; ss. 2, 3, ch. 81-318; s. 4, ch. 82-46; ss. 16, 19, ch. 82-148; ss. 37, 79, 83, ch. 83-181.

1400.317 Procedures for resolving a complaint.

(1) Any complaint, including any problem identified by an ombudsman council as a result of an investigation, deemed valid and requiring remedial action by the district ombudsman council shall be identified and brought to the attention of the nursing home or long-term care facility administrator in writing. Upon receipt of such document, the administrator, in concurrence with the district ombudsman council chairman, shall establish target dates for taking appropriate remedial action. If, by the target date, the remedial action is not completed or forthcoming, the district ombudsman council may:

(a) Extend the target date if the council has reason to believe such action would facilitate the resolution of the complaint.

(b) Make public the complaint, the recommendations of the council, and the response of the nursing home or long-term care facility; however, in no case may the names of individuals involved in the complaint be disclosed.

(c) Refer the complaint to the state ombudsman council.

(2) Upon referral from the district ombudsman council, the state ombudsman council shall assume the responsibility for the disposition of the complaint. If a nursing home or long-term care facility fails to take action on a complaint found valid by the state ombudsman council, the state council may:

(a) Make public the complaint, the recommendations of the council, and the response of the nursing home or long-term care facility; however, in no case may the names of the individuals involved in the complaint be disclosed.

(b) Recommend to the department a series of facility reviews pursuant to s. 400.19(4) to assure correction and nonrecurrence of conditions that give rise to complaints against a nursing home facility.
(c) Recommend to the department changes in rules and regulations for inspecting and licensing or certifying nursing home or long-term care facilities.

(d) Refer the complaint to the state attorney for prosecution if there is reason to believe the nursing home or long-term care facility or its employee is guilty of a criminal act.

(e) Recommend to the department that the nursing home no longer receive payments under the State Medical Assistance Program (Medicaid).

(f) Recommend that the Department of Health and Rehabilitative Services initiate procedures for revocation of license in accordance with chapter 120.

History.—s. 30, ch. 75-233; s. 3, ch. 76-168; s. 244, ch. 77-147; s. 11, ch. 77-401; s. 1, ch. 77-457; s. 13, ch. 78-95; ss. 14, 18, ch. 80-186; ss. 9, 12, ch. 80-198; ss. 4, 6, ch. 81-184; ss. 2, 3, ch. 81-318; s. 4, ch. 82-46; ss. 17, 19, ch. 82-148; ss. 38, 83, ch. 83-181.

Note.—Expires October 1, 1993, pursuant to s. 83, ch. 83-181, and is scheduled for review pursuant to s. 11.61 in advance of that date.

1400.321 Confidentiality.—

(1) All matters before the state or a district ombudsman council concerning abuse or denial of rights of an individual client of a nursing home or long-term care facility shall be confidential and exempt from the provisions of chapter 119. All other matters before the council shall be open to the public and subject to chapter 119.

(2) Members of any state or district ombudsman council shall not be required to testify in any court with respect to matters held to be confidential under s. 400.414 except as may be necessary to enforce the provisions of this act.

History.—s. 31, 32, ch. 75-233; s. 3, ch. 76-168; s. 12, ch. 77-401; s. 1, ch. 77-457; ss. 10, 12, ch. 80-198; ss. 4, 6, ch. 81-184; ss. 2, 3, ch. 81-318; s. 4, ch. 82-46; ss. 39, 83, ch. 83-181.

Note.—Expires October 1, 1993, pursuant to s. 83, ch. 83-181, and is scheduled for review pursuant to s. 11.61 in advance of that date.

1400.322 Emergency medication kits.—

(1) Other provisions of this chapter or of chapter 465, chapter 499, or chapter 893 to the contrary notwithstanding, each nursing home operating pursuant to a license issued by the Department of Health and Rehabilitative Services may maintain an emergency medication kit for the purpose of storing medicinal drugs to be administered under emergency conditions to residents residing in such facility.

(2) The Department of Health and Rehabilitative Services shall adopt such rules as it may deem appropriate to the effective implementation of this act, including, but not limited to, rules which:

(a) Define the term "emergency medication kit."

(b) Describe the medicinal drugs eligible to be placed in emergency medication kits.

(c) Establish requirements for the storing of medicinal drugs in emergency medication kits and the maintenance of records with respect thereto.

(d) Establish requirements for the administration of medicinal drugs to residents under emergency conditions from emergency medication kits.


Note.—Expires October 1, 1993, pursuant to s. 83, ch. 83-181, and is scheduled for review pursuant to s. 11.61 in advance of that date.

1400.324 Immunity.—Any person making a complaint pursuant to this act who does so in good faith shall be immune from any liability, civil or criminal, that otherwise might be incurred or imposed.

History.—s. 33, ch. 75-233; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 3, ch. 81-318; ss. 79, 83, ch. 83-181.

Note.—Repealed effective October 1, 1993, by s. 83, ch. 83-181, and scheduled for review pursuant to s. 11.61 in advance of that date.

1400.327 Penalty.—Anyone knowingly or willfully taking action against a person making a complaint under this act is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

History.—s. 4, ch. 77-401; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181.

Note.—Repealed effective October 1, 1993, by s. 83, ch. 83-181, and scheduled for review pursuant to s. 11.61 in advance of that date.

1400.33 Legislative intent; community-based care for the elderly.—It is the intent of the Legislature to encourage the development of programs for community-based care for the elderly as an alternative to institutionalization. The Legislature finds and declares that routine health care provided on an outpatient basis is one such program, the availability of which would fill an unmet need, improve the quality and quantity of health care available to elderly persons while minimizing the cost of such care, and reduce the incidence of unnecessary or premature institutionalization of elderly persons.

The purpose of this act is to encourage the development of geriatric outpatient nurse clinics to make such services available. The Legislature intends that existing and available nursing facility treatment rooms be used for geriatric outpatient nurse clinics in order that the cost of such programs be kept low.

History.—s. 1, ch. 77-401; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181.

Note.—Repealed effective October 1, 1993, by s. 83, ch. 83-181, and scheduled for review pursuant to s. 11.61 in advance of that date.

1400.331 Definitions.—As used in this act:

(1) "Department" means the Department of Health and Rehabilitative Services.

(2) "Geriatric outpatient nurse clinic" means a site for the provision of health care to geriatric patients on an outpatient basis, which is staffed by a registered nurse or by a physician's assistant.

(3) "Geriatric patient" means any patient who is 60 years of age or older.

(4) "Nursing facility" means a facility licensed under this part.

History.—s. 1, ch. 77-401; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181.

Note.—Repealed effective October 1, 1993, by s. 83, ch. 83-181, and scheduled for review pursuant to s. 11.61 in advance of that date.

1400.332 Funds received not revenues for purpose of medical assistance program.—Any funds received by a nursing home in connection with its participation in the geriatric outpatient nurse clinic program shall not be considered as revenues for purposes of cost reports under the medical assistance program as set forth in s. 409.266.

History.—s. 4, ch. 77-401; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181.

Note.—Repealed effective October 1, 1993, by s. 83, ch. 83-181, and scheduled for review pursuant to s. 11.61 in advance of that date.

400.341 Legislative intent; nursing home costs.—The Legislature finds it to be in the best interest of the state that nursing home care be affordable and accessible to all persons requiring these services. Further, the Legislature finds there is a paucity of information on nursing home revenues and growth in those revenues, the equity of the burden in providing charity care, and
nursing home rates and charges. The potential for growth in nursing home revenues and the effect of such growth on state and local government budgets and on the ability of persons to purchase nursing home care makes it vital that nursing home revenues and expenditures be documented and analyzed. The Legislature finds that the Hospital Cost Containment Board is the agency best qualified to collect, analyze, and monitor nursing home financial data and intends that the board carry out this responsibility in conjunction with the department and the State Nursing Home and Long-Term Care Facility Ombudsman Council and district nursing home and long-term care facility ombudsman councils.

400.342 Definitions.—As used in ss. 400.341-400.346:
(1) "Board" means the Hospital Cost Containment Board.
(2) "Financial report" means a report of audited actual experience, as defined by the board, required under the uniform system of financial reporting.
(3) "Nursing home" means a facility licensed under this part, but does not include a facility licensed under chapter 651.

400.343 Uniform system of financial reporting.—
(1) The board shall consult with appropriate professional and governmental bodies, hold public hearings, and consider existing and proposed systems of accounting and reporting utilized by nursing homes and then establish by rule a uniform system of financial reporting. Such system shall be based on a uniform chart of accounts developed after considering the American Health Care Association’s Uniform Chart of Accounts for Long Term Care Facilities, appropriate audit standards from the American Institute of Certified Public Accountants, and generally accepted accounting principles. Such system shall, to the extent feasible, utilize existing accounting systems and shall make every effort to minimize paperwork to nursing home licensees. In addition, the board may not require nursing homes to adopt a uniform accounting system. The board may require the filing of any information relating to the provider’s and consumer’s cost of services provided in a nursing home, including physicians’ compensation.
(2) Within 120 days after the end of its fiscal year, each nursing home shall file with the board, on forms adopted by the board and based on the uniform system of financial reporting, its actual audited experience for that fiscal year, including revenues, expenditures, and statistical measures, based on examination by an independent, state-licensed certified public accountant in accordance with generally accepted accounting principles. Each nursing home shall also submit a schedule of any changes that were made during the fiscal year.

400.344 Nursing home revenues and financial analysis, studies, and reports.—
(1) The board shall evaluate data from nursing home financial reports beginning with nursing home fiscal years starting January 1, 1985, and shall document and monitor:
(a) Total revenues, annual change in revenues, and revenues by source and classification, including contri-
butions for a patient's care from the patient's resources and from the family and contributions not directed toward any specific patient's care.

(b) Average patient charges by geographic region, payor, and type of facility ownership.

(c) Profit margins by geographic region and type of facility ownership.

(d) Amount of charity care provided by geographic region and type of facility ownership.

(e) Patient days by prior category.

(f) Experience related to Medicaid conversion as reported under s. 400.343(3).

(g) Other information pertaining to nursing home revenues and expenditures.

The findings of the board shall be included in an annual report to the Governor and Legislature by January 1 each year.

(2) The board shall provide information relating to nursing home charges to the public through pamphlets, brochures, and other appropriate means through the Consumer Information Network established by s. 395.5085.

(3) The board shall cooperate with and provide pertinent information on nursing home costs and charges to the department, local health councils, and the State Ombudsman Council and district nursing home and long-term care facility ombudsman councils.

History.---s. 1, ch. 85-298.

400.345 Budget, expenses, assessments.--

(1)(a) The board shall include in its biennial budget a separate estimate of income and expenditures for the administration and operation of the nursing home financial disclosure program. Subject to legislative approval, expenses of the program shall be financed by assessments against each nursing home in an amount set by the Department of Health and Rehabilitative Services to cover the board's approved budget.

(b) The board shall annually notify the department of its approved budget. The department shall calculate the amount to be collected per bed, rounded to the nearest whole dollar. All license fees collected under this section which are due after the date of notification by the board shall be at a rate sufficient to cover the board's approved budget.

(c) Assessments shall be levied and collected annually by the department. Moneys collected shall be deposited into the Hospital Cost Containment Board Trust Fund as collected, but such funds shall be maintained in a separate account.

(d) Each new nursing home shall pay its initial assessment upon being licensed, and each nursing home under new ownership shall pay its initial assessment under the new ownership based on its number of beds.

(2) Moneys raised by collection of assessments from nursing homes which are not required to meet the appropriation for the current fiscal year shall be available to the board in succeeding years.

History.---s. 1, ch. 85-298.

400.346 Penalty.—Any nursing home which refuses to file a report, fails to timely file a report, files a false report, or files an incomplete report and upon notification fails to timely file a complete report required under ss. 400.341-400.346, or which violates any provision of ss. 400.341-400.346 or rule adopted thereunder, shall be punished by a fine not exceeding $1,000 per day for each day in violation, to be imposed and collected by the board.

History.---s. 1, ch. 85-298.
Services, adult congregate living facilities, and other community agencies.

History.—ss. 1, 2, ch. 75-233; ss. 12, 13, ch. 80-196; s. 2, ch. 81-318; ss. 79, 83, ch. 83-183; s. 12, ch. 83-184.

Note.—Repealed effective October 1, 1993, by s. 83, ch. 83-181, and scheduled for review pursuant to s. 116.11 in advance of that date.

1400.402 Definitions.—When used in this part, unless the context otherwise requires, the term:

(1) “Administrator” means an individual who has general administrative charge of an adult congregate living facility.

(2) “Adult congregate living facility,” hereinafter referred to as “facility,” means any building or buildings, section of a building, or distinct part of a building, residence, private home, boarding home, home for the aged, or other place, whether operated for profit or not, which undertakes through its ownership or management to provide, for a period exceeding 24 hours, housing, food service, and one or more personal services for four or more adults, not related to the owner or administrator by blood or marriage, who require such services. A facility offering personal services for fewer than four adults is within the meaning of this definition if it formally or informally advertises to or solicits the public for residents or referrals and holds itself out to the public to be an establishment which regularly provides such services.

(3) “Applicant” means any facility owner, or if a business entity, a person appointed by such entity to make application for a license.

(4) “Department” means the Department of Health and Rehabilitative Services.

(5) “Emergency” means a situation, physical condition, or method of operation which presents imminent danger of death or serious physical or mental harm to facility residents.

(6) “Guardian” means a person to whom the law has entrusted the custody and control of the person or property, or both, of a person who has been legally adjudged incompetent.

(7) “Neglect” means to omit, forbear, or fail to exercise a degree of care and caution that a prudent person would deem essential to ensure the well-being of a resident, and by such omission, forbearance, or failure, to significantly impair or jeopardize the physical or emotional health of a resident.

(8) “Personal services” include, but are not limited to, such services as: individual assistance with or supervision of essential activities of daily living, such as eating, bathing, grooming, dressing, and ambulating; supervision of self-administered medication; and other similar services which the department may define. “Personal services” shall not be construed to mean the provision of medical, nursing, dental, or mental health services by the staff of a facility, except as provided in subsection (12).

(9) “Resident” means a person 18 years of age or older, residing in and receiving care from a facility.

(10) “Resident’s representative or designee” means a person other than the owner, or an agent or employee of the facility, designated in writing by the resident, if legally competent, to receive notice of changes in the contract executed pursuant to s. 400.424; to receive notice of and to participate in meetings between the resident and the facility owner, administrator, or staff concerning the rights of the resident; to assist the resident in contacting the ombudsman committee if the resident has a complaint against the facility; or to bring legal action on behalf of the resident pursuant to s. 400.429.

(11) “Supervision of activities of daily living” means reminding residents to engage in personal hygiene and other self-care activities and, when necessary, observing or assisting residents while they attend to activities such as bathing or shaving to assure their health, safety, or welfare.

(12) “Supervision of self-administered medication” means reminding residents to take medication, opening bottle caps for residents, reading the medication label to residents, observing residents while they take medication, checking the self-administered dosage against the label of the container, reassuring residents that they have obtained and are taking the dosage as prescribed, keeping daily records of when residents receive supervision pursuant to this subsection, and immediately reporting noticeable changes in the condition of a resident to the resident’s physician. Supervision of self-administered medication shall not be construed to mean that facility staff shall provide such supervision to residents who are capable of administering their own medication. Persons under contract to the facility, facility staff, or volunteers, who are licensed according to chapter 464, or those persons exempted under s. 464.022(1), are limited in their practice in an adult congregate living facility to the administration of medication to residents. However, this limitation does not preclude the exercise of professional responsibility by such persons to observe residents, to document the observations on the appropriate resident’s record, and to report the observations to the resident’s physician.

(13) “Supplemental security income,” Title XVI of the Social Security Act, means a program through which the Federal Government guarantees a minimum monthly income to every person who is age 65 or older, or disabled, or blind and meets the income and asset requirements.

(14) “Mechanical restraint” means a device which physically limits, restricts, or deprives an individual of movement or mobility, including, but not limited to, a half-bed rail, a full-bed rail, a geriatric chair, and a posey restraint. The term “mechanical restraint” shall also include any device which was not specifically manufactured as a restraint but which has been altered, arranged, or otherwise used for this purpose. The term shall not include bandage material used for the purpose of binding a wound or injury.

History.—s. 3, ch. 75-233; ss. 12, 14, ch. 80-196; s. 2, ch. 81-318; ss. 6, 19, ch. 82-148; ss. 41, 79, 83, ch. 83-181; s. 4, ch. 85-145.

Note.—Expires October 1, 1993, pursuant to s. 83, ch. 83-181, and is scheduled for review pursuant to s. 116.11 in advance of that date.

1400.404 Facilities to be licensed; exemptions.—

(1) For the administration of this part, facilities to be licensed by the department shall include all adult congregate living facilities as defined in this part.

(2) The following shall be exempt from the provisions of this part:
(a) Any facility, institution, or other place operated by the Federal Government or any agency thereof.
(b) Any institution which offers its services primarily for medical treatment or surgery and is licensed by the state.
(c) Any facility licensed, certified, or regulated pursuant to other provisions of state law, except facilities defined in chapter 651.
(d) Transient rentals as defined in s. 212.03 and college dormitories.
(e) Any home or facility approved by the Veterans Administration as a residential care home wherein care is provided exclusively to three or fewer veterans.
(f) Any facility which has been incorporated in this state for 50 years or more or before July 1, 1983, and the board of directors of which is elected by the residents, until such time as the facility is sold or its ownership is transferred.
History.—s. 4, ch. 75-233; s. 12, ch. 80-196; s. 2, ch. 81-318; ss. 42, 79, 83, ch. 83-181.

1400.407 License required; fee, display.—

(1) It is unlawful to operate or maintain a facility without first obtaining from the department a license authorizing such operation.
(2) Separate licenses shall be required for facilities maintained in separate premises, even though operated under the same management. A separate license shall not be required for separate buildings on the same grounds.
(3) Any license granted by the department shall state the maximum resident capacity of the facility, the type of care for which the license is granted, the date the license is issued, the expiration date of the license, and any other information deemed necessary by the department.
(4) The annual license fee required of a facility shall be $30 per license, with an additional fee of $2 per resident based on the total resident capacity of the facility. The total fee shall not exceed $300, no part of which shall be returned to the facility.
(5) Counties or municipalities applying for licenses under this part are exempt from the payment of license fees.
(6) The license shall be displayed in a conspicuous place inside the facility.
(7) A license shall be valid only in the possession of the individual, firm, partnership, association, or corporation to which it is issued and shall not be subject to sale, assignment, or other transfer, voluntary or involuntary; nor shall a license be valid for any premises other than that for which originally issued.
History.—s. 8, ch. 75-233; s. 8, ch. 79-12; s. 12, ch. 80-196; s. 2, ch. 81-318; ss. 42, 79, 83, ch. 83-181.

1400.411 Initial application for license; provisional license.—

(1) Application for license shall be made to the department on forms furnished by it and shall be accompanied by the appropriate license fee. The application shall contain sufficient information, as required by rules of the department, to establish that the applicant can provide adequate care.
(2) The application shall be under oath and shall contain the following:
(a) The name and address of the applicant and the name by which the facility is to be known. Pursuant thereto:
1. If the applicant is a firm, partnership, or association, the application shall contain the name and address of every member thereof.
2. If the applicant is a corporation, the application shall contain its name and address, the names and addresses of its directors and officers, and the name and address of each person having at least a 10-percent interest in the corporation.
(b) Information which provides a source to establish the acceptable character and competency of the applicant and, if applicable, of the administrator, including the name and address of any long-term care facility with which the applicant or administrator has been affiliated through ownership or employment within 5 years of the date of the application for a license.
(c) The names and addresses of other persons of whom the department may inquire as to the character and reputation of the applicant and, if applicable, of the administrator.
(d) Information relating to the applicant or, if applicable, to the administrator pertaining to any arrest for, or adjudication or conviction of, a crime which relates to providing care in a facility or the ability to operate a facility.
(e) The names and addresses of other persons of whom the department may inquire as to the financial responsibility of the applicant.
(f) Such other reasonable information as may be required by the department to evaluate the ability of the applicant to meet the responsibilities outlined in this part.
(g) The location of the facility for which a license is sought and documentation, signed by the local government official, which states that the applicant has met local zoning requirements.
(3) The applicant shall furnish satisfactory proof of financial ability to operate and conduct the facility in accordance with the requirements of this part. An applicant applying for an initial license shall submit a balance sheet setting forth the assets and liabilities of the owner and a statement projecting revenues, expenses, taxes, extraordinary items, and other credits or charges for the first 12 months of operation of the facility.
(4) If the applicant offers continuing care agreements, as defined in chapter 651, proof shall be furnished that the applicant has obtained a certificate of authority as required for operation under that chapter.
(5) The applicant shall provide proof of liability insurance.
(6) A provisional license may be issued to an applicant making initial application for licensure for a newly constructed or renovated facility which fails to meet all standards and requirements for licensure. A provisional license shall be limited in duration to a specific period of time not to exceed 6 months, as determined by the department, and shall be accompanied by an approved plan of correction.

History.—s. 7, ch. 75-233; s. 3, ch. 77-323; ss. 12, 17, ch. 80-196; s. 2, ch. 81-318; ss. 7, 10, ch. 82-148; ss. 44, 47, 79, 83, ch. 83-181; s. 5, ch. 85-145; s. 1, ch. 85-291.

Note.—Expires October 1, 1993, pursuant to s. 83, ch. 83-181, and is scheduled for review pursuant to s. 11.61 in advance of that date.

1400.412 Sale or transfer of ownership of a facility.—It is the intent of the Legislature to protect the rights of the residents of an adult congregate living facility when the facility is sold or the ownership thereof is transferred. Therefore, whenever a facility is sold or the ownership thereof is transferred, including leasing:
(1) The transferee shall make application to the department for a new license at least 30 days before the date of transfer of ownership.
(2) The transferor shall notify the department in writing at least 30 days before the date of transfer of ownership.
(3) The transferor shall be responsible and liable for:
(a) The lawful operation of the facility and the welfare of the residents domiciled in the facility until the date the transferee is licensed by the department.
(b) Any and all penalties imposed against the facility for violations occurring before the date of transfer of ownership; provided that, if the penalty imposed is a moratorium on admissions, and there is a threat to the health, safety, or welfare of the residents which continues unabated, the moratorium shall remain in full force and effect after the transfer of ownership, or it may be grounds for denial of license to the transferee in accordance with chapter 120.
(c) Any outstanding liability to the state, unless the transferee has agreed, as a condition of sale or transfer, to accept the outstanding liabilities and to guarantee payment therefor; except that, if the transferee fails to meet these obligations, the transferor shall remain liable for the outstanding liability.
(4) The transferor shall, before transferring ownership, pay or make arrangements to pay to the department any amounts owed to the department before the transfer of ownership; and the issuance of a license to the transferee shall be delayed until such payment or arrangements for payment have been made.


Note.—Expires October 1, 1993, pursuant to s. 83, ch. 83-181, and is scheduled for review pursuant to s. 11.61 in advance of that date.

1400.414 Denial, revocation, or suspension of license; imposition of administrative fine; grounds.—
(1) The department may deny, revoke, or suspend a license or impose an administrative fine in the manner provided in chapter 120.
(2) Any of the following actions by a facility or its employee shall be grounds for action by the department against a facility:
(a) An intentional or negligent act, an act which has changed ownership pending final license ap-
proval, if the facility is occupied by residents and, in such instance, conditions in the facility do not present a direct or indirect threat to the health, safety, or welfare of residents. A conditional license issued under this subsection shall be for a single period not to exceed 90 days.

(4) A conditional license may be issued to an applicant for license renewal when the applicant fails to meet all standards and requirements for licensure. A conditional license issued under this subsection shall be limited in duration to a specific period of time not to exceed 6 months, as determined by the department, and shall be accompanied by an approved plan of correction.

'400.4176 Notice of change of administrator or use of certain persons to administer drugs.—If, during the period for which a license is issued, the owner changes administrators, the owner shall notify the department of the change within 30 days thereof. In addition, any owner who enters into any contract for services with, employs, or otherwise utilizes any person licensed under chapter 464, including a volunteer, for the purpose of administering drugs shall notify the department within 30 days of such action.

History.—s. 9, ch. 75-222; ss. 12, 19, ch. 80-196; s. 2, ch. 81-318; ss. 9, 19, ch. 82-148; ss. 47, 79, 83, ch. 83-181.

'400.418 Disposition of fees and administrative fines.—The office of the Comptroller shall establish an Aging and Adult Licensure Trust Fund for the purpose of collecting and disbursing funds generated pursuant to ss. 400.407, 400.417, and 400.419. Income from license fees, late fees, and administrative fines authorized herein shall be deposited in the trust fund. Such funds shall be directed to and used by the department for the following purposes:

(1) Up to 50 percent of the trust funds accrued each fiscal year may be used to offset the expenses of receipt and disbursement of trust funds pursuant to ss. 400.407, 400.417, and 400.419. Income from license fees, late fees, and administrative fines authorized herein shall be deposited in the trust fund. Funds shall be used to offset the expenses of receipt and disbursement of trust funds.

(2) Up to $5,000 of the trust funds accrued each fiscal year may be used to pay for inspection-related physical examinations requested by the department pursuant to ss. 400.420 for residents who are either recipients of supplemental security income or have monthly incomes not in excess of the maximum combined federal and state cash subsidy available to supplemental security income recipients, as provided for in s. 409.212.

(3) The balance of trust funds accrued each fiscal year may be used to offset the expenses of the licensure program, including the costs of conducting background investigations, verifying information submitted, and defraying the costs of processing the names of applicants.

History.—s. 9, ch. 75-222; ss. 12, 19, ch. 80-196; s. 2, ch. 81-318; ss. 9, 19, ch. 82-148; ss. 47, 79, 83, ch. 83-181.

'400.419 Violations; penalties.—

(1) If the department determines that a facility is not in compliance with standards promulgated pursuant to the provisions of this part, including the operation of a facility without a license, the department, as an alternative to or in conjunction with an administrative action against a facility, shall make a reasonable attempt to discuss each violation and recommended corrective action with the owner or administrator of the facility, prior to written notification thereof. The department, instead of fixing a period within which the facility shall enter into compliance with standards, may request a plan of corrective action from the facility which demonstrates a good faith effort to remedy each violation by a specific date, subject to the approval of the department.

(b) Any facility owner or administrator found to be in violation of this part is liable to a fine, set and levied by the department.

(c) Each day during which any person violates any such provision after the date fixed for termination of the violation, as ordered by the department, constitutes an additional, separate, and distinct violation.

(d) Any action taken to correct a violation shall be documented in writing by the administrator of the facility and verified through follow-up visits by licensing personnel of the department.

(e) If a facility desires to appeal any departmental action under this section, it shall send a written request for a hearing to the department within 15 days of receipt of notice of the action of the department. If the fine is upheld, the violator shall pay the fine, plus interest at the legal rate as specified in s. 867.01, for each day beyond the date set by the department for payment of the fine.

(2) In determining if a penalty is to be imposed and fixing the amount of the penalty to be imposed, if any, for a violation, the department shall consider the following factors:

(a) The gravity of the violation, including the probability that death or serious physical or emotional harm to a resident will result or has resulted, the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or rules were violated.

(b) Actions taken by the owner or administrator to correct violations.

(c) Any previous violations.

(d) The financial benefit to the facility of committing or continuing the violation.

(3) Each violation shall be classified according to the nature of the violation and the gravity of its probable effect on facility residents. The department shall indicate the classification of each violation on the face of the notice of the violation as follows:

(a) Class "I" violations are those conditions or occurrences related to the operation and maintenance of a facility or to the personal care of residents which the department determines present an imminent danger to the residents or guests of the facility or a substantial probability that death or serious physical or emotional harm would result therefrom. The condition or practice constituting a class I violation shall be abated or eliminated within 24 hours, unless a fixed period, as determined by the department, is required for correction. A class I violation is subject to a civil penalty in an amount not less than $1,000 and not exceeding $5,000 for each violation. A fine may be levied notwithstanding the correction of the violation.
(b) Class "II" violations are those conditions or occurrences related to the operation and maintenance of a facility or to the personal care of residents which the department determines directly threaten the physical or emotional health, safety, or security of the facility residents, other than class I or II violations. A class II violation is subject to a civil penalty in an amount not less than $500 and not exceeding $1,000 for each violation. A citation for a class II violation shall specify the time within which the violation is required to be corrected. If a class II violation is corrected within the time specified, no civil penalty may be imposed, unless it is a repeated offense.

(c) Class "III" violations are those conditions or occurrences related to the operation and maintenance of a facility or to the personal care of residents which the department determines indirectly or potentially threaten the physical or emotional health, safety, or security of facility residents, other than class I or II violations. A class III violation is subject to a civil penalty of not less than $100 and not exceeding $500 for each violation. A citation for a class III violation shall specify the time within which the violation is required to be corrected. If a class III violation is corrected within the time specified, no civil penalty may be imposed, unless it is a repeated offense.

(4) The department may set and levy a fine not to exceed $500 for each violation which cannot be classified according to subsection (3). In no event may such fine in the aggregate exceed $5,000.

(5) Civil penalties paid by any facility under the provisions of subsection (3) shall be deposited into the Aging and Adult Licensure Trust Fund and expended as provided in s. 400.418.

(6) The department shall maintain a current list containing the names and addresses of all facilities with one or more violations for which a corrective action plan, in accordance with the period approved or set by the department, has not been carried out. The list shall specify the number and class of each violation. Upon request, a copy of the list of violators shall be made available to facilities, residents, and potential residents, and to persons and agencies which make referrals to such facilities. A facility shall be removed from the list when a corrective action plan for all violations is approved by the department or when all corrections are made.

(2) Petitions for receivership shall take precedence over other court business unless the court determines that some other pending proceeding, having similar statutory precedence, shall have priority. A hearing shall be conducted within 5 days of the filing of the petition, at which time all interested parties shall have the opportunity to present evidence pertaining to the petition. The department shall notify the owner or administrator of the facility named in the petition of its filing and the date set for the receivership proceedings.

1400.421 Injunctive proceedings.—

(1) The department may institute injunctive proceedings in a court of competent jurisdiction to:

(a) Enforce the provisions of this part or any minimum standard, rule, or order issued or entered into pursuant thereto when the attempt by the department to correct a violation through administrative fines has failed or when the violation materially affects the health, safety, or welfare of residents.

(b) Terminate the operation of a facility when violations of any provisions of this part or of any standard or rule promulgated pursuant thereto exist which materially affect the health, safety, or welfare of residents.

(2) Such injunctive relief may be temporary or permanent.

1400.422 Receivership proceedings.—

(1) As an alternative to or in conjunction with an injunctive proceeding, the department may petition a court of competent jurisdiction for the appointment of a receiver, if suitable alternate placements are not available, when any of the following conditions exist:

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

(b) The department determines there exist in the facility conditions which present an imminent danger to the health, safety, or welfare of the residents of the facility or a substantial probability that death or serious physical harm would result therefrom.

(c) The facility cannot meet its financial obligation for providing food, shelter, care, and utilities.

(d) Petitions for receivership shall take precedence over other court business unless the court determines that some other pending proceeding, having similar statutory precedence, shall have priority. A hearing shall be conducted within 5 days of the filing of the petition, at which time all interested parties shall have the opportunity to present evidence pertaining to the petition. The department shall notify the owner or administrator of the facility named in the petition of its filing and the date set for the receivership proceedings.

1400.42 Certain solicitation prohibited.—

(1) No person shall, in connection with the solicitation of contributions by or on behalf of an adult congregate living facility or facilities, misrepresent or mislead any person, by any manner, means, practice, or device whatsoever, to believe that the receipts of such solicitation are charitable contributions, if that is not the fact.

(2) Solicitation of contributions of any kind in a threatening, coercive, or unduly forceful manner by or on behalf of an adult congregate living facility or facilities by any agent, employee, owner, or representative of any adult congregate living facility or facilities is grounds for denial, suspension, or revocation of the license of the adult congregate living facility or facilities by or on behalf of which such contributions were solicited.

(3) The admission or maintenance of adult congregate living facility residents whose care is supported, in whole or in part, by state funds may not be conditioned upon the receipt of any manner of contribution or donation from any person. The solicitation or receipt of contributions in violation of this subsection is grounds for denial, suspension, or revocation of license, as provided in s. 400.414, for any adult congregate living facility by or on behalf of which such contributions were solicited.

Note.—Expires October 1, 1993, pursuant to s. 83, ch. 83-181, and is scheduled for review pursuant to s. 11.61 in advance of that date.
for the hearing. The court shall grant the petition only upon finding that the health, safety, or welfare of facility residents would be threatened if a condition existing at the time the petition was filed is permitted to continue. A receiver shall not be appointed ex parte unless the court determines that one or more of the conditions in subsection (1) exist: that the facility owner or administrator cannot be found; that all reasonable means of locating the owner or administrator and notifying him of the petition and hearing have been exhausted; or that the owner or administrator after notification of the hearing chooses not to attend. After such findings, the court may appoint any qualified person as a receiver, except it may not appoint any owner or affiliate of the facility which is in receivership. The receiver duties may be selected from a list of persons qualified to act as receivers developed by the department and presented to the court with each petition for receivership. Under no circumstances may the department or designated departmental employee be appointed as a receiver for more than 60 days; however, the receiver may petition the court, one time only, for a 30-day extension. The court shall grant the extension upon a showing of good cause.

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

(a) Shall exercise those powers and perform those duties set out by the court.
(b) Shall operate the facility in such a manner as to assure safety and adequate health care for the residents.
(c) Shall take such action as is reasonably necessary to protect or conserve the assets or property of the facility for which the receiver is appointed, or the proceeds from any transfer thereof, and may use them only in the manner prescribed by the court.
(d) May use the building, fixtures, furnishings, and any accompanying consumable goods in the provision of care and services to residents and to any other persons receiving services from the facility at the time the petition for receivership was filed. The receiver shall collect payments for all goods and services provided to residents or others during the period of the receivership at the same rate of payment charged by the owners at the time the petition for receivership was filed, or at a fair and reasonable rate otherwise approved by the court.
(e) May correct or eliminate any deficiency in the structure or furnishings of the facility which endangers the safety or health of residents while they remain in the facility, provided the total cost of correction does not exceed $2,000. The court may order expenditures for this purpose in excess of $2,000 on application from the receiver after notice to the owner and a hearing.
(f) May let contracts and hire agents and employees to carry out the powers and duties of the receiver.
(g) Shall honor all leases, mortgages, and secured transactions governing the building in which the facility is located and all goods and fixtures in the building of which the receiver has taken possession, but only to the extent of payments which, in the case of a rental agreement, are for the use of the property during the period of the receivership, or which, in the case of a purchase agreement, become due during the period of the receivership.
(h) Shall have full power to direct and manage and to discharge employees of the facility, subject to any contract rights they may have. The receiver shall pay employees at the rate of compensation, including benefits, approved by the court. A receivership does not relieve the owner of any obligation to employees made prior to the appointment of a receiver and not carried out by the receiver.

(i) Shall be entitled to and take possession of all property or assets of residents which are in the possession of a facility or its owner. The receiver shall preserve all property, assets, and records of residents of which the receiver has taken possession and shall provide for the prompt transfer of the property, assets, and records to the new placement of any transferred resident. An inventory list certified by the owner and receiver shall be made immediately at the time the receiver takes possession of the facility.

(4)(a) A person who is served with notice of an order of the court appointing a receiver and of the receiver’s name and address shall be liable to pay the receiver for any goods or services provided by the receiver after the date of the order if the person would have been liable for the goods or services as supplied by the owner. The receiver shall give a receipt for each payment and shall keep a copy of each receipt on file. The receiver shall deposit accounts received in a separate account and shall use this account for all disbursements.
(b) The receiver may bring an action to enforce the liability created by paragraph (a).
(c) A payment to the receiver of any sum owing to the facility or its owner shall discharge any obligation to the facility to the extent of the payment.

(5)(a) A receiver may bring an action to enforce the agreement, become due during the period of the receivership.
(b) If the receiver is in possession of real estate or goods subject to a lease, mortgage, or security interest which the receiver has obtained a court order to avoid under paragraph (a), and if the real estate or goods are necessary for the continued operation of the facility under this section, the receiver may apply to the court to set a reasonable rental, price, or rate of interest to be paid by the receiver during the duration of the receivership. The court shall hold a hearing on the application within 15 days. The receiver shall send notice of the application to any known persons who own the property involved at least 10 days prior to the hearing. Payment by the receiver of the amount determined by the court to be reasonable is a defense to any action against the receiver for payment or for possession of the goods or real
1400.424 Contracts.—

(1) The presence of each resident in a facility shall be covered by a contract, executed at the time of admission or prior thereto, between the facility and the resident or his designee or legal representative. Each party to the contract shall be provided with a duplicate original of the contract. The completed form shall be submitted to the district licensure office of the department within 30 days of the resident's admission to the facility.

(2) Each contract shall contain express provisions specifically setting forth the services and accommodations to be provided by the facility; the rates or charges; provision for at least 30 days' notice of a rate increase; the rights, duties, and obligations of the residents, other than those specified in s. 400.428; and other matters which the parties deem appropriate. The purpose of any advance payment and a refund policy for such payment, including any advance payment for meals, lodging, or personal services, shall be covered in the contract.

(3) No contract, or any provision thereof, shall be construed to relieve any facility of any requirement or obligation imposed upon it by this act or by standards or rules in force pursuant thereto.

History.—s. 11, ch. 75-253; ss. 12, 23, ch. 80-198; s. 2, ch. 81-318; ss. 52, 79, 83, ch. 92-191.

Note.—Expires October 1, 1993, pursuant to s. 83, ch. 83-181, and is scheduled for review pursuant to s. 11.61 in advance of that date.

1400.426 Examination of residents.—

(1) The owner or administrator of a facility is responsible for determining the appropriateness of admission of an individual to the facility and for determining the continued appropriateness of residence of an individual in the facility.

(2) No physician employed by an adult congregate living facility to provide an initial examination for admission purposes may have any financial interest in such facility.

(3) Where possible, each resident shall have been examined by a licensed physician or a licensed nurse practitioner within 60 days before admission to the facility. The signed and completed medical examination report shall be submitted to the owner or administrator of the facility who shall utilize the information contained therein to assist in the determination of the appropriateness of admission of the resident to the facility. The medical examination report shall become a permanent part of the record of the resident at the facility and shall be available to the department during inspection or upon request.

(4) If a medical examination has not been completed within 60 days before the admission of the resident to the facility, a licensed physician or licensed nurse practitioner shall examine the resident and complete a medical examination form provided by the department within 30 days following the admission to the facility to enable the facility owner or administrator to determine the appropriateness of admission. The medical examination form shall become a permanent part of the record of the resident at the facility and shall be available to the department during inspection or upon request.

(5) Any resident accepted in a facility upon discharge from a state institution shall have been examined by medical personnel of the institution within 30 days before discharge from the state institution, and the findings pursuant to such examination shall be recorded on the medical examination form provided by the department. The completed form shall be submitted to the facility owner or administrator and a copy thereof shall be provided to the district licensure office of the department.

(6) The department may require an annual physical examination for supplemental security income recipients residing in facilities.

(7) If, at any time after admission to a facility, a resident appears to need care beyond that which the facility is licensed to provide, the department shall direct the facility owner or administrator to require the resident to
physically examined by a licensed physician or licensed nurse practitioner; such examination shall be paid for by the resident with personal funds, except as provided in s. 400.418(2). Pursuant to such examination, the examining physician or licensed nurse practitioner shall complete and sign a medical form provided by the department. The completed medical form shall be submitted to the department within 30 days from the date the facility owner or administrator is notified by the department that the physical examination is required. After consultation with the physician or licensed nurse practitioner who performed the examination, the medical review team designated by the department shall then determine whether the resident is appropriately residing in the facility. Such determination shall be final and binding upon the facility and the resident. Any resident who is determined by the medical review team to be inappropriately residing in a facility shall be given 30 days' written notice to relocate by the owner or administrator, unless the resident's continued residence in the facility presents an imminent danger to the health, safety, or welfare of the resident or a substantial probability exists that death or serious physical harm would result to the resident if allowed to remain in the facility.

(3) A facility, upon mutual consent with the resident, may be necessary for the safe and orderly management of the facility or for the safety of the resident.

(6) In addition to any damages or civil penalties to which a person may be subject, any person who:

(a) Intentionally withholds a resident's personal funds or personal property, or who demands, beneficially receives, or contracts for payment of all or any part of a resident's personal funds or personal property in satisfaction of the facility rate for supplies and services; or

(b) Borrows from or pledges any personal funds of a resident, other than that agreed to by written contract pursuant to s. 400.424,
is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(7) In the event of the death of a resident, the facility shall place all funds belonging to the resident in an interest-bearing account until such time as the funds are disbursed pursuant to the Florida Probate Code. Such funds shall be kept separate from the funds and property of the facility and other residents of the facility. In the event the funds of the deceased resident are not disbursed pursuant to the provisions of the Florida Probate Code within 2 years of the resident’s death, the funds shall be deposited in the Aging and Adult Licensure Trust Fund as provided in s. 400.418.

History.--s. 12, ch. 75-233; s. 12, ch. 80-198; s. 2, ch. 81-152; s. 2, ch. 81-318; ss. 54, 79, 83, ch. 83-181.

Note.--Expires October 1, 1993, pursuant to s. 83, ch. 83-181, and is scheduled for review pursuant to s. 11.61 in advance of that date.

1400.428 Resident bill of rights.--

(1) No resident of a facility shall be deprived of any civil or legal rights, benefits, or privileges guaranteed by the Constitution of the State of Florida, or the Constitution of the United States solely by reason of status as a resident of a facility. Every resident of a facility shall have the right to:

(a) Live in a safe and decent living environment, free from abuse and neglect.

(b) Be treated with consideration and respect and with due recognition of personal dignity, individuality, and the need for privacy.

(c) Retain and use his own clothes and other personal property in his immediate living quarters, so as to maintain individuality and personal dignity, except when the facility can demonstrate that such would be unsafe, impractical, or an infringement upon the rights of other residents.

(d) Unrestricted private communication, including receiving and sending unopened correspondence, access to a telephone, and visiting with any person of his choice, at any time between the hours of 9 a.m. and 9 p.m. at a minimum.

(e) Freedom to participate in and benefit from community services and activities to achieve the highest possible level of independence, autonomy, and interaction within the community.

(f) Manage his own financial affairs unless he or his guardian authorizes the administrator of the facility to provide safekeeping for funds as provided in s. 400.427.

(g) Share a room with his spouse if both are residents of the facility.

(h) Reasonable opportunity for regular exercise several times a week and to be outdoors at regular and frequent intervals.

(i) Exercise civil and religious liberties, including the right to independent personal decisions. No religious beliefs or practices, nor any attendance at religious services, shall be imposed upon any resident.

(j) Access to adequate and appropriate health care consistent with established and recognized standards within the community.

(k) At least 30 days’ notice of relocation or termination of residency from the facility unless, for medical reasons, the resident is certified by a physician to require an emergency relocation to a facility providing a more skilled level of care or the resident engages in a pattern of conduct that is harmful or offensive to other residents. In the case of a resident who has been adjudicated mentally incompetent, the guardian shall be given at least 30 days’ notice of a nonemergency relocation or residency termination. Reasons for relocation shall be set forth in writing. In order for a facility to terminate the residency of an individual without notice as provided herein, the facility shall show good cause in a court of competent jurisdiction.

(l) Present grievances and recommend changes in policies, procedures, and services to the staff of the facility, governing officials, or any other person without restraint, interference, coercion, discrimination, or reprisal. This right includes access to ombudsman volunteers and advocates and the right to be a member of, to be active in, and to associate with advocacy or special interest groups.

(2) The administrator of a facility shall ensure that a written notice of the rights, obligations, and prohibitions set forth in this part is posted in a prominent place in each facility and read or explained to residents who cannot read. This notice shall include the name, address, and telephone numbers of the district ombudsman committee and adult abuse register where complaints may be lodged.

(3) In order to determine whether the facility is adequately protecting residents’ rights, the annual inspection of the facility shall include private informal conversations with a sample of residents and consultation with the ombudsman committee in the district in which the facility is located to discuss residents’ experiences within the facility with respect to rights specified in this section and general compliance with standards.

(4) The facility shall not hamper or prevent residents from exercising their rights as specified in this section.

(5) No facility or employee of a facility may serve notice upon a resident to leave the premises or take any other retaliatory action against any person who:

(a) Exercises any right set forth in this section.

(b) Appears as a witness in any hearing, inside or outside the facility.

(c) Files a civil action alleging a violation of the provisions of this part or notifies a state attorney or the Attorney General of a possible violation of such provisions.

(6) Any facility which terminates the residency of an individual who participated in activities specified in subsection (5) shall show good cause in a court of competent jurisdiction.

(7) Any person who submits or reports a complaint concerning a suspected violation of the provisions of this part or concerning services and conditions in facilities, or who testifies in any administrative or judicial proceeding arising from such a complaint, shall have immunity from any civil or criminal liability therefor, unless such person has acted in bad faith or with malicious purpose or the court finds that there was a complete absence of a justifiable issue of either law or fact raised by the losing party.

(8) Any person specified in s. 410.106 who suspects that a resident is subject to abuse, maltreatment, or exploitation shall report or cause reports to be made to the department in accordance with s. 415.103.
1400.429 Civil actions to enforce rights.—Any person or resident whose rights as specified in this part are violated shall have a cause of action against any facility owner, administrator, or staff responsible for the violation. The action may be brought by the resident or his guardian, or by a person or organization acting on behalf of a resident with the consent of the resident or his guardian, to enforce such rights. The action may be brought in any court of competent jurisdiction to enforce such rights and to recover actual damages, and punitive damages when malicious, wanton, or willful disregard of the rights of others can be shown. Any plaintiff who prevails in any such action may be entitled to recover reasonable attorney's fees, costs of the action, and damages, unless the court finds that the plaintiff has acted in bad faith, with malicious purpose, and that there was a complete absence of a justiciable issue of either law or fact. A prevailing defendant may be entitled to recover reasonable attorney's fees pursuant to s. 57.105. The remedies provided in this section are in addition to and cumulative with other legal and administrative remedies available to a resident or to the department.

1400.431 Closing of facility.—(1) Whenever a facility voluntarily discontinues operation, it shall inform the department in writing at least 90 days prior to the discontinuance of operation. The facility shall also, at such time, inform each resident or the next of kin, legal representative, or agency acting on behalf of the resident's behalf, of the fact and the proposed time of such discontinuance. In the event a resident has no person to represent him, the facility shall be responsible for referral to an appropriate social service agency for placement.

(2) Immediately upon the notice by the department of the voluntary or involuntary termination of such operation, the department shall monitor the transfer of residents to other facilities and ensure that residents' rights are being protected. The department shall be responsible for relocating all supplemental security income recipients affected by the termination of the facility.

(3) All charges shall be prorated as of the date on which the facility discontinues operation, and if any payments have been made in advance, the payments for services not received shall be refunded to the resident or the resident's guardian within 7 days of voluntary or involuntary closure of the facility, whether or not such refund is requested by the resident or guardian.

(4) Immediately upon discontinuance of the operation of a facility, the owner shall surrender the license therefor to the department, and the license shall be canceled.

1400.434 Right of entry and inspection.—Any duly designated officer or employee of the department, the state or local fire marshal, or a member of the state or district nursing home and long-term care facility ombudsman council shall have the right to enter unannounced upon and into the premises of any facility licensed pursuant to this part in order to determine the state of compliance with the provisions of this part and of rules or standards in force pursuant thereto. The right of entry and inspection shall also extend to any premises which the department has reason to believe is being operated or maintained as a facility without a license; but no such entry or inspection of any premises may be made without the permission of the owner or person in charge thereof, unless a warrant is first obtained from the circuit court authorizing such entry. Any application for a license or renewal thereof made pursuant to this part shall constitute permission for, and complete acquiescence in, any entry or inspection of the premises for which the license is sought, in order to facilitate verification of the information submitted on or in connection with the application; to discover, investigate, and determine the existence of abuse or neglect; or to elicit, receive, respond to, and resolve complaints.

1400.435 Maintenance of records; reports.—(1) Every facility shall maintain, as public information available for public inspection under such conditions as the department shall prescribe, records containing copies of all inspection reports pertaining to the facility that have been issued by the department to the facility. Copies of inspection reports shall be retained in the records for 5 years from the date the reports are filed or issued. (2) Within 60 days from the date of the annual inspection visit or within 30 days from the date of any interim visit, the department shall forward the results of the inspection to the district ombudsman committee in whose district the facility is located.

(3) Every facility shall post a copy of the last inspection report of the department for that facility in a prominent location within the facility so as to be accessible to all residents and to the public. Upon request, the facility shall also provide an applicant for admission to the facility with a copy of such report.

1400.441 Rules establishing minimum standards.—(1) Pursuant to the intention of the Legislature to provide safe and sanitary facilities, the department shall promulgate, publish, and enforce rules to implement the provisions of this part, which shall include reasonable and fair minimum standards in relation to: (a) The maintenance of facilities, not in conflict with the provisions of chapter 553, relating to plumbing, heating, lighting, ventilation, and other housing conditions, which will ensure the health, safety, and comfort of residents and protection from fire hazard, including adequate provisions for fire alarm and other fire protection systems.
suitable to the size of the structure. Minimum firesafety standards shall be established and enforced by the State Fire Marshal in cooperation with the department. Such standards shall be included in the rules promulgated by the department after consultation with the State Fire Marshal.

(b) The number and qualifications of all personnel having responsibility for the care of residents.

(c) All sanitary conditions within the facility and its surroundings, including water supply, sewage disposal, food handling, and general hygiene, and maintenance thereof, which will ensure the health and comfort of residents.

(d) The levying and enforcement of penalties and use of income from fees and fines.

(e) The enforcement of the resident bill of rights specified in s. 400.428.

(f) The care and maintenance of residents which shall include, but not be limited to:
   1. The provision of personal services;
   2. The provision of, or arrangement for, social and leisure activities; and
   3. The arrangement for appointments and transportation to appropriate medical, dental, nursing, or mental health services, as needed by residents.

(g) The establishment of specific criteria to define appropriateness of admission and continued residency.

(h) The definition and use of mechanical restraints.

The use of mechanical restraints is limited to half-bed rails as prescribed and documented by the resident’s physician.

(2) In promulgating any rules pursuant to the provisions of this part, the department shall make distinctions among types of facilities according to facility size. The department shall also differentiate among the types of care provided in facilities, taking into account the physical and mental capabilities and needs of residents; the type, frequency, and amount of services and care offered; and the staffing characteristics of the facility. The department may make other distinctions among types of facilities as necessary to enforce the provisions of this part. Rules of the department may offer alternate solutions for complying with established standards, based on distinctions made by the department relative to the physical characteristics of facilities and the types of care offered therein.

(3) The department shall submit a copy of proposed rules to the Speaker of the House of Representatives, President of the Senate, and appropriate committees of substance for review and comment prior to the promulgation thereof.

\[\text{Note.-Repealed effective October 1, 1993, by s. 83, ch. 83-181, and scheduled for review pursuant to s. 11.61 in advance of that date.}\]

\[\text{400.444 Construction and renovation; requirements.-The requirements for the construction and renovation of a facility shall comply with the provisions of chapter 553 which pertain to building construction standards, including plumbing, electrical code, glass, manufactured buildings, accessibility for the physically disabled, and the state minimum building code.}\]

\[\text{History.-s. 17, ch. 75-233; s. 3, ch. 79-152; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181.}\]

\[\text{Note.-Repealed effective October 1, 1993, by s. 83, ch. 83-181, and scheduled for review pursuant to s. 11.61 in advance of that date.}\]

\[\text{400.445 Compliance with local zoning requirements.-No facility licensed under this part may commence any construction which will expand the size of the existing structure unless the licensee first submits to the department proof that such construction will be in compliance with applicable local zoning requirements.}\]

\[\text{History.-s. 2, ch. 85-251.}\]

\[\text{400.447 Prohibited acts; penalties for violation.- (1) It is unlawful for any person or public body to offer or advertise to the public, in any way by any medium whatever, personal services as defined in this act, without obtaining a valid current license. It is unlawful for any holder of a license issued pursuant to the provisions of this act to advertise or hold out to the public that it holds a license for a facility other than that for which it actually holds a license.}\]

\[\text{History.-s. 18, ch. 75-233; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181.}\]

\[\text{Note.-Repealed effective October 1, 1993, by s. 83, ch. 83-181, and scheduled for review pursuant to s. 11.61 in advance of that date.}\]

\[\text{400.451 Existing facilities to be given reasonable time to comply with rules and standards.-Any facility as defined in this part which is in operation at the time of promulgation of any applicable rules or standards adopted pursuant to this part may be given a reasonable time, not to exceed 6 months, within which to comply with such rules and standards.}\]

\[\text{History.-s. 19, ch. 75-233; ss. 12, 33, ch. 80-198; s. 2, ch. 81-318; ss. 59, 79, 83, ch. 83-181; s. 7, ch. 85-145.}\]

\[\text{Note.-Repealed effective October 1, 1993, by s. 83, ch. 83-181, and scheduled for review pursuant to s. 11.61 in advance of that date.}\]

\[\text{400.452 Staff training and educational programs; core educational requirement.-The department shall provide, or cause to be provided, training and educational programs for the administrators and such other facility staff as are defined by the department to better enable them to appropriately respond to the needs of residents and to meet licensure requirements. The department shall also establish a core educational requirement to be used in these programs. Such programs shall be available at least annually. Facility administrators and such staff shall complete a core educational requirement within a reasonable time period determined by the department. Failure to complete a core educational requirement within the time set by the department is a violation of this part and subjects the violator to a penalty as prescribed in s. 400.419. Administrators licensed in accordance with chapter 468, part III, are exempt from this requirement.}\]

\[\text{History.-ss. 12, 34, ch. 80-198; s. 2, ch. 81-318; ss. 60, 75, 79, 83, ch. 83-181; ss. 53, ch. 83-218; s. 3, ch. 85-251.}\]

\[\text{Note.-Repealed effective October 1, 1993, by s. 83, ch. 83-181, and scheduled for review pursuant to s. 11.61 in advance of that date.}\]

\[\text{Note.-The words "the violator" were inserted by the editors.}\]

\[\text{400.454 Collection of information; local subsidy.- (1) To enable the department to collect the informa-}\]
tion requested by the Legislature regarding the actual cost of providing room, board, and personal care in facilities, the department is authorized to conduct field visits and audits of facilities as may be necessary. The owners of randomly sampled facilities shall submit such reports, audits, and accountings of cost as the department may require by rule; provided that such reports, audits, and accountings shall be the minimum necessary to implement the provisions of this section. Any facility selected to participate in the study shall cooperate with the department by providing cost of operation information to interviewers.

(2) Local governments or organizations may contribute to the cost of care of local facility residents by further subsidizing the rate of state-authorized payment to such facilities. Implementation of local subsidy shall require departmental approval and shall not result in reductions in the state supplement.


Note.--Expires October 1, 1993, pursuant to s. 83, ch. 83-181, and is scheduled for review pursuant to s. 11.61 in advance of that date.

PART III

HOME HEALTH AGENCIES

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400.505 Licensure of additional home health agencies.

1400.461 Short title; purpose.--

(1) This act shall be known and may be cited as the "Home Health Services Act."

(2) The purpose of this act is to provide for the licensure of every home health agency which is certified or seeks certification as a Medicare home health service provider and to provide for the development, establishment, and enforcement of basic standards which will ensure the safe and adequate care of persons receiving Medicare health services in their own homes.

History.--s. 36, 37, ch. 75-233; s. 2, ch. 81-318; ss. 61, 79, 83, ch. 83-181.

Note.--Expires October 1, 1993, pursuant to s. 83, ch. 83-181, and is scheduled for review pursuant to s. 11.61 in advance of that date.

1400.462 Definitions.--When used in this part, unless the context otherwise requires, the term:

(1) "Department" means the Department of Health and Rehabilitative Services.

(2) "Home health agency," hereinafter referred to as "agency," means any public agency or private organization, or a subdivision of such an agency or organization, whether operated for profit or not, which provides home health services and which is certified or seeks certification as a Medicare home health service provider, except as provided in s. 400.505.

(3) "Home health services," hereinafter referred to as "services," means health and medical services and medical supplies furnished to an individual by a home health agency or by others under arrangements with the agency, on a visiting basis, in a place of residence used as an individual's home. Such services may include, but are not limited to, the following:

(a) Part-time or intermittent nursing care.
(b) Physical, occupational, or speech therapy.
(c) Medical social services, homemaker services, home health aide services, and nutritional guidance.
(d) Medical supplies, other than drugs and biologicals prescribed by a physician, and the use of medical appliances.

History.--s. 38, ch. 75-233; s. 2, ch. 81-318; ss. 62, 79, 83, ch. 83-181; s. 12, ch. 85-167.

Note.--Expires October 1, 1993, pursuant to s. 83, ch. 83-181, and is scheduled for review pursuant to s. 11.61 in advance of that date.

1400.464 Agencies to be licensed.--Any agency providing home health services as defined in this act shall be licensed by the department to operate in this state. However, any agency or organization operated by an agency of the federal government shall be exempt from the provisions of this act.

History.--s. 39, ch. 75-233; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181.

Note.--Repealed effective October 1, 1993, by s. 83, ch. 83-181, and scheduled for review pursuant to s. 11.61 in advance of that date.

1400.467 License required; fee; display.--

(1) It is unlawful to operate an agency without first obtaining from the department a license authorizing such operation.

(2) The annual license fee required of an agency shall be in an amount determined by the department to be sufficient to cover the department's costs in carrying out its responsibilities under this part but not to exceed $500. However, counties or municipalities applying for subsidies for local facilities shall be exempt from the payment of license fees.

(3) The license shall be in an amount determined by the department to be sufficient to cover the department's costs in carrying out its responsibilities under this part but not to exceed $500. However, counties or municipalities applying for subsidies for local facilities shall be exempt from the payment of license fees.


Note.--Expires October 1, 1993, pursuant to s. 83, ch. 83-181, and is scheduled for review pursuant to s. 11.61 in advance of that date.

1400.471 Application for license.--

(1) Application for license shall be made to the department on forms furnished by it and shall be accompanied by the appropriate license fee.

(2) The applicant shall file with the application satisfactory proof that the agency is in compliance with this
act and any rules and minimum standards promulgated hereunder and proof of financial ability to operate and conduct the agency in accordance with the requirements of this act.

(3) The department shall not issue a license to a home health agency which fails to receive a certificate of need under the provisions of ss. 381.493-381.497.

History.—s. 41, ch. 75-233; s. 7, ch. 77-400; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181.

*Note.—Repealed effective October 1, 1993, by s. 83, ch. 83-181, and scheduled for review pursuant to s. 11.61 in advance of that date.

1400.474 Denial, suspension, revocation of license; grounds.—

(1) The department may deny, revoke, or suspend a license or impose an administrative fine in the manner provided in chapter 120.

(2) Any of the following actions by an agency or its employee shall be grounds for action by the department against an agency:

(a) Violation of provisions of this act or of any minimum standards or rules promulgated hereunder.

(b) An intentional or negligent act materially affecting the health or safety of a patient.

History.—s. 42, ch. 75-233; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181.

*Note.—Repealed effective October 1, 1993, by s. 83, ch. 83-181, and scheduled for review pursuant to s. 11.61 in advance of that date.

1400.477 Expiration of license; renewal; conditional license or permit.—

(1)(a) Licenses issued for the operation of an agency, unless sooner suspended or revoked, shall expire 1 year from the date of issuance. Sixty days prior to the expiration date, an application for renewal shall be submitted to the department on forms furnished by the department, and licenses shall be renewed if the applicant has first met the requirements established under this act and all rules promulgated hereunder. The agency shall file with the application satisfactory proof that the agency is in compliance with this act and all rules and minimum standards promulgated hereunder and satisfactory proof of financial ability to operate and conduct the agency in accordance with the requirements of this act.

(b) Any agency having a license on October 1, 1983, may not be denied a renewal of such license on the basis of not being certified as a Medicare home health service provider.

(2) Agencies against whom a revocation or suspension proceeding is pending at the time of license renewal may be issued a conditional license effective until final disposition by the department of such proceedings. If judicial relief is sought from the final disposition, the court having jurisdiction may issue a conditional permit for the duration of the judicial proceeding.

History.—s. 43, ch. 75-233; s. 2, ch. 81-318; ss. 52, 79, 83, ch. 83-181.

*Note.—Expenses October 1, 1993, pursuant to s. 83, ch. 83-181, and is scheduled for review pursuant to s. 11.61 in advance of that date.

400.479 Disposition of fees collected.—All fees collected under this part shall be deposited in the appropriate trust fund by the department for the administration of this part.

History.—s. 14, ch. 85-167.

1400.481 Injunction proceedings authorized.—The department may institute injunction proceedings in a court of competent jurisdiction when violation of the provisions of this act or of any minimum standards or rules promulgated hereunder constitutes an emergency affecting the immediate health and safety of a patient.

History.—s. 44, ch. 75-233; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181.

*Note.—Repealed effective October 1, 1993, by s. 83, ch. 83-181, and scheduled for review pursuant to s. 11.61 in advance of that date.

1400.484 Right of inspection.—Any duly authorized officer or employee of the department shall have the right to make such inspections and investigations as are necessary in order to determine the state of compliance with the provisions of this act and of rules or standards in force pursuant thereto. The right of inspection shall also extend to any agency which the department has reason to believe is being operated as an agency without a license, but no such inspection of any agency shall be made without the permission of the owner or person in charge thereof unless a warrant is first obtained from a circuit court authorizing same. Any application for an agency license or renewal of the same by any person or organization which is not in compliance with this act shall constitute permission for any inspection of the agency for which the license is sought, in order to facilitate verification of the information submitted on or in connection with the application.

History.—s. 45, ch. 75-233; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181.

*Note.—Repealed effective October 1, 1993, by s. 83, ch. 83-181, and scheduled for review pursuant to s. 11.61 in advance of that date.

1400.487 Establishment and review of plan of treatment.—

(1) A plan of treatment shall be established for each patient receiving care or treatment provided by a licensed nurse or by a physical, occupational, or speech therapist, by the physician who is responsible for the care of the patient. The original plan of treatment shall be signed by the physician and reviewed by the physician in consultation with agency personnel involved in providing services to the patient, at such intervals as the severity of the patient’s illness requires, but in any instance, at least every 2 months.

(2) Each patient shall be provided, upon request and prior notification of the physician responsible for the care of the patient, a copy of the plan of treatment established and maintained for that patient by the home health agency.

History.—s. 46, ch. 75-233; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181.

*Note.—Repealed effective October 1, 1993, by s. 83, ch. 83-181, and scheduled for review pursuant to s. 11.61 in advance of that date.

1400.491 Clinical records.—The home health agency shall maintain for each patient a clinical record which includes the services the agency provides directly and those provided through arrangement with another agency. Such records shall contain pertinent past and current medical, nursing, social and other therapeutic information, the plan of treatment, and other such information as is necessary for the safe and adequate care of the patient. When home health services are terminated, the record shall show the date and reason for termination.

History.—s. 47, ch. 75-233; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181.

*Note.—Repealed effective October 1, 1993, by s. 83, ch. 83-181, and scheduled for review pursuant to s. 11.61 in advance of that date.

1400.494 Information confidential.—Information received by persons employed by, or providing services to, a home health agency or received by the licensing
agency through reports or inspection shall be deemed privileged and confidential information and shall not be disclosed to any person other than the patient without the written consent of that patient or his guardian.

History.—s. 40, ch. 75-233; s. 2, ch. 81-319; ss. 79, 83, ch. 83-181.

Note.—Repealed effective October 1, 1993, by s. 83, ch. 83-181, and scheduled for review pursuant to s. 11.61 in advance of that date.

1400.497 Rules establishing minimum standards.—Pursuant to the intent of the Legislature to provide safe and adequate home health services, the department shall promulgate, publish, and enforce rules to implement the provisions of this act within 90 days of the effective date of this act, which shall include reasonable and fair minimum standards in relation to:

1. Scope of services to be provided.
2. The qualifications and minimum training requirements of all agency personnel.
3. Procedures for administering drugs and biologics.
4. The desirability and practicality of accepting patients for services.
5. Insuring that the services provided by a home health agency are in accordance with the plan of treatment established for each patient.

History.—s. 40, ch. 75-233; s. 2, ch. 81-319; ss. 79, 83, ch. 83-181.

Note.—Repealed effective October 1, 1993, by s. 83, ch. 83-181, and scheduled for review pursuant to s. 11.61 in advance of that date.

1400.501 Prohibited acts; penalties for violation.—(1) It is unlawful for any person or public body to offer or advertise to the public, in any way by any medium whatever, home health services as defined in this act without obtaining a valid current license. It is unlawful for any holder of a license issued pursuant to the provisions of this act to advertise or hold out to the public that it actually holds a license.

(2) Any person found guilty of violating subsection (1) shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083. Each day of continuing violation shall be considered a separate offense.

History.—s. 50, ch. 75-233; s. 2, ch. 81-319; ss. 79, 83, ch. 83-181.

Note.—Repealed effective October 1, 1993, by s. 83, ch. 83-181, and scheduled for review pursuant to s. 11.61 in advance of that date.

1400.504 Agencies to be given reasonable time to comply with rules and standards.—Any agency as defined in this act which is in operation as of July 1, 1975, or at the time of promulgation of any applicable rules or standards adopted pursuant to this act may be given a reasonable time, not to exceed 1 year from the date of publication, within which to comply with such rules and standards and obtain a license. Any home health agency operating and providing services in the state and having a provider number issued by the U. S. Department of Health, Education, and Welfare on or before April 30, 1976, shall not be denied a license on the basis of not having received a certificate of need.

History.—s. 51, ch. 75-233; s. 10, ch. 76-201; s. 2, ch. 81-319; ss. 79, 83, ch. 83-181.

Note.—Repealed effective October 1, 1993, by s. 83, ch. 83-181, and scheduled for review pursuant to s. 11.61 in advance of that date.

1400.505 Licensure of additional home health agencies.—(1) The purpose of this section is to provide for the licensure of every home health agency not heretofore subject to regulation as a Medicare home health agency and to provide for the development, establishment, and enforcement of basic standards which will ensure the safe and adequate care of persons receiving health care services in their own homes from these agencies.

(2) Any home health agency not heretofore subject to licensure under this part shall be, effective July 1, 1985, subject to all regulatory and other requirements of ss. 400.461-400.504, except for the requirement of obtaining a certificate of need as provided under chapter 381. Agencies licensed solely under this provision shall not be eligible for Medicare certification.

(3) Any home health agency which is in operation as of July 1, 1985, shall be given a reasonable time by the department, not to exceed 1 year from July 1, 1985, within which to comply with department rules and obtain a license.

History.—ss. 13, 16, ch. 85-167.

Note.—Expires October 1, 1993, pursuant to s. 16, ch. 85-167, and is scheduled for review pursuant to s. 11.61 in advance of that date.

PART IV

ADULT DAY CARE CENTERS

400.55 Purpose.
400.551 Definitions.
400.552 Centers to be licensed.
400.553 Exemptions.
400.554 License required; fee; exemption; display.
400.555 Application for license.
400.556 Denial, suspension, revocation of license; grounds.
400.5565 Administrative fines.
400.5575 Expiration of license; renewal; conditional license as permit.
400.557 Disposition of fees and administrative fines.
400.558 Injunction proceedings authorized.
400.559 Closing of center.
400.56 Right of entry and inspection.
400.562 Rules establishing standards.
400.563 Construction and renovation; requirements.
400.564 Prohibited acts; penalty for violation.

1400.55 Purpose.—The purpose of this part is to develop, establish, and enforce basic standards for adult day care centers in order to assure that a protective environment and preventive, remedial, and restorative services are provided.

History.—s. 1, ch. 78-336; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181.

Note.—Repealed effective October 1, 1993, by s. 83, ch. 83-181, and scheduled for review pursuant to s. 11.61 in advance of that date.

1400.551 Definitions.—When used in this part, unless the context otherwise requires:

(1) "Adult day care center," hereinafter referred to as "center," means any building or buildings, or other place, whether operated for profit or not, which undertakes through its ownership or management to provide, for a part of the 24-hour day, basic services to three or more adults, not related to the owner/operator by blood or marriage, who require such services.
(2) "Basic services" shall include, but not be limited to, providing a protective setting, social activities, leisure-time activities, self-care training, rest, nutritional services, and, when possible, speech and physical therapy.

(3) "Department" means the Department of Health and Rehabilitative Services.

(4) "Owner/operator" means any individual who has general administrative charge of an adult day care center.

(5) "Participant and program data" shall include, but not be limited to, number of participants, frequency of participation, distance traveled, hours of operation, number of referrals from a center to other programs, facilities or institutions, and incidence of illness.

(6) "Supportive and optional services" include, but are not limited to, direct transportation services, legal consultation, consumer education, and referrals for follow-up services.

'400.552 Centers to be licensed.—For the administration of this part, facilities to be licensed by the department shall include all adult day care centers as defined in this part which are not otherwise exempt as provided in s. 400.553.

History.—s. 2, ch. 78-336; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181.

'400.553 Exemptions.—The following shall be exempt from the provisions of this part:

(1) Any facility, institution, or other place operated by the federal government or any agency thereof.

(2) Any federally funded congregate meals program.

(3) Any adult congregate living facility licensed by the state.

(4) Any nursing home facility licensed by the state.

History.—s. 3, ch. 78-336; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181.

'400.554 License required; fee; exemption; display.

(1) It is unlawful to operate or maintain a center without first obtaining from the department a license authorizing such operation. The department is responsible for licensing adult day care centers in accordance with the provisions of this part.

(2) Separate licenses shall be required for centers maintained on separate premises, even though operated under the same management. Separate licenses shall not be required for separate buildings on the same ground.

(3) The annual license fee required of a center shall be determined by the department, but shall not exceed $75.

(4) County-operated or municipally operated centers applying for licensure under this part shall be exempt from the payment of license fees.

(5) The license shall be displayed in a conspicuous place inside the center.

(6) A license shall be valid only in the possession of the individual, firm, partnership, association, or corporation to whom it is issued and shall not be subject to sale, assignment, or other transfer, voluntary or involuntary; nor shall a license be valid for any premises other than that for which originally issued.

History.—s. 5, ch. 78-336; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181.

Note.—Repealed effective October 1, 1993, by s. 83, ch. 83-181, and scheduled for review pursuant to s. 11.61 in advance of that date.

'400.555 Application for license.—

(1) Application for license shall be made to the department on forms furnished by it and shall be accompanied by the appropriate license fee unless the applicant is exempt from payment of the fee as provided in s. 400.554(4).

(2) The applicant for licensure shall furnish satisfactory proof of financial ability to operate and conduct the center in accordance with the requirements of this part.

(3) The applicant for licensure shall furnish proof of adequate liability insurance coverage.

History.—s. 5, ch. 78-336; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181.

Note.—Repealed effective October 1, 1993, by s. 83, ch. 83-181, and scheduled for review pursuant to s. 11.61 in advance of that date.

'400.556 Denial, suspension, revocation of license; grounds.—

(1) The department may deny, revoke, or suspend a license or impose an administrative fine in the manner provided in chapter 120.

(2) Either of the following actions by a center or its employee shall be grounds for action by the department against a center or its employee:

(a) An intentional or negligent act materially affecting the health or safety of participants in the center.

(b) A violation of the provisions of this part or of any standards or rules promulgated hereunder.

(3) The department shall be responsible for all investigations and inspections conducted pursuant to the provisions of this part.

History.—s. 7, ch. 78-336; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181.

Note.—Repealed effective October 1, 1993, by s. 83, ch. 83-181, and scheduled for review pursuant to s. 11.61 in advance of that date.

'400.5565 Administrative fines.—

(1)(a) If the department determines that a center is not in compliance with rules adopted under this part, including the operation of a center without a license, the department, notwithstanding any other administrative action it takes, shall make a reasonable attempt to discuss each violation and recommended corrective action with the owner of the center prior to written notification thereof. The department may request a corrective action plan from the center which demonstrates a good faith effort to remedy each violation by a specific date, subject to the approval of the department.

(b) A center or employee found in violation of rules adopted under this part may be fined by the department. A fine may not exceed $500 for each violation. In no event, however, may such fine in the aggregate exceed $5,000.

(c) The failure to correct a violation by the date set by the department, or the failure to comply with an approved corrective action plan, is a separate violation for each day such failure continues, unless the department approves an extension to a specific date.

(d) If a center desires to appeal any departmental action under this section and the fine is upheld, the violator shall pay the fine, plus interest at the legal rate as
specified in s. 687.01, for each day beyond the date set by the department for payment of the fine.

(2) In determining if a fine is to be imposed and in fixing the amount of any fine, the department shall consider the following factors:

(a) The gravity of the violation, including the probability that death or serious physical or emotional harm to a resident will result or has resulted, the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or rules were violated.

(b) Actions taken by the owner or operator to correct violations.

(c) Any previous violations.

(d) The financial benefit to the center of committing or continuing the violation.

History.—s. 84, ch. 83-181.

1 1400.557 Expiration of license; renewal; conditional license as permit.—

(1) A license issued for the operation of a center, unless sooner suspended or revoked, shall expire 1 year from the date of issuance. At least 60 days prior to the expiration date, an application for renewal shall be submitted to the department. Licenses shall be renewed, upon the filing of an application on forms furnished by the department, if the applicant has first met the requirements established under this part and all rules promulgated hereunder. The center shall file with the application satisfactory proof of financial ability to operate and conduct the facility in accordance with the requirements of this part.

Licensees against whom a revocation or suspension proceeding is pending at the time of license renewal may be issued a conditional license effective until final disposition by the department of such proceedings. If judicial relief is sought from the final disposition, the court having jurisdiction may issue a conditional permit for the duration of the judicial proceeding.

History.—s. 8, ch. 78-336, s. 2, ch. 81-318; ss. 79, 83, ch. 83-181.

1 Note.—Repealed effective October 1, 1993, by s. 83, ch. 83-181.

1 1400.5575 Disposition of fees and administrative fines.—Fees and fines received by the department under this part shall be deposited in the Aging and Adult Licensure Trust Fund. These funds may be used to offset the costs of the licensure program, including the costs of conducting background investigations, verifying information submitted, and defraying the costs of processing applications.

History.—s. 65, ch. 83-181.

1 Note.—Repealed effective October 1, 1993, by s. 83, ch. 83-181.

1 1400.558 Injunction proceedings authorized.—

(1) The department may institute injunction proceedings in a court of competent jurisdiction to:

(a) Enforce the provisions of this part or any standard, rule, or order issued or entered into pursuant thereto; or

(b) Terminate the operation of a center where any of the following exist:

1. Failure to take preventive or corrective measures in accordance with any order of the department.

2. Failure to abide by any final order of the department once it has become effective and binding.

3. Violation of any provision of this part or of any rule or standard promulgated pursuant thereto, which violation constitutes an emergency requiring immediate action.

(2) Such injunctive relief may be a temporary or permanent injunction.

History.—s. 9, ch. 78-336, s. 2, ch. 81-318; ss. 79, 83, ch. 83-181.

1 Note.—Repealed effective October 1, 1993, by s. 83, ch. 83-181, and scheduled for review pursuant to s. 11.61 in advance of that date.

1 1400.559 Closing of center.—

(1) Whenever a center voluntarily discontinues operation, it shall inform the department in writing at least 30 days prior to the discontinuance of operation. The center shall also, at such time, inform each participant of the fact and the proposed time of such discontinuance.

(2) Immediately upon discontinuance of the operation of a center, the owner/operator shall surrender the license therefor to the department and the license shall be canceled.

History.—s. 10, ch. 78-336; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181.

1 Note.—Repealed effective October 1, 1993, by s. 83, ch. 83-181, and scheduled for review pursuant to s. 11.61 in advance of that date.

1 1400.56 Right of entry and inspection.—Any duly designated officer or employee of the department shall have the right to enter upon and into the premises of any center licensed pursuant to this part, at any reasonable time, in order to determine the state of compliance with the provisions of this part and of rules or standards in force pursuant thereto. The right of entry and inspection shall also extend to any premises which the department has reason to believe are being operated or maintained as a center without a license, but no such entry or inspection of any premises shall be made without the permission of the owner/operator in charge thereof unless a warrant is first obtained from the circuit court authorizing same. Any application for a center license or renewal made pursuant to this part shall constitute permission for, and complete acquiescence in, any entry or inspection of the premises for which the license is sought in order to facilitate verification of the information submitted on or in connection with the application.

History.—s. 11, ch. 78-336, s. 2, ch. 81-318; ss. 79, 83, ch. 83-181.

1 Note.—Repealed effective October 1, 1993, by s. 83, ch. 83-181, and scheduled for review pursuant to s. 11.61 in advance of that date.

1 1400.562 Rules establishing standards.—

(1) Pursuant to the intention of the Legislature to provide safe and sanitary facilities and healthful programs, the department, within 1 year of July 1, 1978, shall promulgate and publish rules to implement the provisions of this part, which shall include reasonable and fair standards. Any conflict between these standards and those that may be set forth in local, county, or city ordinances shall be resolved in favor of those having statewide effect. Such standards shall relate to:

(a) The maintenance of centers, not in conflict with the provisions of chapter 553, and based upon the size of the structure and number of participants, relating to plumbing, heating, lighting, ventilation, and other building conditions, including adequate meeting space, which will insure the health, safety, and comfort of participants and protection from fire hazard.

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(n) The number and qualifications of all personnel having responsibility for the care of participants.
(c) All sanitary conditions within the center and its surroundings, including water supply, sewage disposal, food handling, and general hygiene, and maintenance thereof, which will insure the health and comfort of participants.
(d) Programs and basic services promoting and maintaining the health of participants and encouraging leisure and recreational activities, interaction, and communication among participants.
(e) Transportation and other supportive and optional services.
(f) Data and information relative to participants and programs.
(g) Enforcement of standards pursuant to the promulgation of rules under this part shall not take effect until 6 months following the promulgation of such rules.

History.—ss. 13, 18, ch. 79-336; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181.

Note.—Repealed effective October 1, 1993, by s. 83, ch. 83-181, and scheduled for review pursuant to s. 11.61 in advance of that date.

1400.563 Construction and renovation; requirements.—The requirements for the construction and the renovation of a center shall comply with the provisions of chapter 553 which pertain to building construction standards, including plumbing, electrical code, glass, manufactured buildings, accessibility for the physically disabled, and the state minimum building code.

History.—s. 14, ch. 79-336; s. 4, ch. 79-152; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181.

Note.—Repealed effective October 1, 1993, by s. 83, ch. 83-181, and scheduled for review pursuant to s. 11.61 in advance of that date.

1400.564 Prohibited acts; penalty for violation.—
(1) It is unlawful for any person or public body to offer or advertise to the public, in any way, by any medium whatever, basic services as defined in this part, without obtaining a valid current license. It is unlawful for any holder of a license issued pursuant to the provisions of this part to advertise or hold out to the public that it holds a license for a center other than that for which it actually holds a license.

(2) Any person convicted of violating the provisions of subsection (1) is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083. Each day of continuing violation shall be considered a separate offense.

History.—s. 15, ch. 79-336; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181.

Note.—Repealed effective October 1, 1993, by s. 83, ch. 83-181, and scheduled for review pursuant to s. 11.61 in advance of that date.

PART V
HOSPICES

400.601 Definitions.
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1400.601 Definitions.—When used in this act, unless the context otherwise requires:
(1) "Autonomous" means a separate and distinct operational entity which functions under its own administration and bylaws, either within or independently of a parent organization.
(2) "Department" means the Department of Health and Rehabilitative Services.
(3) "Hospice" means an autonomous, centrally administered, nonprofit, as defined in chapter 617, medically directed, nurse-coordinated program providing a continuum of home, outpatient, and homelike inpatient care for the terminally ill patient and his family. It employs an interdisciplinary team to assist in providing palliative and supportive care to meet the special needs arising out of the physical, emotional, spiritual, social, and economic stresses which are experienced during the final stages of illness and during dying and bereavement. This care is available 24 hours a day, 7 days a week, and is provided on the basis of need regardless of inability to pay.
(4) "Hospice care team" means an interdisciplinary team which is a working unit composed by the integration of the various helping professions and lay persons providing hospice care. Such team shall, as a minimum, consist of a physician licensed pursuant to chapter 458 or chapter 459, a nurse licensed pursuant to chapter 458, a social worker, a member of the clergy or a counselor, and volunteers.
(5) "Hospice services" means items and services furnished to an individual by a hospice, or by others under arrangements with such a program, in a place of temporary or permanent residence used as the terminally ill individual's home for the purpose of maintaining that individual at home; or, if the terminally ill individual needs short-term institutionalization, the services shall be furnished in cooperation with those contracted institutions or in the inpatient facility of the hospice program.
(6) "Medically directed" means that the delivery of medical care is directed by a hospice physician licensed pursuant to chapter 458 or chapter 459 who is employed by the hospice for the purposes of providing ongoing palliative care as a participating care giver on the hospice care team.
(7) "Palliative care" means the reduction or abatement of pain and other troubling symptoms by appropriate coordination of all elements of the hospice care team needed to achieve needed relief of distress.
(8) "Patient" means the terminally ill individual receiving hospice services.
(9) "Terminally ill" refers to a medical prognosis of limited expected survival, of 1 year or less at the time of
referral to a hospice, of an individual who is experiencing an illness for which therapeutic strategies directed toward cure and control of the disease alone outside the context of symptom control are no longer appropriate.

History.—s. 79-186, s. 1, ch. 80-64; s. 256, ch. 81-259; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181.

*Note.—Repealed effective October 1, 1993, by s. 83, ch. 83-181, and is scheduled for review pursuant to s. 11.61 in advance of that date.*

1400.5015 Exemptions.—
(1) Services provided by a hospital, nursing home, or other health care facility, health care provider, or care giver, or under the Community Care for the Elderly Act, shall not be considered to constitute a hospice program of care unless such facility, provider, or care giver establishes a freestanding or distinct hospice unit, staff, facility, and services to provide hospice home care, homelike inpatient hospice care, and outpatient hospice care under the separate and distinct administrative authority of a hospice program.

(2) Any existing organization incorporated as a hospice or as a research center offering hospice services which, with the exception of a volunteer coordinator and secretary, is staffed only by volunteers and does not charge for its services or receive third-party reimbursement for those services, and which was operational before December 31, 1979, is exempt from the provisions of this act. In the event that such an organization initiates a system of charges or receives third-party reimbursement, or if any services described by this act as integral to hospice care are provided through such organization by contract or written affiliation, or by acting as an agent for an entity licensed pursuant to chapter 395 or parts I and III of this chapter which receives third-party reimbursement or charges for those services, the organization shall immediately be required to comply with the provisions of this act. The department shall monitor any organization seeking an exemption under this section to ensure that criteria for an exemption, as stated herein, are met.

History.—s. 60, 83, ch. 83-181.

*Note.—Expires October 1, 1993, pursuant to s. 83, ch. 83-181, and is scheduled for review pursuant to s. 11.61 in advance of that date.*

1400.602 Licensure required; display, transferability of license.—
(1) It is unlawful to operate or maintain a hospice without first obtaining a license therefor from the department.

(2) The license shall be displayed in a conspicuous place inside the hospice program office; shall be valid only in the possession of the person or public agency to which it is issued; shall not be subject to sale, assignment, or other transfer, voluntary or involuntary; and shall not be valid for any hospice other than the hospice for which originally issued.

History.—s. 79-186, s. 2, ch. 80-64; s. 2, ch. 81-271; s. 2, ch. 81-318; ss. 66, 79, 83, ch. 83-181.

*Note.—Expires October 1, 1993, pursuant to s. 83, ch. 83-181, and is scheduled for review pursuant to s. 11.61 in advance of that date.*

1400.603 Certificate of need required; exemption.—
(1) The department shall not issue a license to a hospice which fails to receive a certificate of need under the provisions of ss. 381.493-381.499.

(2) Any existing organization incorporated as a hospice which has not obtained a certificate of need on or before May 25, 1981, shall not be required to obtain a certificate of need for those services provided prior to that date. However, any hospice exempt under this subsection shall be subject to the requirements for a certificate of need if such hospice increases its service capacity or engages in the building, acquisition, or expansion of a freestanding hospice facility.

History.—s. 4, ch. 79-186; s. 3, ch. 80-64; s. 3, ch. 81-271; s. 2, ch. 81-318; ss. 67, 79, 83, ch. 83-181.

*Note.—Expires October 1, 1993, pursuant to s. 83, ch. 83-181, and is scheduled for review pursuant to s. 11.61 in advance of that date.*

1400.605 Administration; forms; fees; rules; inspections; fines.—The administration of this act is vested in the Department of Health and Rehabilitative Services, which shall:

(1) Prepare and furnish all forms necessary under the provisions of this act in relation to applications for licensure or renewals thereof.

(2) Collect in advance (and the applicant so served shall pay to it in advance) at the time of filing an application for a license or at the time of renewal of a license a fee of $100.

(3) Promulgate applicable rules and standards in furtherance of the purpose of this act and may amend such rules as may be necessary. The rules shall include, but not be limited to, the following:

(a) The qualifications of professional and ancillary personnel in order to adequately furnish hospice care;

(b) Standards for the organization and quality of patient care;

(c) Procedures for maintaining records; and

(d) Provision for contractual arrangements for the inpatient component of hospice care and for other professional and ancillary hospice services.

(4) Conduct annual licensure inspections of all licensees.

(5) Impose administrative fines pursuant to this act, not to exceed $1,000 per fine, for any violation of the provisions of this act.

History.—s. 4, ch. 79-186; s. 2, ch. 81-271; ss. 67, 79, 83, ch. 83-181.

*Note.—Expires October 1, 1993, pursuant to s. 83, ch. 83-181, and is scheduled for review pursuant to s. 11.61 in advance of that date.*

1400.6055 Right of inspection.—Any duly authorized officer or employee of the department shall have the right to make such inspections and investigations as are necessary in order to determine the state of compliance with the provisions of this act and of rules or standards in force pursuant hereto. The right of inspection shall also extend to any program which the department has reason to believe is offering or advertising itself as a hospice without a license, but no inspection of any hospice may be made without the permission of the owner or person in charge thereof unless a warrant is first obtained from a circuit court authorizing such inspection. Any application for a license or renewal thereof made pursuant to this act shall constitute permission for any inspection of the hospice for which the license is sought in order to facilitate verification of the information submitted on or in connection with the application.

History.—s. 12, ch. 79-186; s. 2, ch. 81-318; ss. 68, 79, 83, ch. 83-181.

*Note.—Expires October 1, 1993, pursuant to s. 83, ch. 83-181, and is scheduled for review pursuant to s. 11.61 in advance of that date.*

Note.—Former s. 400.612.
400.606 License; application; renewal; conditional license or permit.—

(1) An application shall be filed on a form prescribed by the department and shall be accompanied by the appropriate license fee as well as satisfactory proof that the hospice is in compliance with this act and any rules and minimum standards promulgated hereunder and proof of financial ability to operate and conduct the hospice in accordance with the requirements of this act. The initial application shall be accompanied by a plan for the delivery of home, outpatient, and inpatient hospice care to terminally ill persons and their families. Such plan shall contain, but not be limited to:

(a) The estimated average number of terminally ill persons to be served monthly;
(b) The geographic area in which hospice services will be available;
(c) A listing of services which are or will be provided, either directly by the applicant or through contractual arrangements with existing providers;
(d) Provisions for the implementation of hospice home care within 3 months of licensure;
(e) Provisions for the implementation of hospice outpatient and homelike inpatient care within 12 months of licensure;
(f) The name and qualifications of any existing or potential contractee;
(g) The projected annual operating cost of the hospice; and
(h) A statement of financial resources and personnel available to the applicant to deliver hospice care.

If the applicant is an existing health care provider, the application shall be accompanied by a copy of the most recent profit-loss statement and, if applicable, the most recent licensure inspection report.

(2) A license issued for the operation of a hospice program, unless sooner suspended or revoked, shall expire automatically 1 year from the date of issuance. Sixty days prior to the expiration date, an application for renewal shall be submitted to the department on forms furnished by the department; and the license shall be renewed if the applicant has first met the requirements established under this act and all rules promulgated hereunder and has provided the information described in subsection (1) in addition to the application. However, the application for license renewal shall be accompanied by an update of the plan for delivery of hospice care only if information contained in the plan submitted pursuant to subsection (1) is no longer applicable.

(3) A hospice program against which a revocation or suspension proceeding is pending at the time of license renewal may be issued a conditional license effective until final disposition by the department of such proceeding. If judicial relief is sought from the final disposition, the court having jurisdiction may issue a conditional permit for the duration of the judicial proceeding.

(4) The department shall not issue a license to a hospice which fails to receive a certificate of need under the provisions of ss. 381.493-381.499.

History.—s. 7, ch. 79-186; s. 5, ch. 81-271; s. 2, ch. 81-318; ss. 71, 79, 83, ch. 83-181.

*Note.—Expires October 1, 1993, pursuant to s. 83, ch. 83-181, and is scheduled for review pursuant to s. 11.61 in advance of that date.*

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

(1) The department may deny, revoke, or suspend a license or impose an administrative fine, which may not exceed $1,000 per violation, in the manner provided in chapter 120.

(2) Any of the following actions by a hospice program or any of its employees shall be grounds for action by the department against a hospice program:

(a) A violation of the provisions of this act or of any standard or rule promulgated hereunder.
(b) An intentional or negligent act materially affecting the health or safety of a patient.

(3) If, 3 months after the date of obtaining a license pursuant to s. 400.606, or at any time thereafter, a hospice does not have in operation the home-care component of hospice care, the department shall immediately revoke the license of such hospice.

(4) If, 12 months after the date of obtaining a license pursuant to s. 400.606, or at any time thereafter, a hospice does not have in operation the outpatient and homelike inpatient components of hospice care, the department shall immediately revoke the license of such hospice.

History.—s. 7, ch. 79-186; s. 2, ch. 81-318; ss. 71, 79, 83, ch. 83-181.

*Note.—Expires October 1, 1993, pursuant to s. 83, ch. 83-181, and is scheduled for review pursuant to s. 11.61 in advance of that date.*

400.608 General requirements for hospice programs.—

(1) A hospice care program shall coordinate its services with those of the patient’s primary or attending physicians.

(2) A hospice shall coordinate its services with professional and nonprofessional services already in the community. A hospice program may contract out for some elements of its services for a patient and family; however, direct patient care must be maintained with the patient and the hospice care team so that overall coordination of services, which is responsive and appropriate to the patient and family needs, can be maintained by the hospice care team. A majority of hospice services available through an individual hospice shall be provided directly by the hospice. Any contract entered into between a hospice and a health care facility or service provider shall specify that the hospice maintain the responsibility for planning, coordinating, and prescribing hospice services and care on behalf of a hospice patient and his family. No hospice which contracts for any hospice service may charge fees for services provided directly by the hospice care team which are duplicative of contractual services provided to the individual patient or his family.

(3) With respect to contractual arrangements for inpatient hospice care:

(a) Contractual arrangements which designate existing licensed health care facility beds for hospice inpatient care may not be approved if the monthly average number of contracted beds used exceeds 20 percent of the monthly average number of terminally ill persons receiving hospice care within the individual hospice.

(b) The designation of a specific room or rooms for inpatient hospice care shall not be required if beds are...
available through contract between an existing health care facility and a hospice.

(c) Licensed beds designated for inpatient hospice care through contract between an existing health care facility and a hospice shall not be required to be delicensed from one type of health care in order to enter into a contract with a hospice, nor shall the physical plant of any facility licensed pursuant to chapter 395 or part I of this chapter be required to be altered, except that a homelike atmosphere may be required.

(d) Hospices contracting for inpatient hospice care shall not be required to obtain an additional certificate of need for the number of such designated beds. Such beds shall remain licensed to the health care facility and be subject to the appropriate inspections.

(e) Staffing standards for inpatient hospice care provided through a contract may not exceed the staffing standards required under the license held by the contractee.

(f) Under no circumstance may a hospice contract for the use of a licensed bed in a health care facility or another hospice that has, or has had within the last 18 months, a conditional license, accreditation, or rating.

(4) The inpatient hospice care component of a hospice which is a freestanding facility or part of a facility, which is primarily engaged in providing inpatient care and related services, and which is not licensed as a health care facility shall be required to obtain a certificate of need. However, a freestanding inpatient hospice facility with six or fewer beds shall not be required to comply with institutional standards such as, but not limited to, standards requiring sprinkler systems, emergency electrical systems, or special lavatory devices.

(5) A hospice care team shall be responsible for inpatient, outpatient, and home-care aspects of care.

(6) Any inpatient component of care shall be under the direct administration of the hospice program.

(7) Hospice care shall provide symptom control provided by a hospice care team skilled in medical and psychosocial management of distressing signs and symptoms.

(8) The hospice shall have a medical director, licensed pursuant to chapter 458 or chapter 459, who shall have responsibility for medical direction of the care and treatment of patients and their families rendered by the hospice care teams.

(9) Hospice care will be available 24 hours a day, 7 days a week.

(10) A hospice program shall have a bereavement program which shall provide a continuum of support and therapeutic services for the family, including formal and informal individual, family, and group treatment modalities used as needed to support the bereaved family.

(11) A hospice program shall foster independence of the patient and his family by providing training, encouragement, and support so that the patient and family can care for themselves as much as possible.

(12) The unit of care in a hospice program shall be the patient and family.

(13) A hospice program will provide a continuum of care and a continuity of care givers throughout the length of care for the patient and to the family through the bereavement period.

(14) A hospice program of care shall not impose the dictates of any value or belief system on its patients and their families.

(15) Admission to a hospice program shall be made by a physician licensed pursuant to chapter 458 or chapter 459 and shall be dependent on the expressed request and informed consent of the patient and family.

(16) Accurate and current records shall be kept on all patients and their families.

(17) A professional nurse licensed pursuant to chapter 464 shall be employed full time by the hospice as a patient care coordinator to supervise and coordinate the palliative and supportive care for patients and families provided by a hospice care team. No other full-time personnel are required.

History.—s. 8, ch. 79-186; s. 6, ch. 81-271; s. 2, ch. 81-318; ss. 72, 79, 83, ch. 85-181.

Note.—Expires October 1, 1993, pursuant to s. 83, ch. 83-181, and is scheduled for review pursuant to s. 11.161 in advance of that date.

400.609 Components of hospice programs of care. — Each hospice program shall consist of three components or modes of care which afford the terminally ill individual and the family of the terminally ill individual a range of service delivery which can be tailored to specific needs and preferences of the patient and family at any point in time. These three components are:

(1) HOSPICE HOME CARE.—This form of delivery of services shall be the primary form of care. The services of the hospice home care program shall be of the highest quality and shall be provided by the interdisciplinary, interactive qualified hospice team members.

(2) INPATIENT HOSPICE CARE.—The inpatient component of care is an adjunct to hospice home care and shall primarily be used only for short-term stays. The facility or rooms within a facility used for the hospice inpatient component of care shall be arranged, administered, and managed in such a manner to provide privacy, dignity, comfort, warmth, and safety for the terminally ill patient and the family. Every possible accommodation shall be made to create as homelike an atmosphere as practicable. To facilitate overnight family visitation within the facility, rooms shall be limited to no more than double occupancy; and, whenever possible, both occupants shall be hospice patients. There shall be a continuum of care and a continuity of care givers between the hospice home program and the inpatient aspect of care to the extent practicable and compatible with the preferences of the patient and his family. Fees charged for inpatient hospice care, whether provided directly by the hospice or through contract, shall be made available upon request to the Hospital Cost Containment Board created in s. 395.503. The hours for daily operation and the location of the place where the services are provided shall be determined, to the extent practicable, by the accessibility of such services to the patients and families served by the hospice program.

(3) OUTPATIENT HOSPICE CARE.—The hospice outpatient service shall meet the same standards of quality as applied to inpatient care and hospice home care, considering the inherent differences between inpatients and outpatients with respect to their needs and modes of treatment. The hours for daily operation and the location of the place where the services are provided
shall be determined, to the extent practicable, by the accessibility of such services to the patients and families served by the hospice program.

History.—s. 5, ch. 79-186; s. 2, ch. 91-478; s. 13, ch. 93-208; s. 3, ch. 95-478; s. 174, ch. 95-145.

Note.—Repealed effective October 1, 1999, by s. 83, ch. 99-169, and is scheduled for review pursuant to s. 11.61 in advance of that date.

1400.610 Administration and management of a hospice program.—

(1) A hospice program shall have a clearly defined organized governing body, consisting of a minimum of seven persons who are representative of the local community at large, which has autonomous authority for the conduct of the hospice program. This body is not required to meet more often than quarterly.

(2) The hospice program shall have a director, administrator, or manager who shall be responsible for the overall coordination and administration of the hospice program.

(3) A hospice program is not required to establish more than one committee, exclusive of a hospice care team and a governing body. No committee is required to meet more often than quarterly.

History.—s. 3, ch. 79-186; s. 2, ch. 91-478; s. 14, ch. 93-208; s. 16, ch. 94-2; s. 17, ch. 95-478; s. 175, ch. 95-145.

Note.—Repealed effective October 1, 1999, by s. 83, ch. 99-169, and is scheduled for review pursuant to s. 11.61 in advance of that date.

1400.611 Interdisciplinary records of care.—An up-to-date, interdisciplinary record of care being given and patient and family status shall be kept. Records shall contain pertinent past and current medical, nursing, social, and other therapeutic information and such other information that is necessary for the safe and adequate care of the patient and the family. Notations regarding all aspects of care for the patient and family shall be made in the record. When services are terminated, the record shall show the date and reason for termination.

History.—s. 5, ch. 79-186; s. 2, ch. 91-478; s. 14, ch. 93-208; s. 176, ch. 95-145.

Note.—Repealed effective October 1, 1999, by s. 83, ch. 99-169, and is scheduled for review pursuant to s. 11.61 in advance of that date.

1400.612 Patient record information confidential.—Information received by persons employed by, or providing services to, a hospice or received by the licensing agency through reports or inspection shall be deemed privileged and confidential information and shall not be disclosed to any person other than the patient or the family without the written consent of that patient, the patient’s guardian, or the patient’s family.

History.—s. 6, ch. 79-186; s. 2, ch. 91-478; s. 15, ch. 93-208; s. 177, ch. 95-145.

Note.—Repealed effective October 1, 1999, by s. 83, ch. 99-169, and is scheduled for review pursuant to s. 11.61 in advance of that date.

1400.613 Prohibited acts; penalties for violation.—

(1) It is unlawful for any person or public body to offer or advertise to the public in any way by any medium whatever to be a hospice as defined in this act without obtaining a valid current license. It is unlawful for any holder of a license issued pursuant to the provisions of this act to advertise or hold out to the public that it holds a license for a hospice program other than that for which it actually holds a license.

(2) Any person found guilty of violating subsection (1) is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083. Each day of a continuing violation shall be considered a separate offense.

History.—s. 7, ch. 79-186; s. 3, ch. 91-478; s. 16, ch. 93-208; s. 160, ch. 95-145.

Note.—Repealed effective October 1, 1999, by s. 83, ch. 99-169, and is scheduled for review pursuant to s. 11.61 in advance of that date.

1400.614 Definitions.—

(1) "Disabled adult" means any person age 18 through age 59 who is currently a resident of the state and who, because of a functional impairment, requires personal assistance with the activities of daily living but does not require nursing home or institutional care.

(2) "Activities of daily living" means eating, bathing, grooming, dressing, and ambulation.

(3) "Aged" means any person age 60 or over who is currently a resident of the state and who, because of a functional impairment, requires personal assistance with the activities of daily living but does not require nursing home or institutional care.

(4) "Adult foster home" means a full-time, family-type living arrangement, in a private home, under which a person or persons provide, on a nonprofit basis, services of room, board, personal assistance, general supervision, and health monitoring, as appropriate for the level of functional impairment, for three or fewer nonrelatives who are aged or disabled adults placed in the home by the department.

(5) "Department" means the Department of Health and Rehabilitative Services.

History.—s. 1, ch. 79-186; s. 2, ch. 91-478; s. 171, ch. 93-208; s. 178, ch. 95-145.

Note.—Repealed effective October 1, 1999, by s. 83, ch. 99-169, and is scheduled for review pursuant to s. 11.61 in advance of that date.

1400.615 Short title.—This act may be cited as the "Adult Foster Care Act."

History.—s. 3, ch. 79-186; s. 2, ch. 91-478; s. 179, ch. 95-145.

Note.—Repealed effective October 1, 1999, by s. 83, ch. 99-169, and is scheduled for review pursuant to s. 11.61 in advance of that date.

1400.616 Legislative intent; purpose.—

(1) It is the intent of the Legislature to encourage the provision of care for disabled adults and the aged in family-type living arrangements in private homes.

(2) The purpose of this act is to provide for the health, safety, and welfare of residents of adult foster homes in the state.

History.—s. 1, ch. 79-186; s. 2, ch. 91-478; s. 180, ch. 95-145.

Note.—Repealed effective October 1, 1999, by s. 83, ch. 99-169, and is scheduled for review pursuant to s. 11.61 in advance of that date.

1400.617 Licensure requirements.—

(1) Each adult foster home shall be licensed by the department prior to placement of any disabled adults or the aged in the home.

(2) The department shall make an inquiry of the abuse registry on all adult foster home applicants.

History.—ss. 1, 2, ch. 85-195.

Note.—Repealed effective October 1, 1999, by s. 83, ch. 99-169, and is scheduled for review pursuant to s. 11.61 in advance of that date.
(3) Access to a licensed adult foster home shall be provided at reasonable times for the appropriate officials of the department and the State Fire Marshal who are responsible for the development and maintenance of fire, health, sanitary, and safety standards, to inspect the facility to assure compliance with such standards.

(4) The department may deny an applicant a license, or suspend or revoke a license, for any of the following reasons:

(a) An indicated report of abuse, neglect, or exploitation or conviction of a crime related to abuse, neglect, or exploitation.

(b) An intentional or negligent act materially affecting the health, safety, or welfare of the adult foster home residents.

(c) A violation of the provisions of this part or rules adopted hereunder.

400.621 Rules and standards relating to adult foster homes.—

(1) The department shall by rule establish minimum standards and licensure procedures for adult foster homes for disabled adults and the aged and for the approval of persons wishing to provide such care.

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

History.—ss. 1, 2, ch. 85-195.

Note.—Expires October 1, 1995, pursuant to s. 2, ch. 85-195, and is scheduled for review pursuant to s. 11.61 in advance of that date.

400.622 Injunctive proceedings.—

(1) The department may institute injunctive proceedings in a court of competent jurisdiction to:

(a) Enforce the provisions of this part or any license requirement, minimum standard, rule, or order issued or entered into pursuant thereto; or

(b) Terminate the operation of an adult foster home when violations of any license requirement, standard, or rule promulgated pursuant to this part exist which materially affect the health, safety, or welfare of residents.

(2) Such injunctive relief may be temporary or permanent.

History.—ss. 1, 2, ch. 85-195.

Note.—Expires October 1, 1995, pursuant to s. 2, ch. 85-195, and is scheduled for review pursuant to s. 11.61 in advance of that date.

Note.—The words "compliance with such standards" were substituted by the editors for the words "such compliance."

400.623 Recruitment.—The department shall recruit and license an appropriate number of adult foster homes to serve the department’s clients. When a licensed adult foster home accepts more than one resident not placed in the home by the department, the department shall cancel the license issued pursuant to this section and require the home to make application for licensure as an adult congregate living facility in accordance with the provisions of part II of this chapter.

History.—ss. 1, 2, ch. 85-196.

Note.—Expires October 1, 1995, pursuant to s. 2, ch. 85-195, and is scheduled for review pursuant to s. 11.61 in advance of that date.
CHAPTER 401
MEDICAL TELECOMMUNICATIONS AND TRANSPORTATION

PART I EMERGENCY TELECOMMUNICATION SYSTEMS
(ss. 401.013-401.027)

PART II EMERGENCY MEDICAL SERVICES GRANTS (ss. 401.101-401.121)

PART III MEDICAL TRANSPORTATION SERVICES (ss. 401.21-401.481)

PART I
EMERGENCY TELECOMMUNICATION SYSTEMS

401.013 Legislative intent.
401.015 Statewide regional emergency medical telecommunication system.
401.018 System coordination.
401.021 System director.
401.024 System approval.
401.027 Federal assistance.

401.013 Legislative intent.—It is the intention and purpose of the Legislature that a statewide system of regional emergency medical telecommunications be developed whereby maximum use of existing radio channels is achieved in order to more effectively and rapidly provide emergency medical service to the general population. To this end, all emergency medical service entities within the state are directed to provide the Division of Communications of the Department of General Services with any information the division requests for the purpose of implementing the provisions of s. 401.015, and such entities shall comply with the resultant provisions established pursuant to this part.

History.—s. 1, ch. 73-254.

401.015 Statewide regional emergency medical telecommunication system.—The Division of Communications of the Department of General Services is authorized and directed to develop a statewide system of regional emergency medical telecommunications, including, but not limited to: ambulances; rescue vehicles; hospitals or other related emergency receiving facilities; emergency communications centers; physicians and emergency medical personnel; paging facilities; law enforcement and fire protection agencies; and poison control, suicide, and emergency management agencies. In formulating such a system, the division shall divide the state into appropriate regions and shall develop a program which includes, but is not limited to, the following provisions:

1. A requirements provision, which shall state the telecommunications requirements for each emergency medical entity comprising the region.

2. An interfacility communications provision, which shall depict the telecommunications interfaces between the various medical service entities which operate within the region and state.

3. An organizational layout provision, which shall include each emergency medical entity and the number of radio operating units (base, mobile, handheld, etc.) per entity.

4. A frequency allocation and use provision, which shall include on an entity basis each assigned and planned radio channel and the type of operation (simplex, duplex, half duplex, etc.) on each channel.

5. An operational provision, which shall include dispatching, logging, and operating procedures pertaining to telecommunications on an entity basis and regional basis.

6. An emergency medical service telephone provision, which shall include the telephone and the numbering plan throughout the region for both the public and interface requirements.

History.—s. 2, ch. 73-254; s. 41, ch. 83-334.

401.018 System coordination.—

1. The statewide system of regional emergency medical telecommunications shall be developed by the Division of Communications, which division shall be responsible for the implementation and coordination of such system into the state telecommunications plan. The division shall adopt any necessary rules and regulations for implementing and coordinating such a system.

2. The Division of Communications shall be designated as the state frequency coordinator for the special emergency radio service.

History.—s. 3, ch. 73-254.

401.021 System director.—The director of the Division of Communications is designated as the director of the statewide telecommunications system of the regional emergency medical service and, for the purpose of carrying out the provisions of this part, is authorized to coordinate the activities of the telecommunications system with other interested state, county, local, and private agencies.

History.—s. 4, ch. 73-254.

401.024 System approval.—From July 1, 1973, no emergency medical telecommunications system shall be established or present systems expanded without prior approval of the Division of Communications.

History.—s. 5, ch. 73-254.

401.027 Federal assistance.—The director of the Division of Communications is authorized to apply for and accept federal funding assistance in the develop-
ment and implementation of a statewide emergency medical telecommunications system.

History.—s. 6, ch. 73-254.

PART II

EMERGENCY MEDICAL SERVICES GRANTS

401.101 Short title.—This part shall be known and may be cited as the “Florida Emergency Medical Services Grant Act of 1973.”

History.—s. 1, ch. 73-262.

401.104 Legislative intent.—It is the legislative intent that emergency medical services are essential to the health and well-being of all citizens and that private and public expenditures for adequate emergency medical services represent a constructive and essential investment in the future of the state and our democratic society. A major impediment to the provision of adequate and economic emergency medical services to all citizens is the inability of governmental and private agencies within a service area to respond cooperatively in order to finance the systematic provision of such services. This grant program is established to encourage and assist such cooperative efforts.

History.—s. 2, ch. 73-262.

401.107 Definitions.—As used in this part, unless the context clearly requires otherwise:


2. “Local agency” means the board of county commissioners of the various counties in the state.

3. “Emergency medical services” means the provision of medical care and transportation to sick, injured, or otherwise incapacitated persons on the streets, highways, waterways, or airways of this state.

History.—s. 3, ch. 73-262; s. 245, ch. 77-147.

401.111 Emergency medical services grant program; authority.—The Department of Health and Rehabilitative Services is hereby authorized to make grants to local agencies in accordance with any agreement entered into pursuant to this part. These grants shall be designed to assist said agencies in providing emergency medical services. The cost of administering this program shall be paid by the department from funds appropriated to it.

History.—s. 4, ch. 73-262; s. 246, ch. 77-147.

401.113 Department; powers and duties.—

1. Funds deposited into the Emergency Medical Services Trust Fund as provided by ss. 316.061, 316.192, 316.193, and 318.18 shall be used solely to improve and expand prehospital emergency medical services in the state.

2. The department shall annually dispense funds contained in the Emergency Medical Services Trust Fund as follows:

   a. Forty-five percent of such moneys shall be divided among the counties according to the proportion of the combined amount deposited in the trust fund from the county. These funds may not be used to match grant funds as identified in paragraph (b). An individual board of county commissioners may distribute these funds to licensed emergency medical service providers within the county, as it deems appropriate.

   b. Fifty percent of such moneys shall be used by the department for making matching grants to county governments, municipalities, and nonprofit trauma centers and emergency medical services organizations for the purpose of conducting research, increasing existing levels of emergency medical services, evaluation, community education, and training in cardiopulmonary resuscitation and other lifesaving and first-aid techniques. A grant made pursuant to this section shall be contingent upon the recipient providing a sum equal to the grant amount. The department shall develop procedures and standards for grant disbursement based on the need for emergency medical services, the requirements of the population to be served, and the objectives of the state emergency medical services plan.

   c. Five percent of such moneys shall be used by the department for capital equipment outlay, personnel, community education, evaluation, and other costs associated with the administration of this section. Any moneys not annually used for this purpose shall be used for making additional grant funds available.

3. The department shall adopt rules to implement the purpose and provisions of this section.

History.—s. 5, ch. 73-262; s. 1, ch. 77-174; s. 47, ch. 85-81; s. 26, ch. 85-167; s. 5, ch. 85-337.

401.117 Grant agreements; conditions.—The Department of Health and Rehabilitative Services shall use the following guidelines in developing the procedures for grant disbursement:

1. The need for emergency medical services and the requirements of the population to be served.

2. All emergency vehicles and attendants must conform to state standards established by law or regulation of the department.

3. All vehicles shall contain minimum equipment and supplies as required by law or regulation of the department.

4. All vehicles shall have at a minimum a direct communications linkup with the operating base and hospital designated as the primary receiving facility.

5. Emphasis shall be accorded to applications that contain one or more of the following provisions:

   a. Services provided on a county, multicounty, or areawide basis.

   b. A single provider, or a coordinated provider, method of delivering services.

   c. Coordination of all communication links, including police, fire, emergency vehicles, and other related
services.

History.—s. 6, ch. 73-262; s. 247, ch. 77-147.

401.121 Rules and regulations.—The department is authorized to make rules and regulations necessary to carry out the purposes of this part, including funds and assistance to nonprofit volunteer ambulance organizations desiring to comply with the Florida Emergency Medical Services Act of 1973.

History.—s. 7, ch. 73-262.

PART III

MEDICAL TRANSPORTATION SERVICES

401.21 Short title.

401.211 Legislative intent.

401.23 Definitions.

401.24 Emergency and nonemergency medical services state plan.

401.245 Emergency and Nonemergency Medical Services Advisory Council.

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401.252 Interhospital transfer.

401.255 Licensure as a nonemergency medical transportation service.

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401.265 Medical directors.

401.27 Personnel; standards and certification.

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401.321 Transferability of license; effect of sale, transfer, assignment, or lease of service.

401.33 Exemptions.

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401.411 Disciplinary action; penalties.

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401.43 Fraudulently obtaining services from emergency medical services vehicle licensee.

401.44 Turning in a false alarm.

401.45 Denial of emergency treatment; civil liability.

401.48 Air ambulance service; licensure.

401.481 Inspection of air ambulance operations.

401.23 Definitions.—As used in this act, the term:

1. "Advanced life support" means treatment of life-threatening medical emergencies through the use of techniques such as endotracheal intubation, the administration of drugs or intravenous fluids, telemetry, cardiac monitoring, and cardiac defibrillation by a qualified person, pursuant to rules of the department.

2. "Advanced life support service" means any emergency medical transport or nontransport service which meets the requirements of this act.

3. "Advanced life support service license" means any authorization to provide advanced life support services pursuant to the provisions of this act.

4. "Air ambulance" means any fixed-wing or rotary-wing aircraft used for, or intended to be used for, air transportation of sick or injured persons who may need medical attention during transport.

5. "Air ambulance service" means any publicly or privately owned service, licensed in accordance with the provisions of this part, which operates air ambulances to transport persons requiring or likely to require medical attention during transport.

6. "Ambulance" or "emergency medical services vehicle" means any privately or publicly owned land or water vehicle that is designed, constructed, reconstructed, maintained, equipped, or operated for, and is used for, or intended to be used for, land or water transportation of sick or injured persons who may need medical attention during transport.

7. "Ambulance driver" means any person who meets the requirements of s. 401.281.

8. "Basic life support" means treatment of medical emergencies by a qualified person through the use of techniques such as patient assessment, cardiopulmonary resuscitation (CPR), splinting, obstetrical assistance, bandaging, administration of oxygen, application of medical antishock trousers, and other techniques described in the Emergency Medical Technician Basic Training Course Curriculum of the United States Department of Transportation. The term "basic life support" may also include other techniques which have been approved and are performed under conditions specified by rules of the department.

9. "Basic life support service license" means the authorization to provide basic life support pursuant to the provisions of this act.
(10) "Certification" means any authorization issued pursuant to the provisions of this act to a person to act as an emergency medical technician or a paramedic.

(12) "Emergency medical technician" or "EMT" means any person who is trained in basic life support and who is certified by the department to perform such procedures in emergency situations.

(13) "Interhospital transfer" means the transportation by ambulance of a patient between two facilities licensed under chapter 395 or chapter 400, pursuant to this act.

(14) "Medical direction" means direct supervision by a physician through two-way voice communication or, when such voice communication is unavailable, through established standing orders, pursuant to rules of the department.

(15) "Medical director" means a physician who is employed or contracted by a licensed emergency medical services provider and who provides medical supervision, including administrative and managerial functions, for daily operations and training pursuant to the provisions of this act.

(16) "Mutual aid agreement" means a written agreement between two or more entities whereby the signing parties agree to lend aid to one another under conditions specified in the agreement and as sanctioned by the governing body of each affected county.

(17) "Nonemergency medical transportation service" means any privately or publicly owned service employing a land, air, or water vehicle that is designed, constructed, reconstructed, maintained, equipped, or operated for, and which is used for, or intended to be used for, air, land, or water transportation of persons who are confined to wheelchairs or stretchers and whose conditions are such that they do not need and are not likely to need immediate medical attention during transport.

(18) "Paramedic" means a person who is certified by the department to perform basic and advanced life support, pursuant to the provisions of this act.

(19) "Permit" means any authorization issued pursuant to the provisions of this act for a vehicle to be operated as a basic life support or advanced life support transport vehicle or an advanced life support nontransport vehicle providing basic or advanced life support or as a nonemergency medical transportation vehicle.

(20) "Physician" means a practitioner who is licensed under the provisions of chapter 458 or chapter 459.

(21) "Physician's assistant" means a person who is approved by the Department of Professional Regulation to perform medical services under the provisions of s. 458.347.

(22) "Registered nurse" means a practitioner who is licensed to practice professional nursing pursuant to the provisions of chapter 464.

(23) "Secretary" means the Secretary of Health and Rehabilitative Services.

(24) "Service location" means any permanent location or from which a licensee solicits, accepts, or conducts business under the provisions of this act.

1401.24 Emergency and nonemergency medical services state plan.—The department is responsible for the improvement and regulation of basic and advanced life support programs and nonemergency medical transportation services. The department shall develop and annually revise a comprehensive state plan for basic and advanced life support services and nonemergency medical transportation services. The state plan shall include, but need not be limited to:

(1) Emergency and nonemergency medical systems planning, including the prehospital and hospital phases of patient care, and unification of such services into a total delivery system to include air, water, and land services.

(2) Requirements for the operation and coordination of ambulances; nonemergency medical transportation vehicles; advanced life support vehicles, equipment, and supplies; communications; personnel; training; and other medical care components.

(3) The definition of areas of responsibility for regulating and planning the ongoing and developing delivery service requirements.

(4) A description of the contractual relationships between the Department of Health and Rehabilitative Services and the Department of Professional Regulation regarding general administration of the regulatory responsibilities of the department under this act.

History.—s. 3, ch. 73-126; s. 3, ch. 76-168; s. 5, ch. 77-457; s. 1, ch. 77-147; s. 5, ch. 79-280; s. 1, ch. 81-318; s. 5, ch. 82-402; s. 3, ch. 83-196; s. 5, ch. 83-197.

1401.245 Emergency and Nonemergency Medical Services Advisory Council.—

(1) The provisions of s. 20.19(3)(b)3., notwithstanding, the secretary of the Department of Health and Rehabilitative Services may appoint an advisory council for the purpose of acting as the advisory body to the emergency medical services program. No more than 15 members may be appointed to this council. Initially, the secretary shall appoint one-half of the members for terms of 1 year each. Thereafter, members shall be appointed for 2-year terms. The chairman of the council shall be designated by the secretary and shall serve for a term of 1 year. Vacancies shall be filled for the remainder of unexpired terms in the same manner as the original appointment. Members shall receive no compensation, nor shall they be reimbursed for per diem and travel expenses.

(2) Representation on the Emergency and Nonemergency Medical Services Advisory Council shall include: two licensed physicians who are "medical directors" as defined in s. 401.23(16) or whose medical practice is closely related to emergency medical services; two emergency medical service administrators, one of whom is employed by a fire service; two certified paramedics, one of whom is employed by a fire service; two certified emergency medical technicians, one of whom is employed by a fire service; one emergency medical services educator; one emergency nurse; one hospital ad-
ministrator; one representative of air ambulance services; one representative of nonemergency medical transportation services; and two laypersons who are in no way connected with emergency medical services, one of whom is a representative of the elderly Ex officio members of the advisory council from state agencies shall include, but shall not be limited to, representatives from the Department of Education, the Department of General Services, the Department of Insurance, the Department of Community Affairs, and the Department of Professional Regulation.

(3) The secretary shall remove from office any Emergency and Nonemergency Medical Services Advisory Council member for malfeasance; misfeasance; neglect of duty; incompetence; permanent inability to perform official duties; or pleading guilty or nolo contendere to, or being found guilty of, a felony.

(4) The Emergency and Nonemergency Medical Services Advisory Council shall meet no more often than four times annually. The council shall hold meetings at the call of the chairman, upon the written request of five members of the council, or at the call of the staff director of the emergency medical services program office. A majority of the members of the council shall constitute a quorum. Minutes shall be recorded for all meetings of the council and shall be maintained on file in the emergency medical services program office.

(5) No later than December 1 of each year preceding a legislative session in which a biennial budget will be adopted, the department shall present a summary report to the President of the Senate and the Speaker of the House of Representatives documenting compliance with the act and accomplishments and expenditures of the Emergency and Nonemergency Medical Services Advisory Council.

(6) The Department of Health and Rehabilitative Services shall adopt rules to implement this section, which rules shall serve as formal operating procedures for the Emergency and Nonemergency Medical Services Advisory Council.

History.--ss. 4, 13, ch. 83-196.

Note.--Expires October 1, 1992, pursuant to s. 13, ch. 83-196, and is scheduled for review pursuant to s. 11.61 in advance of that date.

1401.252 Interhospital transfer.--A licensed basic or advanced life support ambulance service may conduct interhospital transfers in a permitted ambulance, using a registered nurse in place of an emergency medical technician or paramedic, if:

(1) The registered nurse is currently certified in advanced cardiac life support;
(2) The physician in charge has granted permission for such a transfer, has designated the level of service required for such transfer, and has deemed the patient to be in such a condition appropriate to this type of ambulance staffing; and
(3) The registered nurse operates within the scope of chapter 464.

1401.255 Licensure as a nonemergency medical transportation service.—

(1) Every person, firm, corporation, association, governmental entity owning or acting as agent for the owner of any business or service which furnishes, operates, conducts, maintains, advertises, engages in, proffers to engage in, or professes to engage in the business or service of primarily transporting upon the streets, highways, waterways, or airways of this state persons who are confined to wheelchairs or stretchers and whose conditions are such that they do not need and are not likely to need medical attention during transport shall be licensed by the department as a nonemergency medical transportation service. Such service shall not use, or carry upon its vehicles, equipment or supplies that are considered to be advanced life support or basic life support medical equipment or supplies. A county may elect to regulate such services by enacting an ordinance which sets forth requirements meeting, or to request a due process hearing pursuant to the governing body of the county. The county shall then have 60 days to resolve the conflict noted by the department.

(2) Any person, firm, corporation, association, governmental entity, or other such organization seeking licensure as a nonemergency medical transportation service shall:
(a) Submit a completed application form to the department on forms prescribed by the department. The application shall include such information as is specified by rule of the department.
(b) Submit the appropriate fee or fees, established as provided in s. 401.34.
(c) Provide documentation that vehicles and equipment are in good working order and meet the requirements specified by rule of the department.
(d) Provide proof of adequate insurance coverage for claims arising out of injury or death of persons and damage to the property of others resulting from any cause for which the owner of such business or service would be liable. Adequate insurance coverage shall be specified by rule of the department.
(e) Provide evidence that drivers are trained in the correct use of the special equipment required for wheelchair and stretcher transport.
(f) Provide evidence that nonemergency medical transportation vehicles are staffed by sufficient personnel to ensure safe loading and unloading of nonemergency patients.
(g) Provide proof that sanitation and maintenance standards, as specified by rule of the department, are met.
(h) Provide proof that all vehicles possess a valid vehicle permit as provided herein. To receive a valid vehicle permit, the applicant shall submit a completed application form for each vehicle for which a permit is desired, pay the appropriate fee as provided in s. 401.34, and meet the standards for nonemergency medical transportation vehicles set forth by rule of the department. The department shall issue a vehicle permit for each vehicle inspected by the department and found in compliance with standards established through rules of the department. The vehicle permit will automatically expire 2 years after the date of issuance.
(3) The department shall issue a license for operation of a nonemergency medical transportation service complying with the requirements specified herein. Such license is valid for a period of 2 years from the date of issuance, at which time it will automatically expire.
(4) In order to renew a license or vehicle permit for a nonemergency medical transportation service or vehicle, the applicant shall:
(a) Submit a renewal application which must be received by the department at least 30 days prior to the expiration of the license or permit.
(b) Submit the appropriate renewal fee as provided in s. 401.34.
(c) Provide documentation that current standards for issuance of a license or permit are met.
(5) Any county which elects to regulate nonemergency medical transportation services shall provide the department with a copy of the proposed ordinance and final ordinance, indicating the proposed effective date of the final ordinance. The department shall review the proposed ordinance and final ordinance to determine whether they are in conflict with the provisions of this act or with rules adopted by the department. If a conflict exists, the department shall provide written notification to the governing body of the county. The county shall then have 60 days to resolve the conflict noted by the department or to request a due process hearing pursuant to the provisions of chapter 120.

1401.26 Vehicle permits for basic life support and advanced life support services.—

(1) Every basic life support service and advanced life support service licensed under the provisions of this act shall possess a valid permit for each transport vehicle and advanced life support nontransport vehicle in use. Applications for such permits shall be made upon forms prescribed by the department. The licensee shall
provide documentation that each vehicle for which a permit is sought meets the appropriate requirements for a basic life support or advanced life support service vehicle, whichever is applicable, as specified by rule of the department.

(2) To receive a valid vehicle permit, the applicant must submit a completed application form for each vehicle for which a permit is desired, pay the appropriate fees established as provided in s. 401.34, and provide documentation that each vehicle meets the following requirements as established by rule of the department; the vehicle must:

(a) Be furnished with essential medical supplies and equipment which is in good working order.
(b) Meet appropriate standards for design and construction.
(c) Be equipped with an appropriate communication system.
(d) Meet appropriate safety standards.
(e) Meet sanitation and maintenance standards.
(f) Be insured for an appropriate sum against injuries to or the death of any person arising out of an accident.

(3) The department is authorized to suspend or revoke a permit if it determines that the transport or non-transport vehicle or its equipment fails to meet the requirements specified in this act or in the rules of the department.

(4) A permit issued in accordance with the provisions of this section will expire automatically 2 years after the date of issuance.

(5) In order to renew a vehicle permit issued pursuant to the provisions of the act, the applicant must:

(a) Submit a renewal application. Such application must be received by the department not more than 90 days or less than 30 days prior to the expiration of the permit.
(b) Submit the appropriate fee or fees, established as provided in s. 401.34.
(c) Provide documentation that current standards for issuance of a permit are met.

History.—s. 6, ch. 73-126; s. 3, ch. 78-168; s. 250, ch. 77-147; s. 1, ch. 77-457; s. 19, ch. 78-95; s. 17, 10, ch. 78-280; ss. 2, 3, ch. 81-318; ss. 9, 24, 25, ch. 82-402; s. 13, ch. 83-196; s. 56, ch. 83-216; s. 8, ch. 84-317.
\footnote{Note.—Expires October 1, 1992, pursuant to s. 25, ch. 82-402, and is scheduled for review pursuant to s. 11.61 in advance of that date.}
\footnote{Note.—Repealed effective October 1, 1992, by s. 13, ch. 83-196, and scheduled for review pursuant to s. 11.61 in advance of that date.}

\section*{401.27 Personnel; standards and certification.}

(1) Each permitted ambulance not specifically exempted from the provisions of this act, when transporting a person who is sick, injured, wounded, incapacitated, or helpless, shall be occupied by at least two persons, one of whom shall be a certified emergency medical technician, certified paramedic, or licensed physician and one of whom shall be a driver who meets the requirements for ambulance drivers. This subsection does not apply to:

(a) Interhospital transfers governed by s. 401.252; or
(b) Nonemergency medical transportation services.

(2) The department shall establish by rule educational and training criteria and examinations for the certification and recertification of emergency medical technicians and paramedics. Such rules shall require, but need not be limited to:

(a) For emergency medical technicians, proficiency in techniques identified in s. 401.23(8) and in rules of the department.
(b) For paramedics, proficiency in techniques identified in s. 401.23(1) and in rules of the department; however, prehospital advanced life support services shall be performed only under the responsible supervision of a medical director.

(3) Any person who desires to be certified or recertified as an emergency medical technician or paramedic must apply to the department on forms provided by the department. The department shall determine whether the applicant meets the requirements specified in this section and in rules of the department and shall issue a certificate to any person who meets such requirements.

(4) An applicant for certification or recertification as an emergency medical technician or paramedic must:

a) Have completed an appropriate training course as follows:
1. For an emergency medical technician, an emergency medical technician training course equivalent to the most recent emergency medical technician basic training course of the United States Department of Transportation as approved by the department;
2. For a paramedic, a paramedic training program equivalent to the most recent paramedic course of the United States Department of Transportation as approved by the department;

(b) Certify under oath that he is not addicted to alcohol or any controlled substance;

(c) Certify under oath that he is free from any physical or mental defect or disease that might impair his ability to perform his duties;

(d) Within 1 year of course completion have passed an examination developed or required by the department;

(e) Hold either a current American Heart Association cardiopulmonary resuscitation course card or an American Red Cross cardiopulmonary resuscitation course card, if he is an emergency medical technician applicant;

(f) Submit the certification fee and the nonrefundable examination fee prescribed in s. 401.34, which examination fee will be required for each examination administered to an applicant; and

(g) Submit a completed application to the department, which application documents compliance with paragraphs (a), (b), (c), (e), (f), and, if applicable, (d).

Such application must be submitted so as to be received by the department at least 30 calendar days before the next regularly scheduled examination for which the applicant desires to be scheduled.

(5) The certification examination shall be offered monthly. The department shall issue an examination admission notice to the applicant advising him of the time and place of the examination for which he is scheduled.

(6)(a) The department shall establish by rule a procedure for biennial renewal certification of emergency medical technicians. Such rules shall require a United States Department of Transportation refresher training program of at least 30 hours as approved by the department and shall require at least 10 contact hours in topics related to emergency medical technician services every 2 years. The refresher program may be offered in multiple presentations spread over the 2-year period. The rules shall also provide that the refresher course requirement may be satisfied by passing a challenge examination.

(b) The department shall establish by rule a procedure for biennial renewal certification of paramedics. Such rules shall require candidates for renewal to have taken at least 30 hours of continuing education units during the 2-year period. The rules shall provide that the continuing education requirement may be satisfied by passing a challenge examination.

(7) A registered nurse or physician's assistant may be certified as a paramedic if the registered nurse or physician's assistant is certified in this state as an emergency medical technician, has passed the required emergency medical technician curriculum, has successfully completed an advanced cardiac life support course, has passed the examination for certification as a paramedic, and has met other certification requirements as may be specified by rule of the department. A nurse or physician's assistant so certified shall be re-certified pursuant to this section.

(8) Each emergency medical technician certificate and each paramedic certificate will expire automatically 2 years from the date of issuance and may be renewed if the holder meets the qualifications for renewal as established by the department.

(9) The department may suspend or revoke a certificate at any time if it determines that the holder does not meet the applicable qualifications.

(10) The department may provide by rule for physically disabled persons to take and be provided with the results of the written portion of the emergency medical technician certification examination or paramedic certification examination. However, such persons may not receive any special assistance in completing the examination.

History.--s. 7, ch. 73-126; s. 3, ch. 76-168; s. 251, ch. 77-147; s. 1, ch. 77-257; s. 2, ch. 77-347; s. 1, ch. 77-457; s. 19, ch. 76-95; ss. 2, 3, ch. 81-318; ss. 10, 24, 25, ch. 82-402; ss. 6, 12, 13, ch. 83-196; s. 9, ch. 84-317.

Note.--Expire October 1, 1992, pursuant to s. 13, ch. 83-196, and is scheduled for review pursuant to s. 11.61 in advance of that date.

1401.281 Drivers.---

(1) Each basic life support licensee and advanced life support service licensee is responsible for assuring that its vehicles are driven only by trained, experienced, and otherwise qualified personnel. The licensee shall, at a minimum, document that each of its drivers:

(a) Is at least 18 years of age;

(b) Certifies under oath that he is not addicted to alcohol or any controlled substance;

(c) Certifies under oath that he is free from any physical or mental defect or disease that might impair his ability to drive an ambulance;

(d) Has not, within the past 3 years, been convicted of reckless driving or driving under the influence of alcohol or controlled substances and has not had a driver's license suspended under the point system provided for in chapter 322;

(e) Possesses a valid operator's license issued under chapter 322;

(f) Is trained in the safe operation of emergency vehicles and has completed an emergency vehicle operator's course or the reasonable equivalent as approved by the department; however, this paragraph is applicable only to a driver of a land vehicle;

(g) Possesses a valid American Red Cross standard first aid and personal safety course card or its equivalent; and

(h) Possesses a valid American Red Cross or American Heart Association cardiopulmonary resuscitation card.

(2) Each nonemergency medical transportation service is responsible for assuring that its vehicle drivers are in compliance with paragraphs (a), (b), (c), (d), and (e) of subsection (1) and have successfully completed a defensive driving course approved by the department.

(3) The department shall periodically inspect basic life support services, advanced life support services, and nonemergency medical transportation services for verification of compliance with this section. Services that are unable to verify compliance are subject to disciplinary action as provided in this act.

History.--ss. 11, 25, ch. 82-402; ss. 8, 13, ch. 83-196; s. 10, ch. 84-317.
401.30 Records.—
(1) All emergency medical services licensees shall maintain accurate records of emergency calls on forms that contain such information as may be required by the department. Such records shall be available for inspection by the department at any reasonable time, and copies thereof shall be furnished to the department upon request. The department shall give each licensee notice of what information such forms must contain.

(2) Reports from service providers that cover statistical data are public records. The department shall protect the privacy of patients in disseminating any such information. Any record furnished by a service provider at the request of the department must be a true and certified copy of the original record and may not be altered or have information deleted.

(3) Records of emergency calls that contain patient examination or treatment information have a privileged and confidential status and shall not be disclosed without the consent of the person to whom they pertain, but appropriate disclosure may be made without such consent:
(a) Hospital personnel for use in conjunction with the treatment of the patient;
(b) The department;
(c) The service medical director; or
(d) In any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice by the party seeking such records, to the patient or his legal representative.

401.321 Transferability of license; effect of sale, transfer, assignment, or lease of service.—
(1) Each license is valid only for the licensee to whom it is issued and is not subject to sale, assignment, or other transfer, voluntary or involuntary. A license or permit is valid only for the service location for which it was originally issued.

(2) A license will automatically expire when a licensee changes his service location or his service name as registered with the department. The expired license shall be surrendered by the licensee, and a new license shall be issued by the department for the balance of the term under the expired license upon receipt of a completed application and a fee of $25.

(3) An application for a new license is required when:
(a) A majority of the ownership or a controlling interest of a service is transferred or assigned; and
(b) A lessee agrees to undertake or provide services to the extent that legal liability for the service rests with the lessee.

The application for a new license showing such change must be submitted so as to be received by the department at least 60 days prior to the date of the sale, transfer, assignment, or lease.

401.33 Exemptions.—The following are exempt from the provisions of this act:

(1) A privately owned vehicle not ordinarily used in the business of transporting persons who are sick, injured, wounded, incapacitated, or helpless.

(2) A vehicle rendering services as an ambulance in the event of a major catastrophe or emergency when ambulances with permits based in the locality of the catastrophe or emergency are incapacitated or insufficient in number to render the services needed.

Any ambulance service provider licensed in another state or territory of the United States, except that any such provider receiving a person within this state for transport to a location within this state shall comply with the provisions of this act.

(4) Any ambulance owned and operated by the Federal Government.

(5) A vehicle under the direct supervision of a licensed physician and used as an integral part of a private industrial safety or emergency management plan within a privately owned and controlled area, which vehicle may from time to time be used to transport persons in need of medical attention, but which is not available to the general public and which does not routinely transport patients.

(6) Any organization or person that provides wheelchair transport services, if:
(a) The service is a public bus system.
(b) The service is a public or private school bus system.

(7) Notwithstanding any ordinance or rule adopted by a local government with respect to nonemergency medical transportation services or vehicles, any hospital which utilizes its own vehicles in transporting, to or from a hospital or a medical facility, nonemergency patients whose medical conditions are such that they are confined to wheelchairs or to stretchers but who do not need and are not likely to need medical attention during transport, if the hospital does not charge fees for this service.

History.—s. 13, ch. 73-126; s. 1, ch. 74-334; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 12, ch. 78-280; s. 258, ch. 81-256; ss. 2, 3, ch. 81-316; ss. 14, 24, 25, ch. 82-402; s. 13, ch. 83-196; s. 42, ch. 83-334; s. 14, ch. 84-317.

Note.—Expires October 1, 1992, pursuant to s. 25, ch. 82-402, and is scheduled for review pursuant to s. 11.61 in advance of that date. Expiring October 1, 1992, by s. 13, ch. 83-196, and scheduled for review pursuant to s. 11.61 in advance of that date.

1401.34 Fees.—

(1) Each organization or person subject to this act shall pay to the department the following fees, which shall annually be set by the department by rule within the ranges specified herein:

(a) Nonemergency medical transportation service license: not less than $425, or more than $600, to be paid biennially.
(b) Basic life support service license: not less than $425, or more than $600, to be paid biennially.
(c) Advanced life support service license: not less than $850, or more than $1,250, to be paid biennially.
(d) Original or renewal vehicle permit for basic or advanced life support: not less than $10, or more than $20, to be paid biennially.
(e) Nonemergency medical transportation vehicle permit or renewal permit: not less than $10, or more than $20, to be paid biennially.
(f) Emergency medical technician certification examination: not less than $15, or more than $25.
(g) Emergency medical technician original certificate: not less than $20, or more than $30.
(h) Emergency medical technician renewal certificate: not less than $10, or more than $15, to be paid biennially.
(i) Paramedic certification examination: not less than $15, or more than $25.
(j) Paramedic original certificate: not less than $55, or more than $80.
(k) Paramedic renewal certificate: not less than $55, or more than $80, to be paid biennially.
(l) Ambulance service: not less than $850, or more than $1,250, to be paid biennially.
(m) Original or renewal aircraft permit for air ambulance: not less than $10, or more than $20, to be paid biennially.
(n) Fees established pursuant to subsection (1) shall be based on the actual costs incurred by the department in carrying out its licensure, certification, registration, and inspection responsibilities under this act, including costs of salaries, expenses, inspection equipment, supervision, and program administration.

(3) Until the department adopts rules establishing fees under subsection (1), the lower amount in each range will apply.

(4) There is created in the State Treasury the Emergency Medical Services Trust Fund. Fees collected under this section shall be deposited to the credit of the Emergency Medical Services Trust Fund and shall be applied solely for salaries and expenses of the department incurred in implementing and enforcing this act.

(5)(a) Neither the fire department of any county, municipality, or fire district nor any county or municipally operated emergency medical services provider licensed by the department is required to pay a fee for a service license or vehicle permit.

(b) A volunteer emergency medical services provider licensed by the department is not required to pay any of the fees set by the department for licensure, vehicle permits, and personnel certification.

History.—s. 14, ch. 73-126; s. 2, ch. 74-334; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 4, ch. 77-347; s. 1, ch. 77-457; ss. 2, 3, ch. 81-316; ss. 15, 24, 25, ch. 82-402; ss. 7, 8, 12, 13, ch. 83-196; s. 15, ch. 84-317.

Note.—(1) Except for paragraphs (1)(f)-(k) and subsection (3) October 1, 1992, pursuant to s. 25, ch. 82-402, and is scheduled for review pursuant to s. 11.61 in advance of that date. Expires October 1, 1992, pursuant to s. 13, ch. 83-196, and is scheduled for review pursuant to s. 11.61 in advance of that date.

1401.35 Rules.—The department shall adopt rules necessary to carry out the purposes of this act.

(1) The rules shall provide at least minimum standards governing:

(a) Sanitation, safety, and maintenance of basic life support, advanced life support, and nonemergency medical transportation vehicles, respectively.
(b) Emergency medical technician, paramedic, and driver training and qualifications.
(c) Ground ambulance and vehicle equipment and supplies at least as comprehensive as those published in the most current edition of the American College of Surgeons, Committee on Trauma, list of essential equipment for ambulances, as interpreted by rules of the department.
(d) Ground ambulance or vehicle design and construction at least equal to those most currently recommended by the United States General Services Administration and interpreted by rules of the department.
(e) Staffing of basic life support, advanced life support, and nonemergency medical transportation services.
(f) Two-way communications for basic life support services, advanced life support services, and nonemergency medical transportation services.
(g) Advanced life support services equipment.
(h) Programs of training for emergency medical technicians and paramedics.
(i) Vehicles, equipment, communications, and staffing for ambulance services.
(j) Ambulance driver qualifications, training, and experience.
(k) Optional use of telemetry by licensees.
(l) The rules shall establish application requirements for licensure and certification. Pursuant thereto, application forms shall be developed by the department for basic life support services, advanced life support services, and nonemergency medical transportation ser-
services, respectively. An application for each respective service license must include, but is not limited to:

(a) The name and business address of the operator and owner of the basic life support service, advanced life support service, nonemergency medical transportation service, or proposed service.

(b) The name under which the applicant will operate.

(c) A list of the names and addresses of all officers, directors, and shareholders of the applicant.

(d) A description of each vehicle to be used, including the make, model, year of manufacture, mileage, and vehicle identification number (VIN); the state or federal aviation or marine registration number, when applicable; and the color scheme, insignia, name, monogram, or other distinguishing characteristics to be used to designate the applicant’s vehicle or vehicles.

(e) The location and description of each place from which the basic life support service, advanced life support service, or nonemergency medical transportation service will operate.

(f) A statement reasonably describing the geographic area or areas to be served by the applicant.

(g) A statement certifying that the applicant will provide continuous service on a 24-hour day, 7-day week basis, if a basic life support service license or an advanced life support service license is sought.

(h) Such other information as the department deems reasonable and necessary.

(3) The rules shall set forth specifications regarding insignia and other ambulance identification, except that any fire department may retain its fire department identity and may use such color scheme, insignia, name, monogram, or other distinguishing characteristics that is acceptable to the fire department for the purpose of designating its vehicles as advanced life support vehicles. However, those advanced life support service/fire rescue vehicles or ambulances operated by fire departments which were purchased in whole or in part with federal funds shall comply with federal regulations pertaining to color schemes, emblems, and markings.

History.--s. 15, ch. 73-126; s. 3, ch. 76-168; s. 257, ch. 77-147; s. 5, ch. 77-347; s. 1, ch. 77-457; ss. 8, 10, ch. 79-280; s. 259, ch. 81-239; ss. 2, 3, ch. 81-318; ss. 16, 24, 25, ch. 82-402; s. 12, ch. 83-196.

1401.38 Participation in federal programs.--The department shall develop federal funding proposals and apply for all federal funds available to carry out the purposes of this act. The department is authorized to participate in those federal programs aimed at the delivery of basic life support service, advanced life support service, and nonemergency medical transportation service and shall include such programs in its comprehensive plan.

History.--s. 19, ch. 73-126; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 8, 10, ch. 79-280; ss. 2, 3, ch. 81-318; ss. 12, 14, 25, ch. 82-402; s. 13, ch. 83-196.

1401.411 Disciplinary action; penalties.--

(1) The department may deny, suspend, or revoke a license, certificate, or permit or may reprimand or fine any licensee, certificateholder, or other person operating under the provisions of this act for any of the following grounds:

(a) The violation of any rule of the department or any provision of this chapter.

(b) Being convicted or found guilty, regardless of adjudication, in any jurisdiction of a crime that relates to practice as an emergency medical technician or paramedic, or to practice in any other occupation, when operating under the provisions of this act. For the purposes of this paragraph, a plea of nolo contendere is a conviction.

(c) Habitual intemperance or addiction to narcotics.

(d) Engaging in or attempting to engage in the possession, except in legitimate duties under the supervision of a licensed physician, or the sale or distribution of any controlled substance as set forth in chapter 893.

(e) The conviction in any court in any state or in any federal court of a felony, unless the person’s civil rights have been restored.

(f) Knowingly making false or fraudulent claims; procuring, attempting to procure, or renewing a certificate to practice as an emergency medical technician or

775.082 or s. 775.083 for the first such violation, and is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 for the second and subsequent violations.

(2) Any person who:

(a) Uses or attempts to use a certificate that has been suspended, revoked, or terminated;

(b) Practices or holds himself out as an emergency medical technician, paramedic, or ambulance driver without being so certified; or

(c) Knowingly conceals information relating to violations of this act

is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Whenever any person is charged with knowingly committing an assault or battery upon an ambulance driver, emergency medical technician, or paramedic when such ambulance driver, emergency medical technician, or paramedic is actively engaged in the lawful performance of his duties, the offense for which the person is charged shall be classified as follows:

(a) In the case of assault, the charge shall be a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.084.

(b) In the case of battery, the charge shall be a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Each day that a violation of this act is committed or permitted to continue constitutes a separate and distinct offense under this section.

History.--s. 22, ch. 73-126; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 3, ch. 81-318; ss. 18, 24, 25, ch. 82-402; s. 12, ch. 83-196.

Note.--Expires (except for paragraphs (2)(a) and (b)) October 1, 1992, pursuant to s. 25, ch. 82-402, and is scheduled for review pursuant to s. 11.61 in advance of that date. Repealed effective October 1, 1992, by s. 13, ch. 83-196, and scheduled for review pursuant to s. 11.61 in advance of that date.
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paramedic by fakery, fraudulent action, or misrepresentation.

(g) Unprofessional conduct, including, but not limited to, any departure from or failure to conform to the minimal prevailing standards of acceptable practice as an emergency medical technician or paramedic.

(h) Sexual misconduct with a patient, including inducing or attempting to induce the patient to engage, or engaging or attempting to engage the patient, in sexual activity outside the scope of the practice or the scope of generally accepted examination or treatment of the patient.

(i) The failure to give to the department, or its authorized representative, true information upon request regarding an alleged or confirmed violation of this act or rule of the department.

(j) Fraudulent or misleading advertising or advertising in an unauthorized category.

(k) Practicing as an emergency medical technician, paramedic, or other health care professional operating under the provisions of this act without reasonable skill and safety to patients by reason of illness, drunkenness, or the use of drugs, narcotics, or chemicals or any other substance or as a result of any mental or physical condition.

(l) The failure to report to the department any person known to be in violation of this act.

(2) A suspension or revocation of a license or certificate is for all classifications unless the department, in its sole discretion, suspends or revokes one or more classifications thereof.

(3) One year after the revocation of a license or certificate, application may be made to the department for reinstatement; and the department may authorize reinstatement.

(4) Any charge of a violation of this act by a licensee affects only the license of the service location from which the violation is alleged to have occurred. Another license shall not be issued to the same licensee for a new service location in the same county or any other county for a period of 3 years from the effective date of revocation.

(5) If the department finds that the terms of any such suspension have been violated, it may revoke such suspension immediately.

(6) In the event that a party is found by the department to have violated any of the other provisions of this act, the department may declare such suspension revoked.

(7) In addition to any other administrative action authorized by law, the department may impose an administrative fine, not to exceed $1,000, for any violation of this act or of the rules adopted pursuant to this act. Each day that a violation continues may be considered a separate offense.

(8) All amounts collected pursuant to this section shall be deposited into the Emergency Medical Services Trust Fund.

History.—ss. 19, 25, ch. 82-402; ss. 12, 13, ch. 83-196; s. 17, ch. 84-317.

Note.—Repealed effective October 1, 1992, by s. 13, ch. 83-196, and scheduled for review pursuant to s. 11.61 in advance of that date.

1401.413 Administrative fines.—

(1) In addition to any other administrative action authorized by law, the department may impose an administrative fine, not to exceed $1,000, for any violation of this act or of the rules adopted pursuant to this act. The department shall notify the violator of its intent to impose a fine prior to taking action. Each day that a violation continues may be considered a separate offense.

(2) In determining the amount of the fine, if any, the department shall consider the following factors:

(a) The gravity of the violation, including the probability of death or disability as a result of the violation;

(b) Any actions taken to correct the violation;

(c) Any previous violations committed by the violator.

(3) All amounts collected pursuant to this section shall be deposited into the Emergency Medical Services Trust Fund.

History.—ss. 20, 25, ch. 82-402; s. 13, ch. 83-196; s. 15, ch. 84-317.

Note.—Repealed effective January 1, 1985.

1401.414 Proceedings in investigating complaints and alleged violations.—

(1) The department shall cause to be investigated any complaint which is filed before it if the complaint is in writing, signed by the complainant, and legally sufficient. A complaint is legally sufficient if it contains ultimate facts which show that a violation of this chapter, or of any rule promulgated by the department, has occurred. The department may investigate or continue to investigate, and may take appropriate final action on, a complaint even though the original complainant withdraws his complaint or otherwise indicates his desire not to cause it to be investigated to completion. When an investigation of any person is undertaken, the department shall notify such person of the investigation and inform him of the substance of any complaint filed against him. The department may conduct an investigation without notification to any person if the act under investigation is a criminal offense.

(2) The department or its delegate shall expeditiously investigate each complaint. When its investigation is complete, the department shall prepare an investigative report. The report shall contain the investigative findings and the recommendations of the department concerning the existence of probable cause.

(3) The complaint and all information obtained pursuant to the investigation by the department shall be maintained in a manner similar to that provided for in s. 455.225(9), relating to exemptions from s. 119.07 for complaints processed by the Department of Professional Regulation.

History.—s. 18, ch. 84-317; s. 1, ch. 85-65.

Note.—Repealed effective October 1, 1992, by s. 1, ch. 85-65, and scheduled for review pursuant to s. 11.61 in advance of that date.

1401.421 Injunctive relief.—The secretary may cause to be instituted a civil action in an appropriate circuit court for preliminary or permanent injunctive relief to remedy or prevent violation of any provision of this part or any rule adopted by the department pursuant to
the provisions of this part.

History.—s. 10, 13, ch. 83-196.

Note.—Expires October 1, 1992, pursuant to s. 13, ch. 82-196, and is scheduled for review pursuant to s. 11.61 in advance of that date.

401.43 Fraudulently obtaining services from emergency medical services vehicle licensee.—Whoever willfully and with intent to defraud obtains or attempts to obtain services from an emergency medical services vehicle licensee is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for the first offense, and is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for the second and subsequent offenses.

History.—s. 23, ch. 73-126; s. 3, ch. 76-168; ss. 1, ch. 77-457; ss. 2, 3, ch. 81-318; ss. 21, 24, 25, ch. 82-402; s. 13, ch. 83-196.

Note.—Expires October 1, 1992, pursuant to s. 25, ch. 82-402, and is scheduled for review pursuant to s. 11.61 in advance of that date. Repealed effective October 1, 1992, by s. 13, ch. 83-196, and scheduled for review pursuant to s. 11.61 in advance of that date.

401.44 Turning in a false alarm.—Whoever summons any emergency medical services vehicle pursuant to this act or reports that such a vehicle is needed when such person knows or has reason to know that the services of such a vehicle are not needed is guilty of a misdeemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for the first offense, and is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for the second and subsequent offenses.

History.—s. 14, ch. 73-126; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 3, ch. 81-318; ss. 20, 24, 25, ch. 82-402; s. 13, ch. 83-196.

Note.—Expires October 1, 1992, pursuant to s. 25, ch. 82-402, and is scheduled for review pursuant to s. 11.61 in advance of that date. Repealed effective October 1, 1992, by s. 13, ch. 83-196, and scheduled for review pursuant to s. 11.61 in advance of that date.

401.45 Denial of emergency treatment; civil liability.—

(1) No person shall be denied treatment for any emergency medical condition which will deteriorate from a failure to provide such treatment at any general hospital licensed under chapter 395 or at any specialty hospital that has an emergency room.

(2) A hospital or its employees or any physician or dentist responding to an apparent need for emergency treatment or care if reasonable care is exercised in determining the condition of the person and in determining the appropriateness of the facilities and the qualifications and availability of personnel to render such treatment.

History.—s. 26, ch. 73-126; s. 3, ch. 76-168; s. 1, ch. 77-174; ss. 2, 3, ch. 77-457; ss. 2, 3, ch. 81-318; ss. 24, 25, 27, ch. 82-402; s. 13, ch. 83-196.

Note.—Expires October 1, 1992, pursuant to s. 25, ch. 82-402, and is scheduled for review pursuant to s. 11.61 in advance of that date. Repealed effective October 1, 1992, by s. 13, ch. 83-196, and scheduled for review pursuant to s. 11.61 in advance of first date.

401.48 Air ambulance service; licensure.—

(1) Every person, firm, corporation, association, or governmental entity owning or acting as an agent for the owner of any business or service which furnishes, operates, conducts, maintains, advertises, engages in, proposes to engage in, or professes to engage in the business or service of transporting by air ambulance persons who may need medical attention during transport shall be licensed as an air ambulance service, before offering such service.

(2) The application for such license shall be submitted to the department on forms provided for this purpose. The application shall provide documentation that the licensee meets the appropriate requirements for an air ambulance service as specified by rule of the department. The fee for such licensee shall be as prescribed in s. 401.34.

(3) An applicant seeking licensure as an air ambulance service shall:
   (a) Submit a completed application to the department on such forms and including such information as specified by rule of the department.
   (b) Submit the appropriate fee as provided in s. 401.34.
   (c) Specify the location of all required medical equipment and provide documentation that all such equipment is available and in good working order.
   (d) Provide documentation that all aircraft and crew members meet applicable Federal Aviation Administration (F.A.A.) regulations.
   (e) Provide proof of adequate insurance coverage of not less than $100,000 per person and $300,000 per incident or a greater amount as may be specified by rule of the department for claims arising out of injury or death of persons and damage to property of others resulting from any cause for which the owner of such business or service would be liable. Self-insurance is an acceptable alternative as specified in s. 401.25(2)(c).
   (f) Specify if the service uses either fixed-winged or rotary-winged aircraft, or both.

(4)(a) If a service provides interhospital air transport, air transport from hospital to another facility, air transport from hospital to home, or similar air transport, the service must provide evidence that it has employed a medical director to advise the service on the appropriate staffing, equipment, and supplies to be used for the transport of any patient aboard an air ambulance and shall provide information to referring physicians regarding special medical requirements and restrictions when transporting by air ambulance.
   (b) If the service uses rotary-winged aircraft in conjunction with a community emergency medical advanced life support or basic life support services first response system, the service is required to meet the provisions of s. 401.47(2)(f)1. and is also required to meet separate basic life support and advanced life support requirements unique to air ambulance operations as may be specified in the rules of the department. Such service is subject to the provisions of s. 401.25 relating to a certificate of public convenience and necessity; however, a service may operate in any county under the terms of mutual aid agreements.
   (5) In order to renew a license for air ambulance service, the applicant shall:
      (a) Submit a renewal application to the department not more than 90 days nor less than 60 days before the expiration of the license.
      (b) Submit the appropriate renewal fee as provided in s. 401.34.
      (c) Provide documentation that current standards for issuance of a license are met.
(6) Any advanced support service licensee may engage in air ambulance operations by complying with the appropriate provisions of this section and provisions as may be specified by rule of the department.

History.—ss. 11, 13, ch. 83-196.

Note.—Expires October 1, 1992, pursuant to s. 13, ch. 83-196, and is scheduled for review pursuant to s. 11.61 in advance of that date.

Note.—This reference as enacted by s. 11, ch. 83-196, appears incorrect; s. 401.47, which did not include a subparagraph (2)(f), was repealed by s. 24, ch. 82-402; perhaps the reference is intended to refer to subparagraph (2)(f) of s. 11, ch. 83-196, which subparagraph is compiled as s. 401.48(3)(f).

1401.481 Inspection of air ambulance operations.—The department shall, on a random and periodic basis, inspect air ambulance operations for compliance with the requirements of this chapter and departmental rules.

History.—ss. 11, 13, ch. 83-196.

Note.—Expires October 1, 1992, pursuant to s. 13, ch. 83-196, and is scheduled for review pursuant to s. 11.61 in advance of that date.
CHAPTER 402
HEALTH AND REHABILITATIVE SERVICES; MISCELLANEOUS PROVISIONS

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402.04 Award of scholarships and stipends; disbursement of funds; administration.—The award of scholarships or stipends provided for herein shall be made by the Department of Health and Rehabilitative Services, hereinafter referred to as the department. The department shall handle the administration of the scholarship or stipend and the Department of Education shall, for and on behalf of the department, handle the notes issued for the payment of the scholarships or stipends provided for herein and the collection of same. The department shall prescribe regulations governing the payment of scholarships or stipends to the school, college, or university for the benefit of the scholarship or stipend holders. All scholarship awards, expenses and costs of administration shall be paid from moneys appropriated by the Legislature and shall be paid upon vouchers approved by the department and properly certified by the Comptroller.

History.—s. 4, ch. 29880, 1955; s. 10, ch. 59-1; s. 2, ch. 65-13; ss. 15, 19, 35, ch. 65-131; ss. 15, 19, 35, ch. 66-100; s. 203, ch. 77-147.

402.05 Requisites for holding scholarship and stipend.—Scholarships or stipends are to be awarded only to such residents of the state as intend to make psychiatric social work, psychiatry, psychiatric nursing, and clinical psychology their professions. Among other essential requisites for holding a scholarship or stipend hereunder are citizenship, residence in Florida for a period of 1 year, good moral character, good health, exceptional scholarship, and the applicant shall have met the entrance requirement at a college or university for their professional specialization.

History.—s. 5, ch. 29880, 1955.

402.06 Notes required of scholarship holders.—Each person who receives a scholarship or stipend as provided for in this chapter shall execute a promissory note under seal, on forms to be prescribed by the Department of Education, which may be endorsed by his parent or guardian or, if he is 18 years of age or older, by some responsible citizen and shall deliver said note to the Department of Health and Rehabilitative Services. Each note shall be payable to the state and shall bear interest at the rate of 5 percent per annum beginning 90 days after completion or termination of the training program. Said note shall provide for all costs of collection to be paid by the maker of the note. Said note shall be delivered by the Department of Health and Rehabilitative-
live Services to said Department of Education for collection and final disposition.

History.—s. 6, ch. 29880, 1955; s. 2, ch. 65-13; s. 1, ch. 69-59; ss. 15, 35, ch. 69-106; s. 18, ch. 77-121; s. 280, ch. 77-147.

402.07 Payment of notes.—Prior to the award of a scholarship or stipend provided herein for trainees in psychiatric social work, psychiatry, clinical psychology, or psychiatric nursing, the recipient thereof must agree in writing to practice his profession in the employ of any one of the following institutions or agencies for 1 month for each month of grant immediately after graduation or, in lieu thereof, to repay the full amount of the scholarship or stipend together with interest at the rate of 5 percent per annum over a period not to exceed 10 years:

(1) The staff of one of the state hospitals of the Division of Mental Health.
(2) The Department of Corrections.
(3) A mental health clinic or guidance center.
(4) One of the state-operated universities.
(5) A circuit court exercising jurisdiction in connection with juveniles.
(6) A public school.
(7) Such other accredited social agencies or state institutions as may be approved by the [Department of Health and Rehabilitative Services.]

History.—s. 1, ch. 29880, 1955; s. 1, ch. 69-268; ss. 19, 35, ch. 69-106; s. 2, ch. 70-441; s. 25, ch. 73-334; s. 8, ch. 77-100; s. 15, ch. 79-3; ss. 290, ch. 71-359.

Note.—All divisions within the Department of Health and Rehabilitative Services were abolished by s. 3, ch. 75-48.

402.12 National Community Mental Health Centers Act.—Any federal funds accruing to the state for the purposes of carrying out the National Community Mental Health Centers Act of 1963 shall be paid to the Department of Health and Rehabilitative Services for expenditure as directed by said department.

History.—s. 1, ch. 63-305; ss. 19, 35, ch. 69-106; s. 262, ch. 71-147.

Note.—Former s. 965.16.

402.16 Proceedings by department.—

(1) Whenever it becomes necessary for the welfare and convenience of any of the institutions now under the supervision and control of the Department of Health and Rehabilitative Services, or which may hereafter be placed under the supervision and control of said department, to acquire private property for the use of any of said institutions, and the same cannot be acquired by agreement with the said department and the parties interested in, or the owners of said private property, the department is hereby empowered and authorized to exercise the right of eminent domain, and to proceed to condemn the said property in the same manner as provided by law for the condemnation of property.

(2) Any suit or actions brought by the said department to condemn property as provided in this section shall be brought in the name of the Department of Health and Rehabilitative Services, and it shall be the duty of the Department of Legal Affairs to conduct the proceedings for, and to act as counsel for the said Department of Health and Rehabilitative Services.

History.—s. 1, ch. 7947, 1919; CGL 5104, 5105; ss. 1, 2, ch. 69-59; ss. 15, 35, ch. 69-106; s. 22, ch. 7900, 1941; s. 3, ch. 56-369; ss. 11, 19, 35, ch. 69-106.

Note.—Former s. 7.25; s. 955.961.

402.161 Authorization for sale of property.—

(1) The [department] is authorized to sell any real or personal property that it acquired by way of donation, gift, contribution, bequest, or devise from any person, persons, or organizations when such real or personal property is determined by the [department] not to be necessary for use in connection with the work of the [department]. All proceeds derived from the sale of such property shall be transmitted to the State Treasury to be credited to the department.

(2) The department is authorized to use for [department] purposes any moneys realized from the sale of any such real or personal property. It is expressly declared to be the intention of the Legislature that such moneys are appropriated to the department and may be used by it for [department] purposes. However, such moneys shall be withdrawn in accordance with law. Such moneys are appropriated to the use of the department in addition to other funds which have been or may otherwise be appropriated for [department] purposes.

History.—s. 1, ch. 69-268; s. 19, 35, ch. 69-106; s. 1, ch. 70-255; s. 1, ch. 70-439; s. 17, ch. 78-433.

Note.—Bracketed words substituted by the editors for "division" (of Family Services). See s. 3, ch. 75-48, which abolished the division and assigned its functions to the Department of Health and Rehabilitative Services.

402.17 Claims for care and maintenance; trust property.—The Department of Health and Rehabilitative Services shall protect the financial interest of the state with respect to claims which the state may have for the care and maintenance of clients of the department. The department shall hold in trust and administer money of clients and property designated for the personal benefit of clients.

(1) CLAIMS FOR CARE AND MAINTENANCE.—

(a) The department shall perform the following acts:

1. Receive and supervise the collection of sums due the state.

2. Bring any court action necessary to collect any claim the state may have against any client, former client, guardian of any client or former client, executor or administrator of the client’s estate, or any person against whom any client or former client may have a claim.

3. Obtain a copy of any inventory or appraisal of the client’s property filed with any court.

4. Obtain from the Department of Health and Rehabilitative Services a financial status report on any client or corporation or any entity on behalf of an unrepresented client.

5. Petition the court for appointment of a guardian or administrator for an otherwise unrepresented client or former client should the financial status report or other information indicate the need for such action. The cost of any such action shall be charged against the assets of the estate of the client.

6. Represent the interest of the state in any litigation in which a client or former client is a party.

7. File claims with any person, firm, or corporation or with any federal, state, county, district, or municipal agency on behalf of an unrepresented client.

8. Represent the state in the settlement of the estates of deceased clients or in the settlement of estates.
in which a client or a former client against whom the state may have a claim has a financial interest.

9. Establish procedures by rule for the use of amounts held in trust for the client to pay for the cost of care and maintenance, if such amounts would otherwise cause the client to become ineligible for services which are in the client's best interests.

(b) The Department of Health and Rehabilitative Services may charge off accounts if it certifies that the accounts are uncollectible after diligent efforts have been made to collect them. If the department certifies an account to the Department of Banking and Finance, setting forth the circumstances upon which it predicates the uncollectibility, and if, pursuant to s. 17.04, the Department of Banking and Finance concurs, the account shall be charged off.

(2) MONEY OR OTHER PROPERTY RECEIVED FOR PERSONAL USE OR BENEFIT OF ANY CLIENT.—The department shall perform the following acts:

(a) Accept and administer in trust any money or other property received for personal use or benefit of any client.

(b) Deposit the money in banks qualified as state depositories, or in any bank, credit union, or savings and loan association authorized to do business in this state, provided moneys so deposited or held by such institutions are fully insured by a federal depository or share insurance program, or an approved state depository or share insurance program, and are available on demand.

(c) Withdraw the money and use it to meet current needs of clients. For purposes of this paragraph, "current needs" includes payment of fees assessed under s. 402.33.

(d) As trustee, invest in the manner authorized by law for fiduciaries money not used for current needs of clients. Such investments may include, but shall not be limited to, investments in savings share accounts of any credit union chartered under the laws of the United States and doing business in this state, and savings share accounts of any credit union chartered under the laws of this state, provided the credit union is insured under the federal share insurance program or an approved state share insurance program.

(3) DEPOSIT OF FUNDS RECEIVED.—Funds received by the Department of Health and Rehabilitative Services in accordance with s. 402.33 shall be deposited into a trust fund for the operation of the department.

(4) DISPOSITION OF UNCLAIMED TRUST FUNDS.—Upon the death of any client affected by the provisions of this section, any unclaimed money held in trust by the department or by the Treasurer for him shall be applied first to the payment of any unpaid claim of the state against the client, and any balance remaining unclaimed for a period of 1 year shall escheat to the state as unclaimed funds held by fiduciaries.

(5) LEGAL REPRESENTATION.—To the extent that the budget will permit, the Department of Legal Affairs shall furnish the legal services to carry out the provisions of this section. Upon the request of the Department of Health and Rehabilitative Services, the various state and county attorneys shall assist in litigation within their jurisdiction. Such department may retain legal counsel for necessary legal services which cannot be furnished by the Department of Legal Affairs and the various state and county attorneys.

(6) DEPOSIT OR INVESTMENT OF FUNDS OF CLIENTS.—

(a) The Department of Health and Rehabilitative Services may deposit any funds of clients in its possession in any bank in the state or may invest or reinvest such funds in bonds or obligations of the United States for the payment of which the full faith and credit of the United States is pledged. For purposes of deposit only, the funds of any client may be mingled with the funds of any other clients.

(b) The interest or increment accruing on such funds shall be the property of the clients and shall be used or conserved for the personal use or benefit of the individual client. Such interest shall not accrue to the general welfare of all clients. The department shall establish rules governing reasonable fees for the cost of administering such accounts and for establishing the minimum balance eligible to earn interest.

History.—s. 1, ch. 79-269; s. 1, ch. 83-59; s. 17, ch. 85-167; s. 1, ch. 85-187.

Note.—See s. 8, ch. 80-187, which changed the name of the Social and Economic Services Program Office of the Department of Health and Rehabilitative Services to "Economic Services Program Office" and changed the program responsibilities of the office.

Note.—Former s. 965.08.

402.175 Legislative intent; developmentally disabled and mentally ill persons' umbrella trust fund.—

(1) The Legislature finds and declares that estate planning by families of developmentally disabled and mentally ill persons encourages family ties and supports the health and welfare of developmentally disabled and mentally ill persons. The Legislature further recognizes that many families do not have the continuing financial resources to establish independent trusts for the benefit of their developmentally disabled and mentally ill offspring. Therefore, it is the intent of the Legislature by this act to develop an umbrella trust in which families may participate by complying with the provisions of this section.

(2) The department shall cause to be established with a trust company which has its principal place of business in this state an umbrella trust fund for the benefit of developmentally disabled and mentally ill persons in this state. Such trust shall be funded by:

(a) State appropriations.

(b) Grants and donations.

(c) The remainder interest left to the umbrella trust by the individual trusts as provided by paragraph (3)(b).

(3) In order to qualify for inclusion in the umbrella trust, a family of a developmentally disabled or mentally ill person that establishes an individual trust for the developmentally disabled or mentally ill person shall:

(a) Create an individual trust which shall equal or exceed a minimum amount established by the department through its rulemaking authority based on the life expectancy of the developmentally disabled or mentally ill person. Such rule shall require no less than $2,500 and no more than $30,000 for entrance into the umbrella trust.

(b) Leave an irrevocable remainder interest from the individual trust to the umbrella trust except that any remainder in excess of $10,000 at the death of the de-
velopmentally disabled or mentally ill person shall be subject to the conditions set forth by the individual trust agreement rather than the umbrella trust.

(c) Have the individual trust administered by the trustee of the umbrella trust.

(d) Conform to the requirement of the model trust as set forth by rule of the department pursuant to paragraph (5)(c).

(4)(a) Each developmentally disabled or mentally ill person's income shall be derived from the funds available in the individual trust and income therefrom.

(b) The umbrella trust and interest earned thereon shall be used to fund the expenditures permitted by paragraph (5)(a) upon the expiration of funds available to the developmentally disabled or mentally ill person through his individual trust.

(5) The department shall by rule:

(a) Establish specific expenditure categories within which the trustee may make disbursements.

1. Such categories shall be based on the most common and reasonable unmet needs of developmentally disabled or mentally ill persons.

2. With respect to the developmentally disabled or mentally ill person's using the money available from the umbrella trust, a different category of expenditures may be utilized, dependent upon the resources of the umbrella trust so that the principal of the trust is not substantially diminished.

(b) Establish which types of property will qualify for contribution to the umbrella trust.

(c) Develop a model umbrella trust agreement by which the family of a developmentally disabled or mentally ill person can contribute assets for entrance into the umbrella trust in order to minimize any possibility of conflicts between the umbrella trust and the individual trust.

(6) The department shall contract for the administration of the umbrella trust. Trustees shall serve without compensation other than for the usual and customary charges for similar administration of trusts of a like amount.

(7) The trustee shall:

(a) Determine that no funds from the umbrella trust shall be used to pay for the types of services which the state provides for developmentally disabled or mentally ill persons.

(b) Determine that funds from the umbrella trust shall be used for benefits to developmentally disabled or mentally ill persons over and above those provided by state and federal agencies.

(c) Accept grants and donations for the general benefit of the umbrella trust.

(d) Comingle and invest assets of trusts to obtain the highest earnings for trusts.

(e) Maintain a record of receipts, income, and expenditures on behalf of each developmentally disabled or mentally ill person's individual trust.

(f) If the net income of the trust at the end of any calendar year exceeds 10 percent of the state appropriations to the trust, refund to the General Revenue Fund one-half of the excess.

(g) Have all other powers and duties necessary to carry out the intent of this section.

(8) The trustee shall make no payments to or purchases for the developmentally disabled or mentally ill person which would make the developmentally disabled or mentally ill person ineligible for state or federal social service programs.

History.--s. 1, ch. 85-253.

402.18 Welfare trust funds created; use of.--

(1) All moneys now held in any auxiliary, canteen, welfare, donated, or similar fund in any district of the department shall be deposited in a welfare trust fund, which fund is hereby created in the State Treasury, or in a place which the department shall designate. The money in the fund of each institution of the department, or which may accrue thereto, is hereby appropriated for the benefit, education, and general welfare of clients in that institution. The general welfare of clients includes, but is not limited to, the establishment of, maintenance of, employment of personnel for, and the purchase of items for resale at canteens or vending machines maintained at the state institutions and for the establishment of, maintenance of, employment of personnel for, and the operation of canteens, hobby shops, recreational or entertainment facilities, sheltered workshops, activity centers, farming projects, or other like facilities or programs at the institutions.

(2) All moneys now held in any auxiliary, canteen, welfare, donated, or similar fund in any district of the department shall be deposited in a welfare trust fund which is hereby created in the State Treasury, or in a place which the department shall designate. Money in the fund of each institution of the department, or which may accrue thereto, is hereby appropriated for the purpose for which the donor intended. Absent specific intentions of donor, such moneys shall be used for programs for the benefit, education, and general welfare of all clients of the department. All sales taxes collected by the department in a district for the Department of Revenue may be deposited into the district trust fund to facilitate preparing consolidated sales tax returns and remittals of sales tax to the Department of Revenue.

(3) The department shall deposit in a welfare trust fund all receipts from the operation of canteens, vending machines, hobby shops, sheltered workshops, activity centers, farming projects, and other such facilities designated as accruing to a specific welfare trust fund, and any moneys which may be assigned to a specific welfare trust fund by clients or others. Separate revenue and expense accounts shall be maintained in the department's accounting system for each such facility. Annually, the net proceeds, after providing an allowance for depreciation, shall be determined for such facility and made available for expenditures for the benefit and welfare of the clients of the department. The moneys of said fund shall constitute a trust held by the department for the benefit and welfare of the clients of the department.

(4) Any contraband found upon, or in the possession of, any client of the department shall be confiscated and liquidated, and the proceeds thereof shall be deposited in a welfare trust fund.

(5) The department may invest in the manner authorized by law for fiduciaries any money in a welfare trust fund.