



BOARD OF PSYCHOLOGY

****Study Packet****
For the
Florida Laws and Rules Examination
Computer Based Test
For Psychologists

January – December 2012
(Section 1 of 2)

Note to Applicants

- This study packet is valid only for the dates listed on the front cover. Please verify that you are reviewing the packet appropriate for the date you plan to take the exam. Packets outside of the valid date range may contain outdated rules or not reflect changes in the law.
- Rule 64B19-11.001(4)(b), F.A.C. states, “A passing score on the Florida laws and rules examination shall cease to be valid eighteen (18) months after the Board’s letter to the applicant advising that the applicant has passed the Florida laws and rules examination.”
- Applicants who have not completed all of the requirements for licensure within (18) months of being notified of a passing score on the laws and rules examination will be required to retake the examination prior to licensure.
- The examination consisting of forty (40) objective questions which test knowledge of Florida Statutes and rules relevant to the practice of psychology in this State. The content of the examination is as follows:

SUBJECT	NO. OF QUESTIONS
1. Chapter 490, F.S. (Psychological Services Act)	9
2. Section 90.503, F.S. (Psychotherapist-patient privilege)	1
3. Chapter 394, Part I, F.S. (Florida Mental Health Act)	7
4. Chapter 415, F.S. (Protection From Abuse, Neglect, and Exploitation)	1
5. Chapter 64B19, F.A.C. (Board of Psychology)	12
6. Chapter 456, F.S. (Health Professions and Occupations: General Provisions)	8
7. Chapter 39, F.S. (Proceeding Relating to Children)	2

A raw score of thirty-two (32) correct answers (80%) is necessary to pass the examination.

- Rule 64B19-11.0075(1) F.A.C. states: “The Board shall close the application file of and issue a final order of denial to any applicant for licensure by examination who fails to pass the Examination for Professional Practice in Psychology and the Florida laws and rules examination or who fails to submit evidence of completion of the postdoctoral, supervised experience within 24 months of the issuance of the Board’s letter advising that the applicant has been approved for examination.”

(Formatted for double sided print)

2011 Revisions included herein:

Florida Administrative Code:	Florida Statutes:
64B19-11.0035, 11.005, 11.012	456. 024, 072, 42, 44, 052
64B19-12.005, 12.007	

Examination Study Packet

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Note: Each section is a transcription of the Florida Statutes or the Florida Administrative Code. All attempts have been made to ensure the accuracy of the texts; if you have any concerns about the accuracy, please consult the Florida Statutes or Florida Administrative Code, copies of which can be found in local university or law libraries.

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PART A:

Chapter 490, Florida Statutes, Psychological Services

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CHAPTER 490
PSYCHOLOGICAL SERVICES

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490.001 Short title.--This chapter may be cited as the "Psychological Services Act."

History.--ss. 1, 3, ch. 81-235; ss. 1, 3, ch. 83-265; ss. 18, 19, ch. 87-252; s. 36, ch. 88-392; ss. 12, 13, ch. 89-70; s. 10, ch. 90-192; s. 4, ch. 91-429.

490.002 Intent.--The Legislature finds that as society becomes increasingly complex, emotional survival is equal in importance to physical survival. Therefore, in order to preserve the health, safety, and welfare of the public, the Legislature must provide privileged communication for members of the public or those acting on their behalf to encourage needed or desired psychological services to be sought out. The Legislature further finds that, since such psychological services assist the public primarily with emotional survival, which in turn affects physical and psychophysical survival, the practice of psychology and school psychology by unqualified persons presents a danger to public health, safety, and welfare.

History.--ss. 1, 3, ch. 81-235; ss. 1, 3, ch. 83-265; ss. 1, 18, 19, ch. 87-252; s. 36, ch. 88-392; ss. 12, 13, ch. 89-70; s. 10, ch. 90-192; s. 4, ch. 91-429.

490.003 Definitions.--As used in this chapter:

(1) "Board" means the Board of Psychology.

(2) "Department" means the Department of Health.

(3)(a) Prior to July 1, 1999, "doctoral-level psychological education" and "doctoral degree in psychology" mean a Psy.D., an Ed.D. in psychology, or a Ph.D. in psychology from:

1. An educational institution which, at the time the applicant was enrolled and graduated, had institutional accreditation from an agency recognized and approved by the United States Department of Education or was recognized as a member in good standing with the Association of Universities and Colleges of Canada; and

2. A psychology program within that educational institution which, at the time the applicant was enrolled and graduated, had programmatic accreditation from an accrediting agency recognized and approved by the United States Department of Education or was comparable to such programs.

(b) Effective July 1, 1999, "doctoral-level psychological education" and "doctoral degree in psychology" mean a Psy.D., an Ed.D. in psychology, or a Ph.D. in psychology from:

1. An educational institution which, at the time the applicant was enrolled and graduated, had institutional accreditation from an agency recognized and approved by the United States Department of Education or was recognized as a member in good standing with the Association of Universities and Colleges of Canada; and

2. A psychology program within that educational institution which, at the time the applicant was enrolled and graduated, had programmatic accreditation from an agency recognized and approved by the United States Department of Education.

(4) "Practice of psychology" means the observations, description, evaluation, interpretation, and modification of human behavior, by the use of scientific and applied psychological principles, methods, and procedures, for the purpose of describing, preventing, alleviating, or eliminating symptomatic, maladaptive, or undesired behavior and of enhancing interpersonal behavioral health and mental or psychological health. The ethical practice of psychology includes, but is not limited to, psychological testing and the evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning, including evaluation of mental competency to manage one's affairs and to participate in legal proceedings; counseling, psychoanalysis, all forms of psychotherapy, sex therapy, hypnosis, biofeedback, and behavioral analysis and therapy; psychoeducational evaluation, therapy, remediation, and consultation; and use of psychological methods to diagnose and treat mental, nervous, psychological, marital, or emotional disorders, illness, or disability, alcoholism and substance abuse, and disorders of habit or conduct, as well as the psychological aspects of physical illness, accident, injury, or disability, including neuropsychological evaluation, diagnosis, prognosis, etiology, and treatment.

(a) Psychological services may be rendered to individuals, couples, families, groups, and the public without regard to place of service.

(b) The use of specific modalities within the practice of psychology is restricted to psychologists appropriately trained in the use of such modalities.

(c) The practice of psychology shall be construed within the meaning of this definition without regard to whether payment is requested or received for services rendered.

(5) "Practice of school psychology" means the rendering or offering to render to an individual, a group, an organization, a government agency, or the public any of the following services:

(a) Assessment, which includes psychoeducational, developmental, and vocational assessment; evaluation and interpretation of intelligence, aptitudes, interests, academic achievement, adjustment, and motivations, or any other attributes, in individuals or groups, that relate to learning, educational, or adjustment needs.

(b) Counseling, which includes short-term situation-oriented professional interaction with children, parents, or other adults for amelioration or prevention of learning and adjustment problems. Counseling services relative to the practice of school psychology include verbal interaction, interviewing, behavior techniques, developmental and vocational intervention, environmental management, and group processes.

(c) Consultation, which includes psychoeducational, developmental, and vocational assistance or direct educational services to schools, agencies, organizations, families, or individuals related to learning problems and adjustments to those problems.

(d) Development of programs, which includes designing, implementing, or evaluating educationally and psychologically sound learning environments; acting as a catalyst for teacher

involvement in adaptations and innovations; and facilitating the psychoeducational development of individual families or groups.

(6) "Provisional psychologist licensee" means a person provisionally licensed under this chapter to provide psychological services under supervision.

(7) "Psychologist" means a person licensed pursuant to s. 490.005(1), s. 490.006, or the provision identified as s. 490.013(2) in s. 1, chapter 81-235, Laws of Florida.

(8) "School psychologist" means a person licensed pursuant to s. 490.005(2), s. 490.006, or the provision identified as s. 490.013(1) in s. 1, chapter 81-235, Laws of Florida.

History.--ss. 1, 3, ch. 81-235; ss. 1, 3, ch. 83-265; ss. 2, 18, 19, ch. 87-252; s. 36, ch. 88-392; ss. 2, 12, 13, ch. 89-70; s. 10, ch. 90-192; s. 4, ch. 91-429; s. 190, ch. 94-218; s. 3, ch. 95-279; s. 2, ch. 97-198; s. 194, ch. 97-264.

490.004 Board of Psychology.--

(1) There is created within the department the Board of Psychology, composed of seven members appointed by the Governor and confirmed by the Senate.

(2) Five members of the board must be psychologists licensed pursuant to this chapter in good standing in this state. The remaining two members must be citizens of the state who are not and have never been licensed psychologists and who are in no way connected with the practice of psychology. At least one member of the board must be 60 years of age or older.

(3) Members shall be appointed for terms of 4 years and shall serve until their successors are appointed.

(4) The board shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter.

(5) All applicable provisions of chapter 456 relating to activities of regulatory boards shall apply to the board.

(6) The board shall maintain its official headquarters in the City of Tallahassee.

History.--ss. 1, 3, ch. 81-235; ss. 1, 3, ch. 83-265; s. 25, ch. 87-172; ss. 3, 18, 19, ch. 87-252; s. 36, ch. 88-392; ss. 12, 13, ch. 89-70; s. 10, ch. 90-192; s. 4, ch. 91-429; s. 191, ch. 94-218; s. 4, ch. 95-279; s. 148, ch. 98-166; s. 162, ch. 98-200; s. 207, ch. 2000-160.

490.005 Licensure by examination.--

(1) Any person desiring to be licensed as a psychologist shall apply to the department to take the licensure examination. The department shall license each applicant who the board certifies has:

(a) Completed the application form and remitted a nonrefundable application fee not to exceed \$500 and an examination fee set by the board sufficient to cover the actual per applicant cost to

the department for development, purchase, and administration of the examination, but not to exceed \$500.

(b) Submitted proof satisfactory to the board that the applicant has:

1. Received doctoral-level psychological education, as defined in s. 490.003(3);
2. Received the equivalent of a doctoral-level psychological education, as defined in s. 490.003(3), from a program at a school or university located outside the United States of America and Canada, which was officially recognized by the government of the country in which it is located as an institution or program to train students to practice professional psychology. The burden of establishing that the requirements of this provision have been met shall be upon the applicant;
3. Received and submitted to the board, prior to July 1, 1999, certification of an augmented doctoral-level psychological education from the program director of a doctoral-level psychology program accredited by a programmatic agency recognized and approved by the United States Department of Education; or
4. Received and submitted to the board, prior to August 31, 2001, certification of a doctoral-level program that at the time the applicant was enrolled and graduated maintained a standard of education and training comparable to the standard of training of programs accredited by a programmatic agency recognized and approved by the United States Department of Education. Such certification of comparability shall be provided by the program director of a doctoral-level psychology program accredited by a programmatic agency recognized and approved by the United States Department of Education.

(c) Had at least 2 years or 4,000 hours of experience in the field of psychology in association with or under the supervision of a licensed psychologist meeting the academic and experience requirements of this chapter or the equivalent as determined by the board. The experience requirement may be met by work performed on or off the premises of the supervising psychologist if the off-premises work is not the independent, private practice rendering of psychological services that does not have a psychologist as a member of the group actually rendering psychological services on the premises.

(d) Passed the examination. However, an applicant who has obtained a passing score, as established by the board by rule, on the psychology licensure examination designated by the board as the national licensure examination need only pass the Florida law and rules portion of the examination.

(2) Any person desiring to be licensed as a school psychologist shall apply to the department to take the licensure examination. The department shall license each applicant who the department certifies has:

(a) Satisfactorily completed the application form and submitted a nonrefundable application fee not to exceed \$250 and an examination fee sufficient to cover the per applicant cost to the

department for development, purchase, and administration of the examination, but not to exceed \$250 as set by department rule.

(b) Submitted satisfactory proof to the department that the applicant:

1. Has received a doctorate, specialist, or equivalent degree from a program primarily psychological in nature and has completed 60 semester hours or 90 quarter hours of graduate study, in areas related to school psychology as defined by rule of the department, from a college or university which at the time the applicant was enrolled and graduated was accredited by an accrediting agency recognized and approved by the Commission on Recognition of Postsecondary Accreditation or an institution which is publicly recognized as a member in good standing with the Association of Universities and Colleges of Canada.

2. Has had a minimum of 3 years of experience in school psychology, 2 years of which must be supervised by an individual who is a licensed school psychologist or who has otherwise qualified as a school psychologist supervisor, by education and experience, as set forth by rule of the department. A doctoral internship may be applied toward the supervision requirement.

3. Has passed an examination provided by the department.

(3)(a) The board shall close the application file of any applicant who fails to pass the psychology licensure examination and the Florida law and rules portion of the examination or who fails to submit evidence of completion of the postdoctoral, supervised experience within a timeframe no longer than 24 months.

(b) The board shall implement a procedure by which an applicant may apply for an extension beyond the required timeframe.

(c) An individual who completes the required postdoctoral training residency may continue to practice under supervision if she or he does so in a manner prescribed by the board by rule, has a current application on file, and no final order of denial has been issued.

History.--ss. 1, 3, ch. 81-235; ss. 1, 3, ch. 83-265; s. 91, ch. 83-329; ss. 4, 18, 19, ch. 87-252; s. 36, ch. 88-205; s. 36, ch. 88-392; ss. 3, 12, 13, ch. 89-70; s. 10, ch. 90-192; s. 4, ch. 91-429; s. 109, ch. 92-149; s. 30, ch. 94-310; s. 5, ch. 95-279; s. 3, ch. 97-198; s. 195, ch. 97-264; s. 302, ch. 98-166; s. 162, ch. 99-397; s. 1, ch. 2008-125.

490.0051 Provisional licensure; requirements.--

(1) The department shall issue a provisional psychology license to each applicant who the board certifies has:

(a) Completed the application form and remitted a nonrefundable application fee not to exceed \$250, as set by board rule.

(b) Earned a doctoral degree in psychology as defined in s. 490.003(3).

(c) Met any additional requirements established by board rule.

(2) A provisional licensee must work under the supervision of a licensed psychologist until the provisional licensee is in receipt of a license or a letter from the department stating that he or she is licensed as a psychologist.

(3) A provisional license expires 24 months after the date it is issued and may not be renewed or reissued.

History.--s. 4, ch. 97-198; s. 196, ch. 97-264.

490.006 Licensure by endorsement.--

(1) The department shall license a person as a psychologist or school psychologist who, upon applying to the department and remitting the appropriate fee, demonstrates to the department or, in the case of psychologists, to the board that the applicant:

(a) Holds a valid license or certificate in another state to practice psychology or school psychology, as applicable, provided that, when the applicant secured such license or certificate, the requirements were substantially equivalent to or more stringent than those set forth in this chapter at that time; and, if no Florida law existed at that time, then the requirements in the other state must have been substantially equivalent to or more stringent than those set forth in this chapter at the present time;

(b) Is a diplomate in good standing with the American Board of Professional Psychology, Inc.;
or

(c) Possesses a doctoral degree in psychology as described in s. 490.003 and has at least 20 years of experience as a licensed psychologist in any jurisdiction or territory of the United States within 25 years preceding the date of application.

(2) In addition to meeting the requirements for licensure set forth in subsection (1), an applicant must pass that portion of the psychology or school psychology licensure examinations pertaining to the laws and rules related to the practice of psychology or school psychology in this state before the department may issue a license to the applicant.

(3) The department shall not issue a license by endorsement to any applicant who is under investigation in this or another jurisdiction for an act which would constitute a violation of this chapter until such time as the investigation is complete, at which time the provisions of s. 490.009 shall apply.

History.--ss. 1, 3, ch. 81-235; ss. 1, 3, ch. 83-265; ss. 5, 18, 19, ch. 87-252; s. 36, ch. 88-392; ss. 4, 12, 13, ch. 89-70; s. 10, ch. 90-192; s. 4, ch. 91-429; s. 6, ch. 95-279; s. 163, ch. 99-397.

490.007 Renewal of license.--

(1) The department or, in the case of psychologists, the board shall prescribe by rule a method for the biennial renewal of a license at a fee set by rule, not to exceed \$500.

(2) Each applicant for renewal shall present satisfactory evidence that, in the period since the license was issued, the applicant has completed continuing education requirements set by rule of the department or, in the case of psychologists, by rule of the board. Not more than 25 hours of continuing education per year shall be required.

History.--ss. 1, 3, ch. 81-235; s. 102, ch. 83-218; ss. 1, 3, ch. 83-265; s. 116, ch. 83-329; ss. 6, 18, 19, ch. 87-252; s. 36, ch. 88-392; ss. 12, 13, ch. 89-70; s. 10, ch. 90-192; s. 4, ch. 91-429; s. 110, ch. 92-149; s. 286, ch. 94-119.

490.0085 Continuing education; approval of providers, programs, and courses; proof of completion.--

(1) Continuing education providers, programs, and courses shall be approved by the department or, in the case of psychologists, the board.

(2) The department or, in the case of psychologists, the board has the authority to set a fee not to exceed \$500 for each applicant who applies for or renews provider status. Such fees shall be deposited into the Medical Quality Assurance Trust Fund.

(3) Proof of completion of the required number of hours of continuing education shall be submitted to the department in the manner and time specified by rule and on forms provided by the department.

(4) The department or, in the case of psychologists, the board shall adopt rules and guidelines to administer and enforce the provisions of this section.

History.--ss. 1, 2, ch. 84-168; ss. 18, 19, ch. 87-252; s. 36, ch. 88-392; ss. 12, 13, ch. 89-70; s. 10, ch. 90-192; s. 4, ch. 91-429; s. 111, ch. 92-149; s. 7, ch. 95-279; s. 164, ch. 99-397.

490.009 Discipline.--

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(a) Attempting to obtain, obtaining, or renewing a license under this chapter by bribery or fraudulent misrepresentation or through an error of the board or department.

(b) Having a license to practice a comparable profession revoked, suspended, or otherwise acted against, including the denial of certification or licensure by another state, territory, or country.

(c) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of his or her profession or the ability to practice his or her profession. A plea of nolo contendere creates a rebuttable presumption of guilt of the underlying criminal charges. However, the board shall allow the person who is the subject of the disciplinary proceeding to present any evidence relevant to the underlying charges and circumstances surrounding the plea.

- (d) False, deceptive, or misleading advertising or obtaining a fee or other thing of value on the representation that beneficial results from any treatment will be guaranteed.
- (e) Advertising, practicing, or attempting to practice under a name other than one's own.
- (f) Maintaining a professional association with any person who the applicant or licensee knows, or has reason to believe, is in violation of this chapter or of a rule of the department or, in the case of psychologists, of the department or the board.
- (g) Knowingly aiding, assisting, procuring, or advising any nonlicensed person to hold himself or herself out as licensed under this chapter.
- (h) Failing to perform any statutory or legal obligation placed upon a person licensed under this chapter.
- (i) Willfully making or filing a false report or record; failing to file a report or record required by state or federal law; willfully impeding or obstructing the filing of a report or record; or inducing another person to make or file a false report or record or to impede or obstruct the filing of a report or record. Such report or record includes only a report or record which requires the signature of a person licensed under this chapter.
- (j) Paying a kickback, rebate, bonus, or other remuneration for receiving a patient or client, or receiving a kickback, rebate, bonus, or other remuneration for referring a patient or client to another provider of mental health care services or to a provider of health care services or goods; referring a patient or client to oneself for services on a fee-paid basis when those services are already being paid for by some other public or private entity; or entering into a reciprocal referral agreement.
- (k) Committing any act upon a patient or client which would constitute sexual battery or which would constitute sexual misconduct as defined in s. 490.0111.
- (l) Making misleading, deceptive, untrue, or fraudulent representations in the practice of any profession licensed under this chapter.
- (m) Soliciting patients or clients personally, or through an agent, through the use of fraud, intimidation, undue influence, or a form of overreaching or vexatious conduct.
- (n) Failing to make available to a patient or client, upon written request, copies of test results, reports, or documents in the possession or under the control of the licensee which have been prepared for and paid for by the patient or client.
- (o) Failing to respond within 30 days to a written communication from the department concerning any investigation by the department or to make available any relevant records with respect to any investigation about the licensee's conduct or background.

(p) Being unable to practice the profession for which he or she is licensed under this chapter with reasonable skill or competence as a result of any mental or physical condition or by reason of illness; drunkenness; or excessive use of drugs, narcotics, chemicals, or any other substance. In enforcing this paragraph, upon a finding by the State Surgeon General, the State Surgeon General's designee, or the board that probable cause exists to believe that the licensee is unable to practice the profession because of the reasons stated in this paragraph, the department shall have the authority to compel a licensee to submit to a mental or physical examination by psychologists or physicians designated by the department or board. If the licensee refuses to comply with the department's order, the department may file a petition for enforcement in the circuit court of the circuit in which the licensee resides or does business. The licensee shall not be named or identified by initials in the petition or in any other public court records or documents, and the enforcement proceedings shall be closed to the public. The department shall be entitled to the summary procedure provided in s. 51.011. A licensee affected under this paragraph shall be afforded an opportunity at reasonable intervals to demonstrate that he or she can resume the competent practice for which he or she is licensed with reasonable skill and safety to patients.

(q) Performing any treatment or prescribing any therapy which, by the prevailing standards of the mental health professions in the community, would constitute experimentation on human subjects, without first obtaining full, informed, and written consent.

(r) Failing to meet the minimum standards of performance in professional activities when measured against generally prevailing peer performance, including the undertaking of activities for which the licensee is not qualified by training or experience.

(s) Delegating professional responsibilities to a person whom the licensee knows or has reason to know is not qualified by training or experience to perform such responsibilities.

(t) Violating a rule relating to the regulation of the profession or a lawful order of the department previously entered in a disciplinary hearing.

(u) Failing to maintain in confidence a communication made by a patient or client in the context of such services, except as provided in s. 490.0147.

(v) Making public statements which are derived from test data, client contacts, or behavioral research and which identify or damage research subjects or clients.

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

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

History.--ss. 1, 3, ch. 81-235; s. 35, ch. 83-215; ss. 1, 3, ch. 83-265; s. 9, ch. 84-203; ss. 8, 18, 19, ch. 87-252; s. 36, ch. 88-392; ss. 6, 12, 13, ch. 89-70; s. 10, ch. 90-192; s. 4, ch. 91-429; s. 112, ch. 92-149; s. 8, ch. 95-279; s. 228, ch.

96-410; s. 1135, ch. 97-103; s. 6, ch. 97-198; s. 198, ch. 97-264; s. 150, ch. 98-166; s. 209, ch. 2000-160; s. 52, ch. 2001-277; s. 27, ch. 2005-240; s. 102, ch. 2008-6.

490.0111 Sexual misconduct.--Sexual misconduct by any person licensed under this chapter, in the practice of her or his profession, is prohibited. Sexual misconduct shall be defined by rule.

History.--ss. 1, 3, ch. 81-235; ss. 1, 3, ch. 83-265; ss. 9, 18, 19, ch. 87-252; s. 36, ch. 88-392; ss. 12, 13, ch. 89-70; s. 10, ch. 90-192; s. 4, ch. 91-429; s. 502, ch. 97-103.

490.012 Violations; penalties; injunction.--

(1)(a) No person shall hold herself or himself out by any professional title, name, or description incorporating the word "psychologist" unless such person holds a valid, active license as a psychologist under this chapter.

(b) No person shall hold herself or himself out by any professional title, name, or description incorporating the words "school psychologist" unless such person holds a valid, active license as a school psychologist under this chapter or is certified as a school psychologist by the Department of Education.

(c) No person shall hold herself or himself out by any title or description incorporating the words, or permutations of them, "psychology," "psychological," or "psychodiagnostic," or describe any test or report as psychological, unless such person holds a valid, active license under this chapter or is exempt from the provisions of this chapter.

(d) No person shall hold herself or himself out by any title or description incorporating the word, or a permutation of the word, "psychotherapy" unless such person holds a valid, active license under chapter 458, chapter 459, chapter 490, or chapter 491, or such person is certified as an advanced registered nurse practitioner, pursuant to s. 464.012, who has been determined by the Board of Nursing as a specialist in psychiatric mental health.

(e) No person licensed or provisionally licensed pursuant to this chapter shall hold herself or himself out by any title or description which indicates licensure other than that which has been granted to her or him.

(2)(a) A licensed psychologist shall conspicuously display the valid, active license issued by the department or a true copy thereof at each location at which the licensee practices his or her profession.

(b) A licensed psychologist shall include the words "licensed psychologist" on all professional advertisements, including, but not limited to, advertisements in any newspaper, magazine, other print medium, airwave or broadcast transmission, or phone directory listing purchased by or on behalf of a person licensed according to this chapter.

(3)(a) A person provisionally licensed under this chapter as a provisional psychologist licensee shall conspicuously display the valid provisional license issued by the department or a true copy thereof at each location at which the provisional licensee is providing services.

(b) A provisional psychologist licensee shall include the words "provisional psychologist licensee" on all promotional materials, including cards, brochures, stationery, advertisements, and signs, naming the provisional licensee.

(4) Any person who violates any provision of this section, except for subsections (2) and (3), commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any person who violates any provision of subsection (2) or subsection (3) is subject to disciplinary action under s. 490.009.

(5) The department may institute appropriate proceedings to enjoin violation of subsection (1).

(6) No person shall practice psychology in this state, as such practice is defined in s. 490.003(4), for compensation, unless such person holds an active, valid license to practice psychology issued pursuant to this chapter. Nothing in this subsection shall be construed to limit the practice of school psychology, as such practice is defined in s. 490.003(5).

(7) No person shall practice school psychology in this state, as such practice is defined in s. 490.003(5), for compensation, unless such person holds an active, valid license to practice school psychology issued pursuant to this chapter.

(8) Effective October 1, 2000, a person may not practice juvenile sexual offender therapy in this state, as the practice is defined in s. 490.0145, for compensation, unless the person holds an active license issued under this chapter and meets the requirements to practice juvenile sexual offender therapy. An unlicensed person may be employed by a program operated by or under contract with the Department of Juvenile Justice or the Department of Children and Family Services if the program employs a professional who is licensed under chapter 458, chapter 459, s. 490.0145, or s. 491.0144 who manages or supervises the treatment services.

History.--ss. 1, 3, ch. 81-235; ss. 1, 3, ch. 83-265; ss. 10, 18, 19, ch. 87-252; s. 36, ch. 88-392; ss. 8, 12, 13, ch. 89-70; s. 10, ch. 90-192; s. 3, ch. 90-263; s. 4, ch. 91-429; s. 113, ch. 92-149; s. 503, ch. 97-103; s. 7, ch. 97-198; s. 199, ch. 97-264; s. 2, ch. 98-158; s. 125, ch. 2001-277.

490.0121 Licensed school psychologists; private sector services.--It shall not be a violation of s. 112.313(7) for a licensed school psychologist employed by a school district to provide private sector services to students within that district if:

(1) The parent, guardian, or adult client is informed in writing prior to provision of services of their eligibility for such free services from the school district.

(2) The client is not a student of the schools to which the school psychologist is currently assigned.

(3) The parent, guardian, or adult client is informed that, as a dual practitioner, the school psychologist may not function as an independent evaluator.

(4) The school psychologist does not promise 24-hour service or on-call services and does not engage in private practice during hours of contracted employment.

(5) The school psychologist does not use his or her position within a school district to offer private services or to promote a private practice.

(6) The school psychologist does not utilize tests, materials, or services belonging to the school district.

History.--s. 116, ch. 92-149; s. 504, ch. 97-103.

490.014 Exemptions.--

(1)(a) No provision of this chapter shall be construed to limit the practice of physicians licensed pursuant to chapter 458 or chapter 459 so long as they do not hold themselves out to the public as psychologists or use a professional title protected by this chapter.

(b) No provision of this chapter shall be construed to limit the practice of nursing, clinical social work, marriage and family therapy, mental health counseling, or other recognized businesses or professions, or to prevent qualified members of other professions from doing work of a nature consistent with their training, so long as they do not hold themselves out to the public as psychologists or use a title or description protected by this chapter. Nothing in this subsection shall be construed to exempt any person from the provisions of s. 490.012.

(2) No person shall be required to be licensed or provisionally licensed under this chapter who:

(a) Is a salaried employee of a government agency; a developmental disability facility or program; a mental health, alcohol, or drug abuse facility operating under chapter 393, chapter 394, or chapter 397; the statewide child care resource and referral network operating under s. 411.0101; a child-placing or child-caring agency licensed pursuant to chapter 409; a domestic violence center certified pursuant to chapter 39; an accredited academic institution; or a research institution, if such employee is performing duties for which he or she was trained and hired solely within the confines of such agency, facility, or institution, so long as the employee is not held out to the public as a psychologist pursuant to s. 490.012(1)(a).

(b) Is a salaried employee of a private, nonprofit organization providing counseling services to children, youth, and families, if such services are provided for no charge, if such employee is performing duties for which he or she was trained and hired, so long as the employee is not held out to the public as a psychologist pursuant to s. 490.012(1)(a).

(c) Is a student who is pursuing a course of study which leads to a degree in medicine or a profession regulated by this chapter who is providing services in a training setting, provided such activities or services constitute part of a supervised course of study, or is a graduate accumulating the experience required for any licensure under this chapter, provided such graduate or student is designated by a title such as "intern" or "trainee" which clearly indicates the in-training status of the student.

(d) Is certified in school psychology by the Department of Education and is performing psychological services as an employee of a public or private educational institution. Such

exemption shall not be construed to authorize any unlicensed practice which is not performed as a direct employee of an educational institution.

(e) Is not a resident of the state but offers services in this state, provided:

1. Such services are performed for no more than 5 days in any month and no more than 15 days in any calendar year; and

2. Such nonresident is licensed or certified by a state or territory of the United States, or by a foreign country or province, the standards of which were, at the date of his or her licensure or certification, equivalent to or higher than the requirements of this chapter in the opinion of the department or, in the case of psychologists, in the opinion of the board.

(f) Is a rabbi, priest, minister, or member of the clergy of any religious denomination or sect when engaging in activities which are within the scope of the performance of his or her regular or specialized ministerial duties and for which no separate charge is made, or when such activities are performed, with or without charge, for or under the auspices or sponsorship, individually or in conjunction with others, of an established and legally cognizable church, denomination, or sect, and when the person rendering service remains accountable to the established authority thereof.

(3) No provision of this chapter shall be construed to limit the practice of any individual who solely engages in behavior analysis so long as he or she does not hold himself or herself out to the public as possessing a license issued pursuant to this chapter or use a title or description protected by this chapter.

(4) Nothing in this section shall exempt any person from the provisions of s. 490.012(1)(a)-(b).

(5) Except as stipulated by the board, the exemptions contained in this section do not apply to any person licensed under this chapter whose license has been suspended or revoked by the board or another jurisdiction.

History.--ss. 1, 3, ch. 81-235; s. 36, ch. 82-179; s. 40, ch. 83-216; ss. 1, 3, ch. 83-265; s. 92, ch. 83-329; ss. 11, 18, 19, ch. 87-252; s. 36, ch. 88-392; ss. 9, 12, 13, ch. 89-70; s. 10, ch. 90-192; s. 4, ch. 90-263; s. 4, ch. 91-429; s. 114, ch. 92-149; s. 33, ch. 93-39; s. 9, ch. 95-279; s. 505, ch. 97-103; s. 8, ch. 97-198; s. 200, ch. 97-264; s. 156, ch. 98-403; s. 126, ch. 2001-277; s. 62, ch. 2006-227; s. 24, ch. 2010-210.

490.0141 Practice of hypnosis.--A licensed psychologist who is qualified as determined by the board may practice hypnosis as defined in s. 485.003(1). The provisions of this chapter may not be interpreted to limit or affect the right of any person qualified pursuant to chapter 485 to practice hypnosis pursuant to that chapter or to practice hypnosis for nontherapeutic purposes, so long as such person does not hold herself or himself out to the public as possessing a license issued pursuant to this chapter or use a title protected by this chapter.

History.--ss. 2, 3, ch. 84-168; ss. 18, 19, ch. 87-252; s. 36, ch. 88-392; ss. 12, 13, ch. 89-70; s. 10, ch. 90-192; s. 4, ch. 91-429; ss. 115, 127, ch. 92-149; s. 2, ch. 95-279; s. 506, ch. 97-103; s. 210, ch. 2000-160.

490.0143 Practice of sex therapy.--Only a person licensed by this chapter who meets the qualifications set by the board may hold himself or herself out as a sex therapist. The board shall define these qualifications by rule. In establishing these qualifications, the board may refer to the sexual disorder and sexual dysfunction sections of the most current edition of the Diagnostic and Statistical Manual of the American Psychiatric Association or other relevant publications.

History.--ss. 12, 19, ch. 87-252; s. 36, ch. 88-392; ss. 12, 13, ch. 89-70; s. 10, ch. 90-192; s. 4, ch. 91-429; s. 507, ch. 97-103.

490.0145 The practice of juvenile sexual offender therapy.--Only a person licensed by this chapter who meets the qualifications set by the board may hold himself or herself out as a juvenile sexual offender therapist, except as provided in s. 491.0144. These qualifications shall be determined by the board. The board shall require training and coursework in the specific areas of juvenile sexual offender behaviors, treatments, and related issues. In establishing these qualifications, the board may refer to the sexual disorder and dysfunction sections of the most current edition of the Diagnostic and Statistical Manual of the American Psychiatric Association, Association for the Treatment of Sexual Abusers Practitioner's Handbook, or other relevant publications.

History.--s. 3, ch. 98-158.

490.0147 Confidentiality and privileged communications.--Any communication between any person licensed under this chapter and her or his patient or client shall be confidential. This privilege may be waived under the following conditions:

- (1) When the person licensed under this chapter is a party defendant to a civil, criminal, or disciplinary action arising from a complaint filed by the patient or client, in which case the waiver shall be limited to that action.
- (2) When the patient or client agrees to the waiver, in writing, or when more than one person in a family is receiving therapy, when each family member agrees to the waiver, in writing.
- (3) When there is a clear and immediate probability of physical harm to the patient or client, to other individuals, or to society and the person licensed under this chapter communicates the information only to the potential victim, appropriate family member, or law enforcement or other appropriate authorities.

History.--ss. 13, 19, ch. 87-252; s. 36, ch. 88-392; ss. 12, 13, ch. 89-70; s. 10, ch. 90-192; s. 4, ch. 91-429; s. 508, ch. 97-103.

490.0148 Psychologist and school psychologist records.--Each psychologist and school psychologist who provides services as defined in this chapter shall maintain records. The board or, in the case of a school psychologist, the department may adopt rules defining the minimum requirements for such records, including content, length of time such records shall be maintained, and transfer of such records or of a summary of such records, or both, to a subsequent treating practitioner or other individual with the written consent of the client or clients.

History.--s. 117, ch. 92-149.

490.0149 Specialties.--

(1) As used in this section, the term "certified psychology specialist," "board-certified psychology specialist," or "psychology diplomate" means a psychologist with recognized special competency acquired through an organized sequence of formal education, training, experience, and professional standing that is recognized by a certifying body approved by the board pursuant to criteria adopted under subsection (3).

(2) A person licensed as a psychologist may not hold himself or herself out as a certified psychology specialist, board-certified psychology specialist, or psychology diplomate unless the person has received formal recognition from an approved certifying body.

(3) The board shall adopt rules to establish criteria for approval of certifying bodies that provide certification for specialties in psychology as provided in subsection (1). The criteria shall include that a certifying body:

(a) Be national in scope, incorporate standards of the profession, and collaborate closely with organizations related to specialization in psychology.

(b) Have clearly described purposes, bylaws, policies, and procedures.

(c) Have established standards for specialized practice of psychology.

(d) Provide assessments that include the development and implementation of an examination designed to measure the competencies required to provide services that are characteristic of the specialty area.

(4) A person licensed as a psychologist under this chapter may indicate the services he or she offers and may indicate that his or her practice is limited to one or more types of services when this accurately reflects his or her scope of practice.

History.--s. 1, ch. 2006-209.

490.015 Duties of the department.--

(1) All functions reserved to boards under chapter 456 shall be exercised by the department with respect to the regulation of school psychologists and in a manner consistent with the exercise of its regulatory functions.

(2) The department shall adopt rules to implement the provisions of this chapter.

History.--ss. 1, 3, ch. 81-235; ss. 1, 3, ch. 83-265; ss. 14, 18, 19, ch. 87-252; s. 36, ch. 88-392; ss. 12, 13, ch. 89-70; s. 10, ch. 90-192; s. 4, ch. 91-429; s. 151, ch. 98-166; s. 211, ch. 2000-160.

PART B:

Chapter 64B19, Florida Administrative Code, Psychology

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CHAPTER 64B19-10 GENERAL ORGANIZATION AND PROCEDURES; DELEGATION OF FUNCTIONS

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64B19-10.006 Meetings and Compensation.

For the purposes of Board member compensation pursuant to subsection 456.011(4), F.S., "other business involving the Board" is defined to include:

- (1) Board meetings;
- (2) Meetings of committees of the Board;
- (3) Attendance at any meeting of a Board member with Department staff or contractors of the Department at the Department or the Board's request;
- (4) Meetings attended by a Board member at the request of the Department or the Board;
- (5) Probable cause panel meetings;
- (6) Meetings of the Association of State and Provincial Psychology Boards or other state, regional or national organizations attended by a Board member at the request of the Department or the Board dealing with issues pertaining to state licensure or discipline of psychologists;
- (7) Legislative or legislative committee meetings.

Specific Authority 456.011(4), 490.004(4) FS. Law Implemented 456.011(3), (4) FS. History—New 1-17-82, Formerly 21U-10.06, Amended 7-18-88, Formerly 21U-10.006, Amended 6-14-94, Formerly 61F13-10.006, Amended 1-7-96, 6-26-97, Formerly 59AA-10.006.

64B19-10.014 Attendance at Board Meetings.

(1) Board members shall attend all regularly scheduled Board meetings unless prevented from doing so by reason of court order, subpoena, business with a court which has the sole prerogative of setting the date of such business, death of a family member, illness of the Board member, or hospitalization of the member's immediate family.

(2) No Board member may be absent from three consecutive regularly scheduled Board meetings unless the absence is excused for one of the reasons stated in subsection (1) of this rule. An absence for any reason other than the reasons stated in section (1) constitutes an unexcused absence for the purpose of declaring a vacancy on the Board. An otherwise excused absence is not excused if the Board member fails to notify the Board office of the impending absence prior to the regularly scheduled Board meeting at which the absence will occur or unless the failure to notify the Board office is the result of circumstance surrounding the reason for the absence which the Board itself excuses after the absence has occurred.

(3) "Family" consists of immediate family, nieces, nephews, cousins, and in-laws.

(4) "Immediate family" consists of spouse, child, parents, parents-in-law, siblings, grandchildren, and grandparents.

Specific Authority 456.011(3), (4), 490.004(4) FS. Law Implemented 456.011 FS. History--New 10-28-92, Formerly 21U-10.014, 61F13-10.014, 59AA-10.014.

CHAPTER 64B19-11 APPLICATIONS, EXAMINATIONS, CRITERIA FOR LICENSURE

64B19-11.001	Examination
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64B19-11.010	Limited Licensure
64B19-11.011	Provisional License; Supervision of Provisional Licensees
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64B19-11.001 Examination.

(1)(a) The first part of the examination shall be the Examination for Professional Practice in Psychology (EPPP) developed by the Association of State and Provincial Psychology Boards.

(b) The minimum passing score on EPPP is the cut-off score provided by the national examination provider established according to a standard setting and statistical equating methods. Statistical equating is used to adjust for the level of difficulty of the different examination administrations. After the statistical equating, candidates' raw scores are converted to a scaled score with a maximum possible score of 800. The minimum passing score shall be a scaled score of 500.

(c) The minimum passing score on EPPP shall be 70% correct of the items scored on the examination prior to the October 2000 examination. The minimum passing score on EPPP for the October 2000 examination and thereafter shall be the ASPPB recommended cut-off score.

(2)(a) The second part of the licensure examination is an examination consisting of forty (40) objective questions which test knowledge of Florida Statutes and rules relevant to the practice of psychology in this State. The content of the examination is as follows:

SUBJECT	NO. OF QUESTIONS
1. Chapter 490, F.S. (Psychological Services Act)	9
2. Section 90.503, F.S. (Psychotherapist-patient privilege)	1
3. Chapter 394, Part I, F.S. (Florida Mental Health Act)	7
4. Chapter 415, F.S. (Protection From Abuse, Neglect, and Exploitation)	1
5. Chapter 64B19, F.A.C. (Board of Psychology)	12
6. Chapter 456, F.S. (Health Professions and Occupations: General Provisions)	8
7. Chapter 39, F.S. (Proceeding Relating to Children)	2

(b) A raw score of thirty-two (32) correct answers (80%) is necessary to pass the second part of the licensure examination.

(3) The Board will certify as exempt from the EPPP those applicants who have taken the Association

of State and Provincial Psychology Boards' examination in another state and obtained a score equal to or greater than the score required in paragraph (1)(b) or (c).

(4)(a) A candidate for licensure by examination who fails to pass one part of the examination shall only be required to retake and pass that part of the examination which was failed. The application for re-examination of the Florida laws and rules examination shall be made on the Re-Examination Application/Laws and Rules Exam form DH-MQA 1221 (revised 10/09), hereby adopted and incorporated by reference. The application for re-examination of the EPPP shall be made on the Re-Examination Application/National Exam form DH-MQA 1222 (revised 10/09), hereby adopted and incorporated by reference. Upon notice from the Department's Testing Services Unit of an applicant's unsuccessful scores(s), the Board Office will send the appropriate re-examination form(s) to the affected applicant.

(b) A passing score on the Florida laws and rules examination shall cease to be valid eighteen (18) months after the Board's letter to the applicant advising that the applicant has passed the Florida laws and rules examination.

Rulemaking Authority 456.017(1)(b), (c), 490.004(4) FS. Law Implemented 456.017(1)(b), (c), (d), (6), 490.005 FS. History—New 4-4-82, Amended 7-11-84, Formerly 21U-11.03, Amended 2-19-86, 12-30-86, 3-10-87, 11-21-88, 3-5-90, 1-16-92, Formerly 21U-11.003, Amended 6-14-94, Formerly 61F13-11.003, Amended 1-7-96, 6-26-97, Formerly 59AA-11.001, Amended 2-21-99, 5-1-00, 1-10-01, 8-5-01, 4-26-04, 5-10-05, 2-24-10.

64B19-11.0035 Licensure by Examination: Proof Satisfactory to the Board for the Purpose of Determining Eligibility for Examination.

(1) The following proof is satisfactory to the Board for the purpose of showing that the applicant has received a Ph.D. in Psychology, a Psy.D., or an Ed.D. in Psychology from an institution of higher learning recognized and approved by the U.S. States Department of Education or recognized as a member in good standing with the Association of Universities and Colleges of Canada: a true copy of the applicant's transcript confirming same and sent directly to the Board from an institution of higher learning accredited by a regional accrediting agency recognized and approved by the U.S. Department of Education or the Association of Universities and Colleges of Canada.

(2) The following proof is satisfactory to the Board for the purpose of showing that the applicant's degree obtained in the United States or Canada was obtained from a psychology program accredited by a programmatic accrediting agency recognized and approved by the U.S. Department of Education: a true copy of the applicant's transcript confirming same from a doctoral psychology program accredited by an accrediting agency recognized and approved by the United States Department of Education.

(3) The following proof is satisfactory to the Board for the purpose of showing that the applicant's degree obtained outside of the United States or Canada was equivalent to a Ph.D. in psychology, a Psy.D., or an Ed.D. in psychology and was obtained from a program equivalent to a program accredited by a programmatic accrediting agency recognized and approved by the U.S. Department of Education: an original, signed letter on official letterhead confirming same and sent directly to the Board from the director of a doctoral psychology program accredited by the accrediting agency recognized and approved by the United States Department of Education. The letter shall enumerate the exact documents that were reviewed in determining comparability or augmentation. The Board shall also require the validation of degree and internship equivalence performed by a credentials' evaluation service acceptable to the Board.

Rulemaking Authority 490.004(4), 490.005(1)(b) FS. Law Implemented 490.003(3), 490.005(1)(b) FS. History—New 1-7-96, Formerly 59AA-11.0035, Amended 12-4-97, 9-20-98, 11-24-98, 1-25-00, 10-12-11.

64B19-11.004 Licensure by Examination: Additional Educational Requirements for Initial Licensure.

Before licensure, each applicant shall comply with the requirements of Section 456.013(7), F.S., regarding instruction on prevention of medical errors.

Specific Authority 456.013(7), 456.031, 490.004(4) FS. Law Implemented 456.013(7), 456.031 FS. History—New 8-12-90, Amended 11-18-92, 7-14-93, Formerly 21U-11.0063, Amended 6-14-94, Formerly 61F13-11.0063, Amended 1-7-96, Formerly 59AA-11.004, Amended 8-3-97, 3-24-02, 6-26-02, 12-31-06.

64B19-11.005 Supervised Experience Requirements.

The law requires 4,000 hours of supervised experience for licensure. The Board recognizes that the applicant's internship satisfies 2,000 of those hours. This rule concerns the remaining 2,000 hours.

(1) Definitions. Within the context of this rule, the following definitions apply:

(a) "Association" or "in association with": the supervisory relationship between the supervisor and the psychological resident.

(b) "Psychology Resident or Post-Doctoral Fellow." A psychology resident or post-doctoral fellow is a person who has met Florida's educational requirements for licensure and intends from the outset of the supervised experience to meet that part of the supervised experience requirement for licensure which is not part of the person's internship.

(c) "Supervisor." A supervisor is either a licensed Florida psychologist in good standing with the Board, or a doctoral-level psychologist licensed in good standing in another state providing supervision for licensure in that state. However, where the psychology resident or post-doctoral fellow is on active duty with the armed services of the United States, the supervisor may be a doctoral-level psychologist licensed in good standing in any state, regardless of where the supervision is conducted.

(d) All applicants for licensure shall use the title psychology resident or post-doctoral fellow until licensed as a psychologist.

(e) The psychology resident or post-doctoral fellow shall inform all service users of her or his supervised status and provide the name of the supervising psychologist. Consultation reports, and summaries shall be co-signed by the supervising psychologist. Progress notes may be co-signed at the discretion of the supervision psychologist.

(2) Requirements and Prohibitions. All applicants for licensure must complete at least 2,000 hours of post doctoral experience under a supervisor whose supervision comports with subsection (3) of this rule.

(a) There may be no conflict of interest created by the supervisory association and no relationship may exist between the supervisor and the psychological resident except the supervisory association.

(b) A psychology resident or post-doctoral fellow may be supervised by more than one supervisor, at more than one location. If there is more than one supervisor, however, then one of the supervisors must be identified as the primary supervisor. The primary supervisor shall be the supervisor who enters into the agreement with the applicant for licensure, for supervision, and who integrates all of the applicant's supervisory experiences.

(c) The post-doctoral training must be a cohesive and integrated training experience which includes the following criteria:

1. It averages at least twenty (20) hours a week over no more than one hundred and four (104) weeks. Alternatively, it averages no more than forty (40) hours a week over no more than fifty-two (52) weeks;

2. It requires at least 900 hours in activities related to direct client contact;

3. It includes an average of at least two (2) hours of clinical supervision each week, at least one (1) hour of which is individual face-to-face supervision.

(3) Supervisors' Responsibilities. The Board requires each primary supervisor to perform and to certify that the primary supervisor has:

(a) Entered into an agreement with the applicant for licensure, which details the applicant's obligations and remuneration as well as the supervisor's responsibilities to the applicant;

(b) Determined that the psychology resident or post-doctoral fellow was capable of providing competent and safe psychological service to that client;

(c) Maintained professional responsibility for the psychology resident or post-doctoral fellow's work;

(d) Provided two (2) hours of clinical supervision each week, one (1) hour of which was individual,

face-to-face supervision;

(e) Prevailed in all professional disagreements with the psychology resident or post-doctoral fellow;

(f) Kept informed of all the services performed by the psychology resident or post-doctoral fellow;

(g) Advised the Board if the supervisor has received any complaints about the psychology resident or post-doctoral fellow or has any reason to suspect that the resident is less than fully ethical, professional, or qualified for licensure.

(h) When there is more than one supervisor, pursuant to paragraph (2)(b) above, the primary supervisor shall provide the Board with a written statement describing the manner in which the training and supervision comprised a cohesive and integrated experience.

(4) Until licensure, an individual who completes post doctoral training residency may continue to practice under supervision so long as the individual does so in the manner prescribed by this rule and so long as the individual has applied for licensure and no final order of denial has been entered in the application case before the Board.

Rulemaking Authority 490.004(4) FS. Law Implemented 490.005(1) FS. History—New 11-18-92, Amended 7-14-93, Formerly 21U-11.007, Amended 6-14-94, Formerly 61F13-11.007, Amended 1-7-96, Formerly 59AA-11.005, Amended 12-4-97, 8-5-01, 7-27-04, 3-4-10, 8-15-11.

64B19-11.006 Incomplete Applications.

(1) The Board will not review incomplete applications, and applications that remain incomplete for one year following a timely filed notice of deficiency shall expire and be automatically closed by the department.

(2) Applicants whose files are closed and who wish further consideration must submit new applications. Likewise, applicants who delay timely responses to notices of deficiencies may be required to update their applications with the department prior to the Board's consideration.

Specific Authority 490.004(4) FS. Law Implemented 120.60(1), 456.013(1), 490.005(1) FS. History—New 6-23-91, Formerly 21U-11.008, 61F13-11.008, 59AA-11.006, Amended 8-4-08.

64B19-11.0075 Application Closure After 24 Months.

(1) The Board shall close the application file of and issue a final order of denial to any applicant for licensure by examination who fails to pass the Examination for Professional Practice in Psychology and the Florida laws and rules examination or who fails to submit evidence of completion of the postdoctoral, supervised experience within 24 months of the issuance of the Board's letter advising that the applicant has been approved for examination.

(2) The Board may grant an additional twelve (12) months to comply with the requirements of subsection (1) above, of up to 36 months, to any applicant who files a written request for extension and demonstrates that the applicant has made a good faith effort to comply but has failed to comply because of illness or unusual hardship.

Specific Authority 490.004(4), 490.005(3) FS. Law Implemented 490.005(3) FS. History—New 1-26-09.

64B19-11.008 Reapplication by Persons Whose Licenses Have Been Revoked by the Board.

Specific Authority 456.072(5), 490.004(4) FS. Law Implemented 456.072(5), 490.009 FS. History—New 11-18-92, Formerly 21U-11.010, 61F13-11.010, Amended 6-26-97, Formerly 59AA-11.008, Repealed 1-20-09.

64B19-11.009 Denial of Licensure.

(1) When the Board finds that an applicant has committed any of the offenses listed in paragraphs (a)-(b) of this subsection, the Board shall deny the application permanently.

(a) Attempting to obtain a license by bribery or fraudulent misrepresentation; fraudulent misrepresentation being an interpretation of fact.

(b) Having been disciplined by any regulatory body in any jurisdiction for sexual misconduct or for any

action involving the trespass of sexual boundaries;

(2) When the Board finds that an applicant has committed any of the offenses listed in paragraphs (a) or (b) of this subsection, the Board shall either deny the application permanently or deny the licensure for two years to allow the applicant an opportunity for rehabilitation or, if rehabilitation is demonstrated to the satisfaction of the Board, grant licensure and place the applicant on probation under reasonable terms and conditions:

(a) Having been disciplined by any regulatory body in any jurisdiction for any violation of the laws or rules governing licensure in that jurisdiction except for those violations which constitute cause for permanent denial of licensure in Florida.

(b) Having been found guilty, regardless of adjudication, of any crime in any jurisdiction.

(3) The determination of which action the Board will take in the case of an applicant under subsection (2) is controlled by the Board's consideration of the mitigating and aggravating circumstances set forth in subsection 64B19-17.002(2), F.A.C.

(4) A plea of nolo contendere creates a rebuttable presumption of guilt of the underlying criminal charges. The presumption cannot be overcome absent clear and convincing evidence of applicant's innocence of the underlying criminal charges.

Specific Authority 490.004(4) FS. Law Implemented 490.009, 490.0111 FS. History—New 4-26-93, Formerly 21U-11.011, Amended 6-14-94, Formerly 61F13-11.011, 59AA-11.009.

64B19-11.010 Limited Licensure.

(1) Pursuant to Section 456.015, F.S., the Board shall grant a limited license to any applicants who meet the requirements of Section 456.015, F.S., and:

(a) Are retired or will retire from the active practice of psychology within six (6) months of the date of the application,

(b) Pay an application and licensure fee of \$25, unless the applicant submits a notarized statement from the applicant's employer stating that the applicant will not receive monetary compensation for any service involving the practice of psychology, in which case there will be no fee, and

(c) Complete and submit to the Board form DH-MQA 1188, (Revised 9/09), "Application for Psychologist Limited Licensure," which is hereby incorporated by reference, copies of which may be obtained from the Board office or on the Board's website at <http://www.doh.state.fl.us/mqa/psychology>.

(2) Underserved or critical need populations as set forth in Section 456.015, F.S., are defined as people living within a twenty (20) mile radius of any site in the state which has no other psychologist practicing in that twenty (20) mile radius. Underserved populations shall also include indigent people with developmental disabilities, indigent immigrants from other countries, indigent American Indians living on Indian reservations, and indigent adults over the age of fifty-nine (59) years.

Rulemaking Authority 456.015(1), (4), 490.004(4) FS. Law Implemented 456.015 FS. History—New 6-14-94, Formerly 61F13-11.012, Amended 6-26-97, Formerly 59AA-11.010, Amended 3-24-02, 5-24-09, 5-2-10.

64B19-11.011 Provisional License; Supervision of Provisional Licensees.

All applicants applying for provisional licensure shall:

(1) Complete and submit to the Board form DH-MQA 1189, (Revised 9/09), "Application for Provisional Psychology Licensure," which is hereby incorporated by reference, copies of which may be obtained from the Board office or on the Board's website at <http://www.doh.state.fl.us/mqa/psychology>.

(2) Submit a letter signed by a licensed psychologist who is in good standing and not under disciplinary investigation, who agrees to supervise the provisional licensee according to law.

(3) State on the application that the applicant is not under investigation in this or any other state for an offense which would constitute a violation in Florida.

(4) The provisional licensee shall insure that the supervisor notifies the Board immediately and in writing of the termination of the supervision.

(5) In the event that supervision is terminated, the provisional psychologist shall cease practice until a new supervisor is approved by the Board.

(6) Supervisors' Responsibilities. The Board requires the supervisor to perform and to certify that the supervisor has:

(a) Entered into an agreement with the provisional licensee which details the provisional licensee's obligations and remuneration as well as the supervisor's responsibilities to the provisional licensee;

(b) Determined that the provisional licensee was capable of providing competent and safe psychological service to the clients;

(c) Maintained professional responsibility for the provisional licensee's work;

(d) Provided two (2) hours of clinical supervision each week, one (1) hour of which was individual, face-to-face supervision;

(e) Prevailed in all professional disagreements with the provisional licensee;

(f) Kept informed of all professional services performed by the provisional licensee;

(g) Advised the Board if the supervisor has received any complaints about the provisional licensee or has any reason to suspect that the provisional licensee is less than fully ethical, professional, or qualified for licensure.

Rulemaking Authority 456.013, 490.003(6), 490.004(4), 490.0051 FS. Law Implemented 456.013, 490.003(6), 490.004(4), 490.0051, 490.009 FS. History—New 1-27-98, Amended 3-24-02, 9-8-03, 5-24-09, 3-1-10.

64B19-11.012 Application Forms.

(1) All applicants for licensure pursuant to Chapter 490, F.S., shall complete and submit form DH-MQA 1187, (Revised 01/11), "Application for Psychologist Licensure," which is incorporated herein by reference and which may be obtained from <http://www.flrules.org/Gateway/reference.asp?No=Ref-00664>, the Board office, or on the Board's website at <http://www.doh.state.fl.us/mqa/psychology>.

(2) All applicants for licensure pursuant to Chapter 490, F.S., who have ever held a license to practice psychology or a related profession shall complete and submit PY FORM 1.VERIF (rev. 10/01), "Licensure/Certification Verification Form," effective 6-25-02, which is incorporated herein by reference and which may be obtained from the Board office.

(3) An applicant who is a diplomate in good standing with the American Board of Professional Psychology, Inc., and who wishes to apply for licensure by endorsement pursuant to Section 490.006(1)(b), F.S., shall submit as part of his or her application PY FORM 4.abpp (rev. 10/01), "ABPP Diplomate Verification Form," effective 6-25-02, which is incorporated herein by reference and which may be obtained from the Board office.

(4) All applicants for licensure other than those applying for licensure pursuant to Section 490.006, F.S., shall complete and submit Form DH-MQA 1246, "Supervising Psychologist Verification Form," (Revised 01/11), which is incorporated herein by reference and which may be obtained from <http://www.flrules.org/Gateway/reference.asp?No=Ref-00665>, from the Board office, or on the Board's website at <http://www.doh.state.fl.us/mqa/psychology>.

Rulemaking Authority 490.004(4) FS. Law Implemented 490.005, 490.006(1)(b), 490.007(1) FS. History—New 6-25-02, Amended 5-24-09, 3-1-10, 5-23-10, 11-10-11.

CHAPTER 64B19-12 FEES

64B19-12.002	Application and Examination Fee for Licensure by Examination; Review Fee
64B19-12.003	Reexamination Fee
64B19-12.004	Application Fee for Licensure by Endorsement
64B19-12.0041	Initial Fee for Licensure
64B19-12.005	Biennial Active Renewal Fee
64B19-12.006	Reactivation Fee and Change of Status Fee
64B19-12.007	Biennial Inactive Renewal Fee

64B19-12.0085	Delinquency Fee
64B19-12.009	Continuing Education Provider Fees
64B19-12.010	Fee for Duplicate License
64B19-12.011	Fee to Enforce Prohibition Against Unlicensed Activity
64B19-12.012	Fee for Provisional Licensure
64B19-12.013	Retired Status Fee

64B19-12.002 Application and Examination Fee for Licensure by Examination; Review Fee.

- (1) The application fee for licensure by examination is \$375.00.
- (2) When the board certifies the applicant to sit for the examination, it is the applicant's responsibility to complete the examination process with the national vendor.
- (3) In addition to the application fee specified above, each applicant for certification for examination shall submit a laws and rules examination fee of \$150.00.
- (4) An applicant who fails to take the laws and rules examination for which the applicant is initially scheduled shall remit the examination fee required by Rule 64B19-12.003, F.A.C., again before being allowed to sit for the next subsequent examination.
- (5) An applicant who wishes to review the applicant's own Florida laws and rules examination shall remit a fee of \$150.00.

Rulemaking Authority 456.013(2), 490.004(4), 490.005(1)(a) FS. Law Implemented 456.013(2), 456.017, 490.005(1)(a) FS. History—New 2-22-82, Amended 7-2-84, Formerly 21U-12.02, Amended 11-21-88, 8-12-90, 1-16-92, Formerly 21U-12.002, Amended 10-12-93, 6-14-94, Formerly 61F13-12.002, Amended 1-7-96, 6-26-97, Formerly 59AA-12.002, Amended 12-3-98, 6-28-00, 8-8-01, 2-12-04, 10-31-05, 1-28-07, 2-18-10, 5-23-10.

64B19-12.003 Reexamination Fee.

The reexamination fee for only the Florida laws and rules examination is \$150.00. Additional fees will be required by the examination vendor.

Rulemaking Authority 456.017(2), 490.004(4) FS. Law Implemented 456.017(1)(c), (2) FS. History—New 2-22-82, Amended 7-11-84, Formerly 21U-12.03, Amended 7-18-88, 8-12-90, 1-16-92, Formerly 21U-12.003, Amended 10-12-93, Formerly 61F13-12.003, Amended 1-7-96, Formerly 59AA-12.003, Amended 12-3-98, 1-10-01, 8-8-01, 2-12-04, 10-31-05, 4-8-07, 2-18-10.

64B19-12.004 Application Fee for Licensure by Endorsement.

The application fee for a psychology license by endorsement is \$375.00.

Rulemaking Authority 490.004(4) FS. Law Implemented 490.006(1) FS. History—New 2-22-82, Amended 5-12-82, Formerly 21U-12.04, Amended 8-12-90, Formerly 21U-12.004, Amended 6-14-94, Formerly 61F13-12.004, Amended 1-7-96, Formerly 59AA-12.004, Amended 6-28-00, 5-23-10.

64B19-12.0041 Initial Fee for Licensure.

The initial fee for licensure is \$300.00.

Rulemaking Authority 456.013(2), 490.004(4) FS. Law Implemented 456.013(2), 490.005(1)(a), 490.006(1) FS. History—New 7-7-86, Amended 6-1-89, 1-16-92, Formerly 21U-12.0041, Amended 6-14-94, Formerly 61F13-12.0041, Amended 1-7-96, Formerly 59AA-12.0041, Amended 1-25-00, 8-8-01, 4-16-02, 1-2-06, 5-23-10.

64B19-12.005 Biennial Active Renewal Fee.

The fee for renewal of an active license is \$340.00. The fee for renewal of a limited license is \$25.00, unless the applicant submits a notarized statement from the applicant's employer stating that the applicant will not receive monetary compensation for any service involving the practice of psychology, in which case there will be no fee.

Rulemaking Authority 456.015(1), (4), 456.025(1), 490.004(4), 490.007(1) FS. Law Implemented 456.015,

456.025(1), (4), 490.007(1) FS. History—New 2-22-82, Formerly 21U-12.05, Amended 6-1-89, Formerly 21U-12.005, Amended 6-14-94, Formerly 61F13-12.005, Amended 1-7-96, Formerly 59AA-12.005, Amended 12-3-98, 8-8-01, 10-10-11.

64B19-12.006 Reactivation Fee and Change of Status Fee.

The fee for reactivation of an inactive or retired status license is \$50.00. Upon any change of status, including the election of retired status, a \$50.00 change of status fee shall be charged. Such fee(s) shall be in addition to the biennial licensure fee, if any, as prescribed in Rule 64B19-12.005, F.A.C.

Specific Authority 456.036(4) FS. Law Implemented 456.025, 456.036(4), (8) FS. History—New 1-29-84, Formerly 21U-12.06, Amended 1-4-88, 6-1-89, 8-12-90, Formerly 21U-12.006, 61F13-12.006, Amended 1-7-96, 6-26-97, Formerly 59AA-12.006, Amended 1-10-01, 1-2-06.

64B19-12.007 Biennial Inactive Renewal Fee.

The fee for renewal of an inactive license is \$340.00.

Rulemaking Authority 456.036(3) FS. Law Implemented 456.036(3) FS. History—New 1-19-84, Formerly 21U-12.07, Amended 1-4-88, 6-1-89, 8-12-90, Formerly 21U-12.007, 61F13-12.007, Amended 1-7-96, Formerly 59AA-12.007, Amended 8-8-01, 10-10-11.

64B19-12.0075 Biennial Limited License Renewal Fee.

The fee for renewal of an inactive limited license is \$25.00.

Specific Authority 456.036(3) FS. Law Implemented 456.036(3) FS. History—New 10-26-08.

64B19-12.0085 Delinquency Fee.

If an active or inactive license is not renewed on time, the licensee shall pay a delinquency fee of \$400.00. If a limited license is not renewed on time, the licensee shall pay a delinquency fee of \$25.00.

Specific Authority 456.036(7) FS. Law Implemented 456.036(7) FS. History—New 1-7-96, Formerly 59AA-12.0085, Amended 8-8-01, 6-8-08.

64B19-12.009 Continuing Education Provider Fees.

(1) The application fee and the renewal fee for Board approval of a continuing education provider is \$500.00.

(2) The application or renewal fee shall be paid to the Department of Health by May 31 of every even numbered year.

Specific Authority 456.025(5), 490.0085(4) FS. Law Implemented 456.025(5), 490.0085(4) FS. History—New 10-14-87, Amended 6-23-91, 10-28-92, Formerly 21U-12.011, 61F13-12.011, Amended 1-7-96, Formerly 59AA-12.009, Amended 9-20-98, 8-8-01, 6-16-03.

64B19-12.010 Fee for Duplicate License.

The fee for a duplicate license is \$25.00.

Specific Authority 456.025(6), 490.004(4), (5) FS. Law Implemented 456.025(6) FS. History—New 5-10-92, Formerly 21U-12.012, 61F13-12.012, Amended 1-7-96, Formerly 59AA-12.010.

64B19-12.011 Fee to Enforce Prohibition Against Unlicensed Activity.

As of July 1, 1993 each initial licensee and each renewing licensee shall pay \$5.00 in addition to the fee for initial licensure and licensure renewal to fund the efforts of the Department of Health to combat unlicensed activity.

Specific Authority 456.064 FS. Law Implemented 456.064 FS. History—New 1-28-93, Formerly 21U-12.013, 61F13-12.013, Amended 6-26-97, Formerly 59AA-12.011.

64B19-12.012 Fee for Provisional Licensure.

The non-refundable application fee for a provisional license shall be two hundred fifty dollars (\$250.00). The initial licensure fee for a provisional license shall be five hundred dollars (\$500.00).

Specific Authority 456.013, 490.003(6), 490.004(4), 490.0051 FS. Law Implemented 456.013, 456.013(2), 490.003(6), 490.004(4), 490.0051 FS. History—New 12-4-97, Amended 9-26-01.

64B19-12.013 Retired Status Fee.

The fee for retired status is \$50.00. An active status licensee or inactive status licensee who chooses retired status at any time other than at the time of license renewal must pay the retired status fee plus a change-of-status fee set out in Rule 64B19-12.006, F.A.C.

Specific Authority 456.036(4)(b), 490.004(4) FS. Law Implemented 456.036(4)(b) FS. History—New 7-17-06.

CHAPTER 64B19-13 LICENSE RENEWAL, CONTINUING EDUCATION

64B19-13.001	Renewal of Active Licenses
64B19-13.0015	Exemption of Spouses of Members of Armed Forces from License Renewal Requirements
64B19-13.002	Renewal of Inactive Licenses
64B19-13.0025	Notice to the Department of Mailing Address and Place of Practice of Licensee
64B19-13.003	Continuing Psychological Education Credit
64B19-13.004	Board Approval of Continuing Psychological Education Providers
64B19-13.005	Obligations of Continuing Psychological Education Providers
64B19-13.006	Definitions
64B19-13.007	Evaluations of Providers
64B19-13.008	Duration of Provider Status

64B19-13.001 Renewal of Active Licenses.

To renew an active license, the licensee must remit to the Department the biennial renewal licensure fee for active licenses, and a statement certifying that the licensee has completed the forty (40) hours of approved continuing education which were required during the last biennium.

Specific Authority 456.013(7), 490.004(4), 490.007(2) FS. Law Implemented 490.007(2) FS. History—New 2-22-82, Amended 5-2-84, Formerly 21U-13.01, Amended 7-18-88, 1-28-93, Formerly 21U-13.001, 61F13-13.001, Amended 1-7-96, 6-26-97, Formerly 59AA-13.001, Amended 8-5-01.

64B19-13.0015 Exemption of Spouses of Members of Armed Forces from License Renewal Requirements.

A licensee who is the spouse of a member of the Armed Forces of the United States and was caused to be absent from the State of Florida because of the spouse's duties with the armed forces exempt from all licensure renewal provisions under these rules during such absence. The licensee must show satisfactory proof to the Board of the absence and the spouse's military status.

Specific Authority 456.024, 490.004(4) FS. Law Implemented 456.024 FS. History—New 4-30-00.

64B19-13.002 Renewal of Inactive Licenses.

To maintain an inactive license on inactive status, the licensee must remit the biennial renewal fee for inactive status and a statement certifying that the licensee has neither practiced psychology nor violated any of the provisions of Section 490.012, F.S., since the date on which the license was first placed on inactive status.

Specific Authority 456.036 FS. Law Implemented 456.036 FS. History—New 1-19-84, Formerly 21U-13.016, Amended 1-4-88, 4-26-93, Formerly 21U-13.0016, 61F13-13.0016, Amended 1-7-96, Formerly 59AA-13.002, Amended 8-5-01.

64B19-13.0025 Notice to the Department of Mailing Address and Place of Practice of Licensee.

(1) Each licensee shall provide either written or electronic notification to the Department of the licensee's current mailing address and place of practice. The term "place of practice" means the primary physical location where the psychologist practices the profession of psychology.

(2) Each licensee shall provide either written or electronic notification to the Department of a change of address within 45 days.

(3) If electronic notification is used, it shall be the responsibility of the licensee to ensure that the electronic notification was received by the Department.

Specific Authority 456.035 FS. Law Implemented 456.035 FS. History—New 3-25-02.

64B19-13.003 Continuing Psychological Education Credit.

(1) Continuing psychological education credit will be granted for:

(a) Completion of graduate level courses approved for credit by sponsors approved by the American Psychological Association;

(b) Completion of graduate level courses in psychology provided by a university or professional school which is regionally accredited, except that no more than ten (10) hours of continuing psychological education credit may be obtained for each semester hour;

(c) Completion of a colloquium, a presentation, a workshop or a symposium offered for continuing education credit by a doctoral psychology program or an internship or residency which is part of a psychology program that is accredited by the American Psychological Association;

(d) Full attendance at workshops/seminars offered by providers approved by the American Psychological Association or any of its affiliates, or providers approved by the Board. A list of Board approved providers is available from the Board office upon request;

(e) Simple attendance at a state, regional or national psychology convention or conference. Only four (4) credits will be allowed each biennium regardless of how many state, regional or national conventions or conferences are attended during that biennium;

(f) Attainment of diplomate status in a specialty area from the American Board of Professional Psychology, for which thirty-seven (37) continuing psychological education credits, not including the two-hour continuing education course on domestic violence required by Section 456.031(1), F.S., and the two-hour continuing education course on the prevention of medical errors required by Section 456.013(7), F.S., will be allowed only during the biennium during which the diplomate is first awarded;

(g) Presenting or moderating for the first time only a continuing psychological education program sponsored by a provider approved by the Board, except that credit will be limited to the number of credits allowed by the program;

(h) Each hour of attendance at a Board meeting or Board committee meeting. Only one credit will be granted for each hour of full attendance and only ten (10) credits will be allowed each biennium regardless of how many hours are attended during the biennium. Attendance at a Board or committee meeting shall also satisfy, hour by hour, the requirement of professional ethics and legal issues credit set out in subsection (3) of this rule.

(i) Continuing education courses approved by any Board within the Division of Medical Quality Assurance of the Department of Health, provided that such courses enhance the psychological skills and/or psychological knowledge of the licensee.

(j) The provision of volunteer expert witness opinions for cases being reviewed pursuant to laws and standards relevant to the practice of psychology. Two hours of credit shall be awarded for each case reviewed up to a maximum of ten hours per biennium. In this regard, volunteer expert witnesses are expected to perform a review of the psychological, medical, legal, and/or ethical literature, as appropriate to the case being reviewed.

(2) No continuing psychological education credit may be earned for:

(a) Regular work activities as a psychologist;

(b) Membership, office in, or participation on boards or committees of professional organizations;

- (c) Independent, unstructured or self-structured learning;
- (d) Personal psychotherapy or personal growth experience;
- (e) Authoring or editing books or articles;
- (f) Obtaining or providing supervision or consultation from or under a psychologist or other professional who is not a Board approved continuing psychological education provider;
- (g) Home study except from providers approved by the American Psychological Association or any of its affiliates.

(3) As a condition of biennial licensure renewal, each licensee must complete forty (40) hours of continuing psychological education.

(a) Three (3) of the forty (40) hours must be on professional ethics and Florida Statutes and rules affecting the practice of psychology.

(b) Two (2) of the forty (40) hours must relate to prevention of medical errors. In addition to the study of root-cause analysis, error reduction and prevention, and patient safety, the course content shall also be designed to discuss potential errors within a psychological setting, such as inadequate assessment of suicide risk, failure to comply with mandatory abuse reporting laws, and failure to detect medical conditions presenting as a psychological disorder. If the course is offered by a facility licensed pursuant to Chapter 395, F.S., for its employees, the Board will approve up to one (1) hour of the two (2) hour course to be specifically related to error reduction and prevention methods used in that facility.

(c) Passage of the laws and rules examination of the Board constitutes forty (40) hours of continuing education credit, including credit for professional ethics and Florida Statutes and rules affecting the practice of psychology. Passage of the laws and rules examination, however, does not satisfy the requirement for the two (2) credit hours of continuing education on domestic violence required every third biennial licensure renewal period, nor the requirement for two (2) hours relating to prevention of medical errors.

(4) The licensee shall maintain, and make available upon request, documentation to substantiate continuing psychological education credit required by the Board. The licensee shall retain such documentation for two (2) years following the renewal period during which the continuing psychological education credit was required.

(5) Every six years, each licensee shall complete two (2) hours of continuing psychological education on domestic violence as defined in Section 741.28, F.S.; these two (2) hours shall be part of the forty (40) hours otherwise required for each biennial licensure renewal. The licensee shall maintain documentation to substantiate timely completion of these two (2) hours and make said documentation available upon request every third biennial licensure renewal period.

Specific Authority 456.013(7), 490.004(4), 490.0085(4) FS. Law Implemented 456.013(7), 490.007(2), 490.0085(1), (3) FS. History—New 1-28-93, Amended 7-14-93, Formerly 21U-13.0042, Amended 6-14-94, Formerly 61F13-13.0042, Amended 2-8-96, 11-18-96, Formerly 59AA-13.003, Amended 1-10-01, 8-5-01, 5-21-02, 6-3-04, 1-2-06, 12-31-06, 2-24-08, 5-26-08, 1-7-09.

64B19-13.004 Board Approval of Continuing Psychological Education Providers.

(1) To obtain or renew provider status, the applicant must demonstrate to the Board's satisfaction that the programs to be offered by the applicant will:

- (a) Enhance psychological skills or psychological knowledge;
- (b) Be of sufficient duration to adequately address the subject matter of the program;
- (c) Be taught by an individual who has at least two (2) years of education or research in, or practical application of, the subject matter of the program.

(2) To allow the Board to evaluate the prospective provider's initial application, the applicant must submit the following:

- (a) A narrative description of one (1) program to be offered by the provider to psychologists for credit. The narrative must include sufficient information to show that the program meets the criteria of subsection

(1) of this rule. The narrative must also include research to be relied upon in the presentation of the program;

- (b) All promotional material concerning that program;
- (c) The learning objectives of the program;
- (d) The name of the instructor for the program;
- (e) The qualifications of the instructor to conduct that program;
- (f) A sample of the program evaluation form to be completed by each program attendee;
- (g) A sample certificate of completion;
- (h) A nonrefundable application fee of \$500.

(3) The “enhancement of psychological skills or knowledge” occurs only when the program increases the ability of licensed psychologists to deliver psychological services to the public. Such programs presume a basic level of psychological education and training that is beyond the undergraduate level. The program may focus on the further development of already existing psychological skills or knowledge. The program may encourage interdisciplinary approaches to the delivery of psychological services. The program may introduce recent scientific findings in an area that impacts on the practice of psychology, or the program may focus on a specific area of expertise not covered by general psychological education and training. As a general rule, a program that is designed to appeal to the general public will probably not be a program that will enhance psychological skills or knowledge.

Specific Authority 490.004(4), 490.0085(4) FS. Law Implemented 490.007(2), 490.0085(1), (3) FS. History—New 1-28-93, Formerly 21U-13.005, Amended 6-14-94, Formerly 61F13-13.005, Amended 1-7-96, Formerly 59AA-13.004.

64B19-13.005 Obligations of Continuing Psychological Education Providers.

(1) To maintain status as a continuing psychological education provider, the provider must:

- (a) Require each program attendee to remain for the entire program in order to receive any continuing psychological education credit for the program;
- (b) Provide each program attendee with an evaluation form which contains the following words: The Board of Psychology will not revoke the continuing psychological education credit given to any psychologist for the completion of any continuing psychological education program sponsored by a provider whose status is later revoked by the Board as a result of any complaint registered against the program by a psychologist;
- (c) Retain originals of program evaluation forms for three (3) years from the date on which the program is conducted and provide those forms to the Board upon request;
- (d) Ensure that all promotional material offered to psychologists for credit by the provider contains the name of the provider to which the provider number was issued, and the provider number assigned to that provider;
- (e) Send to the Board office, so that it is received at least one (1) week before the first date on which the program is to be offered to psychologists for credit, all promotional material concerning any program that has not previously been reviewed by the Board;
- (f) Allow only one hour of continuing psychological education credit for each hour of instruction that is no less or no more than fifty (50) minutes of instruction;
- (g) Notify the Board within two (2) weeks of any change in the address of the provider;
- (h) Give the Board thirty (30) days advance notice of any significant change in the programs on file with the Board;
- (i) Maintain active status as a continuing psychological education provider by conducting at least one (1) program a year for psychologists, renewing provider status each biennium, and paying the biennial renewal fee of \$500 so that it is postmarked no later than the last date of the biennial renewal period;
- (j) Allow the Department of Health and the Board’s designee to have access to information concerning programs conducted by the provider for continuing psychological education credit to psychologists for credit; and
- (k) Provide to psychologists those programs that meet the criteria of subsection 64B19-13.004(1),

F.A.C.

(2) Nothing in this rule shall be construed to mean that co-sponsorship are not allowed. Co-sponsorships are allowed but the Board will hold the provider responsible.

Specific Authority 490.004(4), 490.0085(4) FS. Law Implemented 490.007(2), 490.0085(1), (3) FS. History—New 1-28-93, Formerly 21U-13.006, Amended 6-14-94, Formerly 61F13-13.006, Amended 1-7-96, Formerly 59AA-13.005, Amended 8-5-01.

64B19-13.006 Definitions.

(1) "One hour" of continuing psychological education credit consists of no less than fifty (50) uninterrupted minutes of education.

(2) A "significant change" would be the title of the program, the content of the program, the name or the qualifications of the program instructor, the number of continuing psychological education credits allowed for the program, and the length of time in which the program is conducted.

(3) "Substantiation" for the purpose of providing evidence of completion of continuing psychological education programs includes a certificate from the American Psychological Association verifying the psychologist's attendance at a program sponsored by the American Psychological Association, a letter from the instructor verifying the psychologist's completion of a graduate level course in psychology taught by that instructor at a regionally accredited university or professional school, or the provider number and a certificate of completion verifying attendance at a program sponsored by a provider approved by the Board, receipt for paid registration at a state, regional or national psychology convention or conference, certificate of diplomate status, program bulletin listing the licensee as a presenter or moderator, a letter from the Executive Director of the Board confirming full attendance at a Business Meeting of the Board, or a letter or certificate of completion from the internship director.

(4) "Programs" include workshops, presentations, seminars, colloquia, and symposia.

(5) "Promotional materials" are written documents designed to attract an audience.

Specific Authority 456.013(7), 490.004(4), 490.0085(4) FS. Law Implemented 490.007(2), 490.0085(1), (3) FS. History—New 1-28-93, Formerly 21U-13.007, Amended 6-14-94, Formerly 61F13-13.007, Amended 1-7-96, Formerly 59AA-13.006..

64B19-13.007 Evaluations of Providers.

(1) The Board shall evaluate continuing psychological education programs offered to psychologists for credit by:

(a) Attending such programs; or

(b) Reviewing the files of the provider to gain information about any program offered to psychologists for credit; or

(c) Asking program attendees to provide the Board with their evaluations of the program.

(2) The Board will not revoke the continuing psychological education credit given to any psychologist for completion of any continuing psychological education program about which any psychologist registers a complaint with the Board.

Specific Authority 456.013(7), 490.004(4), 490.0085(4) FS. Law Implemented 490.007(2), 490.0085(1), (3) FS. History—New 1-28-93, Formerly 21U-13.008, Amended 6-14-94, Formerly 61F13-13.008, 59AA-13.007.

64B19-13.008 Duration of Provider Status.

(1) Continuing psychological education providers are approved only for the biennium during which they apply or for which they have been renewed by the Board.

(2) The Board is under no obligation to allow a provider to continue offering programs to psychologists for credit if the provider fails to follow the Board's rules regarding the provision of continuing education credit.

(3) The Board will not renew the continuing psychological education provider status of any provider

who has failed to follow the Board's rules regarding the provision of programs to psychologists for credit.

(4) If the Board denies the initial application or renewal application of any prospective provider, the Board will issue a notice of intention to deny, and the prospective provider will be given an opportunity to be heard.

(5) Renewing providers may continue to offer programs to psychologists for credit until such time as a final order is entered against them as a result of any notice of intention to deny renewal status that is issued by the Board.

(6) The Board will not grant continuing psychological education provider status until at least two (2) years have elapsed since the entry of any final order of revocation of the provider status of the applicant.

Specific Authority 456.025(3), 490.004(4), 490.0085(4) FS. Law Implemented 490.007(2), 490.0085(1), (3) FS. History—New 1-28-93, Formerly 21U-13.009, 61F13-13.009, Amended 1-7-96, Formerly 59AA-13.008.

CHAPTER 64B19-14 REQUEST FOR RETIRED STATUS

64B19-14.001 Request for Retired Status
64B19-14.003 Reactivation of Retired Status Licenses

64B19-14.001 Request for Retired Status.

A licensee with an active or inactive license may choose retired status by submitting a written request to the Board and remitting the retired status fee set out in Rule 64B19-12.013, F.A.C, and, if applicable, the change of status fee set out in Rule 64B19-12.006, F.A.C.

Specific Authority 456.036, 490.004(5) FS. Law Implemented 456.036, 490.004(4), (5) FS. History—New 7-16-06.

64B19-14.003 Reactivation of Retired Status Licenses.

(1) A licensee, who has maintained a retired status license for fewer than five years, may reactivate his or her own retired status license and thereby place the license on active status by:

- (a) Submitting a written request;
- (b) Paying the reactivation fee set out in Rule 64B19-12.006, F.A.C.;
- (c) Paying the fee for biennial renewal of an active license, set out in Rule 64B19-12.005, F.A.C., for all biennial licensure periods during which the license was in retired status;
- (d) Paying any owed delinquency fee set out in Rule 64B19-12.0085, F.A.C.; and
- (e) Paying any owed change of status fee set out in Rule 64B19-12.006, F.A.C.

(2) A licensee, who has maintained a retired status license for five or more years, may reactivate his or her own retired status license and thereby place the license on active status by:

- (a) Submitting a written request;
- (b) Paying the reactivation fee set out in Rule 64B19-12.006, F.A.C.;
- (c) Paying the fee for biennial renewal of an active license, set out in Rule 64B19-12.005, F.A.C., for all biennial licensure periods during which the license was in retired status;
- (d) Paying any owed delinquency fee set out in Rule 64B19-12.0085, F.A.C.;
- (e) Paying any owed change of status fee set out in Rule 64B19-12.006, F.A.C.; and
- (f) Retake and pass the Florida laws and rules examination in the 12 months prior to submitting the request for reactivation.

(3) In addition, the licensee must submit proof that the licensee has obtained forty (40) hours of continuing education for each biennial licensure period in which the license was in retired status and for the last full biennial period in which the license was in active status. Finally, the licensee must either report any disciplinary action that has been taken against the licensee by any regulatory agency or must state that no such disciplinary action has been taken against the licensee. If the licensee has any outstanding administrative fines, the license may not be restored to active status until the administrative fines are paid.

Specific Authority 456.036, 490.004(4), (5), 490.007(2) FS. Law Implemented 456.036, 490.007(2) FS. History—New 8-17-06.

CHAPTER 64B19-15 INACTIVE LICENSES

64B19-15.001	Request for Inactive Status
64B19-15.003	Reactivation of Inactive Licenses

64B19-15.001 Request for Inactive Status.

A licensee with an active license may request to the Department for inactive licensure status by submitting a written request and remitting any applicable required fees.

Specific Authority 490.004(5), 456.036 FS. Law Implemented 456.036, 490.004(4), (5) FS. History—New 2-10-87, Amended 1-4-88, Formerly 21U-19.001, 61F13-19.001, Amended 1-7-96, Formerly 59AA-15.001, Amended 8-5-01.

64B19-15.003 Reactivation of Inactive Licenses.

(1) A licensee may reactivate his or her own inactive license and thereby place the license on active status by:

(a) Making application on form DH-MQA 1239, "Application for Reactivation of Inactive Psychologist Licensure," (revised 7/10), which is hereby adopted and incorporated by reference, and can be obtained from the Board of Psychology's website at <http://www.doh.state.fl.us/mqa/psychology/index.html>;

(b) Paying the application fee, set out in Rule 64B19-12.006, F.A.C.

(c) Paying the fee for biennial renewal of an active license, set out in Rule 64B19-12.005, F.A.C.

(d) Paying any owed delinquency fees, and

(e) Paying any owed fees for changing status.

(2) In addition, the licensee must submit proof that the licensee has obtained forty (40) hours of continuing education that meets the requirements of subsection 64B19-13.003(3), F.A.C., for each full biennium in which the license was in an inactive status and for the last full biennium in which the licensee held an active status license. Finally, the licensee must either report any disciplinary action that has been taken against the licensee by any regulatory agency or must state that no such disciplinary action has been taken against the licensee. If the licensee has any outstanding administrative fines, the license may not be restored to active status until the administrative fines are paid.

Rulemaking Authority 456.036, 490.004(4) FS. Law Implemented 456.036 FS. History—New 1-19-84, Formerly 21U-13.015, 21U-13.0015, 21U-19.003, 61F13-19.003, Amended 1-7-96, Formerly 59AA-15.003, Amended 8-5-01, 3-25-02, 12-27-05, 11-8-10.

CHAPTER 64B19-16 INVESTIGATORS, PROBABLE CAUSE PANEL, RECONSIDERATION OF PROBABLE CAUSE, SEXUAL MISCONDUCT

64B19-16.001	Probable Cause Panel
64B19-16.003	Sexual Misconduct in the Practice of Psychology

64B19-16.001 Probable Cause Panel.

(1) The Chairperson of the Board shall appoint at least two people to the probable cause panel and shall designate its chairperson. The appointed people shall be either current Board members or at least one current Board member and one or more former members of the Board. Not more than one member of the panel may be a lay member. The determination as to whether probable cause exists that a violation of the provisions of Chapters 490 and 456, Florida Statutes, and/or the rules promulgated pursuant thereto, has occurred shall be made by a majority vote of the probable cause panel of the Board.

(2) The Chairperson of the Board may make temporary appointments to the panel as necessary to conduct the business of the panel in the absence or unavailability of a regularly appointed panel member.

(3) If a Board member has reviewed a case as a member of the probable cause panel, that member shall be on the panel for reconsideration of that case if reconsideration is requested by the prosecutor.

Specific Authority 456.073(2), (4), 490.004(4) FS. Law Implemented 456.073(2), (4) FS. History—New 5-12-82, Formerly 21U-15.03, Amended 7-18-88, 11-18-92, Formerly 21U-15.003, Amended 6-14-94, Formerly 61F13-15.003, Amended 1-7-96, Formerly 59AA-16.001, Amended 11-23-97.

64B19-16.003 Sexual Misconduct in the Practice of Psychology.

(1) In accordance with the intent of Chapter 490, Florida Statutes, to preserve the health, safety and welfare of the public, sexual misconduct as defined herein is prohibited. The Board finds that the effects of the psychologist-client relationship are powerful and subtle and that clients are influenced consciously and subconsciously by the unequal distribution of power inherent in such relationships. The Board also finds that sexual intimacies with a former client are frequently harmful to the client, and that such intimacies undermine public confidence in the psychology profession and thereby deter the public's use of needed services. Furthermore, the Board finds that the effects of the psychologist-client relationship endure after psychological services cease to be rendered. Therefore, the client shall be presumed incapable of giving valid, informed, free consent to sexual activity involving the psychologist and the assertion of consent by the client shall not constitute a defense against charges of sexual misconduct.

(2) It shall constitute sexual misconduct for a psychologist, who is involved in a psychologist-client relationship, to engage, attempt to engage, or offer to engage the client in sexual intercourse or other sexual behavior. Sexual behavior includes, but is not limited to, kissing, or the touching by either the psychologist or the client of the other's breasts or genitals.

(3) It shall constitute sexual misconduct for a psychologist, who is involved in a psychologist-client relationship, to engage the client in verbal or physical behavior which is sexually arousing or demeaning to the client unless:

(a) Such behavior is for the purpose of treatment of psycho-sexual disorders or dysfunctions; and

(b) Such behavior complies with generally accepted professional standards for psychological treatment of the client's specific psycho-sexual disorders or dysfunctions.

(4) It shall constitute sexual misconduct for a psychologist who is involved in a psychologist-client relationship to use the influence inherent in that relationship to induce the client to engage in sexual conduct with a third party unless:

(a) Such inducement is consistent with the planned psychological treatment of the client's specific psychological, social, or sexual dysfunctions or disorders; and

(b) Treatment is provided in accordance with generally accepted professional standards for psychological treatment.

(5) A psychologist-client relationship exists whenever a psychologist has rendered, or purports to have rendered, psychological services including, but not limited to, psychotherapy, counseling, assessment or treatment to a person. A formal contractual relationship, the scheduling of professional appointments, or payment of a fee for services are not necessary conditions for the existence of a psychologist-client relationship, though each of these may be evidence that such a relationship exists.

(a) The determination of when a person is a client for purposes of this rule is made on a case by case basis with consideration given to the nature, extent, and context of the professional relationship between the psychologist and the person. The fact that a person is not actively receiving treatment or professional services from a psychologist is not determinative of this issue. A person is presumed to remain a client until the psychologist-client relationship is terminated.

(b) The mere passage of time since the client's last visit to the psychologist is not solely determinative of whether or not the psychologist-client relationship has been terminated. Some of the factors considered by the Board in determining whether the psychologist-client relationship has terminated include, but are not limited to, the following:

1. Formal termination procedures;
2. Transfer of the client's case to another psychologist;
3. The length of time that has passed since the client's last visit to the psychologist;
4. The nature and duration of the professional relationship;

5. The extent to which the client has confided personal or private information to the psychologist;
6. The nature of the client's personal history;
7. The degree of emotional dependence that the client has on the psychologist;
8. The circumstances of termination of the professional relationship;
9. The client's current mental status;
10. The likelihood of adverse impact on the client and others; and
11. Any statements or actions by the psychologist during the provision of psychological services suggesting or inviting the possibility of a post-termination sexual or romantic relationship with the client.

(c) Sexual conduct between a psychologist and a former client after termination of the psychologist-client relationship will constitute a violation of the Psychological Services Act if the sexual contact is a result of the exploitation of trust, knowledge, influence or emotions, derived from the professional relationship.

(d) A client's consent to, initiation of, or participation in sexual behavior or involvement with a psychologist does not change the nature of the conduct nor lift the statutory prohibition.

(e) Upon a finding that a psychologist has committed unprofessional conduct by engaging in sexual misconduct, the Board will impose such discipline as the Board deems necessary to protect the public. The sanctions available to the Board are set forth in Rule 64B19-17.002, F.A.C., and include restriction or limitation of the psychologist's practice, revocation or suspension of the psychologist's license.

Specific Authority 490.0111 FS. Law Implemented 490.009(2)(k), 490.0111, FS. History—New 6-23-82, Formerly 21U-15.04, Amended 12-21-86, Formerly 21U-15.004, 61F13-15.004, 59AA-16.003, Amended 5-14-01.

CHAPTER 64B19-17 DISCIPLINE

64B19-17.002	Disciplinary Guidelines
64B19-17.0025	Payment of Fine
64B19-17.003	Advertising
64B19-17.0035	Minor Misconduct; Notices of Noncompliance
64B19-17.004	Citations
64B19-17.007	Mediation

64B19-17.002 Disciplinary Guidelines.

(1) When the Board finds that an applicant or a licensee has committed any of the acts set forth in Section 456.072(1) or 490.009(2), F.S., it shall issue a final order imposing one or more of the penalties listed in Section 456.072(2), F.S., as recommended in the following disciplinary guidelines. The descriptions of violations are only a summary; the full language of each statutory provision cited must be consulted in order to determine the conduct involved. The guidelines are presented as a range of penalties that may be imposed from minimum to maximum.

PENALTY RANGE			
VIOLATION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
(a) Attempting to obtain, or renewing a license by bribery or fraudulent misrepresentation (Sections 490.009(1)(a) and 456.072(1)(h), F.S.)	Revocation or permanent denial of licensure and \$10,000 fine. If unintentional, then from granting licensure with Probation to Suspension or denial of licensure for a	Revocation or permanent denial of licensure, and \$10,000 fine. If unintentional, then from granting licensure with Probation to Suspension or denial of licensure for a	Revocation or permanent denial of licensure, and \$10,000 fine. If unintentional, then from granting licensure with Probation to Suspension or denial of licensure for a minimum of 2 years to Revocation

	minimum of 2 years to Revocation or permanent denial of licensure, and fine up to \$10,000.	minimum of 2 years to Revocation or permanent denial of licensure, and fine up to \$10,000.	or permanent denial of licensure, and fine up to \$10,000.
(b) License disciplined by another jurisdiction (Sections 490.009(1)(b) and 456.072(1)(f), F.S.)	Imposition of discipline that would have been imposed had the violation occurred in Florida and fine of up to \$10,000.	Imposition of discipline that would have been imposed had the violation occurred in Florida and fine of up to \$10,000.	Revocation and a \$10,000 fine.
Case of Applicant	From granting licensure with Probation or denial of licensure for up to 2 years to permanent denial of licensure, and fine up to \$10,000.	From granting licensure with Probation or denial of licensure for up to 2 years to permanent denial of licensure, and fine up to \$10,000.	Permanent denial of license
(c) Criminal conviction relating to psychology (Sections 490.009(1)(c) and 456.072(1)(c), F.S.)	From Suspension and a fine up to \$10,000 to Revocation.	From Suspension and a \$10,000 fine to Revocation.	Revocation.
Case of Applicant	From granting licensure with Probation or denial of licensure for up to 2 years to permanent denial of licensure, and fine up to \$10,000.	From granting licensure with Probation or denial of licensure for up to 2 years to permanent denial of licensure, and fine up to \$10,000.	Permanent denial of license.
(d) False, deceptive or misleading advertising (Sections 490.009(1)(d) and 456.072(1)(m), F.S.)	From Reprimand and Probation to Suspension, and a \$10,000 fine. If unintentional, from Reprimand and a \$1,000 fine to Probation and a fine up to \$5,000.	From Reprimand and Suspension to Revocation, and a \$10,000 fine. If unintentional, from Reprimand, Probation and a \$5,000 fine to Suspension and a fine up to \$10,000.	Revocation and a \$10,000 fine. If unintentional, from Suspension to Revocation, and a \$10,000 fine.
(e) Advertising, practicing, or attempting to practice under another name (Section 490.009(1)(t), F.S.)	From Reprimand and Probation to Suspension, and a \$10,000 fine. If unintentional, from Reprimand and a	From Reprimand and Suspension to Revocation, and a \$10,000 fine. If unintentional, from Reprimand, Probation,	Revocation and a \$10,000 fine. If unintentional, from Reprimand, Suspension, and a \$10,000 fine to

	\$1,000 fine to Probation and a fine up to \$10,000.	and a \$1,000 fine to Suspension and a fine up to \$10,000.	Revocation.
(f) Maintaining a wrongful professional association (Section 490.009(1)(f), F.S.)	From Reprimand and a \$1,000 fine to Revocation and a fine up to \$10,000.	From Reprimand, Probation, and a \$5,000 fine to Revocation and a fine up to \$10,000.	From Reprimand and Suspension to Revocation, and a \$10,000 fine.
(g) Knowingly aiding, assisting, procuring, or advising a non-licensed person (Sections 490.009(1)(g) and 456.072(1)(j), F.S.)	From Reprimand, Probation, and a \$1,000 fine to Revocation and a fine up to \$10,000.	From Reprimand, Suspension, and a \$5,000 fine to Revocation and a fine up to \$10,000.	Revocation and a \$10,000 fine.
(h) Failing to perform any statutory or legal obligation (Sections 490.009(1)(h) and 456.072(1)(k), F.S.)	From Reprimand and a \$1,000 fine to Revocation and a fine up to \$10,000.	From Reprimand, Suspension, and a \$5,000 fine to Revocation and a fine up to \$10,000.	Revocation and a \$10,000 fine.
(i) Willingly making or filing a false report, etc. (Sections 409.009(1)(i) and 456.072(1)(l), F.S.)	From Reprimand to Revocation, and a \$10,000 fine.	From Reprimand and Suspension to Revocation, and a \$10,000 fine.	Revocation and a \$10,000 fine.
(j) Paying or receiving a kickback, etc. (Section 490.009(1)(j), F.S.)	From Reprimand and a \$1,000 fine to Revocation and a fine up to \$10,000.	From Reprimand, Suspension, and a \$5,000 fine to Revocation and a fine up to \$10,000.	Revocation and a \$10,000 fine.
(k) Sexual misconduct or battery on a patient (Section 490.009(1)(k), and 456.072(1)(v), F.S.)	From Suspension followed by Probation to Revocation, and a fine from \$5,000 up to \$10,000.	Revocation and a fine from \$5,000 up to \$10,000.	Revocation and a \$10,000 fine.
Case of Applicant	Permanent denial of licensure.	Permanent denial of licensure.	Permanent denial of licensure.
(l) Making misleading, deceptive, untrue, or fraudulent representations, etc. (Sections 409.009(1)(l) and 456.072(1)(m), F.S.)	Reprimand, Probation and a \$10,000 fine. If unintentional, Reprimand and a fine from \$1,000 up to \$10,000.	From Reprimand and Suspension to Revocation, and a \$10,000 fine. If unintentional, Reprimand and Probation, and a fine from \$1,000 up to	Revocation and a \$10,000 fine. If unintentional, Reprimand and Suspension, and a fine from \$5,000 up to \$10,000.

		\$10,000.	
(m) Soliciting through fraud, intimidation, undue influence, etc. (Section 490.009(1)(m), F.S.)	From Reprimand to Revocation, and a \$10,000 fine.	From Reprimand and Suspension to Revocation, and a \$10,000 fine.	Revocation and a \$10,000 fine.
(n) Failing to provide records, etc. (Section 490.009(1)(n), F.S.)	From Reprimand to Suspension, and a fine from \$1,000 up to \$10,000.	From Reprimand to Suspension, and a fine from \$5,000 up to \$10,000.	From Reprimand and Suspension to Revocation, and a \$10,000 fine.
(o) Failing to respond to Department within 30 days, etc. (Section 490.009(1)(o), F.S.)	Suspension until compliance and a fine from \$1,000 up to \$10,000.	Suspension until compliance and a fine from \$5,000 up to \$10,000.	From Suspension until compliance to Revocation, and a \$10,000 fine.
(p) Incompetence (mental or physical impairment), etc. (Section 490.009(1)(p), and 456.072(1)(z), F.S.)	From Suspension, followed by Probation, mental and physical evaluations to Revocation and a fine from \$1,000 up to \$10,000.	From Suspension, followed by Probation, mental and physical evaluations to Revocation and a fine from \$1,000 up to \$10,000.	Revocation.
(q) Violating provisions of Chapter 490 or 456, F.S., or any rules pursuant thereto (Sections 490.009(1)(w), 456.072(1)(b) and 456.072(1)(dd), F.S.)	From Reprimand and a \$1,000 fine to Revocation and a fine up to \$10,000.	From Reprimand, Suspension, and a \$5,000 fine to Revocation and a fine up to \$10,000.	Revocation and a \$10,000 fine.
(r) Experimentation without informed consent (Section 490.009(1)(q), F.S.)	From Reprimand and a \$1,000 fine to Revocation and a fine up to \$10,000.	From Reprimand, Suspension, and a \$5,000 fine to Revocation and a fine up to \$10,000.	Revocation and a \$10,000 fine.
(s) Negligence (Section 490.009(1)(r), F.S.)	From Reprimand and a \$1,000 fine to Revocation and a fine up to \$10,000.	From Reprimand, Suspension, and a \$5,000 fine to Revocation and a fine up to \$10,000.	Revocation and a \$10,000 fine.
(t) Delegating professional responsibilities (Sections 490.009(1)(s) and 456.072(1)(p),	From Reprimand and a \$1,000 fine to Revocation and a fine up to \$10,000.	From Reprimand, Suspension, and a \$5,000 fine to Revocation and a fine up to \$10,000.	Revocation and a \$10,000 fine.

F.S.)			
(u) Violating any lawful order (Sections 490.009(1)(t) and 456.072(1)(q), F.S.)	Suspension until compliance and a fine from \$1,000 up to \$10,000.	Suspension until compliance and a fine from \$1,000 up to \$10,000.	Revocation.
(v) Failing to maintain confidence (Section 490.009(1)(u), F.S.)	Reprimand and a fine from \$1,000 up to \$5,000.	From Reprimand to Revocation, and a fine from \$5,000 up to \$10,000.	Revocation and \$10,000 fine.
(w) Identifying or damaging research clients (Section 490.009(1)(v), F.S.)	From Reprimand and a \$1,000 fine to Revocation and a fine up to \$10,000.	From Reprimand, Suspension, and a \$5,000 fine to Revocation and a fine up to \$10,000.	Revocation and a \$10,000 fine.
(x) Failure to comply with continuing education for domestic violence: (Section 456.072(1)(s), F.S)	\$250 fine and Suspension until compliance.	Reprimand, \$500 fine and Suspension until compliance.	Reprimand, \$1,000 fine and Suspension until compliance.
(y) Exercising influence on the patient or client for financial gain (Section 456.072(1)(n), F.S.)	From Reprimand and a \$1,000 fine to Revocation and a fine up to \$10,000.	From Reprimand, Suspension, and a \$5,000 fine to Revocation and a fine up to \$10,000.	Revocation and a \$10,000 fine.
(z) Improperly interfering with an investigation (Section 456.072(1)(r), F.S.)	From Reprimand and a \$1,000 fine to Revocation and a fine up to \$10,000.	From Reprimand, Suspension, and a \$5,000 fine to Revocation and a fine up to \$10,000.	Revocation and a \$10,000 fine.
Case of Applicant	From granting licensure with Probation or denial of licensure for up to 2 years to permanent denial of licensure, and fine up to \$10,000.	From granting licensure with Probation or denial of licensure for up to 2 years to permanent denial of licensure, and fine up to \$10,000.	Permanent denial of license.
(aa) Performing or attempting to perform wrong health care services	From Reprimand and a \$1,000 fine to Revocation and a fine up to \$10,000.	From Reprimand, Suspension, and a \$5,000 fine to Revocation and a fine	Revocation and a \$10,000 fine.

(Section 456.072(1)(bb), F.S.)		up to \$10,000.	
(bb) Termination from impaired practitioner treatment program (Section 456.072(1)(hh), F.S.)	From Suspension and a fine up to \$10,000 to Revocation.	From Suspension and a fine up to \$10,000 to Revocation.	Revocation.
(cc) Failure to identify through written notice, or orally to a patient the type of license under which the practitioner is practicing. Any advertisement for health care services naming the practitioner must identify the type of license the practitioner holds. (Section 456.072(1)(e), F.S.)	From Reprimand and a \$1,000 fine to Revocation and a fine up to \$10,000.	From Reprimand, Suspension, and a \$5,000 fine to Revocation and a fine up to \$10,000.	Revocation and a \$10,000 fine.
(dd) Failure to report another licensee in violation. (Section 456.072(1)(i), F.S.)	From Reprimand and a \$1,000 fine to Revocation and a fine up to \$10,000.	From Reprimand, Suspension, and a \$5,000 fine to Revocation and a fine up to \$10,000.	Revocation and a \$10,000 fine.
(ee) Practicing beyond scope permitted. (Section 456.072(1)(o), F.S.)	From Reprimand and a \$1,000 fine to Revocation and a fine up to \$10,000.	From Reprimand, Suspension, and a \$5,000 fine to Revocation and a fine up to \$10,000.	Revocation and a \$10,000 fine.
(ff) Failing to report to the Board within thirty (30) days after the licensee has been convicted of a crime in any jurisdiction. (Section 456.072(1)(x), F.S.)	From a Reprimand and an administrative fine up to \$1,000.00.	From a Reprimand to Suspension of license, and an administrative fine up to \$5,000.00.	From Suspension to Revocation of license, and an administrative fine up to \$10,000.00.
(gg) Being convicted of, or entering a plea of guilty or nolo contendere to, any misdemeanor or felony, regardless of adjudication, under 18 USC s. 669, ss. 285-287, s. 371, s. 1001,	Revocation and a fine of \$10,000, or in the case of application for licensure, denial of license.		

s. 1035, s. 1341, s. 1343, s. 1347, s. 1349, or s. 1518, or 42 USC ss. 1320a-7b, relating to the Medicaid program. (Section 456.072(1)(ii), F.S.)			
(hh) Failing to remit the sum owed to the state for overpayment from the Medicaid program pursuant to a final order, judgment, or settlement. (Section 456.072(1)(jj), F.S.)	From a Reprimand to Probation of the license, and an administrative fine up to \$1,000.00.	From a Reprimand to Suspension of license, and an administrative fine up to \$5,000.00.	From Suspension to Revocation of license, and an administrative fine up to \$10,000.00
(ii) Being terminated from the state Medicaid program, or any other state Medicaid program, or the federal Medicare program. (Section 456.072(1)(kk), F.S.)	From a Reprimand of the license and an administrative fine up to \$1,000.00 to Revocation and a fine up to \$10,000.	From a Reprimand to Suspension of license, and an administrative fine up to \$5,000.00 up to Revocation and a fine up to \$10,000.	From Suspension to Revocation of license, and an administrative fine of \$1,000.00 to \$5,000.00 up to Revocation and a fine up to \$10,000.
(jj) Being convicted of, or entering into a plea of guilty or nolo contendere to, any misdemeanor or felony, regardless of adjudication, which relates to health care fraud. (Section 456.072(1)(ll), F.S.)	Revocation and a fine of \$10,000, or in the case of application for licensure, denial of license.		

(2) Based upon consideration of aggravating and mitigating factors present in an individual case, the Board may deviate from the penalties recommended above. The Board shall consider as aggravating or mitigating circumstances the following:

- (a) The danger to the public;
- (b) The length of time since the date of violation;
- (c) The number of complaints filed against the licensee;
- (d) The length of time the licensee has practiced without complaint or violations;
- (e) The actual damage, physical or otherwise, to the patient;
- (f) The deterrent effect of the penalty imposed;
- (g) The effect of the penalty upon the licensee's livelihood;
- (h) Any efforts the licensee has made toward rehabilitation;
- (i) The actual knowledge of the licensee pertaining to the violation;

(j) Attempts by the licensee to correct or stop violations or refusal by the licensee to correct or stop violations;

(k) Related violations found against the licensee in another state including findings of guilt or innocence, penalties imposed and penalties served;

(l) Any other mitigating or aggravating circumstances that are particular to that licensee or to the situation so long as the aggravating or mitigating circumstances are articulated in the Board's final order.

(3) The provisions of this rule shall not be construed to prohibit civil action or criminal prosecution as provided by law. Nor may the provisions of this rule be construed to limit the ability of the Board to enter into binding stipulations as per Section 120.57(4), F.S.

Rulemaking Authority 456.079, 490.004(4) FS. Law Implemented 456.072, 456.079, 490.009 FS. History—New 11-24-86, Amended 7-18-88, 4-26-93, Formerly 21U-18.003, Amended 6-14-94, Formerly 61F13-18.003, Amended 1-9-96, Formerly 59AA-17.002, Amended 9-18-97, 9-26-01, 3-25-02, 4-3-05, 1-2-06, 12-31-06, 2-18-10.

64B19-17.0025 Payment of Fine.

All fines imposed by the Board shall be paid within thirty (30) days from the date of the final order entered by the Board unless the final order extends the deadline in any given case.

Specific Authority 456.072(3), 490.004(4), 490.009(1)(e) FS. Law Implemented 456.072(3), 490.009(1)(e) FS. History—New 8-27-98.—New 8-27-98.

64B19-17.003 Advertising.

The following rules pertain to the requirement in Section 490.012(2), F.S., that licensees must include the words "licensed psychologist" on all professional advertisements:

(1) A professional advertisement is any medium used to solicit clients, such as a listing in the yellow pages of a telephone book or an announcement of the availability of services in the newspaper or on the radio or television.

(2) Business cards and stationery are not professional advertisements.

(3) A listing in the white pages of a telephone book is not a professional advertisement unless the listing is distinguishable from the listings of non-licensees.

(4) A professional advertisement must include the words "licensed psychologist" regardless of whether the licensee paid for the advertisement or not.

(5) A psychologist must include the words "licensed psychologist" on all advertisements in which the psychologist's name appears, even if the name appears as part of a professional association or any other entity providing psychological services.

(6) The Board recognizes that in some instances, a psychologist may not be aware of the fact that a yellow page listing exists for the psychologist. For that reason, the Board will not prosecute the psychologist unless the listing was paid for by the psychologist or by anyone other than the yellow page company. Upon receipt of information that a yellow page listing exists, however, the psychologist must either prevent a future listing from occurring or pay for the insertion of the words "licensed psychologist" in the listing.

Specific Authority 490.004(4) FS. Law Implemented 490.009(2)(d), 490.012(2) FS. History—New 1-16-92, Formerly 21U-18.005, Amended 6-14-94, Formerly 61F13-18.005, 59AA-17.003, Amended 9-18-97.

64B19-17.0035 Minor Misconduct; Notices of Noncompliance.

The Board designates the following offenses as minor misconduct for which the Department shall issue notices of noncompliance before disciplinary action is taken:

(1) Sections 490.009(1)(d) and 490.012(2)(b), F.S., (for failing to include "licensed psychologist" in any advertisement).

(2) Section 490.009(1)(o), F.S., (for failing to respond within 30 days to a written communication from the department concerning any investigation by the department or to make available any relevant records with respect to any investigation about the licensee's conduct or background).

(3) Section 456.035(1), F.S., (for failing to notify the Board of the licensee's current mailing address and place of practice after 45 days but within 60 days).

Specific Authority 456.073(3) FS. Law Implemented 456.073(3) FS. History—New 1-9-96, Formerly 59AA-17.0035, Amended 9-18-97, 10-5-04

64B19-17.004 Citations.

In lieu of the disciplinary procedures contained in Section 456.073, F.S., the offenses enumerated in this rule may be disciplined by the issuance of a citation. The citation shall include a requirement that the licensee correct the offense, within thirty (30) days, impose whatever obligations will correct the offense, and impose the prescribed penalty. The verbal identification of offenses are descriptive only; the full language of each statutory provision cited must be consulted in order to determine the conduct included. In addition to the fine indicated, the licensee shall pay the Department's cost of investigation.

(1) Violation of Section 456.036(1), F.S. (for practicing on an inactive or delinquent license for less than three months): \$500 fine.

(2) Violation of Section 456.036(1), F.S. (for practicing on an inactive license for three to six months): \$1,000 fine.

(3) Violation of Section 490.009(1)(f), F.S. (for maintaining a professional association with a person who may be in violation of the chapter or rule): \$500 fine.

(4) Violation of Section 490.009(1)(t), F.S., through a violation of subsection 64B19-13.003(4), F.A.C. (for failing to provide documentation of Continuing Education courses upon request): \$50 per credit hour missing, if documentation of some credits is provided: \$3,000 and a reprimand if no documentation is provided.

(5) Violation of Section 456.035(1), F.S. (for failing to notify the Board of the licensee's current mailing address and place of practice after 60 days but within 90 days): \$250 fine.

(6) Violation of Section 490.009(1)(t), F.S. (for failing to pay an administrative fine within thirty (30) days after notification of delinquency): 10% of the fine and/or cost of imposed fine and cost (failure to pay citation will result in an administrative complaint).

(7) Violation of Section 490.009(1)(o), F.S. (for failing to respond within 30 days to a written communication from the Department concerning any investigation by the Department or to make available any relevant records with respect to any investigation about the licensee's conduct or background): \$500 fine.

(8) Violation of Section 490.012(2), F.S. (for failing to display license): \$100 fine.

(9) Issuance of a worthless bank check to the Department or to the Board in violation of Section 490.009(1)(a), F.S.: \$100 fine.

(10) Violation of Section 456.072(1)(w), F.S., (for failing to report to the Board, in writing within 30 days after the licensee has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction) where the licensee ultimately reported more than 30 days but fewer than 91 days: \$100 fine.

(11) Violation of Section 456.072(1)(t), F.S., (for failing to identify type of license): \$100 fine.

Specific Authority 456.077 FS. Law Implemented 456.072(4), 456.077 FS. History—New 1-16-92, Amended 4-26-93, Formerly 21U-18.006, 61F13-18.006, Amended 1-9-96, Formerly 59AA-17.004, Amended 11-23-97, 3-25-02, 9-21-04, 4-8-07.

64B19-17.007 Mediation.

The following offenses may be mediated if the offense meets the criteria of Section 456.078, F.S.:

(1) Violation of Sections 490.009(1)(d) and 456.072(1)(a), F.S. (for misleading advertisement).

(2) Violation of Sections 490.009(1)(h) and 456.072(1)(k), F.S. (for failing to explain to patient, or patient's legal representative, the nature of evaluation and the confidentiality provisions in the practice setting; e.g., compulsory psychological examinations in forensic settings).

(3) Violation of Sections 490.009(1)(l) and 456.072(1)(m), F.S. (for misrepresenting credentials).

(4) Violation of Section 490.009(1)(n), F.S. (for failing to provide copies, which have been paid for, of

a report of examination or treatment upon written request from the service user).

(5) Violation of Section 490.009(1)(r), F.S. (for the following allegations arising from a psychological evaluation):

- (a) Failing to write a report consistent with referral questions.
- (b) Failing to use appropriate diagnosis and procedure codes.
- (c) Failing to perform a clinical examination, if indicated, independent of the testing process.
- (d) Failing to terminate inpatient treatment upon request of patient or patient's legal representative.

(6) Violation of Section 490.009(1)(u), F.S. (for failing to maintain in confidence a communication made by patient or client).

(7) Violation of Section 490.009(1)(v), F.S. (for making public statements that identify or damage research subjects or clients).

Specific Authority 456.078, 490.004(4), (5) FS. Law Implemented 456.078, 490.009(2)(h), (v), (w) FS. History—New 3-20-95, Formerly 59AA-18.009, 59AA-17.007, Amended 10-15-02, 12-27-04.

CHAPTER 64B19-18 SCOPE OF PRACTICE, CONSENT, FORENSIC EVALUATIONS TO ADDRESS MATTERS RELATING TO CHILD CUSTODY

64B19-18.001	Qualifications to Evaluate and Treat Sex Offenders Under "Qualified Practitioner" Status
64B19-18.002	Use of the Title Sex Therapist
64B19-18.0025	Qualifications to Practice Juvenile Sexual Offender Therapy
64B19-18.003	Qualifications to Practice Hypnosis
64B19-18.004	Use of Test Instruments
64B19-18.005	Consent for Treatment of Minors
64B19-18.007	Requirements for Forensic Psychological Evaluations of Minors for the Purpose of Addressing Custody, Residence or Visitation Disputes
64B19-18.008	Board Approval of Specialty Certifying Bodies

64B19-18.001 Qualifications to Evaluate and Treat Sex Offenders as a "Qualified Practitioner".

Specific Authority 490.004(4), 947.005(9), 948.001(6) FS. Law Implemented 947.005(9), 948.001(6) FS. History—New 10-23-06, Repealed 1-29-08.

64B19-18.002 Use of the Title Sex Therapist.

Prior to holding oneself out as a sex therapist, a psychologist must have received training in the provision of psychological health services and shall have completed a minimum of 150 clock hours of education which meets the requirements of Rule 64B19-13.003, F.A.C., in the specific area of sex therapy and in the interaction between sex therapy and the general provision of psychological health services.

Specific Authority 490.004(4), 490.0143 FS. Law Implemented 490.003(4), 490.0143 FS. History—New 7-11-89, Formerly 21U-20.002, 61F13-20.002, 59AA-18.002, Amended 9-18-97.

64B19-18.0025 Qualifications to Practice Juvenile Sexual Offender Therapy.

Effective December 31, 2005, a psychologist, prior to practicing juvenile sexual offender therapy, must be a Florida licensed psychologist, except as otherwise provided within Section 490.012, F.S. The psychologist shall have education, training, and experience that demonstrates competency and interest in this area of practice. The training of a psychologist practicing juvenile sexual offender therapy must include:

(1) Coursework and/or training in child behavior and development, child psychopathology, and child assessment and treatment; and

(2) Thirty (30) hours of training in juvenile sex offender assessment and treatment.

Specific Authority 490.004(4), 490.012(8), 490.0145 FS. Law Implemented 490.012(8), 490.0145 FS. History—New 2-21-99, Amended 7-27-04.

64B19-18.003 Qualifications to Practice Hypnosis.

The practice of hypnosis as defined in Chapter 485, F.S., is permitted by a licensed psychologist who qualifies as designated by this rule. Basic hypnosis is defined as the use of hypnotic approaches for the purpose of stress management, self-hypnosis, guided imagery, or relaxation and shall be practiced only by those licensees who have successfully completed a total of at least 10 clock hours of education which meets the requirements for approval set forth in Rule 64B19-13.003, F.A.C., in basic hypnosis.

Specific Authority 490.004(4), 490.0141 FS. Law Implemented 490.003(4), 490.0141 FS. History—New 6-1-89, Formerly 21U-20.003, 61F13-20.003, 59AA-18.003, Amended 11-23-97.

64B19-18.004 Use of Test Instruments.

(1) The Board finds that the inappropriate use of test instruments is harmful to consumers. The Board finds further that a need exists to set out the minimum standard of professional practice maintained and required of psychologists who use test instruments in the psychologist's practice of psychology.

(2) A psychologist who uses test instruments in the psychologist's practice of psychology:

(a) Must consider whether research supports the underlying presumptions which govern the interpretive statements which would be made by the test instrument as a result of its completion by any service user;

(b) Must be able to justify the selection of any particular test instrument for the particular service user who takes the test at the instruction of the psychologist;

(c) Must integrate and reconcile the interpretive statements made by the test instrument based on group norms, with the psychologist's independent professional knowledge, evaluation and assessment of the individual who takes the test;

(d) Must specify in the test report the name of each person who assisted the psychologist in the administration of the test, and the role which that person played in the administration of the test.

(3) A psychologist who uses test instruments may not release test data, such as test protocols, test questions, assessment-related notes, or written answer sheets, except (1) to a licensed psychologist or school psychologist licensed pursuant to Chapter 490, F.S., or Florida certified, or (2) after complying with the procedures set forth in Rule 64B19-19.005, F.A.C., and obtaining an order from a court or other tribunal of competent jurisdiction, or (3) when the release of the material is otherwise required by law. When raw test data is released pursuant to this paragraph, the psychologist shall certify to the service user or the service user's designee that all raw test data from those test instruments have been provided. Psychologists are expected to make all reasonable efforts to maintain the integrity of the test protocols, modalities and instruments when releasing information as provided herein.

(4) In performing the functions listed at subsection (2) of this rule, the psychologist must meet with the test subject face-to-face in a clinical setting unless the psychologist has delegated the work to a psychological intern, psychological trainee or psychological resident in a doctoral psychology program approved by the American Psychological Association.

(5) It shall be a violation of this rule for a psychologist to sign any evaluation or assessment unless the psychologist has had an active role in the evaluation or assessment of the subject as required by subsection (4) of this rule. A psychologist may not sign any evaluation or assessment that is signed by any other person unless the psychologist is signing as a supervisor, in conjunction with an evaluation or assessment performed by a psychological intern, psychological trainee or psychological resident, or as a member of a multidisciplinary diagnostic team.

(6) "Test instruments" are standardized procedures which purport to objectively measure personal characteristics such as intelligence, personality, abilities, interests aptitudes, and neuropsychological functioning including evaluation of mental capacity to manage one's affairs and to participate in legal proceedings. Examples of such tests include intelligence tests, multiple aptitude batteries, tests of special aptitudes, achievement tests, and personality tests concerned with measures of emotional and motivational functioning, interpersonal behavior, interests, attitudes and other affective variables.

Specific Authority 490.004(4) FS. Law Implemented 490.003(4), 490.009(1)(r), (s), (v), (w) FS. History—New 6-14-94, Formerly 61F13-20.004, Amended 5-19-97, Formerly 54AA-18.004, Amended 3-25-02, 11-18-07.

64B19-18.005 Consent for Treatment of Minors.

For the purpose of discipline, the Board will not consider it a violation for a psychologist to treat a minor in an emergency situation, such as crisis intervention, without the consent of an adult so long as the psychologist abides by state law governing the emergency treatment of minors. Nor will the Board consider it a violation for a psychologist to treat a minor upon the psychologist's receipt of written permission from any adult who claims to have authority to consent to treatment. This rule, however, may not be used to circumvent other disciplinary action against the psychologist in the substantive provision of treatment to the minor.

Specific Authority 490.004(4) FS. Law Implemented 490.009(1)(r) FS. History—New 6-14-94, Formerly 61F13-20.005, Amended 1-7-96, Formerly 59AA-18.005.

64B19-18.007 Requirements for Forensic Psychological Evaluations of Minors for the Purpose of Addressing Custody, Residence or Visitation Disputes.

(1) For the purposes of this rule the following definitions apply:

(a) "Parent" means parent or legal guardian identified by the court order.

(b) "Child(ren)" means those identified by the court order.

(2) The minimum standard of performance in court-ordered child custody evaluation and family law proceedings includes, but is not limited to, the following:

(a) The psychologist shall adhere to the "APA Guidelines for Child Custody Evaluations in Divorce Proceedings," effective July, 1994, and the "Specialty Guidelines for Forensic Psychologists," effective March 9, 1991. These guidelines are incorporated by reference and copies may be obtained from the Board office. The APA Guidelines for Child Custody Evaluations in Divorce Proceedings are also available at: www.apa.org/practice/childcustody.html.

(b) The psychologist who has accepted an appointment as an evaluator shall not serve as guardian ad litem, mediator, therapist or parenting coordinator regarding the children in the instant case. The psychologist who has had a prior role as guardian ad litem, mediator, therapist or parenting coordinator shall not accept an appointment as an evaluator for the children in the instant case.

(c) The psychologist shall inform the parents or legal guardian in writing and obtain their signature verifying notification of the limits of confidentiality.

(d) The psychologist shall submit the evaluation report pursuant to court order or provide prior notification to the court, if the report will not be provided by the due date.

(e) The evaluation report shall include all of the following. The failure to include any of the following shall be documented.

1. Evaluations of both parents, or legal guardian including observations, test results, and impressions.
2. Evaluations of the children identified in the court order including observations and where appropriate, test results and impressions.
3. Description of interactions between each parent or legal guardian and each child identified in the court order.
4. Collateral sources of information as needed.
5. Request medical records as needed.

(3) It is a conflict of interest for a psychologist who has treated a minor or any of the adults involved in a custody or visitation action to perform a forensic evaluation for the purpose of recommending with which adult the minor should reside, which adult should have custody, or what visitation should be allowed. Consequently, a psychologist who treats a minor or any of the adults involved in a custody or visitation action may not also perform a forensic evaluation for custody, residence or visitation of the minor. So long as confidentiality is not violated, a psychologist may provide a court, or a mental health professional

performing a forensic evaluation, with factual information about the minor derived from treatment, but shall not state an opinion about custody, residence or visitation disputes.

Specific Authority 490.004(4) FS. Law Implemented 490.009(2)(s) FS. History—New 6-14-94, Formerly 61F13-20.007, Amended 1-7-96, Formerly 59AA-18.007, Amended 9-30-04.

64B19-18.008 Board Approval of Specialty Certifying Bodies.

To obtain Board approval as a certifying body, eligible to grant formal recognition declaring a licensed psychologist to be a “certified psychology specialist,” board-certified psychology specialist,” or a “psychology diplomate,” pursuant to Section 490.0149, F.S., an applicant shall file a petition demonstrating that it:

- (1) Is an independent body, national in scope, that incorporates standards of the profession, collaborates closely with organizations related to specialization in psychology, and only certifies doctoral-level, licensed psychologists as having advanced qualifications in a particular psychological specialty through demonstrations of competence in the specialty being recognized;
- (2) Has clearly described purposes, bylaws, policies, and procedures, that include an internal review and budgetary practices, to ensure effective utilization of resources with an administrative staff, housed in dedicated office space that is appropriate for the certifying body’s program and sufficient for responding to consumer or regulatory inquiries;
- (3) Has established standards for specialized practice of psychology and adopts the American Psychological Association (APA) “Ethical Principles of Psychologists and Code of Conduct,” effective June 1, 2003, to guide the practice of its members. The code is incorporated by reference and available for inspection at the Board office as well as at: www.apa.org/ethics/code2002.html; and
- (4) Has implemented and documented a comprehensive assessment procedure, designed to measure the competencies required to provide services characteristic of the specialty area, that describes security and grading standards, and consists of an oral examination and peer-review of practice samples and may include a written examination.

Specific Authority 490.0149, 490.004(4) FS. Law Implemented 490.0149 FS. History—New 11-1-07.

CHAPTER 64B19-19 PSYCHOLOGICAL RECORDS AND CONFIDENTIALITY

64B19-19.002	Definitions
64B19-19.0025	Standards for Records
64B19-19.003	Maintenance and Retention of Records
64B19-19.004	Disposition of Records Upon Termination or Relocation of Psychological Practice
64B19-19.005	Releasing Psychological Records
64B19-19.006	Confidentiality

64B19-19.002 Definitions.

A “client”, or “patient” is that individual who, by virtue of private consultation with the psychologist, has reason to expect that the individual’s communication with the psychologist during that private consultation will remain confidential, regardless of who pays for the services of the psychologist.

Specific Authority 490.004(4), 490.0147 FS. Law Implemented 490.009(2)(v), 490.0147 FS. History—New 8-12-90, Amended 4-1-92, Formerly 21U-22.002, 61F13-22.002, 59AA-19.002, Amended 9-18-97.

64B19-19.0025 Standards for Records.

To serve and protect users of psychological services, psychologists’ records must meet minimum requirements for chronicling and documenting the services performed by the psychologist, documenting informed consent and recording financial transactions.

- (1) Records for chronicling and documenting psychologists’ services must include the following: basic identification data such as name, address, telephone number, age and sex; presenting symptoms or requests for services; dates of service and types of services provided. Additionally, as applicable, these

records must include: test data (previous and current); history including relevant medical data and medication, especially current; what transpired during the service sessions; significant actions by the psychologist, service user, and service payer; psychologist's indications suggesting possible sensitive matters like threats; progress notes; copies of correspondence related to assessment or services provided; and notes concerning relevant psychologist's conversation with persons significant to the service user.

(2) Written informed consent must be obtained concerning all aspects of services including assessment and therapy.

(3) A provisionally licensed psychologist must include on the informed consent form the fact that the provisional licensee is working under the supervision of a licensed psychologist as required by Section 490.0051, F.S. The informed consent form must identify the supervising psychologist.

(4) Records shall also contain data relating to financial transactions between the psychologist and service user, including fees assessed and collected.

(5) Entries in the records must be made within ten (10) days following each consultation or rendition of service. Entries that are made after the date of service should indicate the date the entries are made, as well as the date of service.

Specific Authority 490.004(4), 490.0148 FS. Law Implemented 490.002, 490.0051, 490.009(2)(s), (u), 490.0148 FS. History—New 11-23-97, Amended 10-22-98, 5-14-02.

64B19-19.003 Maintenance and Retention of Records.

(1) Licensed psychologists shall maintain psychological records for each service user and shall record information concerning consultations and/or services rendered by the psychologist to the service user within a reasonable time following that consultation or the rendition of that service.

(2) Except as provided in subsection (4) of this rule, the licensed psychologist shall maintain full and total responsibility for and control of all psychological records relating to users of the licensee's psychological services and of the users of the psychological services rendered by any person under the supervision of the licensed psychologist.

(3) Except as provided in subsection (4) of this rule, complete psychological records shall be retained by the licensed psychologist for a minimum of 3 years after (a) the completion of planned services or (b) the date of last contact with the user, whichever event occurs later in time. Thereafter, either the complete psychological records or a summary of those psychological records shall be retained for an additional 4 years.

(4) A licensed psychologist is not required to retain psychological records if the psychologist's patients were assigned to the psychologist by a business entity which agrees to maintain and retain the confidentiality of the psychological records consistent with Rules 64B19-19.005 and 64B19-19.006, F.A.C., and subsections (2) and (3) of this rule.

Specific Authority 490.004(4), 490.0148 FS. Law Implemented 490.009(2)(s), (q), (u), 490.0148 FS. History—New 8-12-90, Formerly 21U-22.003, Amended 6-14-94, Formerly 61F13-22.003, 59AA-19.003.

64B19-19.004 Disposition of Records Upon Termination or Relocation of Psychological Practice.

(1) When a licensed psychologist terminates practice or relocates practice and is no longer available to service users in the practice area, the licensed psychologist shall provide notice of such termination or relocation of practice. The licensed psychologist shall cause such notice to be published in the newspaper of greatest circulation in the county from which the licensed psychologist is relocating or, in the case of termination of practice, in each county where the licensed psychologist has practiced. Such notice shall be published weekly for four (4) consecutive weeks. The notice shall contain the date of termination or relocation of practice and an address at which the psychological records of the service users may be obtained by them, their legal representatives, or licensed mental health professionals designated by service users in writing, to receive the service user's records.

(2) The executor, administrator, personal representative or survivor of a deceased licensed psychologist shall ensure the retention of psychological records in existence upon the death of the psychologist for a period of at least two (2) years and two (2) months from the date of the licensed psychologist's death. Within 1 month of the licensed psychologist's death, the executor, administrator, personal representative or survivor of the deceased licensed psychologist shall cause notice to be published in the newspaper of greatest general circulation in each county where the licensed psychologist practiced. Such notice shall be published weekly for four (4) consecutive weeks and shall advise of the licensed psychologist's death. Such notice shall also state the address from which service users, their legal representative, or licensed mental health professionals designated by the service user in writing, may obtain the service user's psychological records. A copy of such notice shall be mailed to the administrative office of the Board of Psychology. At the conclusion of 24 months from the date of the licensed psychologist's death, the executor, administrator, personal representative or survivor shall cause a notice to be published in the newspaper of greatest circulation in each county where the deceased psychologist practiced. Such notice shall advise that the psychological records still in the possession or under the control of the executor, administrator, personal representative or survivor will be destroyed on a date specified which may not be any sooner than 1 month from the last day of the last week of the publication of the notice. Such notice shall also be published once a week for four (4) consecutive weeks. Thereafter, on the date specified in the notice, the executor, administrator, personal representative or survivor shall destroy unclaimed psychological records.

Specific Authority 456.058, 490.004(4) FS. Law Implemented 456.058 FS. History—New 8-12-90, Formerly 21U-22.004, Amended 6-14-94, Formerly 61F13-22.004, 59AA-19.004, Amended 9-18-97.

64B19-19.005 Releasing Psychological Records.

(1) Any licensed psychologist who agrees to provide copies of psychological records to a service user, a service user's designee, or a service user's legal representative, shall be accorded a reasonable time, not to exceed thirty (30) days, to make final entries and copy the psychological records, and may condition release of the copies upon payment by the requesting party of the reasonable costs of reproducing the records.

(2) Any licensed psychologist who opts to issue a report rather than provide copies of psychological records to a service user, a service user's designee, or a service user's legal representative, shall issue the report within thirty (30) days of the request, and may charge a reasonable fee for the preparation of the report and may condition the issuance of the report upon payment of the reasonable fee.

(3) The psychologist's notes pertaining to psychological services rendered may be considered raw data as provided by subsection 64B19-18.004(3), F.A.C., at the discretion of the psychologist and therefore can be released only (1) to a licensed psychologist or school psychologist licensed pursuant to Chapter 490, F.S., or Florida certified, or (2) when the release of the material is otherwise required by law.

Specific Authority 456.057, 490.004(4) FS. Law Implemented 456.057, 490.009(2)(n), 490.0147 FS. History—New 8-12-90, Amended 7-14-93, Formerly 21U-22.005, Amended 6-14-94, Formerly 61F13-22.005, Amended 11-19-96, Formerly 59AA-19.005, Amended 9-18-97, 6-4-02.

64B19-19.006 Confidentiality.

(1) One of the primary obligations of psychologists is to respect the confidentiality of information entrusted to them by service users. Psychologists may disclose that information only with the written consent of the service user. The only exceptions to this general rule occur in those situations when nondisclosure on the part of the psychologist would violate the law. If there are limits to the maintenance of confidentiality, however, the licensed psychologist shall inform the service user of those limitations. For instance, licensed psychologists in hospital, subacute or nursing home settings should inform service users when the service user's clinical records will contain psychological information which may be available to others without the service user's written consent. Similar limitations on confidentiality may present themselves in educational, industrial, military or third-party payment situations, and in each of the circumstances mentioned herein or in each similar circumstance, the licensed psychologist must obtain a written statement from the service user which acknowledges the psychologist's advice in those regards. This rule is particularly applicable to supervisory situations wherein the supervised individual will be sharing confidential information with the supervising psychologist. In that situation, it is incumbent upon the licensed psychologist to secure the written acknowledgement of the service user regarding that breach of confidentiality.

(2) In cases where an evaluation is performed upon a person by a psychologist for use by a third party, the psychologist must explain to the person being evaluated the limits of confidentiality in that specific situation, document that such information was explained and understood by the person being evaluated, and obtain written informed consent to all aspects of the testing and evaluative procedures.

(3) This rule recognizes that minors and legally incapacitated individuals cannot give informed consent under the law. Psychologists, nonetheless, owe a duty of confidentiality to minor and legally incapacitated service users consistent with the duty imposed by subsection (1). This does not mean that the psychologist may not impart the psychologist's own evaluation, assessment, analysis, diagnosis, or recommendations regarding the minor or legally incapacitated individual to the service user's guardian or to any court of law.

(4) The licensed psychologist shall maintain the confidentiality of all psychological records in the licensed psychologist's possession or under the licensed psychologist's control except as otherwise provided by law or pursuant to written and signed authorization of a service user specifically requesting or authorizing release or disclosure of the service user's psychological records.

(5) The licensed psychologist shall also ensure that no person working for the psychologist, whether as an employee, an independent contractor, or a volunteer violates the confidentiality of the service user. *Specific Authority 490.004(4) FS. Law Implemented 456.057, 490.009(2)(s), (v), 490.0147 FS. History—New 8-12-90, Formerly 21U-22.006, 61F13-22.006, Amended 2-26-96, Formerly 59AA-19.006, Amended 11-23-97.*

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PART C:

**Chapter 39.201, Florida Statutes,
Mandatory reports of child abuse
abandonment, or neglect; mandatory
reports of death; central abuse hotlines**

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39.201 Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.--

(1)(a) Any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare, as defined in this chapter, or that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall report such knowledge or suspicion to the department in the manner prescribed in subsection (2).

(b) Reporters in the following occupation categories are required to provide their names to the hotline staff:

1. Physician, osteopathic physician, medical examiner, chiropractic physician, nurse, or hospital personnel engaged in the admission, examination, care, or treatment of persons;
2. Health or mental health professional other than one listed in subparagraph 1.;
3. Practitioner who relies solely on spiritual means for healing;
4. School teacher or other school official or personnel;
5. Social worker, day care center worker, or other professional child care, foster care, residential, or institutional worker;
6. Law enforcement officer; or
7. Judge.

The names of reporters shall be entered into the record of the report, but shall be held confidential and exempt as provided in s. 39.202.

(c) A professional who is hired by or enters into a contract with the department for the purpose of treating or counseling any person, as a result of a report of child abuse, abandonment, or neglect, is not required to again report to the central abuse hotline the abuse, abandonment, or neglect that was the subject of the referral for treatment.

(d) An officer or employee of the judicial branch is not required to again provide notice of reasonable cause to suspect child abuse, abandonment, or neglect when that child is currently being investigated by the department, there is an existing dependency case, or the matter has previously been reported to the department, provided there is reasonable cause to believe the information is already known to the department. This paragraph applies only when the information has been provided to the officer or employee in the course of carrying out his or her official duties.

(e) Nothing in this chapter or in the contracting with community-based care providers for foster care and related services as specified in s. 409.1671 shall be construed to remove or reduce the duty and responsibility of any person, including any employee of the community-based care provider, to report a suspected or actual case of child abuse, abandonment, or neglect or the sexual abuse of a child to the department's central abuse hotline.

(2)(a) Each report of known or suspected child abuse, abandonment, or neglect by a parent, legal custodian, caregiver, or other person responsible for the child's welfare as defined in this chapter, except those solely under s. 827.04(3), and each report that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall be made immediately to the department's central abuse hotline. Such reports may be made on the single statewide toll-free telephone number or via fax or web-based report. Personnel at the department's central abuse hotline shall determine if the report received meets the statutory definition of child abuse, abandonment, or neglect. Any report meeting one of these definitions shall be accepted for the protective investigation pursuant to part III of this chapter.

(b) If the report is of an instance of known or suspected child abuse by someone other than a parent, legal custodian, caregiver, or other person responsible for the child's welfare as defined in this chapter, the report or call shall be immediately electronically transferred to the appropriate county sheriff's office by the central abuse hotline.

(c) If the report is of an instance of known or suspected child abuse, abandonment, or neglect that occurred out of state and the alleged perpetrator and the child alleged to be a victim live out of state, the central abuse hotline shall not accept the report or call for investigation, but shall transfer the information on the report to the appropriate state.

(d) If the report is of an instance of known or suspected child abuse involving impregnation of a child under 16 years of age by a person 21 years of age or older solely under s. 827.04(3), the report shall be made immediately to the appropriate county sheriff's office or other appropriate law enforcement agency. If the report is of an instance of known or suspected child abuse solely under s. 827.04(3), the reporting provisions of this subsection do not apply to health care professionals or other persons who provide medical or counseling services to pregnant children when such reporting would interfere with the provision of medical services.

(e) Reports involving known or suspected institutional child abuse or neglect shall be made and received in the same manner as all other reports made pursuant to this section.

(f) Reports involving a known or suspected juvenile sexual offender or a child who has exhibited inappropriate sexual behavior shall be made and received by the department.

1. The department shall determine the age of the alleged offender, if known.

2. If the alleged offender is 12 years of age or younger, the central abuse hotline shall immediately electronically transfer the report or call to the county sheriff's office. The department shall conduct an assessment and assist the family in receiving appropriate services

pursuant to s. 39.307, and send a written report of the allegation to the appropriate county sheriff's office within 48 hours after the initial report is made to the central abuse hotline.

3. If the alleged offender is 13 years of age or older, the central abuse hotline shall immediately electronically transfer the report or call to the appropriate county sheriff's office and send a written report to the appropriate county sheriff's office within 48 hours after the initial report to the central abuse hotline.

(g) Reports involving surrendered newborn infants as described in s. 383.50 shall be made and received by the department.

1. If the report is of a surrendered newborn infant as described in s. 383.50 and there is no indication of abuse, neglect, or abandonment other than that necessarily entailed in the infant having been left at a hospital, emergency medical services station, or fire station, the department shall provide to the caller the name of a licensed child-placing agency on a rotating basis from a list of licensed child-placing agencies eligible and required to accept physical custody of and to place newborn infants left at a hospital, emergency medical services station, or fire station. The report shall not be considered a report of abuse, neglect, or abandonment solely because the infant has been left at a hospital, emergency medical services station, or fire station pursuant to s. 383.50.

2. If the call, fax, or web-based report includes indications of abuse or neglect beyond that necessarily entailed in the infant having been left at a hospital, emergency medical services station, or fire station, the report shall be considered as a report of abuse, neglect, or abandonment and shall be subject to the requirements of s. 39.395 and all other relevant provisions of this chapter, notwithstanding any provisions of chapter 383.

(h) Hotline counselors shall receive periodic training in encouraging reporters to provide their names when reporting abuse, abandonment, or neglect. Callers shall be advised of the confidentiality provisions of s. 39.202. The department shall secure and install electronic equipment that automatically provides to the hotline the number from which the call or fax is placed or the Internet protocol (IP) address from which the report is received. This number shall be entered into the report of abuse, abandonment, or neglect and become a part of the record of the report, but shall enjoy the same confidentiality as provided to the identity of the reporter pursuant to s. 39.202.

(i) The department shall voice-record all incoming or outgoing calls that are received or placed by the central abuse hotline which relate to suspected or known child abuse, neglect, or abandonment. The department shall maintain an electronic copy of each fax and web-based report. The recording or electronic copy of each fax and web-based report shall become a part of the record of the report but, notwithstanding s. 39.202, shall be released in full only to law enforcement agencies and state attorneys for the purpose of investigating and prosecuting criminal charges pursuant to s. 39.205, or to employees of the department for the purpose of investigating and seeking administrative penalties pursuant to s. 39.206. Nothing in this paragraph shall prohibit the use of the recordings, the electronic copies of faxes, and web-based reports by hotline staff for quality assurance and training.

(3) Any person required to report or investigate cases of suspected child abuse, abandonment, or neglect who has reasonable cause to suspect that a child died as a result of child abuse, abandonment, or neglect shall report his or her suspicion to the appropriate medical examiner. The medical examiner shall accept the report for investigation and shall report his or her findings, in writing, to the local law enforcement agency, the appropriate state attorney, and the department. Autopsy reports maintained by the medical examiner are not subject to the confidentiality requirements provided for in s. 39.202.

(4) The department shall establish and maintain a central abuse hotline to receive all reports made pursuant to this section in writing, via fax, via web-based reporting, or through a single statewide toll-free telephone number, which any person may use to report known or suspected child abuse, abandonment, or neglect at any hour of the day or night, any day of the week. The central abuse hotline shall be operated in such a manner as to enable the department to:

(a) Immediately identify and locate prior reports or cases of child abuse, abandonment, or neglect through utilization of the department's automated tracking system.

(b) Monitor and evaluate the effectiveness of the department's program for reporting and investigating suspected abuse, abandonment, or neglect of children through the development and analysis of statistical and other information.

(c) Track critical steps in the investigative process to ensure compliance with all requirements for any report of abuse, abandonment, or neglect.

(d) Maintain and produce aggregate statistical reports monitoring patterns of child abuse, child abandonment, and child neglect. The department shall collect and analyze child-on-child sexual abuse reports and include the information in aggregate statistical reports.

(e) Serve as a resource for the evaluation, management, and planning of preventive and remedial services for children who have been subject to abuse, abandonment, or neglect.

(f) Initiate and enter into agreements with other states for the purpose of gathering and sharing information contained in reports on child maltreatment to further enhance programs for the protection of children.

(5) The department shall be capable of receiving and investigating, 24 hours a day, 7 days a week, reports of known or suspected child abuse, abandonment, or neglect and reports that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care. If it appears that the immediate safety or well-being of a child is endangered, that the family may flee or the child will be unavailable for purposes of conducting a child protective investigation, or that the facts otherwise so warrant, the department shall commence an investigation immediately, regardless of the time of day or night. In all other child abuse, abandonment, or neglect cases, a child protective investigation shall be commenced within 24 hours after receipt of the report. In an institutional investigation, the alleged perpetrator may be represented by an attorney, at his or her own expense, or accompanied by another person, if the person or the attorney executes an

affidavit of understanding with the department and agrees to comply with the confidentiality provisions of s. 39.202. The absence of an attorney or other person does not prevent the department from proceeding with other aspects of the investigation, including interviews with other persons. In institutional child abuse cases when the institution is not operating and the child cannot otherwise be located, the investigation shall commence immediately upon the resumption of operation. If requested by a state attorney or local law enforcement agency, the department shall furnish all investigative reports to that agency.

(6) Information in the central abuse hotline may not be used for employment screening, except as provided in s. 39.202(2)(a) and (h). Information in the central abuse hotline and the department's automated abuse information system may be used by the department, its authorized agents or contract providers, the Department of Health, or county agencies as part of the licensure or registration process pursuant to ss. 402.301-402.319 and ss. 409.175-409.176.

(7) On an ongoing basis, the department's quality assurance program shall review calls, fax reports, and web-based reports to the hotline involving three or more unaccepted reports on a single child, where jurisdiction applies, in order to detect such things as harassment and situations that warrant an investigation because of the frequency or variety of the source of the reports. A component of the quality assurance program shall analyze unaccepted reports to the hotline by identified relatives as a part of the review of screened out calls. The Program Director for Family Safety may refer a case for investigation when it is determined, as a result of this review, that an investigation may be warranted.

History.--ss. 1, 2, 3, 4, 5, 6, ch. 63-24; s. 941, ch. 71-136; ss. 1, 1A, ch. 71-97; s. 32, ch. 73-334; s. 65, ch. 74-383; s. 1, ch. 75-101; s. 1, ch. 75-185; s. 4, ch. 76-237; s. 1, ch. 77-77; s. 3, ch. 77-429; ss. 1, 2, ch. 78-322; s. 3, ch. 78-326; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 181, ch. 79-164; s. 1, ch. 79-203; s. 7, ch. 84-226; s. 37, ch. 85-54; s. 68, ch. 86-163; s. 34, ch. 87-238; s. 21, ch. 88-337; s. 33, ch. 89-294; s. 6, ch. 90-50; s. 51, ch. 90-306; s. 7, ch. 91-57; s. 17, ch. 91-71; s. 6, ch. 93-25; s. 59, ch. 94-164; ss. 22, 44, ch. 95-228; s. 9, ch. 95-266; s. 51, ch. 95-267; s. 133, ch. 95-418; s. 1, ch. 96-215; s. 14, ch. 96-268; s. 14, ch. 96-402; s. 271, ch. 96-406; s. 1041, ch. 97-103; s. 43, ch. 97-264; s. 257, ch. 98-166; s. 31, ch. 98-403; s. 4, ch. 99-168; s. 10, ch. 99-193; s. 41, ch. 2000-139; s. 3, ch. 2000-188; s. 1, ch. 2000-217; s. 1, ch. 2001-53; s. 1, ch. 2003-127; s. 7, ch. 2006-86; s. 2, ch. 2008-90; s. 5, ch. 2008-245; s. 3, ch. 2009-43.

Note.--Former ss. 828.041, 827.07(3), (4), (9), (13); s. 415.504

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PART D:

Section 90.503, Florida Statutes
Psychotherapist-patient privilege

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**Chapter 90
EVIDENCE CODE**

90.503 Psychotherapist-patient privilege.--

(1) For purposes of this section:

(a) A "psychotherapist" is:

1. A person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be, who is engaged in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction;
2. A person licensed or certified as a psychologist under the laws of any state or nation, who is engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction;
3. A person licensed or certified as a clinical social worker, marriage and family therapist, or mental health counselor under the laws of this state, who is engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction;
4. Treatment personnel of facilities licensed by the state pursuant to chapter 394, chapter 395, or chapter 397, of facilities designated by the Department of Children and Family Services pursuant to chapter 394 as treatment facilities, or of facilities defined as community mental health centers pursuant to s. [394.907\(1\)](#), who are engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction; or
5. An advanced registered nurse practitioner certified under s. [464.012](#), whose primary scope of practice is the diagnosis or treatment of mental or emotional conditions, including chemical abuse, and limited only to actions performed in accordance with part I of chapter 464.

(b) A "patient" is a person who consults, or is interviewed by, a psychotherapist for purposes of diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction.

(c) A communication between psychotherapist and patient is "confidential" if it is not intended to be disclosed to third persons other than:

1. Those persons present to further the interest of the patient in the consultation, examination, or interview.
2. Those persons necessary for the transmission of the communication.
3. Those persons who are participating in the diagnosis and treatment under the direction of the psychotherapist.

(2) A patient has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications or records made for the purpose of diagnosis or

treatment of the patient's mental or emotional condition, including alcoholism and other drug addiction, between the patient and the psychotherapist, or persons who are participating in the diagnosis or treatment under the direction of the psychotherapist. This privilege includes any diagnosis made, and advice given, by the psychotherapist in the course of that relationship.

(3) The privilege may be claimed by:

(a) The patient or the patient's attorney on the patient's behalf.

(b) A guardian or conservator of the patient.

(c) The personal representative of a deceased patient.

(d) The psychotherapist, but only on behalf of the patient. The authority of a psychotherapist to claim the privilege is presumed in the absence of evidence to the contrary.

(4) There is no privilege under this section:

(a) For communications relevant to an issue in proceedings to compel hospitalization of a patient for mental illness, if the psychotherapist in the course of diagnosis or treatment has reasonable cause to believe the patient is in need of hospitalization.

(b) For communications made in the course of a court-ordered examination of the mental or emotional condition of the patient.

(c) For communications relevant to an issue of the mental or emotional condition of the patient in any proceeding in which the patient relies upon the condition as an element of his or her claim or defense or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of the party's claim or defense.

History.--s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 40, ch. 90-347; s. 1, ch. 92-57; s. 19, ch. 93-39; s. 475, ch. 95-147; s. 28, ch. 99-2; s. 5, ch. 99-8; s. 1, ch. 2006-204

PART E:

Chapter 394, Part I, Florida Statutes, Florida Mental Health Act

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**CHAPTER 394
MENTAL HEALTH**

PART I

FLORIDA MENTAL HEALTH ACT

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394.4788 Use of certain PMATF funds for the purchase of acute care mental health services.

394.4789 Establishment of referral process and eligibility determination.

394.451 Short title.--This part shall be known as "The Florida Mental Health Act" or "The Baker Act."

History.--s. 1, ch. 71-131.

394.453 Legislative intent.--It is the intent of the Legislature to authorize and direct the Department of Children and Family Services to evaluate, research, plan, and recommend to the Governor and the Legislature programs designed to reduce the occurrence, severity, duration, and disabling aspects of mental, emotional, and behavioral disorders. It is the intent of the Legislature that treatment programs for such disorders shall include, but not be limited to, comprehensive health, social, educational, and rehabilitative services to persons requiring intensive short-term and continued treatment in order to encourage them to assume responsibility for their treatment and recovery. It is intended that such persons be provided with emergency service and temporary detention for evaluation when required; that they be admitted to treatment facilities on a voluntary basis when extended or continuing care is needed and unavailable in the community; that involuntary placement be provided only when expert evaluation determines that it is necessary; that any involuntary treatment or examination be accomplished in a setting which is clinically appropriate and most likely to facilitate the person's return to the community as soon as possible; and that individual dignity and human rights be guaranteed to all persons who are admitted to mental health facilities or who are being held under s. 394.463. It is the further intent of the Legislature that the least restrictive means of intervention be employed based on the individual needs of each person, within the scope of available services. It is the policy of this state that the use of restraint and seclusion on clients is justified only as an emergency safety measure to be used in response to imminent danger to the client or others. It is, therefore, the intent of the Legislature to achieve an ongoing reduction in the use of restraint and seclusion in programs and facilities serving persons with mental illness.

History.--s. 2, ch. 71-131; s. 198, ch. 77-147; s. 1, ch. 79-298; s. 4, ch. 82-212; s. 2, ch. 84-285; s. 10, ch. 85-54; s. 1, ch. 91-249; s. 1, ch. 96-169; s. 96, ch. 99-8; s. 36, ch. 2006-227.

394.455 Definitions.--As used in this part, unless the context clearly requires otherwise, the term:

- (1) "Administrator" means the chief administrative officer of a receiving or treatment facility or his or her designee.
- (2) "Clinical psychologist" means a psychologist as defined in s. 490.003(7) with 3 years of postdoctoral experience in the practice of clinical psychology, inclusive of the experience required for licensure, or a psychologist employed by a facility operated by the United States Department of Veterans Affairs that qualifies as a receiving or treatment facility under this part.
- (3) "Clinical record" means all parts of the record required to be maintained and includes all medical records, progress notes, charts, and admission and discharge data, and all other information recorded by a facility which pertains to the patient's hospitalization or treatment.
- (4) "Clinical social worker" means a person licensed as a clinical social worker under chapter 491.
- (5) "Community facility" means any community service provider contracting with the department to furnish substance abuse or mental health services under part IV of this chapter.
- (6) "Community mental health center or clinic" means a publicly funded, not-for-profit center which contracts with the department for the provision of inpatient, outpatient, day treatment, or emergency services.
- (7) "Court," unless otherwise specified, means the circuit court.
- (8) "Department" means the Department of Children and Family Services.
- (9) "Express and informed consent" means consent voluntarily given in writing, by a competent person, after sufficient explanation and disclosure of the subject matter involved to enable the person to make a knowing and willful decision without any element of force, fraud, deceit, duress, or other form of constraint or coercion.
- (10) "Facility" means any hospital, community facility, public or private facility, or receiving or treatment facility providing for the evaluation, diagnosis, care, treatment, training, or hospitalization of persons who appear to have a mental illness or have been diagnosed as having a mental illness. "Facility" does not include any program or entity licensed pursuant to chapter 400 or chapter 429.
- (11) "Guardian" means the natural guardian of a minor, or a person appointed by a court to act on behalf of a ward's person if the ward is a minor or has been adjudicated incapacitated.
- (12) "Guardian advocate" means a person appointed by a court to make decisions regarding mental health treatment on behalf of a patient who has been found incompetent to consent to

treatment pursuant to this part. The guardian advocate may be granted specific additional powers by written order of the court, as provided in this part.

(13) "Hospital" means a facility as defined in s. 395.002 and licensed under chapter 395 and part II of chapter 408.

(14) "Incapacitated" means that a person has been adjudicated incapacitated pursuant to part V of chapter 744 and a guardian of the person has been appointed.

(15) "Incompetent to consent to treatment" means that a person's judgment is so affected by his or her mental illness that the person lacks the capacity to make a well-reasoned, willful, and knowing decision concerning his or her medical or mental health treatment.

(16) "Law enforcement officer" means a law enforcement officer as defined in s. 943.10.

(17) "Mental health overlay program" means a mobile service which provides an independent examination for voluntary admissions and a range of supplemental onsite services to persons with a mental illness in a residential setting such as a nursing home, assisted living facility, adult family-care home, or nonresidential setting such as an adult day care center. Independent examinations provided pursuant to this part through a mental health overlay program must only be provided under contract with the department for this service or be attached to a public receiving facility that is also a community mental health center.

(18) "Mental illness" means an impairment of the mental or emotional processes that exercise conscious control of one's actions or of the ability to perceive or understand reality, which impairment substantially interferes with a person's ability to meet the ordinary demands of living, regardless of etiology. For the purposes of this part, the term does not include retardation or developmental disability as defined in chapter 393, intoxication, or conditions manifested only by antisocial behavior or substance abuse impairment.

(19) "Mobile crisis response service" means a nonresidential crisis service attached to a public receiving facility and available 24 hours a day, 7 days a week, through which immediate intensive assessments and interventions, including screening for admission into a receiving facility, take place for the purpose of identifying appropriate treatment services.

(20) "Patient" means any person who is held or accepted for mental health treatment.

(21) "Physician" means a medical practitioner licensed under chapter 458 or chapter 459 who has experience in the diagnosis and treatment of mental and nervous disorders or a physician employed by a facility operated by the United States Department of Veterans Affairs which qualifies as a receiving or treatment facility under this part.

(22) "Private facility" means any hospital or facility operated by a for-profit or not-for-profit corporation or association that provides mental health services and is not a public facility.

(23) "Psychiatric nurse" means a registered nurse licensed under part I of chapter 464 who has a master's degree or a doctorate in psychiatric nursing and 2 years of post-master's clinical experience under the supervision of a physician.

(24) "Psychiatrist" means a medical practitioner licensed under chapter 458 or chapter 459 who has primarily diagnosed and treated mental and nervous disorders for a period of not less than 3 years, inclusive of psychiatric residency.

(25) "Public facility" means any facility that has contracted with the department to provide mental health services to all persons, regardless of their ability to pay, and is receiving state funds for such purpose.

(26) "Receiving facility" means any public or private facility designated by the department to receive and hold involuntary patients under emergency conditions or for psychiatric evaluation and to provide short-term treatment. The term does not include a county jail.

(27) "Representative" means a person selected to receive notice of proceedings during the time a patient is held in or admitted to a receiving or treatment facility.

(28)(a) "Restraint" means a physical device, method, or drug used to control behavior. A physical restraint is any manual method or physical or mechanical device, material, or equipment attached or adjacent to the individual's body so that he or she cannot easily remove the restraint and which restricts freedom of movement or normal access to one's body.

(b) A drug used as a restraint is a medication used to control the person's behavior or to restrict his or her freedom of movement and is not part of the standard treatment regimen of a person with a diagnosed mental illness who is a client of the department. Physically holding a person during a procedure to forcibly administer psychotropic medication is a physical restraint.

(c) Restraint does not include physical devices, such as orthopedically prescribed appliances, surgical dressings and bandages, supportive body bands, or other physical holding when necessary for routine physical examinations and tests; or for purposes of orthopedic, surgical, or other similar medical treatment; when used to provide support for the achievement of functional body position or proper balance; or when used to protect a person from falling out of bed.

(29) "Seclusion" means the physical segregation of a person in any fashion or involuntary isolation of a person in a room or area from which the person is prevented from leaving. The prevention may be by physical barrier or by a staff member who is acting in a manner, or who is physically situated, so as to prevent the person from leaving the room or area. For purposes of this chapter, the term does not mean isolation due to a person's medical condition or symptoms.

(30) "Secretary" means the Secretary of Children and Family Services.

(31) "Transfer evaluation" means the process, as approved by the appropriate district office of the department, whereby a person who is being considered for placement in a state treatment facility is first evaluated for appropriateness of admission to the facility by a community-based

public receiving facility or by a community mental health center or clinic if the public receiving facility is not a community mental health center or clinic.

(32) "Treatment facility" means any state-owned, state-operated, or state-supported hospital, center, or clinic designated by the department for extended treatment and hospitalization, beyond that provided for by a receiving facility, of persons who have a mental illness, including facilities of the United States Government, and any private facility designated by the department when rendering such services to a person pursuant to the provisions of this part. Patients treated in facilities of the United States Government shall be solely those whose care is the responsibility of the United States Department of Veterans Affairs.

(33) "Service provider" means any public or private receiving facility, an entity under contract with the Department of Children and Family Services to provide mental health services, a clinical psychologist, a clinical social worker, a marriage and family therapist, a mental health counselor, a physician, a psychiatric nurse as defined in subsection (23), or a community mental health center or clinic as defined in this part.

(34) "Involuntary examination" means an examination performed under s. 394.463 to determine if an individual qualifies for involuntary inpatient treatment under s. 394.467(1) or involuntary outpatient treatment under s. 394.4655(1).

(35) "Involuntary placement" means either involuntary outpatient treatment pursuant to s. 394.4655 or involuntary inpatient treatment pursuant to s. 394.467.

(36) "Marriage and family therapist" means a person licensed as a marriage and family therapist under chapter 491.

(37) "Mental health counselor" means a person licensed as a mental health counselor under chapter 491.

(38) "Electronic means" means a form of telecommunication that requires all parties to maintain visual as well as audio communication.

History.--s. 3, ch. 71-131; s. 1, ch. 72-396; s. 1, ch. 73-133; s. 25, ch. 73-334; s. 199, ch. 77-147; s. 2, ch. 79-298; s. 1, ch. 80-398; s. 5, ch. 82-212; s. 46, ch. 83-218; s. 3, ch. 84-285; s. 11, ch. 85-54; s. 11, ch. 86-145; s. 10, ch. 87-238; s. 17, ch. 87-252; s. 41, ch. 89-526; s. 28, ch. 90-306; s. 21, ch. 92-33; s. 65, ch. 93-268; s. 705, ch. 95-148; s. 54, ch. 95-228; s. 2, ch. 96-169; s. 8, ch. 97-82; s. 21, ch. 97-198; s. 213, ch. 97-264; s. 92, ch. 2000-318; s. 1, ch. 2000-349; s. 1, ch. 2004-385; s. 1, ch. 2006-171; s. 17, ch. 2006-197; s. 37, ch. 2006-227; s. 24, ch. 2007-230; s. 2, ch. 2009-38.

394.457 Operation and administration.—

(1)ADMINISTRATION.—The Department of Children and Family Services is designated the “Mental Health Authority” of Florida. The department and the Agency for Health Care Administration shall exercise executive and administrative supervision over all mental health facilities, programs, and services.

(2)RESPONSIBILITIES OF THE DEPARTMENT.—The department is responsible for:

(a)The planning, evaluation, and implementation of a complete and comprehensive statewide program of mental health, including community services, receiving and treatment facilities, child services, research, and training as authorized and approved by the Legislature, based on the annual program budget of the department. The department is also responsible for the coordination of efforts with other departments and divisions of the state government, county and municipal governments, and private agencies concerned with and providing mental health services. It is responsible for establishing standards, providing technical assistance, and exercising supervision of mental health programs of, and the treatment of patients at, community facilities, other facilities for persons who have a mental illness, and any agency or facility providing services to patients pursuant to this part.

(b)The publication and distribution of an information handbook to facilitate understanding of this part, the policies and procedures involved in the implementation of this part, and the responsibilities of the various providers of services under this part. It shall stimulate research by public and private agencies, institutions of higher learning, and hospitals in the interest of the elimination and amelioration of mental illness.

(3)POWER TO CONTRACT.—The department may contract to provide, and be provided with, services and facilities in order to carry out its responsibilities under this part with the following agencies: public and private hospitals; receiving and treatment facilities; clinics; laboratories; departments, divisions, and other units of state government; the state colleges and universities; the community colleges; private colleges and universities; counties, municipalities, and any other governmental unit, including facilities of the United States Government; and any other public or private entity which provides or needs facilities or services. Baker Act funds for community inpatient, crisis stabilization, short-term residential treatment, and screening services must be allocated to each county pursuant to the department’s funding allocation methodology. Notwithstanding the provisions of s. [287.057](#)(3)(f), contracts for community-based Baker Act services for inpatient, crisis stabilization, short-term residential treatment, and screening provided under this part, other than those with other units of government, to be provided for the department must be awarded using competitive sealed bids when the county commission of the county receiving the services makes a request to the department’s district office by January 15 of the contracting year. The district shall not enter into a competitively bid contract under this provision if such action will result in increases of state or local expenditures for Baker Act services within the district. Contracts for these Baker Act services using competitive sealed bids will be effective for 3 years. The department shall adopt rules establishing minimum standards for such contracted services and facilities and shall make periodic audits and inspections to assure that the contracted services are provided and meet the standards of the department.

(4)APPLICATION FOR AND ACCEPTANCE OF GIFTS AND GRANTS.—The department may apply for and accept any funds, grants, gifts, or services made available to it by any agency or department of the Federal Government or any other public or private agency or individual in aid of mental health programs. All such moneys shall be deposited in the State Treasury and shall be disbursed as provided by law.

(5)RULES.—

(a)The department shall adopt rules establishing forms and procedures relating to the rights and privileges of patients seeking mental health treatment from facilities under this part.

(b)The department shall adopt rules necessary for the implementation and administration of the provisions of this part, and a program subject to the provisions of this part shall not be permitted to operate unless rules designed to ensure the protection of the health, safety, and welfare of the patients treated through such program have been adopted. Rules adopted under this subsection must include provisions governing the use of restraint and seclusion which are consistent with recognized best practices and professional judgment; prohibit inherently dangerous restraint or seclusion procedures; establish limitations on the use and duration of restraint and seclusion; establish measures to ensure the safety of program participants and staff during an incident of restraint or seclusion; establish procedures for staff to follow before, during, and after incidents of restraint or seclusion; establish professional qualifications of and training for staff who may order or be engaged in the use of restraint or seclusion; and establish mandatory reporting, data collection, and data dissemination procedures and requirements. Rules adopted under this subsection must require that each instance of the use of restraint or seclusion be documented in the record of the patient.

(c)The department shall adopt rules establishing minimum standards for services provided by a mental health overlay program or a mobile crisis response service.

(6)PERSONNEL.—

(a)The department shall, by rule, establish minimum standards of education and experience for professional and technical personnel employed in mental health programs, including members of a mobile crisis response service.

(b)The department shall design and distribute appropriate materials for the orientation and training of persons actively engaged in implementing the provisions of this part relating to the involuntary examination and placement of persons who are believed to have a mental illness.

(7)PAYMENT FOR CARE OF PATIENTS.—Fees and fee collections for patients in state-owned, state-operated, or state-supported treatment facilities shall be according to s. [402.33](#).

History.—s. 1, ch. 57-317; s. 1, ch. 59-222; s. 1, ch. 65-13; s. 3, ch. 65-22; s. 1, ch. 65-145; s. 1, ch. 67-334; ss. 11, 19, 31, 35, ch. 69-106; s. 4, ch. 71-131; s. 70, ch. 72-221; s. 2, ch. 72-396; s. 2, ch. 73-133; s. 25, ch. 73-334; s. 1, ch. 74-233; s. 200, ch. 77-147; s. 19, ch. 78-95; s. 3, ch. 78-332; s. 3, ch. 79-298; s. 6, ch. 82-212; s. 4, ch. 84-285; s. 12, ch. 85-54; s. 11, ch. 87-238; s. 2, ch. 90-225; s. 28, ch. 90-347; s. 7, ch. 91-33; s. 22, ch. 91-57; s. 89, ch. 91-221; s. 2, ch. 91-249; s. 11, ch. 93-156; s. 19, ch. 94-134; s. 19, ch. 94-135; s. 15, ch. 95-152; s. 37, ch. 95-228; s. 124, ch. 95-418; s. 3, ch. 96-169; s. 8, ch. 96-268; s. 209, ch. 96-406; s. 123, ch. 96-410; s. 97, ch. 99-8; s. 13, ch. 2001-278; s. 34, ch. 2002-207; s. 1, ch. 2006-29; s. 38, ch. 2006-227; s. 29, ch. 2010-151.

Note.—Former s. 965.01(3), s. 402.10

¹394.4572 Screening of mental health personnel.—

(1)(a) The department and the Agency for Health Care Administration shall require level 2 background screening pursuant to chapter 435 for mental health personnel. “Mental health personnel” includes all program directors, professional clinicians, staff members, and volunteers working in public or private mental health programs and facilities who have direct contact with individuals held for examination or admitted for mental health treatment. For purposes of this chapter, employment screening of mental health personnel also includes, but is not limited to, employment screening as provided under chapter 435 and s. 408.809.

(b) Students in the health care professions who are interning in a mental health facility licensed under chapter 395, where the primary purpose of the facility is not the treatment of minors, are exempt from the fingerprinting and screening requirements if they are under direct supervision in the actual physical presence of a licensed health care professional.

(c) A volunteer who assists on an intermittent basis for less than 10 hours per month is exempt from the fingerprinting and screening requirements if a person who meets the screening requirement of paragraph (a) is always present and has the volunteer within his or her line of sight.

(2) The department or the Agency for Health Care Administration may grant exemptions from disqualification as provided in chapter 435.

History.--s. 1, ch. 87-128; s. 1, ch. 87-141; s. 23, ch. 93-39; s. 4, ch. 96-169; s. 980, ch. 2002-387; s. 7, ch. 2004-267; s. 5, ch. 2010-114.

¹ Note.— Section 58, ch. 2010-114, provides that “[t]he changes made by this act are intended to be prospective in nature. It is not intended that persons who are employed or licensed on the effective date of this act be rescreened until such time as they are otherwise required to be rescreened pursuant to law, at which time they must meet the requirements for screening as set forth in this act.”

394.4573 Continuity of care management system; measures of performance; reports.—

(1)For the purposes of this section:

(a)“Case management” means those activities aimed at assessing client needs, planning services, linking the service system to a client, coordinating the various system components, monitoring service delivery, and evaluating the effect of service delivery.

(b)“Case manager” means an individual who works with clients, and their families and significant others, to provide case management.

(c)“Client manager” means an employee of the department who is assigned to specific provider agencies and geographic areas to ensure that the full range of needed services is available to clients.

(d)“Continuity of care management system” means a system that assures, within available resources, that clients have access to the full array of services within the mental health services delivery system.

(2)The department is directed to implement a continuity of care management system for the provision of mental health care, through the provision of client and case management, including clients referred from state treatment facilities to community mental health facilities. Such system shall include a network of client managers and case managers throughout the state designed to:

(a)Reduce the possibility of a client’s admission or readmission to a state treatment facility.

(b)Provide for the creation or designation of an agency in each county to provide single intake services for each person seeking mental health services. Such agency shall provide information and referral services necessary to ensure that clients receive the most appropriate and least restrictive form of care, based on the individual needs of the person seeking treatment. Such agency shall have a single telephone number, operating 24 hours per day, 7 days per week, where practicable, at a central location, where each client will have a central record.

(c)Advocate on behalf of the client to ensure that all appropriate services are afforded to the client in a timely and dignified manner.

(d)Require that any public receiving facility initiating a patient transfer to a licensed hospital for acute care mental health services not accessible through the public receiving facility shall notify the hospital of such transfer and send all records relating to the emergency psychiatric or medical condition.

(3)The department is directed to develop and include in contracts with service providers measures of performance with regard to goals and objectives as specified in the state plan. Such measures shall use, to the extent practical, existing data collection methods and reports and shall not require, as a result of this subsection, additional reports on the part of service providers. The department shall plan monitoring visits of community mental health facilities with other state, federal, and local governmental and private agencies charged with monitoring such facilities.

History.—ss. 3, 4, 5, ch. 80-384; s. 5, ch. 84-285; s. 1, ch. 89-211; s. 5, ch. 96-169; s. 100, ch. 2010-102.

394.4574 Department responsibilities for a mental health resident who resides in an assisted living facility that holds a limited mental health license.--

(1) The term "mental health resident," for purposes of this section, means an individual who receives social security disability income due to a mental disorder as determined by the Social Security Administration or receives supplemental security income due to a mental disorder as determined by the Social Security Administration and receives optional state supplementation.

(2) The department must ensure that:

(a) A mental health resident has been assessed by a psychiatrist, clinical psychologist, clinical social worker, or psychiatric nurse, or an individual who is supervised by one of these professionals, and determined to be appropriate to reside in an assisted living facility. The documentation must be provided to the administrator of the facility within 30 days after the mental health resident has been admitted to the facility. An evaluation completed upon discharge from a state mental hospital meets the requirements of this subsection related to appropriateness for placement as a mental health resident if it was completed within 90 days prior to admission to the facility.

(b) A cooperative agreement, as required in s. 429.075, is developed between the mental health care services provider that serves a mental health resident and the administrator of the assisted living facility with a limited mental health license in which the mental health resident is living. Any entity that provides Medicaid prepaid health plan services shall ensure the appropriate coordination of health care services with an assisted living facility in cases where a Medicaid recipient is both a member of the entity's prepaid health plan and a resident of the assisted living facility. If the entity is at risk for Medicaid targeted case management and behavioral health services, the entity shall inform the assisted living facility of the procedures to follow should an emergent condition arise.

(c) The community living support plan, as defined in s. 429.02, has been prepared by a mental health resident and a mental health case manager of that resident in consultation with the administrator of the facility or the administrator's designee. The plan must be provided to the administrator of the assisted living facility with a limited mental health license in which the mental health resident lives. The support plan and the agreement may be in one document.

(d) The assisted living facility with a limited mental health license is provided with documentation that the individual meets the definition of a mental health resident.

(e) The mental health services provider assigns a case manager to each mental health resident who lives in an assisted living facility with a limited mental health license. The case manager is responsible for coordinating the development of and implementation of the community living support plan defined in s. 429.02. The plan must be updated at least annually.

(3) The Secretary of Children and Family Services, in consultation with the Agency for Health Care Administration, shall annually require each district administrator to develop, with community input, detailed plans that demonstrate how the district will ensure the provision of state-funded mental health and substance abuse treatment services to residents of assisted living facilities that hold a limited mental health license. These plans must be consistent with the substance abuse and mental health district plan developed pursuant to s. 394.75 and must address case management services; access to consumer-operated drop-in centers; access to services during evenings, weekends, and holidays; supervision of the clinical needs of the residents; and access to emergency psychiatric care.

History.--s. 9, ch. 97-82; s. 23, ch. 98-80; s. 12, ch. 2000-349; s. 18, ch. 2006-197.

394.458 Introduction or removal of certain articles unlawful; penalty.--

(1)(a) Except as authorized by law or as specifically authorized by the person in charge of each hospital providing mental health services under this part, it is unlawful to introduce into or upon the grounds of such hospital, or to take or attempt to take or send therefrom, any of the following articles, which are hereby declared to be contraband for the purposes of this section:

1. Any intoxicating beverage or beverage which causes or may cause an intoxicating effect;
2. Any controlled substance as defined in chapter 893; or
3. Any firearms or deadly weapon.

(b) It is unlawful to transmit to, or attempt to transmit to, or cause or attempt to cause to be transmitted to, or received by, any patient of any hospital providing mental health services under this part any article or thing declared by this section to be contraband, at any place which is outside of the grounds of such hospital, except as authorized by law or as specifically authorized by the person in charge of such hospital.

(2) A person who violates any provision of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.--s. 1, ch. 75-253; s. 201, ch. 77-147; s. 1, ch. 77-174; s. 6, ch. 96-169.

394.459 Rights of patients.--

(1) **RIGHT TO INDIVIDUAL DIGNITY.**--It is the policy of this state that the individual dignity of the patient shall be respected at all times and upon all occasions, including any occasion when the patient is taken into custody, held, or transported. Procedures, facilities, vehicles, and restraining devices utilized for criminals or those accused of crime shall not be used in connection with persons who have a mental illness, except for the protection of the patient or others. Persons who have a mental illness but who are not charged with a criminal offense shall not be detained or incarcerated in the jails of this state. A person who is receiving treatment for mental illness shall not be deprived of any constitutional rights. However, if such a person is adjudicated incapacitated, his or her rights may be limited to the same extent the rights of any incapacitated person are limited by law.

(2) **RIGHT TO TREATMENT.**--

(a) A person shall not be denied treatment for mental illness and services shall not be delayed at a receiving or treatment facility because of inability to pay. However, every reasonable effort to collect appropriate reimbursement for the cost of providing mental health services to persons able to pay for services, including insurance or third-party payments, shall be made by facilities providing services pursuant to this part.

(b) It is further the policy of the state that the least restrictive appropriate available treatment be utilized based on the individual needs and best interests of the patient and consistent with optimum improvement of the patient's condition.

(c) Each person who remains at a receiving or treatment facility for more than 12 hours shall be given a physical examination by a health practitioner authorized by law to give such examinations, within 24 hours after arrival at such facility.

(d) Every patient in a facility shall be afforded the opportunity to participate in activities designed to enhance self-image and the beneficial effects of other treatments, as determined by the facility.

(e) Not more than 5 days after admission to a facility, each patient shall have and receive an individualized treatment plan in writing which the patient has had an opportunity to assist in preparing and to review prior to its implementation. The plan shall include a space for the patient's comments.

(3) RIGHT TO EXPRESS AND INFORMED PATIENT CONSENT.--

(a)1. Each patient entering treatment shall be asked to give express and informed consent for admission or treatment. If the patient has been adjudicated incapacitated or found to be incompetent to consent to treatment, express and informed consent to treatment shall be sought instead from the patient's guardian or guardian advocate. If the patient is a minor, express and informed consent for admission or treatment shall also be requested from the patient's guardian. Express and informed consent for admission or treatment of a patient under 18 years of age shall be required from the patient's guardian, unless the minor is seeking outpatient crisis intervention services under s. 394.4784. Express and informed consent for admission or treatment given by a patient who is under 18 years of age shall not be a condition of admission when the patient's guardian gives express and informed consent for the patient's admission pursuant to s. 394.463 or s. 394.467.

2. Before giving express and informed consent, the following information shall be provided and explained in plain language to the patient, or to the patient's guardian if the patient is 18 years of age or older and has been adjudicated incapacitated, or to the patient's guardian advocate if the patient has been found to be incompetent to consent to treatment, or to both the patient and the guardian if the patient is a minor: the reason for admission or treatment; the proposed treatment; the purpose of the treatment to be provided; the common risks, benefits, and side effects thereof; the specific dosage range for the medication, when applicable; alternative treatment modalities; the approximate length of care; the potential effects of stopping treatment; how treatment will be monitored; and that any consent given for treatment may be revoked orally or in writing before or during the treatment period by the patient or by a person who is legally authorized to make health care decisions on behalf of the patient.

(b) In the case of medical procedures requiring the use of a general anesthetic or electroconvulsive treatment, and prior to performing the procedure, express and informed consent shall be obtained from the patient if the patient is legally competent, from the guardian

of a minor patient, from the guardian of a patient who has been adjudicated incapacitated, or from the guardian advocate of the patient if the guardian advocate has been given express court authority to consent to medical procedures or electroconvulsive treatment as provided under s. 394.4598.

(c) When the department is the legal guardian of a patient, or is the custodian of a patient whose physician is unwilling to perform a medical procedure, including an electroconvulsive treatment, based solely on the patient's consent and whose guardian or guardian advocate is unknown or unlocatable, the court shall hold a hearing to determine the medical necessity of the medical procedure. The patient shall be physically present, unless the patient's medical condition precludes such presence, represented by counsel, and provided the right and opportunity to be confronted with, and to cross-examine, all witnesses alleging the medical necessity of such procedure. In such proceedings, the burden of proof by clear and convincing evidence shall be on the party alleging the medical necessity of the procedure.

(d) The administrator of a receiving or treatment facility may, upon the recommendation of the patient's attending physician, authorize emergency medical treatment, including a surgical procedure, if such treatment is deemed lifesaving, or if the situation threatens serious bodily harm to the patient, and permission of the patient or the patient's guardian or guardian advocate cannot be obtained.

(4) QUALITY OF TREATMENT.--

(a) Each patient shall receive services, including, for a patient placed under s. 394.4655, those services included in the court order which are suited to his or her needs, and which shall be administered skillfully, safely, and humanely with full respect for the patient's dignity and personal integrity. Each patient shall receive such medical, vocational, social, educational, and rehabilitative services as his or her condition requires in order to live successfully in the community. In order to achieve this goal, the department is directed to coordinate its mental health programs with all other programs of the department and other state agencies.

(b) Facilities shall develop and maintain, in a form accessible to and readily understandable by patients and consistent with rules adopted by the department, the following:

1. Criteria, procedures, and required staff training for any use of close or elevated levels of supervision, of restraint, seclusion, or isolation, or of emergency treatment orders, and for the use of bodily control and physical management techniques.

2. Procedures for documenting, monitoring, and requiring clinical review of all uses of the procedures described in subparagraph 1. and for documenting and requiring review of any incidents resulting in injury to patients.

3. A system for investigating, tracking, managing, and responding to complaints by persons receiving services or individuals acting on their behalf.

(c) A facility may not use seclusion or restraint for punishment, to compensate for inadequate staffing, or for the convenience of staff. Facilities shall ensure that all staff are made aware of these restrictions on the use of seclusion and restraint and shall make and maintain records which demonstrate that this information has been conveyed to individual staff members.

(5) COMMUNICATION, ABUSE REPORTING, AND VISITS.--

(a) Each person receiving services in a facility providing mental health services under this part has the right to communicate freely and privately with persons outside the facility unless it is determined that such communication is likely to be harmful to the person or others. Each facility shall make available as soon as reasonably possible to persons receiving services a telephone that allows for free local calls and access to a long-distance service. A facility is not required to pay the costs of a patient's long-distance calls. The telephone shall be readily accessible to the patient and shall be placed so that the patient may use it to communicate privately and confidentially. The facility may establish reasonable rules for the use of this telephone, provided that the rules do not interfere with a patient's access to a telephone to report abuse pursuant to paragraph (e).

(b) Each patient admitted to a facility under the provisions of this part shall be allowed to receive, send, and mail sealed, unopened correspondence; and no patient's incoming or outgoing correspondence shall be opened, delayed, held, or censored by the facility unless there is reason to believe that it contains items or substances which may be harmful to the patient or others, in which case the administrator may direct reasonable examination of such mail and may regulate the disposition of such items or substances.

(c) Each facility must permit immediate access to any patient, subject to the patient's right to deny or withdraw consent at any time, by the patient's family members, guardian, guardian advocate, representative, Florida statewide or local advocacy council, or attorney, unless such access would be detrimental to the patient. If a patient's right to communicate or to receive visitors is restricted by the facility, written notice of such restriction and the reasons for the restriction shall be served on the patient, the patient's attorney, and the patient's guardian, guardian advocate, or representative; and such restriction shall be recorded on the patient's clinical record with the reasons therefor. The restriction of a patient's right to communicate or to receive visitors shall be reviewed at least every 7 days. The right to communicate or receive visitors shall not be restricted as a means of punishment. Nothing in this paragraph shall be construed to limit the provisions of paragraph (d).

(d) Each facility shall establish reasonable rules governing visitors, visiting hours, and the use of telephones by patients in the least restrictive possible manner. Patients shall have the right to contact and to receive communication from their attorneys at any reasonable time.

(e) Each patient receiving mental health treatment in any facility shall have ready access to a telephone in order to report an alleged abuse. The facility staff shall orally and in writing inform each patient of the procedure for reporting abuse and shall make every reasonable effort to present the information in a language the patient understands. A written copy of that procedure, including the telephone number of the central abuse hotline and reporting forms, shall be posted in plain view.

(f) The department shall adopt rules providing a procedure for reporting abuse. Facility staff shall be required, as a condition of employment, to become familiar with the requirements and procedures for the reporting of abuse.

(6) CARE AND CUSTODY OF PERSONAL EFFECTS OF PATIENTS.--A patient's right to the possession of his or her clothing and personal effects shall be respected. The facility may take temporary custody of such effects when required for medical and safety reasons. A patient's clothing and personal effects shall be inventoried upon their removal into temporary custody. Copies of this inventory shall be given to the patient and to the patient's guardian, guardian advocate, or representative and shall be recorded in the patient's clinical record. This inventory may be amended upon the request of the patient or the patient's guardian, guardian advocate, or representative. The inventory and any amendments to it must be witnessed by two members of the facility staff and by the patient, if able. All of a patient's clothing and personal effects held by the facility shall be returned to the patient immediately upon the discharge or transfer of the patient from the facility, unless such return would be detrimental to the patient. If personal effects are not returned to the patient, the reason must be documented in the clinical record along with the disposition of the clothing and personal effects, which may be given instead to the patient's guardian, guardian advocate, or representative. As soon as practicable after an emergency transfer of a patient, the patient's clothing and personal effects shall be transferred to the patient's new location, together with a copy of the inventory and any amendments, unless an alternate plan is approved by the patient, if able, and by the patient's guardian, guardian advocate, or representative.

(7) VOTING IN PUBLIC ELECTIONS.--A patient who is eligible to vote according to the laws of the state has the right to vote in the primary and general elections. The department shall establish rules to enable patients to obtain voter registration forms, applications for absentee ballots, and absentee ballots.

(8) HABEAS CORPUS.--

(a) At any time, and without notice, a person held in a receiving or treatment facility, or a relative, friend, guardian, guardian advocate, representative, or attorney, or the department, on behalf of such person, may petition for a writ of habeas corpus to question the cause and legality of such detention and request that the court order a return to the writ in accordance with chapter 79. Each patient held in a facility shall receive a written notice of the right to petition for a writ of habeas corpus.

(b) At any time, and without notice, a person who is a patient in a receiving or treatment facility, or a relative, friend, guardian, guardian advocate, representative, or attorney, or the department, on behalf of such person, may file a petition in the circuit court in the county where the patient is being held alleging that the patient is being unjustly denied a right or privilege granted herein or that a procedure authorized herein is being abused. Upon the filing of such a petition, the court shall have the authority to conduct a judicial inquiry and to issue any order needed to correct an abuse of the provisions of this part.

(c) The administrator of any receiving or treatment facility receiving a petition under this subsection shall file the petition with the clerk of the court on the next court working day.

(d) No fee shall be charged for the filing of a petition under this subsection.

(9) VIOLATIONS.--The department shall report to the Agency for Health Care Administration any violation of the rights or privileges of patients, or of any procedures provided under this part, by any facility or professional licensed or regulated by the agency. The agency is authorized to impose any sanction authorized for violation of this part, based solely on the investigation and findings of the department.

(10) LIABILITY FOR VIOLATIONS.--Any person who violates or abuses any rights or privileges of patients provided by this part is liable for damages as determined by law. Any person who acts in good faith in compliance with the provisions of this part is immune from civil or criminal liability for his or her actions in connection with the admission, diagnosis, treatment, or discharge of a patient to or from a facility. However, this section does not relieve any person from liability if such person commits negligence.

(11) RIGHT TO PARTICIPATE IN TREATMENT AND DISCHARGE PLANNING.--The patient shall have the opportunity to participate in treatment and discharge planning and shall be notified in writing of his or her right, upon discharge from the facility, to seek treatment from the professional or agency of the patient's choice.

(12) POSTING OF NOTICE OF RIGHTS OF PATIENTS.--Each facility shall post a notice listing and describing, in the language and terminology that the persons to whom the notice is addressed can understand, the rights provided in this section. This notice shall include a statement that provisions of the federal Americans with Disabilities Act apply and the name and telephone number of a person to contact for further information. This notice shall be posted in a place readily accessible to patients and in a format easily seen by patients. This notice shall include the telephone numbers of the Florida local advocacy council and Advocacy Center for Persons with Disabilities, Inc.

History.--s. 5, ch. 71-131; s. 3, ch. 73-133; s. 25, ch. 73-334; s. 2, ch. 74-233; s. 202, ch. 77-147; s. 1, ch. 78-434; s. 12, ch. 79-3; s. 4, ch. 79-298; s. 10, ch. 79-320; s. 1, ch. 80-171; s. 7, ch. 82-212; s. 6, ch. 84-285; s. 27, ch. 85-167; s. 1, ch. 88-307; s. 16, ch. 88-398; s. 11, ch. 90-347; s. 1, ch. 91-170; s. 71, ch. 95-143; s. 706, ch. 95-148; s. 7, ch. 96-169; s. 210, ch. 96-406; s. 9, ch. 2000-263; s. 64, ch. 2000-349; s. 2, ch. 2004-385; s. 3, ch. 2005-65.

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

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

(a) "Employee" includes any paid staff member, volunteer, or intern of the department; any person under contract with the department; and any person providing care or support to a client on behalf of the department or its providers.

(b) "Sexual activity" means:

1. Fondling the genital area, groin, inner thighs, buttocks, or breasts of a person.
2. The oral, anal, or vaginal penetration by or union with the sexual organ of another or the anal or vaginal penetration of another by any other object.
3. Intentionally touching in a lewd or lascivious manner the breasts, genitals, the genital area, or buttocks, or the clothing covering them, of a person, or forcing or enticing a person to touch the perpetrator.
4. Intentionally masturbating in the presence of another person.
5. Intentionally exposing the genitals in a lewd or lascivious manner in the presence of another person.
6. Intentionally committing any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity in the presence of a victim.

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

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

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

(b) Resides in a receiving facility or a treatment facility, as those terms are defined in s. 394.455,

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

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

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

(a) Is legally married to the patient; or

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

(5) An employee who witnesses sexual misconduct, or who otherwise knows or has reasonable cause to suspect that a person has engaged in sexual misconduct, shall immediately report the incident to the department's central abuse hotline and to the appropriate local law enforcement

agency. Such employee shall also prepare, date, and sign an independent report that specifically describes the nature of the sexual misconduct, the location and time of the incident, and the persons involved. The employee shall deliver the report to the supervisor or program director, who is responsible for providing copies to the department's inspector general. The inspector general shall immediately conduct an appropriate administrative investigation, and, if there is probable cause to believe that sexual misconduct has occurred, the inspector general shall notify the state attorney in the circuit in which the incident occurred.

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

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

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

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

History.--s. 2, ch. 2004-267.

394.4595 Florida statewide and local advocacy councils; access to patients and records.--

Any facility designated by the department as a receiving or treatment facility must allow access to any patient and the clinical and legal records of any patient admitted pursuant to the provisions of this act by members of the Florida statewide and local advocacy councils.

History.--s. 8, ch. 96-169; s. 10, ch. 2000-263.

394.4597 Persons to be notified; patient's representative.--

(1) VOLUNTARY PATIENTS.--At the time a patient is voluntarily admitted to a receiving or treatment facility, the identity and contact information of a person to be notified in case of an emergency shall be entered in the patient's clinical record.

(2) INVOLUNTARY PATIENTS.--

(a) At the time a patient is admitted to a facility for involuntary examination or placement, or when a petition for involuntary placement is filed, the names, addresses, and telephone numbers of the patient's guardian or guardian advocate, or representative if the patient has no guardian, and the patient's attorney shall be entered in the patient's clinical record.

(b) If the patient has no guardian, the patient shall be asked to designate a representative. If the patient is unable or unwilling to designate a representative, the facility shall select a representative.

(c) The patient shall be consulted with regard to the selection of a representative by the receiving or treatment facility and shall have authority to request that any such representative be replaced.

(d) When the receiving or treatment facility selects a representative, first preference shall be given to a health care surrogate, if one has been previously selected by the patient. If the patient has not previously selected a health care surrogate, the selection, except for good cause documented in the patient's clinical record, shall be made from the following list in the order of listing:

1. The patient's spouse.
2. An adult child of the patient.
3. A parent of the patient.
4. The adult next of kin of the patient.
5. An adult friend of the patient.
6. The appropriate Florida local advocacy council as provided in s. 402.166.

(e) A licensed professional providing services to the patient under this part, an employee of a facility providing direct services to the patient under this part, a department employee, a person providing other substantial services to the patient in a professional or business capacity, or a creditor of the patient shall not be appointed as the patient's representative.

History.--s. 9, ch. 96-169; s. 11, ch. 2000-263.

394.4598 Guardian advocate.--

(1) The administrator may petition the court for the appointment of a guardian advocate based upon the opinion of a psychiatrist that the patient is incompetent to consent to treatment. If the court finds that a patient is incompetent to consent to treatment and has not been adjudicated incapacitated and a guardian with the authority to consent to mental health treatment appointed, it shall appoint a guardian advocate. The patient has the right to have an attorney represent him or her at the hearing. If the person is indigent, the court shall appoint the office of the public defender to represent him or her at the hearing. The patient has the right to testify, cross-examine witnesses, and present witnesses. The proceeding shall be recorded either electronically or stenographically, and testimony shall be provided under oath. One of the professionals authorized to give an opinion in support of a petition for involuntary placement, as described in s. 394.4655 or s. 394.467, must testify. A guardian advocate must meet the qualifications of a

guardian contained in part IV of chapter 744, except that a professional referred to in this part, an employee of the facility providing direct services to the patient under this part, a departmental employee, a facility administrator, or member of the Florida local advocacy council shall not be appointed. A person who is appointed as a guardian advocate must agree to the appointment.

(2) A facility requesting appointment of a guardian advocate must, prior to the appointment, provide the prospective guardian advocate with information about the duties and responsibilities of guardian advocates, including the information about the ethics of medical decisionmaking. Before asking a guardian advocate to give consent to treatment for a patient, the facility shall provide to the guardian advocate sufficient information so that the guardian advocate can decide whether to give express and informed consent to the treatment, including information that the treatment is essential to the care of the patient, and that the treatment does not present an unreasonable risk of serious, hazardous, or irreversible side effects. Before giving consent to treatment, the guardian advocate must meet and talk with the patient and the patient's physician in person, if at all possible, and by telephone, if not. The decision of the guardian advocate may be reviewed by the court, upon petition of the patient's attorney, the patient's family, or the facility administrator.

(3) Prior to a guardian advocate exercising his or her authority, the guardian advocate shall attend a training course approved by the court. This training course, of not less than 4 hours, must include, at minimum, information about the patient rights, psychotropic medications, diagnosis of mental illness, the ethics of medical decisionmaking, and duties of guardian advocates. This training course shall take the place of the training required for guardians appointed pursuant to chapter 744.

(4) The information to be supplied to prospective guardian advocates prior to their appointment and the training course for guardian advocates must be developed and completed through a course developed by the department and approved by the chief judge of the circuit court and taught by a court-approved organization. Court-approved organizations may include, but are not limited to, community or junior colleges, guardianship organizations, and the local bar association or The Florida Bar. The court may, in its discretion, waive some or all of the training requirements for guardian advocates or impose additional requirements. The court shall make its decision on a case-by-case basis and, in making its decision, shall consider the experience and education of the guardian advocate, the duties assigned to the guardian advocate, and the needs of the patient.

(5) In selecting a guardian advocate, the court shall give preference to a health care surrogate, if one has already been designated by the patient. If the patient has not previously selected a health care surrogate, except for good cause documented in the court record, the selection shall be made from the following list in the order of listing:

- (a) The patient's spouse.
- (b) An adult child of the patient.
- (c) A parent of the patient.

(d) The adult next of kin of the patient.

(e) An adult friend of the patient.

(f) An adult trained and willing to serve as guardian advocate for the patient.

(6) If a guardian with the authority to consent to medical treatment has not already been appointed or if the patient has not already designated a health care surrogate, the court may authorize the guardian advocate to consent to medical treatment, as well as mental health treatment. Unless otherwise limited by the court, a guardian advocate with authority to consent to medical treatment shall have the same authority to make health care decisions and be subject to the same restrictions as a proxy appointed under part IV of chapter 765. Unless the guardian advocate has sought and received express court approval in proceeding separate from the proceeding to determine the competence of the patient to consent to medical treatment, the guardian advocate may not consent to:

(a) Abortion.

(b) Sterilization.

(c) Electroconvulsive treatment.

(d) Psychosurgery.

(e) Experimental treatments that have not been approved by a federally approved institutional review board in accordance with 45 C.F.R. part 46 or 21 C.F.R. part 56.

The court must base its decision on evidence that the treatment or procedure is essential to the care of the patient and that the treatment does not present an unreasonable risk of serious, hazardous, or irreversible side effects. The court shall follow the procedures set forth in subsection (1) of this section.

(7) The guardian advocate shall be discharged when the patient is discharged from an order for involuntary outpatient placement or involuntary inpatient placement or when the patient is transferred from involuntary to voluntary status. The court or a hearing officer shall consider the competence of the patient pursuant to subsection (1) and may consider an involuntarily placed patient's competence to consent to treatment at any hearing. Upon sufficient evidence, the court may restore, or the hearing officer may recommend that the court restore, the patient's competence. A copy of the order restoring competence or the certificate of discharge containing the restoration of competence shall be provided to the patient and the guardian advocate.

History.--s. 10, ch. 96-169; s. 50, ch. 97-96; s. 12, ch. 2000-263; s. 3, ch. 2004-385.

394.4599 Notice.--

(1) VOLUNTARY PATIENTS.--Notice of a voluntary patient's admission shall only be given at the request of the patient, except that in an emergency, notice shall be given as determined by the facility.

(2) INVOLUNTARY PATIENTS.--

(a) Whenever notice is required to be given under this part, such notice shall be given to the patient and the patient's guardian, guardian advocate, attorney, and representative.

1. When notice is required to be given to a patient, it shall be given both orally and in writing, in the language and terminology that the patient can understand, and, if needed, the facility shall provide an interpreter for the patient.

2. Notice to a patient's guardian, guardian advocate, attorney, and representative shall be given by United States mail and by registered or certified mail with the receipts attached to the patient's clinical record. Hand delivery by a facility employee may be used as an alternative, with delivery documented in the clinical record. If notice is given by a state attorney or an attorney for the department, a certificate of service shall be sufficient to document service.

(b) A receiving facility shall give prompt notice of the whereabouts of a patient who is being involuntarily held for examination, by telephone or in person within 24 hours after the patient's arrival at the facility, unless the patient requests that no notification be made. Contact attempts shall be documented in the patient's clinical record and shall begin as soon as reasonably possible after the patient's arrival. Notice that a patient is being admitted as an involuntary patient shall be given to the Florida local advocacy council no later than the next working day after the patient is admitted.

(c) The written notice of the filing of the petition for involuntary placement must contain the following:

1. Notice that the petition has been filed with the circuit court in the county in which the patient is hospitalized and the address of such court.

2. Notice that the office of the public defender has been appointed to represent the patient in the proceeding, if the patient is not otherwise represented by counsel.

3. The date, time, and place of the hearing and the name of each examining expert and every other person expected to testify in support of continued detention.

4. Notice that the patient, the patient's guardian or representative, or the administrator may apply for a change of venue for the convenience of the parties or witnesses or because of the condition of the patient.

5. Notice that the patient is entitled to an independent expert examination and, if the patient cannot afford such an examination, that the court will provide for one.

(d) A treatment facility shall provide notice of a patient's involuntary admission on the next regular working day after the patient's arrival at the facility.

(e) When a patient is to be transferred from one facility to another, notice shall be given by the facility where the patient is located prior to the transfer.

History.--s. 11, ch. 96-169; s. 13, ch. 2000-263.

394.460 Rights of professionals.--No professional referred to in this part shall be required to accept patients for treatment of mental, emotional, or behavioral disorders. Such participation shall be voluntary.

History.--s. 4, ch. 73-133; s. 5, ch. 79-298; s. 8, ch. 82-212; s. 12, ch. 96-169.

394.461 Designation of receiving and treatment facilities.--The department is authorized to designate and monitor receiving facilities and treatment facilities and may suspend or withdraw such designation for failure to comply with this part and rules adopted under this part. Unless designated by the department, facilities are not permitted to hold or treat involuntary patients under this part.

(1) **RECEIVING FACILITY.**--The department may designate any community facility as a receiving facility. Any other facility within the state, including a private facility or a federal facility, may be so designated by the department, provided that such designation is agreed to by the governing body or authority of the facility.

(2) **TREATMENT FACILITY.**--The department may designate any state-owned, state-operated, or state-supported facility as a state treatment facility. A civil patient shall not be admitted to a state treatment facility without previously undergoing a transfer evaluation. Before a court hearing for involuntary placement in a state treatment facility, the court shall receive and consider the information documented in the transfer evaluation. Any other facility, including a private facility or a federal facility, may be designated as a treatment facility by the department, provided that such designation is agreed to by the appropriate governing body or authority of the facility.

(3) **PRIVATE FACILITIES.**--Private facilities designated as receiving and treatment facilities by the department may provide examination and treatment of involuntary patients, as well as voluntary patients, and are subject to all the provisions of this part.

(4)(a) A facility designated as a public receiving or treatment facility under this section shall report to the department on an annual basis the following data, unless these data are currently being submitted to the Agency for Health Care Administration:

1. Number of licensed beds.
2. Number of contract days.
3. Number of admissions by payor class and diagnoses.

4. Number of bed days by payor class.
5. Average length of stay by payor class.
6. Total revenues by payor class.

(b) For the purposes of this subsection, "payor class" means Medicare, Medicare HMO, Medicaid, Medicaid HMO, private-pay health insurance, private-pay health maintenance organization, private preferred provider organization, the Department of Children and Family Services, other government programs, self-pay patients, and charity care.

(c) The data required under this subsection shall be submitted to the department no later than 90 days following the end of the facility's fiscal year. A facility designated as a public receiving or treatment facility shall submit its initial report for the 6-month period ending June 30, 2008.

(d) The department shall issue an annual report based on the data required pursuant to this subsection. The report shall include individual facilities' data, as well as statewide totals. The report shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(5) RULES.--The department shall adopt rules relating to:

(a) Procedures and criteria for receiving and evaluating facility applications for designation, which may include onsite facility inspection and evaluation of an applicant's licensing status and performance history, as well as consideration of local service needs.

(b) Minimum standards consistent with this part that a facility must meet and maintain in order to be designated as a receiving or treatment facility and procedures for monitoring continued adherence to such standards.

(c) Procedures for receiving complaints against a designated facility and for initiating inspections and investigations of facilities alleged to have violated the provisions of this part or rules adopted under this part.

(d) Procedures and criteria for the suspension or withdrawal of designation.

History.--s. 6, ch. 71-131; s. 3, ch. 72-396; s. 5, ch. 73-133; s. 1, ch. 77-90; s. 203, ch. 77-147; s. 6, ch. 79-298; ss. 1, 2, ch. 80-384; s. 9, ch. 82-212; s. 7, ch. 84-285; s. 42, ch. 85-167; s. 707, ch. 95-148; s. 13, ch. 96-169; s. 1, ch. 2007-169.

394.4612 Integrated adult mental health crisis stabilization and addictions receiving facilities.--

(1) The Agency for Health Care Administration, in consultation with the Department of Children and Family Services, may license facilities that integrate services provided in an adult mental health crisis stabilization unit with services provided in an adult addictions receiving facility. Such a facility shall be licensed by the agency as an adult crisis stabilization unit under

part IV and must meet all licensure requirements for crisis stabilization units providing integrated services.

(2) An integrated mental health crisis stabilization unit and addictions receiving facility may provide services under this section to adults who are 18 years of age or older and who fall into one or more of the following categories:

(a) An adult meeting the requirements for voluntary admission for mental health treatment under s. 394.4625.

(b) An adult meeting the criteria for involuntary examination for mental illness under s. 394.463.

(c) An adult qualifying for voluntary admission for substance abuse treatment under s. 397.601.

(d) An adult meeting the criteria for involuntary admission for substance abuse impairment under s. 397.675.

(3) The department, in consultation with the agency, shall adopt by rule standards that address eligibility criteria; clinical procedures; staffing requirements; operational, administrative, and financing requirements; and the investigation of complaints.

History.--s. 1, ch. 2009-44.

394.4615 Clinical records; confidentiality.--

(1) A clinical record shall be maintained for each patient. The record shall include data pertaining to admission and such other information as may be required under rules of the department. A clinical record is confidential and exempt from the provisions of s. 119.07(1). Unless waived by express and informed consent, by the patient or the patient's guardian or guardian advocate or, if the patient is deceased, by the patient's personal representative or the family member who stands next in line of intestate succession, the confidential status of the clinical record shall not be lost by either authorized or unauthorized disclosure to any person, organization, or agency.

(2) The clinical record shall be released when:

(a) The patient or the patient's guardian authorizes the release. The guardian or guardian advocate shall be provided access to the appropriate clinical records of the patient. The patient or the patient's guardian or guardian advocate may authorize the release of information and clinical records to appropriate persons to ensure the continuity of the patient's health care or mental health care.

(b) The patient is represented by counsel and the records are needed by the patient's counsel for adequate representation.

(c) The court orders such release. In determining whether there is good cause for disclosure, the court shall weigh the need for the information to be disclosed against the possible harm of disclosure to the person to whom such information pertains.

(d) The patient is committed to, or is to be returned to, the Department of Corrections from the Department of Children and Family Services, and the Department of Corrections requests such records. These records shall be furnished without charge to the Department of Corrections.

(3) Information from the clinical record may be released in the following circumstances:

(a) When a patient has declared an intention to harm other persons. When such declaration has been made, the administrator may authorize the release of sufficient information to provide adequate warning to the person threatened with harm by the patient.

(b) When the administrator of the facility or secretary of the department deems release to a qualified researcher as defined in administrative rule, an aftercare treatment provider, or an employee or agent of the department is necessary for treatment of the patient, maintenance of adequate records, compilation of treatment data, aftercare planning, or evaluation of programs.

For the purpose of determining whether a person meets the criteria for involuntary outpatient placement or for preparing the proposed treatment plan pursuant to s. 394.4655, the clinical record may be released to the state attorney, the public defender or the patient's private legal counsel, the court, and to the appropriate mental health professionals, including the service provider identified in s. 394.4655(6)(b)2., in accordance with state and federal law.

(4) Information from clinical records may be used for statistical and research purposes if the information is abstracted in such a way as to protect the identity of individuals.

(5) Information from clinical records may be used by the Agency for Health Care Administration, the department, and the Florida advocacy councils for the purpose of monitoring facility activity and complaints concerning facilities.

(6) Clinical records relating to a Medicaid recipient shall be furnished to the Medicaid Fraud Control Unit in the Department of Legal Affairs, upon request.

(7) Any person, agency, or entity receiving information pursuant to this section shall maintain such information as confidential and exempt from the provisions of s. 119.07(1).

(8) Any facility or private mental health practitioner who acts in good faith in releasing information pursuant to this section is not subject to civil or criminal liability for such release.

(9) Nothing in this section is intended to prohibit the parent or next of kin of a person who is held in or treated under a mental health facility or program from requesting and receiving information limited to a summary of that person's treatment plan and current physical and mental condition. Release of such information shall be in accordance with the code of ethics of the profession involved.

(10) Patients shall have reasonable access to their clinical records, unless such access is determined by the patient's physician to be harmful to the patient. If the patient's right to inspect his or her clinical record is restricted by the facility, written notice of such restriction shall be given to the patient and the patient's guardian, guardian advocate, attorney, and representative. In addition, the restriction shall be recorded in the clinical record, together with the reasons for it. The restriction of a patient's right to inspect his or her clinical record shall expire after 7 days but may be renewed, after review, for subsequent 7-day periods.

(11) Any person who fraudulently alters, defaces, or falsifies the clinical record of any person receiving mental health services in a facility subject to this part, or causes or procures any of these offenses to be committed, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.--s. 14, ch. 96-169; s. 98, ch. 99-8; s. 1, ch. 2000-163; s. 14, ch. 2000-263; s. 4, ch. 2004-385.

394.462 Transportation.--

(1) TRANSPORTATION TO A RECEIVING FACILITY.--

(a) Each county shall designate a single law enforcement agency within the county, or portions thereof, to take a person into custody upon the entry of an ex parte order or the execution of a certificate for involuntary examination by an authorized professional and to transport that person to the nearest receiving facility for examination. The designated law enforcement agency may decline to transport the person to a receiving facility only if:

1. The jurisdiction designated by the county has contracted on an annual basis with an emergency medical transport service or private transport company for transportation of persons to receiving facilities pursuant to this section at the sole cost of the county; and
2. The law enforcement agency and the emergency medical transport service or private transport company agree that the continued presence of law enforcement personnel is not necessary for the safety of the person or others.
3. The jurisdiction designated by the county may seek reimbursement for transportation expenses. The party responsible for payment for such transportation is the person receiving the transportation. The county shall seek reimbursement from the following sources in the following order:
 - a. From an insurance company, health care corporation, or other source, if the person receiving the transportation is covered by an insurance policy or subscribes to a health care corporation or other source for payment of such expenses.
 - b. From the person receiving the transportation.
 - c. From a financial settlement for medical care, treatment, hospitalization, or transportation payable or accruing to the injured party.

(b) Any company that transports a patient pursuant to this subsection is considered an independent contractor and is solely liable for the safe and dignified transportation of the patient. Such company must be insured and provide no less than \$100,000 in liability insurance with respect to the transportation of patients.

(c) Any company that contracts with a governing board of a county to transport patients shall comply with the applicable rules of the department to ensure the safety and dignity of the patients.

(d) When a law enforcement officer takes custody of a person pursuant to this part, the officer may request assistance from emergency medical personnel if such assistance is needed for the safety of the officer or the person in custody.

(e) When a member of a mental health overlay program or a mobile crisis response service is a professional authorized to initiate an involuntary examination pursuant to s. 394.463 and that professional evaluates a person and determines that transportation to a receiving facility is needed, the service, at its discretion, may transport the person to the facility or may call on the law enforcement agency or other transportation arrangement best suited to the needs of the patient.

(f) When any law enforcement officer has custody of a person based on either noncriminal or minor criminal behavior that meets the statutory guidelines for involuntary examination under this part, the law enforcement officer shall transport the person to the nearest receiving facility for examination.

(g) When any law enforcement officer has arrested a person for a felony and it appears that the person meets the statutory guidelines for involuntary examination or placement under this part, such person shall first be processed in the same manner as any other criminal suspect. The law enforcement agency shall thereafter immediately notify the nearest public receiving facility, which shall be responsible for promptly arranging for the examination and treatment of the person. A receiving facility is not required to admit a person charged with a crime for whom the facility determines and documents that it is unable to provide adequate security, but shall provide mental health examination and treatment to the person where he or she is held.

(h) If the appropriate law enforcement officer believes that a person has an emergency medical condition as defined in s. 395.002, the person may be first transported to a hospital for emergency medical treatment, regardless of whether the hospital is a designated receiving facility.

(i) The costs of transportation, evaluation, hospitalization, and treatment incurred under this subsection by persons who have been arrested for violations of any state law or county or municipal ordinance may be recovered as provided in s. 901.35.

(j) The nearest receiving facility must accept persons brought by law enforcement officers for involuntary examination.

(k) Each law enforcement agency shall develop a memorandum of understanding with each receiving facility within the law enforcement agency's jurisdiction which reflects a single set of protocols for the safe and secure transportation of the person and transfer of custody of the person. These protocols must also address crisis intervention measures.

(l) When a jurisdiction has entered into a contract with an emergency medical transport service or a private transport company for transportation of persons to receiving facilities, such service or company shall be given preference for transportation of persons from nursing homes, assisted living facilities, adult day care centers, or adult family-care homes, unless the behavior of the person being transported is such that transportation by a law enforcement officer is necessary.

(m) Nothing in this section shall be construed to limit emergency examination and treatment of incapacitated persons provided in accordance with the provisions of s. 401.445.

(2) TRANSPORTATION TO A TREATMENT FACILITY.--

(a) If neither the patient nor any person legally obligated or responsible for the patient is able to pay for the expense of transporting a voluntary or involuntary patient to a treatment facility, the governing board of the county in which the patient is hospitalized shall arrange for such required transportation and shall ensure the safe and dignified transportation of the patient. The governing board of each county is authorized to contract with private transport companies for the transportation of such patients to and from a treatment facility.

(b) Any company that transports a patient pursuant to this subsection is considered an independent contractor and is solely liable for the safe and dignified transportation of the patient. Such company must be insured and provide no less than \$100,000 in liability insurance with respect to the transportation of patients.

(c) Any company that contracts with the governing board of a county to transport patients shall comply with the applicable rules of the department to ensure the safety and dignity of the patients.

(d) County or municipal law enforcement and correctional personnel and equipment shall not be used to transport patients adjudicated incapacitated or found by the court to meet the criteria for involuntary placement pursuant to s. 394.467, except in small rural counties where there are no cost-efficient alternatives.

(3) TRANSFER OF CUSTODY.--Custody of a person who is transported pursuant to this part, along with related documentation, shall be relinquished to a responsible individual at the appropriate receiving or treatment facility.

(4) EXCEPTIONS.--An exception to the requirements of this section may be granted by the secretary of the department for the purposes of improving service coordination or better meeting the special needs of individuals. A proposal for an exception must be submitted by the district administrator after being approved by the governing boards of any affected counties, prior to submission to the secretary.

(a) A proposal for an exception must identify the specific provision from which an exception is requested; describe how the proposal will be implemented by participating law enforcement agencies and transportation authorities; and provide a plan for the coordination of services such as case management.

(b) The exception may be granted only for:

1. An arrangement centralizing and improving the provision of services within a district, which may include an exception to the requirement for transportation to the nearest receiving facility;

2. An arrangement by which a facility may provide, in addition to required psychiatric services, an environment and services which are uniquely tailored to the needs of an identified group of persons with special needs, such as persons with hearing impairments or visual impairments, or elderly persons with physical frailties; or

3. A specialized transportation system that provides an efficient and humane method of transporting patients to receiving facilities, among receiving facilities, and to treatment facilities.

(c) Any exception approved pursuant to this subsection shall be reviewed and approved every 5 years by the secretary.

History.--s. 15, ch. 96-169; s. 48, ch. 2000-139; s. 3, ch. 2009-38.

394.4625 Voluntary admissions.--

(1) **AUTHORITY TO RECEIVE PATIENTS.--**

(a) A facility may receive for observation, diagnosis, or treatment any person 18 years of age or older making application by express and informed consent for admission or any person age 17 or under for whom such application is made by his or her guardian. If found to show evidence of mental illness, to be competent to provide express and informed consent, and to be suitable for treatment, such person 18 years of age or older may be admitted to the facility. A person age 17 or under may be admitted only after a hearing to verify the voluntariness of the consent.

(b) A mental health overlay program or a mobile crisis response service or a licensed professional who is authorized to initiate an involuntary examination pursuant to s. 394.463 and is employed by a community mental health center or clinic must, pursuant to district procedure approved by the respective district administrator, conduct an initial assessment of the ability of the following persons to give express and informed consent to treatment before such persons may be admitted voluntarily:

1. A person 60 years of age or older for whom transfer is being sought from a nursing home, assisted living facility, adult day care center, or adult family-care home, when such person has been diagnosed as suffering from dementia.

2. A person 60 years of age or older for whom transfer is being sought from a nursing home pursuant to s. 400.0255(12).

3. A person for whom all decisions concerning medical treatment are currently being lawfully made by the health care surrogate or proxy designated under chapter 765.

(c) When an initial assessment of the ability of a person to give express and informed consent to treatment is required under this section, and a mobile crisis response service does not respond to the request for an assessment within 2 hours after the request is made or informs the requesting facility that it will not be able to respond within 2 hours after the request is made, the requesting facility may arrange for assessment by any licensed professional authorized to initiate an involuntary examination pursuant to s. 394.463 who is not employed by or under contract with, and does not have a financial interest in, either the facility initiating the transfer or the receiving facility to which the transfer may be made.

(d) A facility may not admit as a voluntary patient a person who has been adjudicated incapacitated, unless the condition of incapacity has been judicially removed. If a facility admits as a voluntary patient a person who is later determined to have been adjudicated incapacitated, and the condition of incapacity had not been removed by the time of the admission, the facility must either discharge the patient or transfer the patient to involuntary status.

(e) The health care surrogate or proxy of a voluntary patient may not consent to the provision of mental health treatment for the patient. A voluntary patient who is unwilling or unable to provide express and informed consent to mental health treatment must either be discharged or transferred to involuntary status.

(f) Within 24 hours after admission of a voluntary patient, the admitting physician shall document in the patient's clinical record that the patient is able to give express and informed consent for admission. If the patient is not able to give express and informed consent for admission, the facility shall either discharge the patient or transfer the patient to involuntary status pursuant to subsection (5).

(2) DISCHARGE OF VOLUNTARY PATIENTS.--

(a) A facility shall discharge a voluntary patient:

1. Who has sufficiently improved so that retention in the facility is no longer desirable. A patient may also be discharged to the care of a community facility.

2. Who revokes consent to admission or requests discharge. A voluntary patient or a relative, friend, or attorney of the patient may request discharge either orally or in writing at any time following admission to the facility. The patient must be discharged within 24 hours of the request, unless the request is rescinded or the patient is transferred to involuntary status pursuant to this section. The 24-hour time period may be extended by a treatment facility when necessary for adequate discharge planning, but shall not exceed 3 days exclusive of weekends and holidays. If the patient, or another on the patient's behalf, makes an oral request for discharge to a staff

member, such request shall be immediately entered in the patient's clinical record. If the request for discharge is made by a person other than the patient, the discharge may be conditioned upon the express and informed consent of the patient.

(b) A voluntary patient who has been admitted to a facility and who refuses to consent to or revokes consent to treatment shall be discharged within 24 hours after such refusal or revocation, unless transferred to involuntary status pursuant to this section or unless the refusal or revocation is freely and voluntarily rescinded by the patient.

(3) NOTICE OF RIGHT TO DISCHARGE.--At the time of admission and at least every 6 months thereafter, a voluntary patient shall be notified in writing of his or her right to apply for a discharge.

(4) TRANSFER TO VOLUNTARY STATUS.--An involuntary patient who applies to be transferred to voluntary status shall be transferred to voluntary status immediately, unless the patient has been charged with a crime, or has been involuntarily placed for treatment by a court pursuant to s. 394.467 and continues to meet the criteria for involuntary placement. When transfer to voluntary status occurs, notice shall be given as provided in s. 394.4599.

(5) TRANSFER TO INVOLUNTARY STATUS.--When a voluntary patient, or an authorized person on the patient's behalf, makes a request for discharge, the request for discharge, unless freely and voluntarily rescinded, must be communicated to a physician, clinical psychologist, or psychiatrist as quickly as possible, but not later than 12 hours after the request is made. If the patient meets the criteria for involuntary placement, the administrator of the facility must file with the court a petition for involuntary placement, within 2 court working days after the request for discharge is made. If the petition is not filed within 2 court working days, the patient shall be discharged. Pending the filing of the petition, the patient may be held and emergency treatment rendered in the least restrictive manner, upon the written order of a physician, if it is determined that such treatment is necessary for the safety of the patient or others.

History.--s. 8, ch. 71-131; s. 7, ch. 73-133; s. 109, ch. 73-333; s. 8, ch. 79-298; s. 11, ch. 82-212; s. 709, ch. 95-148; s. 17, ch. 96-169; s. 22, ch. 99-394.

Note.--Former s. 394.465.

394.463 Involuntary examination.--

(1) CRITERIA.--A person may be taken to a receiving facility for involuntary examination if there is reason to believe that the person has a mental illness and because of his or her mental illness:

(a)1. The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination; or

2. The person is unable to determine for himself or herself whether examination is necessary; and

(b)1. Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; or

2. There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.

(2) INVOLUNTARY EXAMINATION.--

(a) An involuntary examination may be initiated by any one of the following means:

1. A court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination, giving the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on sworn testimony, written or oral. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer, or other designated agent of the court, shall take the person into custody and deliver him or her to the nearest receiving facility for involuntary examination. The order of the court shall be made a part of the patient's clinical record. No fee shall be charged for the filing of an order under this subsection. Any receiving facility accepting the patient based on this order must send a copy of the order to the Agency for Health Care Administration on the next working day. The order shall be valid only until executed or, if not executed, for the period specified in the order itself. If no time limit is specified in the order, the order shall be valid for 7 days after the date that the order was signed.

2. A law enforcement officer shall take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to the nearest receiving facility for examination. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, and the report shall be made a part of the patient's clinical record. Any receiving facility accepting the patient based on this report must send a copy of the report to the Agency for Health Care Administration on the next working day.

3. A physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer shall take the person named in the certificate into custody and deliver him or her to the nearest receiving facility for involuntary examination. The law enforcement officer shall execute a written report detailing the circumstances under which the person was taken into custody. The report and certificate shall be made a part of the patient's clinical record. Any receiving facility accepting the patient based on this certificate must send a copy of the certificate to the Agency for Health Care Administration on the next working day.

(b) A person shall not be removed from any program or residential placement licensed under chapter 400 or chapter 429 and transported to a receiving facility for involuntary examination unless an ex parte order, a professional certificate, or a law enforcement officer's report is first prepared. If the condition of the person is such that preparation of a law enforcement officer's report is not practicable before removal, the report shall be completed as soon as possible after removal, but in any case before the person is transported to a receiving facility. A receiving facility admitting a person for involuntary examination who is not accompanied by the required ex parte order, professional certificate, or law enforcement officer's report shall notify the Agency for Health Care Administration of such admission by certified mail no later than the next working day. The provisions of this paragraph do not apply when transportation is provided by the patient's family or guardian.

(c) A law enforcement officer acting in accordance with an ex parte order issued pursuant to this subsection may serve and execute such order on any day of the week, at any time of the day or night.

(d) A law enforcement officer acting in accordance with an ex parte order issued pursuant to this subsection may use such reasonable physical force as is necessary to gain entry to the premises, and any dwellings, buildings, or other structures located on the premises, and to take custody of the person who is the subject of the ex parte order.

(e) The Agency for Health Care Administration shall receive and maintain the copies of ex parte orders, involuntary outpatient placement orders issued pursuant to s. 394.4655, involuntary inpatient placement orders issued pursuant to s. 394.467, professional certificates, and law enforcement officers' reports. These documents shall be considered part of the clinical record, governed by the provisions of s. 394.4615. The agency shall prepare annual reports analyzing the data obtained from these documents, without information identifying patients, and shall provide copies of reports to the department, the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the Senate and the House of Representatives.

(f) A patient shall be examined by a physician or clinical psychologist at a receiving facility without unnecessary delay and may, upon the order of a physician, be given emergency treatment if it is determined that such treatment is necessary for the safety of the patient or others. The patient may not be released by the receiving facility or its contractor without the documented approval of a psychiatrist, a clinical psychologist, or, if the receiving facility is a hospital, the release may also be approved by an attending emergency department physician with experience in the diagnosis and treatment of mental and nervous disorders and after completion of an involuntary examination pursuant to this subsection. However, a patient may not be held in a receiving facility for involuntary examination longer than 72 hours.

(g) A person for whom an involuntary examination has been initiated who is being evaluated or treated at a hospital for an emergency medical condition specified in s. 395.002 must be examined by a receiving facility within 72 hours. The 72-hour period begins when the patient arrives at the hospital and ceases when the attending physician documents that the patient has an emergency medical condition. If the patient is examined at a hospital providing emergency medical services by a professional qualified to perform an involuntary examination and is found

as a result of that examination not to meet the criteria for involuntary outpatient placement pursuant to s. 394.4655(1) or involuntary inpatient placement pursuant to s. 394.467(1), the patient may be offered voluntary placement, if appropriate, or released directly from the hospital providing emergency medical services. The finding by the professional that the patient has been examined and does not meet the criteria for involuntary inpatient placement or involuntary outpatient placement must be entered into the patient's clinical record. Nothing in this paragraph is intended to prevent a hospital providing emergency medical services from appropriately transferring a patient to another hospital prior to stabilization, provided the requirements of s. 395.1041(3)(c) have been met.

(h) One of the following must occur within 12 hours after the patient's attending physician documents that the patient's medical condition has stabilized or that an emergency medical condition does not exist:

1. The patient must be examined by a designated receiving facility and released; or
2. The patient must be transferred to a designated receiving facility in which appropriate medical treatment is available. However, the receiving facility must be notified of the transfer within 2 hours after the patient's condition has been stabilized or after determination that an emergency medical condition does not exist.

(i) Within the 72-hour examination period or, if the 72 hours ends on a weekend or holiday, no later than the next working day thereafter, one of the following actions must be taken, based on the individual needs of the patient:

1. The patient shall be released, unless he or she is charged with a crime, in which case the patient shall be returned to the custody of a law enforcement officer;
2. The patient shall be released, subject to the provisions of subparagraph 1., for voluntary outpatient treatment;
3. The patient, unless he or she is charged with a crime, shall be asked to give express and informed consent to placement as a voluntary patient, and, if such consent is given, the patient shall be admitted as a voluntary patient; or
4. A petition for involuntary placement shall be filed in the circuit court when outpatient or inpatient treatment is deemed necessary. When inpatient treatment is deemed necessary, the least restrictive treatment consistent with the optimum improvement of the patient's condition shall be made available. When a petition is to be filed for involuntary outpatient placement, it shall be filed by one of the petitioners specified in s. 394.4655(3)(a). A petition for involuntary inpatient placement shall be filed by the facility administrator.

(3) NOTICE OF RELEASE.--Notice of the release shall be given to the patient's guardian or representative, to any person who executed a certificate admitting the patient to the receiving facility, and to any court which ordered the patient's evaluation.

History.--s. 7, ch. 71-131; s. 6, ch. 73-133; s. 204, ch. 77-147; s. 7, ch. 79-298; s. 10, ch. 82-212; s. 8, ch. 84-285; s. 59, ch. 91-221; s. 3, ch. 91-249; s. 69, ch. 92-289; s. 708, ch. 95-148; s. 16, ch. 96-169; s. 1, ch. 2003-88; ss. 5, 6, 7, ch. 2004-385; s. 2, ch. 2006-171; s. 19, ch. 2006-197.

394.4655 Involuntary outpatient placement.--

(1) **CRITERIA FOR INVOLUNTARY OUTPATIENT PLACEMENT.**--A person may be ordered to involuntary outpatient placement upon a finding of the court that by clear and convincing evidence:

- (a) The person is 18 years of age or older;
- (b) The person has a mental illness;
- (c) The person is unlikely to survive safely in the community without supervision, based on a clinical determination;
- (d) The person has a history of lack of compliance with treatment for mental illness;
- (e) The person has:
 - 1. At least twice within the immediately preceding 36 months been involuntarily admitted to a receiving or treatment facility as defined in s. 394.455, or has received mental health services in a forensic or correctional facility. The 36-month period does not include any period during which the person was admitted or incarcerated; or
 - 2. Engaged in one or more acts of serious violent behavior toward self or others, or attempts at serious bodily harm to himself or herself or others, within the preceding 36 months;
- (f) The person is, as a result of his or her mental illness, unlikely to voluntarily participate in the recommended treatment plan and either he or she has refused voluntary placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of placement for treatment or he or she is unable to determine for himself or herself whether placement is necessary;
- (g) In view of the person's treatment history and current behavior, the person is in need of involuntary outpatient placement in order to prevent a relapse or deterioration that would be likely to result in serious bodily harm to himself or herself or others, or a substantial harm to his or her well-being as set forth in s. 394.463(1);
- (h) It is likely that the person will benefit from involuntary outpatient placement; and
- (i) All available, less restrictive alternatives that would offer an opportunity for improvement of his or her condition have been judged to be inappropriate or unavailable.

(2) INVOLUNTARY OUTPATIENT PLACEMENT.--

(a)1. A patient who is being recommended for involuntary outpatient placement by the administrator of the receiving facility where the patient has been examined may be retained by the facility after adherence to the notice procedures provided in s. 394.4599. The recommendation must be supported by the opinion of a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist, both of whom have personally examined the patient within the preceding 72 hours, that the criteria for involuntary outpatient placement are met. However, in a county having a population of fewer than 50,000, if the administrator certifies that a psychiatrist or clinical psychologist is not available to provide the second opinion, the second opinion may be provided by a licensed physician who has postgraduate training and experience in diagnosis and treatment of mental and nervous disorders or by a psychiatric nurse. Any second opinion authorized in this subparagraph may be conducted through a face-to-face examination, in person or by electronic means. Such recommendation must be entered on an involuntary outpatient placement certificate that authorizes the receiving facility to retain the patient pending completion of a hearing. The certificate shall be made a part of the patient's clinical record.

2. If the patient has been stabilized and no longer meets the criteria for involuntary examination pursuant to s. 394.463(1), the patient must be released from the receiving facility while awaiting the hearing for involuntary outpatient placement. Before filing a petition for involuntary outpatient treatment, the administrator of a receiving facility or a designated department representative must identify the service provider that will have primary responsibility for service provision under an order for involuntary outpatient placement, unless the person is otherwise participating in outpatient psychiatric treatment and is not in need of public financing for that treatment, in which case the individual, if eligible, may be ordered to involuntary treatment pursuant to the existing psychiatric treatment relationship.

3. The service provider shall prepare a written proposed treatment plan in consultation with the patient or the patient's guardian advocate, if appointed, for the court's consideration for inclusion in the involuntary outpatient placement order. The service provider shall also provide a copy of the proposed treatment plan to the patient and the administrator of the receiving facility. The treatment plan must specify the nature and extent of the patient's mental illness, address the reduction of symptoms that necessitate involuntary outpatient placement, and include measurable goals and objectives for the services and treatment that are provided to treat the person's mental illness and assist the person in living and functioning in the community or to prevent a relapse or deterioration. Service providers may select and supervise other individuals to implement specific aspects of the treatment plan. The services in the treatment plan must be deemed clinically appropriate by a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker who consults with, or is employed or contracted by, the service provider. The service provider must certify to the court in the proposed treatment plan whether sufficient services for improvement and stabilization are currently available and whether the service provider agrees to provide those services. If the service provider certifies that the services in the proposed treatment plan are not available, the petitioner may not file the petition.

(b) If a patient in involuntary inpatient placement meets the criteria for involuntary outpatient placement, the administrator of the treatment facility may, before the expiration of the period during which the treatment facility is authorized to retain the patient, recommend involuntary outpatient placement. The recommendation must be supported by the opinion of a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist, both of whom have personally examined the patient within the preceding 72 hours, that the criteria for involuntary outpatient placement are met. However, in a county having a population of fewer than 50,000, if the administrator certifies that a psychiatrist or clinical psychologist is not available to provide the second opinion, the second opinion may be provided by a licensed physician who has postgraduate training and experience in diagnosis and treatment of mental and nervous disorders or by a psychiatric nurse. Any second opinion authorized in this subparagraph may be conducted through a face-to-face examination, in person or by electronic means. Such recommendation must be entered on an involuntary outpatient placement certificate, and the certificate must be made a part of the patient's clinical record.

(c)1. The administrator of the treatment facility shall provide a copy of the involuntary outpatient placement certificate and a copy of the state mental health discharge form to a department representative in the county where the patient will be residing. For persons who are leaving a state mental health treatment facility, the petition for involuntary outpatient placement must be filed in the county where the patient will be residing.

2. The service provider that will have primary responsibility for service provision shall be identified by the designated department representative prior to the order for involuntary outpatient placement and must, prior to filing a petition for involuntary outpatient placement, certify to the court whether the services recommended in the patient's discharge plan are available in the local community and whether the service provider agrees to provide those services. The service provider must develop with the patient, or the patient's guardian advocate, if appointed, a treatment or service plan that addresses the needs identified in the discharge plan. The plan must be deemed to be clinically appropriate by a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker, as defined in this chapter, who consults with, or is employed or contracted by, the service provider.

3. If the service provider certifies that the services in the proposed treatment or service plan are not available, the petitioner may not file the petition.

(3) PETITION FOR INVOLUNTARY OUTPATIENT PLACEMENT.--

(a) A petition for involuntary outpatient placement may be filed by:

1. The administrator of a receiving facility; or
2. The administrator of a treatment facility.

(b) Each required criterion for involuntary outpatient placement must be alleged and substantiated in the petition for involuntary outpatient placement. A copy of the certificate

recommending involuntary outpatient placement completed by a qualified professional specified in subsection (2) must be attached to the petition. A copy of the proposed treatment plan must be attached to the petition. Before the petition is filed, the service provider shall certify that the services in the proposed treatment plan are available. If the necessary services are not available in the patient's local community to respond to the person's individual needs, the petition may not be filed.

(c) The petition for involuntary outpatient placement must be filed in the county where the patient is located, unless the patient is being placed from a state treatment facility, in which case the petition must be filed in the county where the patient will reside. When the petition has been filed, the clerk of the court shall provide copies of the petition and the proposed treatment plan to the department, the patient, the patient's guardian or representative, the state attorney, and the public defender or the patient's private counsel. A fee may not be charged for filing a petition under this subsection.

(4) APPOINTMENT OF COUNSEL.--Within 1 court working day after the filing of a petition for involuntary outpatient placement, the court shall appoint the public defender to represent the person who is the subject of the petition, unless the person is otherwise represented by counsel. The clerk of the court shall immediately notify the public defender of the appointment. The public defender shall represent the person until the petition is dismissed, the court order expires, or the patient is discharged from involuntary outpatient placement. An attorney who represents the patient shall have access to the patient, witnesses, and records relevant to the presentation of the patient's case and shall represent the interests of the patient, regardless of the source of payment to the attorney.

(5) CONTINUANCE OF HEARING.--The patient is entitled, with the concurrence of the patient's counsel, to at least one continuance of the hearing. The continuance shall be for a period of up to 4 weeks.

(6) HEARING ON INVOLUNTARY OUTPATIENT PLACEMENT.--

(a)1. The court shall hold the hearing on involuntary outpatient placement within 5 working days after the filing of the petition, unless a continuance is granted. The hearing shall be held in the county where the petition is filed, shall be as convenient to the patient as is consistent with orderly procedure, and shall be conducted in physical settings not likely to be injurious to the patient's condition. If the court finds that the patient's attendance at the hearing is not consistent with the best interests of the patient and if the patient's counsel does not object, the court may waive the presence of the patient from all or any portion of the hearing. The state attorney for the circuit in which the patient is located shall represent the state, rather than the petitioner, as the real party in interest in the proceeding.

2. The court may appoint a master to preside at the hearing. One of the professionals who executed the involuntary outpatient placement certificate shall be a witness. The patient and the patient's guardian or representative shall be informed by the court of the right to an independent expert examination. If the patient cannot afford such an examination, the court shall provide for one. The independent expert's report shall be confidential and not discoverable, unless the expert

is to be called as a witness for the patient at the hearing. The court shall allow testimony from individuals, including family members, deemed by the court to be relevant under state law, regarding the person's prior history and how that prior history relates to the person's current condition. The testimony in the hearing must be given under oath, and the proceedings must be recorded. The patient may refuse to testify at the hearing.

(b)1. If the court concludes that the patient meets the criteria for involuntary outpatient placement pursuant to subsection (1), the court shall issue an order for involuntary outpatient placement. The court order shall be for a period of up to 6 months. The order must specify the nature and extent of the patient's mental illness. The order of the court and the treatment plan shall be made part of the patient's clinical record. The service provider shall discharge a patient from involuntary outpatient placement when the order expires or any time the patient no longer meets the criteria for involuntary placement. Upon discharge, the service provider shall send a certificate of discharge to the court.

2. The court may not order the department or the service provider to provide services if the program or service is not available in the patient's local community, if there is no space available in the program or service for the patient, or if funding is not available for the program or service. A copy of the order must be sent to the Agency for Health Care Administration by the service provider within 1 working day after it is received from the court. After the placement order is issued, the service provider and the patient may modify provisions of the treatment plan. For any material modification of the treatment plan to which the patient or the patient's guardian advocate, if appointed, does agree, the service provider shall send notice of the modification to the court. Any material modifications of the treatment plan which are contested by the patient or the patient's guardian advocate, if appointed, must be approved or disapproved by the court consistent with subsection (2).

3. If, in the clinical judgment of a physician, the patient has failed or has refused to comply with the treatment ordered by the court, and, in the clinical judgment of the physician, efforts were made to solicit compliance and the patient may meet the criteria for involuntary examination, a person may be brought to a receiving facility pursuant to s. 394.463. If, after examination, the patient does not meet the criteria for involuntary inpatient placement pursuant to s. 394.467, the patient must be discharged from the receiving facility. The involuntary outpatient placement order shall remain in effect unless the service provider determines that the patient no longer meets the criteria for involuntary outpatient placement or until the order expires. The service provider must determine whether modifications should be made to the existing treatment plan and must attempt to continue to engage the patient in treatment. For any material modification of the treatment plan to which the patient or the patient's guardian advocate, if appointed, does agree, the service provider shall send notice of the modification to the court. Any material modifications of the treatment plan which are contested by the patient or the patient's guardian advocate, if appointed, must be approved or disapproved by the court consistent with subsection (2).

(c) If, at any time before the conclusion of the initial hearing on involuntary outpatient placement, it appears to the court that the person does not meet the criteria for involuntary outpatient placement under this section but, instead, meets the criteria for involuntary inpatient

placement, the court may order the person admitted for involuntary inpatient examination under s. 394.463. If the person instead meets the criteria for involuntary assessment, protective custody, or involuntary admission pursuant to s. 397.675, the court may order the person to be admitted for involuntary assessment for a period of 5 days pursuant to s. 397.6811. Thereafter, all proceedings shall be governed by chapter 397.

(d) At the hearing on involuntary outpatient placement, the court shall consider testimony and evidence regarding the patient's competence to consent to treatment. If the court finds that the patient is incompetent to consent to treatment, it shall appoint a guardian advocate as provided in s. 394.4598. The guardian advocate shall be appointed or discharged in accordance with s. 394.4598.

(e) The administrator of the receiving facility or the designated department representative shall provide a copy of the court order and adequate documentation of a patient's mental illness to the service provider for involuntary outpatient placement. Such documentation must include any advance directives made by the patient, a psychiatric evaluation of the patient, and any evaluations of the patient performed by a clinical psychologist or a clinical social worker.

(7) PROCEDURE FOR CONTINUED INVOLUNTARY OUTPATIENT PLACEMENT.--

(a)1. If the person continues to meet the criteria for involuntary outpatient placement, the service provider shall, before the expiration of the period during which the treatment is ordered for the person, file in the circuit court a petition for continued involuntary outpatient placement.

2. The existing involuntary outpatient placement order remains in effect until disposition on the petition for continued involuntary outpatient placement.

3. A certificate shall be attached to the petition which includes a statement from the person's physician or clinical psychologist justifying the request, a brief description of the patient's treatment during the time he or she was involuntarily placed, and an individualized plan of continued treatment.

4. The service provider shall develop the individualized plan of continued treatment in consultation with the patient or the patient's guardian advocate, if appointed. When the petition has been filed, the clerk of the court shall provide copies of the certificate and the individualized plan of continued treatment to the department, the patient, the patient's guardian advocate, the state attorney, and the patient's private counsel or the public defender.

(b) Within 1 court working day after the filing of a petition for continued involuntary outpatient placement, the court shall appoint the public defender to represent the person who is the subject of the petition, unless the person is otherwise represented by counsel. The clerk of the court shall immediately notify the public defender of such appointment. The public defender shall represent the person until the petition is dismissed or the court order expires or the patient is discharged from involuntary outpatient placement. Any attorney representing the patient shall have access to the patient, witnesses, and records relevant to the presentation of the patient's case and shall represent the interests of the patient, regardless of the source of payment to the attorney.

(c) Hearings on petitions for continued involuntary outpatient placement shall be before the circuit court. The court may appoint a master to preside at the hearing. The procedures for obtaining an order pursuant to this paragraph shall be in accordance with subsection (6), except that the time period included in paragraph (1)(e) is not applicable in determining the appropriateness of additional periods of involuntary outpatient placement.

(d) Notice of the hearing shall be provided as set forth in s. 394.4599. The patient and the patient's attorney may agree to a period of continued outpatient placement without a court hearing.

(e) The same procedure shall be repeated before the expiration of each additional period the patient is placed in treatment.

(f) If the patient has previously been found incompetent to consent to treatment, the court shall consider testimony and evidence regarding the patient's competence. Section 394.4598 governs the discharge of the guardian advocate if the patient's competency to consent to treatment has been restored.

History.--s. 8, ch. 2004-385; s. 3, ch. 2006-171; s. 4, ch. 2009-38.

394.467 Involuntary inpatient placement.--

(1) CRITERIA.--A person may be placed in involuntary inpatient placement for treatment upon a finding of the court by clear and convincing evidence that:

(a) He or she is mentally ill and because of his or her mental illness:

1.a. He or she has refused voluntary placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of placement for treatment; or

b. He or she is unable to determine for himself or herself whether placement is necessary; and

2.a. He or she is manifestly incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services, and, without treatment, is likely to suffer from neglect or refuse to care for himself or herself, and such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; or

b. There is substantial likelihood that in the near future he or she will inflict serious bodily harm on himself or herself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm; and

(b) All available less restrictive treatment alternatives which would offer an opportunity for improvement of his or her condition have been judged to be inappropriate.

(2) **ADMISSION TO A TREATMENT FACILITY.**--A patient may be retained by a receiving facility or involuntarily placed in a treatment facility upon the recommendation of the administrator of the receiving facility where the patient has been examined and after adherence to the notice and hearing procedures provided in s. [394.4599](#). The recommendation must be supported by the opinion of a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist, both of whom have personally examined the patient within the preceding 72 hours, that the criteria for involuntary inpatient placement are met. However, in a county that has a population of fewer than 50,000, if the administrator certifies that a psychiatrist or clinical psychologist is not available to provide the second opinion, the second opinion may be provided by a licensed physician who has postgraduate training and experience in diagnosis and treatment of mental and nervous disorders or by a psychiatric nurse. Any second opinion authorized in this subsection may be conducted through a face-to-face examination, in person or by electronic means. Such recommendation shall be entered on an involuntary inpatient placement certificate that authorizes the receiving facility to retain the patient pending transfer to a treatment facility or completion of a hearing.

(3) **PETITION FOR INVOLUNTARY INPATIENT PLACEMENT.**--The administrator of the facility shall file a petition for involuntary inpatient placement in the court in the county where the patient is located. Upon filing, the clerk of the court shall provide copies to the department, the patient, the patient's guardian or representative, and the state attorney and public defender of the judicial circuit in which the patient is located. No fee shall be charged for the filing of a petition under this subsection.

(4) **APPOINTMENT OF COUNSEL.**--Within 1 court working day after the filing of a petition for involuntary inpatient placement, the court shall appoint the public defender to represent the person who is the subject of the petition, unless the person is otherwise represented by counsel. The clerk of the court shall immediately notify the public defender of such appointment. Any attorney representing the patient shall have access to the patient, witnesses, and records relevant to the presentation of the patient's case and shall represent the interests of the patient, regardless of the source of payment to the attorney.

(5) **CONTINUANCE OF HEARING.**--The patient is entitled, with the concurrence of the patient's counsel, to at least one continuance of the hearing. The continuance shall be for a period of up to 4 weeks.

(6) **HEARING ON INVOLUNTARY INPATIENT PLACEMENT.**--

(a)1. The court shall hold the hearing on involuntary inpatient placement within 5 days, unless a continuance is granted. The hearing shall be held in the county where the patient is located and shall be as convenient to the patient as may be consistent with orderly procedure and shall be conducted in physical settings not likely to be injurious to the patient's condition. If the court finds that the patient's attendance at the hearing is not consistent with the best interests of the patient, and the patient's counsel does not object, the court may waive the presence of the patient from all or any portion of the hearing. The state attorney for the circuit in which the patient is located shall represent the state, rather than the petitioning facility administrator, as the real party in interest in the proceeding.

2. The court may appoint a general or special magistrate to preside at the hearing. One of the professionals who executed the involuntary inpatient placement certificate shall be a witness. The patient and the patient's guardian or representative shall be informed by the court of the right to an independent expert examination. If the patient cannot afford such an examination, the court shall provide for one. The independent expert's report shall be confidential and not discoverable, unless the expert is to be called as a witness for the patient at the hearing. The testimony in the hearing must be given under oath, and the proceedings must be recorded. The patient may refuse to testify at the hearing.

(b) If the court concludes that the patient meets the criteria for involuntary inpatient placement, it shall order that the patient be transferred to a treatment facility or, if the patient is at a treatment facility, that the patient be retained there or be treated at any other appropriate receiving or treatment facility, or that the patient receive services from a receiving or treatment facility, on an involuntary basis, for a period of up to 6 months. The order shall specify the nature and extent of the patient's mental illness. The facility shall discharge a patient any time the patient no longer meets the criteria for involuntary inpatient placement, unless the patient has transferred to voluntary status.

(c) If at any time prior to the conclusion of the hearing on involuntary inpatient placement it appears to the court that the person does not meet the criteria for involuntary inpatient placement under this section, but instead meets the criteria for involuntary outpatient placement, the court may order the person evaluated for involuntary outpatient placement pursuant to s. [394.4655](#). The petition and hearing procedures set forth in s. [394.4655](#) shall apply. If the person instead meets the criteria for involuntary assessment, protective custody, or involuntary admission pursuant to s. [397.675](#), then the court may order the person to be admitted for involuntary assessment for a period of 5 days pursuant to s. [397.6811](#). Thereafter, all proceedings shall be governed by chapter 397.

(d) At the hearing on involuntary inpatient placement, the court shall consider testimony and evidence regarding the patient's competence to consent to treatment. If the court finds that the patient is incompetent to consent to treatment, it shall appoint a guardian advocate as provided in s. [394.4598](#).

(e) The administrator of the receiving facility shall provide a copy of the court order and adequate documentation of a patient's mental illness to the administrator of a treatment facility whenever a patient is ordered for involuntary inpatient placement, whether by civil or criminal court. The documentation shall include any advance directives made by the patient, a psychiatric evaluation of the patient, and any evaluations of the patient performed by a clinical psychologist, a marriage and family therapist, a mental health counselor, or a clinical social worker. The administrator of a treatment facility may refuse admission to any patient directed to its facilities on an involuntary basis, whether by civil or criminal court order, who is not accompanied at the same time by adequate orders and documentation.

(7) PROCEDURE FOR CONTINUED INVOLUNTARY INPATIENT PLACEMENT.--

(a) Hearings on petitions for continued involuntary inpatient placement shall be administrative hearings and shall be conducted in accordance with the provisions of s. [120.57](#)(1), except that

any order entered by the administrative law judge shall be final and subject to judicial review in accordance with s. [120.68](#). Orders concerning patients committed after successfully pleading not guilty by reason of insanity shall be governed by the provisions of s. [916.15](#).

(b) If the patient continues to meet the criteria for involuntary inpatient placement, the administrator shall, prior to the expiration of the period during which the treatment facility is authorized to retain the patient, file a petition requesting authorization for continued involuntary inpatient placement. The request shall be accompanied by a statement from the patient's physician or clinical psychologist justifying the request, a brief description of the patient's treatment during the time he or she was involuntarily placed, and an individualized plan of continued treatment. Notice of the hearing shall be provided as set forth in s. [394.4599](#). If at the hearing the administrative law judge finds that attendance at the hearing is not consistent with the best interests of the patient, the administrative law judge may waive the presence of the patient from all or any portion of the hearing, unless the patient, through counsel, objects to the waiver of presence. The testimony in the hearing must be under oath, and the proceedings must be recorded.

(c) Unless the patient is otherwise represented or is ineligible, he or she shall be represented at the hearing on the petition for continued involuntary inpatient placement by the public defender of the circuit in which the facility is located.

(d) If at a hearing it is shown that the patient continues to meet the criteria for involuntary inpatient placement, the administrative law judge shall sign the order for continued involuntary inpatient placement for a period not to exceed 6 months. The same procedure shall be repeated prior to the expiration of each additional period the patient is retained.

(e) If continued involuntary inpatient placement is necessary for a patient admitted while serving a criminal sentence, but whose sentence is about to expire, or for a patient involuntarily placed while a minor but who is about to reach the age of 18, the administrator shall petition the administrative law judge for an order authorizing continued involuntary inpatient placement.

(f) If the patient has been previously found incompetent to consent to treatment, the administrative law judge shall consider testimony and evidence regarding the patient's competence. If the administrative law judge finds evidence that the patient is now competent to consent to treatment, the administrative law judge may issue a recommended order to the court that found the patient incompetent to consent to treatment that the patient's competence be restored and that any guardian advocate previously appointed be discharged.

(8) RETURN OF PATIENTS.--When a patient at a treatment facility leaves the facility without authorization, the administrator may authorize a search for the patient and the return of the patient to the facility. The administrator may request the assistance of a law enforcement agency in the search for and return of the patient.

History.--s. 9, ch. 71-131; s. 8, ch. 73-133; ss. 3, 4, ch. 74-233; s. 1, ch. 75-305; s. 17, ch. 77-121; s. 205, ch. 77-147; s. 1, ch. 77-174; ss. 2, 8, ch. 77-312; s. 19, ch. 78-95; s. 1, ch. 78-197; s. 9, ch. 79-298; s. 2, ch. 79-336; ss. 2, 4, ch. 80-75; s. 12, ch. 82-212; s. 9, ch. 84-285; s. 28, ch. 85-167; s. 105, ch. 89-96; s. 70, ch. 90-271; s. 710, ch. 95-148; s. 18, ch. 96-169; s. 124, ch. 96-410; s. 3, ch. 98-92; s. 77, ch. 2004-11; s. 9, ch. 2004-385; s. 4, ch. 2006-171; s. 5, ch. 2009-38.

394.46715 Rulemaking authority.--The Department of Children and Family Services shall have rulemaking authority to implement the provisions of ss. 394.455, 394.4598, 394.4615, 394.463, 394.4655, and 394.467 as amended or created by this act. These rules shall be for the purpose of protecting the health, safety, and well-being of persons examined, treated, or placed under this act. **History.**--s. 10, ch. 2004-385.

394.4672 Procedure for placement of veteran with federal agency.--

(1) Whenever it is determined by the court that a person meets the criteria for involuntary placement and it appears that such person is eligible for care or treatment by the United States Department of Veterans Affairs or other agency of the United States Government, the court, upon receipt of a certificate from the United States Department of Veterans Affairs or such other agency showing that facilities are available and that the person is eligible for care or treatment therein, may place that person with the United States Department of Veterans Affairs or other federal agency. The person whose placement is sought shall be personally served with notice of the pending placement proceeding in the manner as provided in this part, and nothing in this section shall affect his or her right to appear and be heard in the proceeding. Upon placement, the person shall be subject to the rules and regulations of the United States Department of Veterans Affairs or other federal agency.

(2) The judgment or order of placement by a court of competent jurisdiction of another state or of the District of Columbia, placing a person with the United States Department of Veterans Affairs or other federal agency for care or treatment, shall have the same force and effect in this state as in the jurisdiction of the court entering the judgment or making the order; and the courts of the placing state or of the District of Columbia shall be deemed to have retained jurisdiction of the person so placed. Consent is hereby given to the application of the law of the placing state or district with respect to the authority of the chief officer of any facility of the United States Department of Veterans Affairs or other federal agency operated in this state to retain custody or to transfer, parole, or discharge the person.

(3) Upon receipt of a certificate of the United States Department of Veterans Affairs or such other federal agency that facilities are available for the care or treatment of mentally ill persons and that the person is eligible for care or treatment, the administrator of the receiving or treatment facility may cause the transfer of that person to the United States Department of Veterans Affairs or other federal agency. Upon effecting such transfer, the committing court shall be notified by the transferring agency. No person shall be transferred to the United States Department of Veterans Affairs or other federal agency if he or she is confined pursuant to the conviction of any felony or misdemeanor or if he or she has been acquitted of the charge solely on the ground of insanity, unless prior to transfer the court placing such person enters an order for the transfer after appropriate motion and hearing and without objection by the United States Department of Veterans Affairs.

(4) Any person transferred as provided in this section shall be deemed to be placed with the United States Department of Veterans Affairs or other federal agency pursuant to the original placement. **History.**--s. 15, ch. 14579, 1929; CGL 1936 Supp. 2146(16); s. 1, ch. 21795, 1943; s. 4, ch. 84-62; s. 18, ch. 93-268; s. 711, ch. 95-148; s. 19, ch. 96-169. **Note.**--Former s. 293.16.

394.4674 Plan and report.--

(1) The department is directed to develop a comprehensive plan for the deinstitutionalization of patients in a treatment facility who are over age 55 and do not meet the criteria for involuntary placement pursuant to s. 394.467. The plan shall include, but need not be limited to, the projected numbers of patients, the timetables for deinstitutionalization, and the specific actions to be taken to accomplish the deinstitutionalization.

(2) The department shall prepare and submit a semiannual report to the Legislature, until the conditions specified in subsection (1) are met, which shall include, but not be limited to:

(a) The status of compliance with the deinstitutionalization plan;

(b) The specific efforts to stimulate alternative living and support resources outside the hospitals and all documentation of the success of these efforts;

(c) The specific efforts to facilitate the development and retention of daily living skills identified by the department as being necessary for living outside an institution and any evidence of the success of these efforts;

(d) The specific plans for new efforts to accomplish the deinstitutionalization of patients in this age group; and

(e) Any evidence of involvement between the Mental Health Program Office and other program offices within the department and between the department and other state and private agencies and individuals to accomplish the deinstitutionalization of patients in this age group.

History.--s. 2, ch. 80-293; s. 245, ch. 81-259; s. 6, ch. 81-290; s. 20, ch. 96-169; s. 49, ch. 2000-139.

394.468 Admission and discharge procedures.--Admission and discharge procedures and treatment policies of the department are governed solely by this part. Such procedures and policies shall not be subject to control by court procedure rules. The matters within the purview of this part are deemed to be substantive, not procedural.

History.--s. 9, ch. 77-312; s. 21, ch. 96-169.

394.4685 Transfer of patients among facilities.--

(1) TRANSFER BETWEEN PUBLIC FACILITIES.--

(a) A patient who has been admitted to a public receiving facility, or the family member, guardian, or guardian advocate of such patient, may request the transfer of the patient to another public receiving facility. A patient who has been admitted to a public treatment facility, or the family member, guardian, or guardian advocate of such patient, may request the transfer of the patient to another public treatment facility. Depending on the medical treatment or mental health treatment needs of the patient and the availability of appropriate facility resources, the patient may be transferred at the discretion of the department. If the department approves the transfer of

an involuntary patient, notice according to the provisions of s. 394.4599 shall be given prior to the transfer by the transferring facility. The department shall respond to the request for transfer within 2 working days after receipt of the request by the facility administrator.

(b) When required by the medical treatment or mental health treatment needs of the patient or the efficient utilization of a public receiving or public treatment facility, a patient may be transferred from one receiving facility to another, or one treatment facility to another, at the department's discretion, or, with the express and informed consent of the patient or the patient's guardian or guardian advocate, to a facility in another state. Notice according to the provisions of s. 394.4599 shall be given prior to the transfer by the transferring facility. If prior notice is not possible, notice of the transfer shall be provided as soon as practicable after the transfer.

(2) **TRANSFER FROM PUBLIC TO PRIVATE FACILITIES.**--A patient who has been admitted to a public receiving or public treatment facility and has requested, either personally or through his or her guardian or guardian advocate, and is able to pay for treatment in a private facility shall be transferred at the patient's expense to a private facility upon acceptance of the patient by the private facility.

(3) **TRANSFER FROM PRIVATE TO PUBLIC FACILITIES.**--

(a) A patient or the patient's guardian or guardian advocate may request the transfer of the patient from a private to a public facility, and the patient may be so transferred upon acceptance of the patient by the public facility.

(b) A private facility may request the transfer of a patient from the facility to a public facility, and the patient may be so transferred upon acceptance of the patient by the public facility. The cost of such transfer shall be the responsibility of the transferring facility.

(c) A public facility must respond to a request for the transfer of a patient within 2 working days after receipt of the request.

(4) **TRANSFER BETWEEN PRIVATE FACILITIES.**--A patient in a private facility or the patient's guardian or guardian advocate may request the transfer of the patient to another private facility at any time, and the patient shall be transferred upon acceptance of the patient by the facility to which transfer is sought.

History.--s. 22, ch. 96-169.

394.469 Discharge of involuntary patients.--

(1) **POWER TO DISCHARGE.**--At any time a patient is found to no longer meet the criteria for involuntary placement, the administrator shall:

(a) Discharge the patient, unless the patient is under a criminal charge, in which case the patient shall be transferred to the custody of the appropriate law enforcement officer;

(b) Transfer the patient to voluntary status on his or her own authority or at the patient's request, unless the patient is under criminal charge or adjudicated incapacitated; or

(c) Place an improved patient, except a patient under a criminal charge, on convalescent status in the care of a community facility.

(2) NOTICE.--Notice of discharge or transfer of a patient shall be given as provided in s. 394.4599. **History.**--s. 10, ch. 71-131; s. 9, ch. 73-133; s. 10, ch. 79-298; s. 13, ch. 82-212; s. 712, ch. 95-148; s. 23, ch. 96-169.

394.473 Attorney's fee; expert witness fee.--

(1) In the case of an indigent person for whom an attorney is appointed pursuant to the provisions of this part, the attorney shall be compensated by the state pursuant to s. 27.5304. In the case of an indigent person, the court may appoint a public defender. The public defender shall receive no additional compensation other than that usually paid his or her office.

(2) In the case of an indigent person for whom expert testimony is required in a court hearing pursuant to the provisions of this act, the expert, except one who is classified as a full-time employee of the state or who is receiving remuneration from the state for his or her time in attendance at the hearing, shall be compensated by the state pursuant to s. 27.5304.

History.--s. 13, ch. 71-131; s. 10, ch. 73-133; s. 25, ch. 73-334; s. 12, ch. 79-298; s. 3, ch. 82-176; s. 14, ch. 82-212; s. 713, ch. 95-148; s. 107, ch. 2003-402; s. 70, ch. 2004-265.

394.475 Acceptance, examination, and involuntary placement of Florida residents from out-of-state mental health authorities.--

(1) Upon the request of the state mental health authority of another state, the department is authorized to accept as a patient, for a period of not more than 15 days, a person who is and has been a bona fide resident of this state for a period of not less than 1 year.

(2) Any person received pursuant to subsection (1) shall be examined by the staff of the state facility where such patient has been accepted, which examination shall be completed during the 15-day period.

(3) If upon examination such a person requires continued involuntary placement, a petition for a hearing regarding involuntary placement shall be filed with the court of the county wherein the treatment facility receiving the patient is located or the county where the patient is a resident.

(4) During the pendency of the examination period and the pendency of the involuntary placement proceedings, such person may continue to be held in the treatment facility unless the court having jurisdiction enters an order to the contrary.

History.--s. 14, ch. 71-131; s. 25, ch. 73-334; s. 206, ch. 77-147; s. 13, ch. 79-298; s. 15, ch. 82-212; s. 24, ch. 96-169.

394.4781 Residential care for psychotic and emotionally disturbed children.--

(1) DEFINITIONS.--As used in this section:

(a) "Psychotic or severely emotionally disturbed child" means a child so diagnosed by a psychiatrist or clinical psychologist who has specialty training and experience with children. Such a severely emotionally disturbed child or psychotic child shall be considered by this diagnosis to benefit by and require residential care as contemplated by this section.

(b) "Department" means the Department of Children and Family Services.

(2) FUNDING OF PROGRAM.--The department shall provide for the purposes of this section such amount as shall be set forth in the annual appropriations act as payment for part of the costs of residential care for psychotic or severely emotionally disturbed children.

(3) ADMINISTRATION OF THE PROGRAM.--

(a) The department shall provide the necessary application forms and office personnel to administer the purchase-of-service program.

(b) The department shall review such applications monthly and, in accordance with available funds, the severity of the problems of the child, the availability of the needed residential care, and the financial means of the family involved, approve or disapprove each application. If an application is approved, the department shall contract for or purchase the services of an appropriate residential facility in such amounts as are determined by the annual appropriations act.

(c) The department is authorized to promulgate such rules as are necessary for the full and complete implementation of the provisions of this section.

(d) The department shall purchase services only from those facilities which are in compliance with standards promulgated by the department.

(4) RULE ADOPTION.--The department may adopt rules to carry out this section, including rules concerning review and approval of applications for placement, cost-sharing, and client eligibility for placement, and rules to ensure that facilities from which the department purchases or contracts for services under this section provide:

(a) Minimum standards for client care and treatment practices, including ensuring that sufficient numbers and types of qualified personnel are on duty and available at all times to provide necessary and adequate client safety, care, and security.

(b) Minimum standards for client intake and admission, eligibility criteria, discharge planning, assessment, treatment planning, continuity of care, treatment modalities, service array, medical services, physical health services, client rights, maintenance of client records, and management

of the treatment environment, including standards for the use of seclusion, restraints, and time-out.

(c) Minimum standards for facility operation and administration, fiscal accountability, personnel policies and procedures, and staff education, qualifications, experience, and training.

(d) Minimum standards for adequate infection control, housekeeping sanitation, disaster planning, firesafety, construction standards, and emergency services.

(e) Minimum standards for the establishment, organization, and operation of the licensed facility in accordance with program standards of the department.

(f) Licensing requirements.

History.--ss. 1, 2, 3, ch. 77-287; s. 156, ch. 79-400; s. 16, ch. 82-212; s. 3, ch. 98-152; s. 99, ch. 99-8.

394.4784 Minors; access to outpatient crisis intervention services and treatment.--For the purposes of this section, the disability of nonage is removed for any minor age 13 years or older to access services under the following circumstances:

(1) **OUTPATIENT DIAGNOSTIC AND EVALUATION SERVICES.**--When any minor age 13 years or older experiences an emotional crisis to such degree that he or she perceives the need for professional assistance, he or she shall have the right to request, consent to, and receive mental health diagnostic and evaluative services provided by a licensed mental health professional, as defined by Florida Statutes, or in a mental health facility licensed by the state. The purpose of such services shall be to determine the severity of the problem and the potential for harm to the person or others if further professional services are not provided. Outpatient diagnostic and evaluative services shall not include medication and other somatic methods, aversive stimuli, or substantial deprivation. Such services shall not exceed two visits during any 1-week period in response to a crisis situation before parental consent is required for further services, and may include parental participation when determined to be appropriate by the mental health professional or facility.

(2) **OUTPATIENT CRISIS INTERVENTION, THERAPY AND COUNSELING SERVICES.**--When any minor age 13 years or older experiences an emotional crisis to such degree that he or she perceives the need for professional assistance, he or she shall have the right to request, consent to, and receive outpatient crisis intervention services including individual psychotherapy, group therapy, counseling, or other forms of verbal therapy provided by a licensed mental health professional, as defined by Florida Statutes, or in a mental health facility licensed by the state. Such services shall not include medication and other somatic treatments, aversive stimuli, or substantial deprivation. Such services shall not exceed two visits during any 1-week period in response to a crisis situation before parental consent is required for further services, and may include parental participation when determined to be appropriate by the mental health professional or facility.

(3) **LIABILITY FOR PAYMENT.**--The parent, parents, or legal guardian of a minor shall not be liable for payment for any such outpatient diagnostic and evaluation services or outpatient therapy and counseling services, as provided in this section, unless such parent, parents, or legal guardian participates in the outpatient diagnostic and evaluation services or outpatient therapy and counseling services and then only for the services rendered with such participation.

(4) **PROVISION OF SERVICES.**--No licensed mental health professional shall be obligated to provide services to minors accorded the right to receive services under this section. Provision of such services shall be on a voluntary basis.

History.--s. 2, ch. 91-170; s. 716, ch. 95-148.

394.4785 Children and adolescents; admission and placement in mental facilities.--

(1) A child or adolescent as defined in s. 394.492 may not be admitted to a state-owned or state-operated mental health treatment facility. A child may be admitted pursuant to s. 394.4625 or s. 394.467 to a crisis stabilization unit or a residential treatment center licensed under this chapter or a hospital licensed under chapter 395. The treatment center, unit, or hospital must provide the least restrictive available treatment that is appropriate to the individual needs of the child or adolescent and must adhere to the guiding principles, system of care, and service planning provisions contained in part III of this chapter.

(2) A person under the age of 14 who is admitted to any hospital licensed pursuant to chapter 395 may not be admitted to a bed in a room or ward with an adult patient in a mental health unit or share common areas with an adult patient in a mental health unit. However, a person 14 years of age or older may be admitted to a bed in a room or ward in the mental health unit with an adult if the admitting physician documents in the case record that such placement is medically indicated or for reasons of safety. Such placement shall be reviewed by the attending physician or a designee or on-call physician each day and documented in the case record.

History.--ss. 1, 2, ch. 82-212; s. 1, ch. 85-254; s. 1, ch. 87-209; s. 2, ch. 2000-265; s. 152, ch. 2000-349.

394.4786 Intent.--

(1) The Legislature intends that all hospitals, excluding hospitals owned and operated by the department or the Department of Corrections, be assessed on a continuing basis an amount equal to 1.5 percent of the hospital's annual net operating revenues and that the assessments be deposited into the Public Medical Assistance Trust Fund.

(2) Further, the Legislature intends that a specialty psychiatric hospital that provides health care to specified indigent patients be eligible for reimbursement up to the amount that hospital contributed to the Public Medical Assistance Trust Fund in the previous fiscal year.

History.--s. 1, ch. 89-355; s. 25, ch. 96-169.

394.47865 South Florida State Hospital; privatization.--

(1) The Department of Children and Family Services shall, through a request for proposals, privatize South Florida State Hospital. The department shall plan to begin implementation of this privatization initiative by July 1, 1998.

(a) Notwithstanding s. 287.057(13), the department may enter into agreements, not to exceed 20 years, with a private provider, a coalition of providers, or another agency to finance, design, and construct a treatment facility having up to 350 beds and to operate all aspects of daily operations within the facility. The department may subcontract any or all components of this procurement to a statutorily established state governmental entity that has successfully contracted with private companies for designing, financing, acquiring, leasing, constructing, and operating major privatized state facilities.

(b) The selected contractor is authorized to sponsor the issuance of tax-exempt bonds, certificates of participation, or other securities to finance the project, and the state is authorized to enter into a lease-purchase agreement for the treatment facility.

(2) The contractor shall operate South Florida State Hospital as a mental health treatment facility that serves voluntarily and involuntarily committed indigent adults who meet the criteria of part I of this chapter and who reside in the South Florida State Hospital service area.

(a) South Florida State Hospital shall remain a participant in the mental health disproportionate share program so long as the residents receive eligible services.

(b) The department and the contractor shall ensure that the treatment facility is operated as a part of a total continuum of care for persons who are mentally ill. The contractor shall have as its primary goal for the treatment facility to effectively treat and assist residents to return to the community as quickly as possible.

(3)(a) Current South Florida State Hospital employees who are affected by the privatization shall be given first preference for continued employment by the contractor. The department shall make reasonable efforts to find suitable job placements for employees who wish to remain within the state Career Service System.

(b) Any savings that result from the privatization of South Florida State Hospital shall be directed to the department's service districts 9, 10, and 11 for the delivery of community mental health services.

History.--s. 14, ch. 97-260; s. 14, ch. 2001-278; s. 35, ch. 2002-207; s. 30, ch. 2010-151.

394.4787 Definitions; ss. 394.4786, 394.4787, 394.4788, and 394.4789.--As used in this section and ss. 394.4786, 394.4788, and 394.4789:

- (1) "Acute mental health services" means mental health services provided through inpatient hospitalization.
- (2) "Agency" means the Agency for Health Care Administration.
- (3) "Charity care" means that portion of hospital charges for care provided to a patient whose family income for the 12 months preceding the determination is equal to or below 150 percent of the current federal nonfarm poverty guideline or the amount of hospital charges due from the patient which exceeds 25 percent of the annual family income and for which there is no compensation. Charity care shall not include administrative or courtesy discounts, contractual allowances to third party payors, or failure of a hospital to collect full charges due to partial payment by governmental programs.
- (4) "Indigent" means an individual whose financial status would qualify him or her for charity care.
- (5) "Operating expense" means all common and accepted costs appropriate in developing and maintaining the operating of the patient care facility and its activities.
- (6) "PMATF" means the Public Medical Assistance Trust Fund.
- (7) "Specialty psychiatric hospital" means a hospital licensed by the agency pursuant to s. 395.002(28) and part II of chapter 408 as a specialty psychiatric hospital.

History.--s. 2, ch. 89-355; s. 1, ch. 90-192; s. 11, ch. 90-295; s. 55, ch. 91-282; s. 90, ch. 92-33; ss. 70, 98, ch. 92-289; s. 717, ch. 95-148; s. 26, ch. 96-169; s. 32, ch. 98-89; s. 25, ch. 98-171; s. 205, ch. 99-13; s. 25, ch. 2007-230.

394.4788 Use of certain PMATF funds for the purchase of acute care mental health services.--

- (1) A hospital may be eligible to be reimbursed an amount no greater than the hospital's previous year contribution to the PMATF for acute mental health services provided to indigent mentally ill persons who have been determined by the agency or its agent to require such treatment and who:
 - (a) Do not meet Medicaid eligibility criteria, unless the agency makes a referral for a Medicaid eligible patient pursuant to s. 394.4789;
 - (b) Meet the criteria for mental illness under this part; and
 - (c) Meet the definition of charity care.
- (2) The agency shall annually calculate a per diem reimbursement rate for each specialty psychiatric hospital to be paid to the specialty psychiatric hospitals for the provision of acute

mental health services provided to indigent mentally ill patients who meet the criteria in subsection (1). After the first rate period, providers shall be notified of new reimbursement rates for each new state fiscal year by June 1. The new reimbursement rates shall commence July 1.

(3) Reimbursement rates shall be calculated using the most recent audited actual costs received by the agency. Cost data received each April 15 shall be used in the calculation of the rates. Historic costs shall be inflated from the midpoint of a hospital's fiscal year to the midpoint of the state fiscal year. The inflation adjustment shall be made utilizing the latest available projections as of March 31 for the Data Resources Incorporated National and Regional Hospital Input Price Indices as calculated by the Medicaid program office.

(4) Reimbursement shall be based on compensating a specialty psychiatric hospital at a per diem rate equal to its operating costs per inpatient day.

(5) A hospital shall not be entitled to receive more in any one fiscal year than that hospital contributed to the PMATF during the previous fiscal year.

(6) Hospitals that agree to participate in the program set forth in this section and ss. 394.4786, 394.4787, and 394.4789 shall agree that payment from the PMATF is payment in full for all patients for which reimbursement is received under this section and ss. 394.4786, 394.4787, and 394.4789, until the funds for this program are no longer available.

(7) The agency shall develop a payment system to reimburse specialty psychiatric hospitals quarterly as set forth in this part.

History.--s. 3, ch. 89-355; s. 1, ch. 90-192; s. 98, ch. 92-289; s. 27, ch. 96-169; s. 3, ch. 98-89.

394.4789 Establishment of referral process and eligibility determination.--

(1) The department shall adopt by rule a referral process which shall provide each participating specialty psychiatric hospital with a system for accepting into the hospital's care indigent mentally ill persons referred by the department. It is the intent of the Legislature that a hospital which seeks payment under s. 394.4788 shall accept referrals from the department. However, a hospital shall have the right to refuse the admission of a patient due to lack of functional bed space or lack of services appropriate to a patient's specific treatment and no hospital shall be required to accept referrals if the costs for treating the referred patient are no longer reimbursable because the hospital has reached the level of contribution made to the PMATF in the previous fiscal year. Furthermore, a hospital that does not seek compensation for indigent mentally ill patients under the provisions of this act shall not be obliged to accept department referrals, notwithstanding any agreements it may have entered into with the department. The right of refusal in this subsection shall not affect a hospital's requirement to provide emergency care pursuant to s. 395.1041 or other statutory requirements related to the provision of emergency care.

(2) The department shall adopt by rule a patient eligibility form and shall be responsible for eligibility determination. However, the department may contract with participating psychiatric

hospitals for eligibility determination. The eligibility form shall provide the mechanism for determining a patient's eligibility according to the requirements of s. 394.4788(1).

(a) A specialty psychiatric hospital shall be eligible for reimbursement only when an eligibility form has been completed for each indigent mentally ill person for whom reimbursement is sought.

(b) As part of eligibility determination, every effort shall be made by the hospital to determine if any third party insurance coverage is available.

History.--s. 4, ch. 89-355; s. 71, ch. 92-289.

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BOARD OF PSYCHOLOGY

****Study Packet****
For the
Florida Laws and Rules Examination
Computer Based Test
For Psychologists

January – December 2012

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Examination Study Packet

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PART F:

Chapter 415, Adult Protective Services

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CHAPTER 415
ADULT PROTECTIVE SERVICES

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415.101 Adult Protective Services Act; legislative intent.--

(1) Sections 415.101-415.113 may be cited as the “Adult Protective Services Act.”

(2) The Legislature recognizes that there are many persons in this state who, because of age or disability, are in need of protective services. Such services should allow such an individual the same rights as other citizens and, at the same time, protect the individual from abuse, neglect, and exploitation. It is the intent of the Legislature to provide for the detection and correction of abuse, neglect, and exploitation through social services and criminal investigations and to establish a program of protective services for all vulnerable adults in need of them. It is intended that the mandatory reporting of such cases will cause the protective services of the state to be brought to bear in an effort to prevent further abuse, neglect, and exploitation of vulnerable adults. In taking this action, the Legislature intends to place the fewest possible restrictions on personal liberty and the exercise of constitutional rights, consistent with due process and protection from abuse, neglect, and exploitation. Further, the Legislature intends to encourage the constructive involvement of families in the care and protection of vulnerable adults.

History.— ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, ch. 73-176; s. 1, ch. 77-174; ss. 3, 5, ch. 79-287; s. 15, ch. 79-298; s. 1, ch. 80-293; s. 1, ch. 83-82; s. 61, ch. 85-81; s. 27, ch. 86-220; s. 93, ch. 95-418; s. 1, ch. 2010-31.

415.102 Definitions of terms used in ss. 415.101-415.113.--As used in ss. 415.101-415.113, the term:

(1) “Abuse” means any willful act or threatened act by a relative, caregiver, or household member which causes or is likely to cause significant impairment to a vulnerable adult’s physical, mental, or emotional health. Abuse includes acts and omissions.

(2) “Activities of daily living” means functions and tasks for self-care, including ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.

(3) “Alleged perpetrator” means a person who has been named by a reporter as the person responsible for abusing, neglecting, or exploiting a vulnerable adult.

(4) “Capacity to consent” means that a vulnerable adult has sufficient understanding to make and communicate responsible decisions regarding the vulnerable adult’s person or property, including whether or not to accept protective services offered by the department.

(5) “Caregiver” means a person who has been entrusted with or has assumed the responsibility for frequent and regular care of or services to a vulnerable adult on a temporary or permanent basis and who has a commitment, agreement, or understanding with that person or that person’s guardian that a caregiver role exists. “Caregiver” includes, but is not limited to, relatives, household members, guardians, neighbors, and employees and volunteers of facilities as defined in subsection (9). For the purpose of departmental investigative jurisdiction, the term “caregiver” does not include law enforcement officers or employees of municipal or county detention facilities or the Department of Corrections while acting in an official capacity.

(6) “Deception” means a misrepresentation or concealment of a material fact relating to services rendered, disposition of property, or the use of property intended to benefit a vulnerable adult.

(7) “Department” means the Department of Children and Family Services.

(8)(a) “Exploitation” means a person who:

1. Stands in a position of trust and confidence with a vulnerable adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, a vulnerable adult’s funds, assets, or property with the intent to temporarily or permanently deprive a vulnerable adult

of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult; or

2. Knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult.

(b) "Exploitation" may include, but is not limited to:

1. Breaches of fiduciary relationships, such as the misuse of a power of attorney or the abuse of guardianship duties, resulting in the unauthorized appropriation, sale, or transfer of property;
2. Unauthorized taking of personal assets;
3. Misappropriation, misuse, or transfer of moneys belonging to a vulnerable adult from a personal or joint account; or
4. Intentional or negligent failure to effectively use a vulnerable adult's income and assets for the necessities required for that person's support and maintenance.

(9) "Facility" means any location providing day or residential care or treatment for vulnerable adults. The term "facility" may include, but is not limited to, any hospital, state institution, nursing home, assisted living facility, adult family-care home, adult day care center, residential facility licensed under chapter 393, adult day training center, or mental health treatment center.

(10) "False report" means a report of abuse, neglect, or exploitation of a vulnerable adult to the central abuse hotline which is not true and is maliciously made for the purpose of:

- (a) Harassing, embarrassing, or harming another person;
- (b) Personal financial gain for the reporting person;
- (c) Acquiring custody of a vulnerable adult; or
- (d) Personal benefit for the reporting person in any other private dispute involving a vulnerable adult.

The term "false report" does not include a report of abuse, neglect, or exploitation of a vulnerable adult which is made in good faith to the central abuse hotline.

(11) "Fiduciary relationship" means a relationship based upon the trust and confidence of the vulnerable adult in the caregiver, relative, household member, or other person entrusted with the use or management of the property or assets of the vulnerable adult. The relationship exists where there is a special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to the interests of the vulnerable adult. For the purposes of this part, a fiduciary relationship may be formed by an informal agreement between the vulnerable adult and the other person and does not require a formal declaration or court order for its existence. A fiduciary relationship includes, but is not limited to, court-appointed or voluntary guardians, trustees, attorneys, or conservators of a vulnerable adult's assets or property.

(12) "Guardian" means a person who has been appointed by a court to act on behalf of a person; a preneed guardian, as provided in chapter 744; or a health care surrogate expressly designated as provided in chapter 765.

(13) "In-home services" means the provision of nursing, personal care, supervision, or other services to vulnerable adults in their own homes.

- (14) “Intimidation” means the communication by word or act to a vulnerable adult that that person will be deprived of food, nutrition, clothing, shelter, supervision, medicine, medical services, money, or financial support or will suffer physical violence.
- (15) “Lacks capacity to consent” means a mental impairment that causes a vulnerable adult to lack sufficient understanding or capacity to make or communicate responsible decisions concerning person or property, including whether or not to accept protective services.
- (16) “Neglect” means the failure or omission on the part of the caregiver or vulnerable adult to provide the care, supervision, and services necessary to maintain the physical and mental health of the vulnerable adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, which a prudent person would consider essential for the well-being of a vulnerable adult. The term “neglect” also means the failure of a caregiver or vulnerable adult to make a reasonable effort to protect a vulnerable adult from abuse, neglect, or exploitation by others. “Neglect” is repeated conduct or a single incident of carelessness which produces or could reasonably be expected to result in serious physical or psychological injury or a substantial risk of death.
- (17) “Obtains or uses” means any manner of:
- (a) Taking or exercising control over property;
 - (b) Making any use, disposition, or transfer of property;
 - (c) Obtaining property by fraud, willful misrepresentation of a future act, or false promise; or
 - (d) 1. Conduct otherwise known as stealing; larceny; purloining; abstracting; embezzlement; misapplication; misappropriation; conversion; or obtaining money or property by false pretenses, fraud, or deception; or
2. Other conduct similar in nature.
- (18) “Position of trust and confidence” with respect to a vulnerable adult means the position of a person who:
- (a) Is a parent, spouse, adult child, or other relative by blood or marriage;
 - (b) Is a joint tenant or tenant in common;
 - (c) Has a legal or fiduciary relationship, including, but not limited to, a court-appointed or voluntary guardian, trustee, attorney, or conservator; or
 - (d) Is a caregiver or any other person who has been entrusted with or has assumed responsibility for the use or management of the vulnerable adult’s funds, assets, or property.
- (19) “Protective investigation” means acceptance of a report from the central abuse hotline alleging abuse, neglect, or exploitation as defined in this section; investigation of the report; determination as to whether action by the court is warranted; and referral of the vulnerable adult to another public or private agency when appropriate.
- (20) “Protective investigator” means an authorized agent of the department who receives and investigates reports of abuse, neglect, or exploitation of vulnerable adults.
- (21) “Protective services” means services to protect a vulnerable adult from further occurrences of abuse, neglect, or exploitation. Such services may include, but are not limited to, protective supervision, placement, and in-home and community-based services.
- (22) “Protective supervision” means those services arranged for or implemented by the department to protect vulnerable adults from further occurrences of abuse, neglect, or exploitation.
- (23) “Psychological injury” means an injury to the intellectual functioning or emotional state of a vulnerable adult as evidenced by an observable or measurable reduction in the vulnerable

adult's ability to function within that person's customary range of performance and that person's behavior.

(24) "Records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, videotapes, or other material, regardless of physical form or characteristics, made or received pursuant to a protective investigation.

(25) "Sexual abuse" means acts of a sexual nature committed in the presence of a vulnerable adult without that person's informed consent. "Sexual abuse" includes, but is not limited to, the acts defined in s. 794.011(1)(h), fondling, exposure of a vulnerable adult's sexual organs, or the use of a vulnerable adult to solicit for or engage in prostitution or sexual performance. "Sexual abuse" does not include any act intended for a valid medical purpose or any act that may reasonably be construed to be normal caregiving action or appropriate display of affection.

(26) "Victim" means any vulnerable adult named in a report of abuse, neglect, or exploitation.

(27) "Vulnerable adult" means a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.

(28) "Vulnerable adult in need of services" means a vulnerable adult who has been determined by a protective investigator to be suffering from the ill effects of neglect not caused by a second party perpetrator and is in need of protective services or other services to prevent further harm.

History.— ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, ch. 73-176; s. 1, ch. 77-174; ss. 3, 5, ch. 79-287; s. 15, ch. 79-298; s. 1, ch. 80-293; s. 1, ch. 83-82; s. 28, ch. 86-220; s. 29, ch. 87-238; s. 26, ch. 89-294; s. 1, ch. 90-50; s. 44, ch. 90-306; s. 1, ch. 91-57; s. 35, ch. 95-210; s. 94, ch. 95-418; s. 9, ch. 97-98; s. 127, ch. 97-101; s. 41, ch. 97-264; s. 1, ch. 98-182; s. 68, ch. 2000-153; s. 26, ch. 2000-349; s. 4, ch. 2003-57; s. 1, ch. 2006-131; s. 57, ch. 2006-227; s. 2, ch. 2010-31.

415.103 Central abuse hotline.--

(1) The department shall establish and maintain a central abuse hotline that receives all reports made pursuant to s. 415.1034 in writing or through a single statewide toll-free telephone number. Any person may use the statewide toll-free telephone number to report known or suspected abuse, neglect, or exploitation of a vulnerable adult at any hour of the day or night, any day of the week. The central abuse hotline must be operated in such a manner as to enable the department to:

(a) Accept reports for investigation when there is a reasonable cause to suspect that a vulnerable adult has been or is being abused, neglected, or exploited.

(b) Determine whether the allegations made by the reporter require an immediate, 24-hour, or next-working-day response priority.

(c) When appropriate, refer calls that do not allege the abuse, neglect, or exploitation of a vulnerable adult to other organizations that might better resolve the reporter's concerns.

(d) Immediately identify and locate prior reports of abuse, neglect, or exploitation through the central abuse hotline.

(e) Track critical steps in the investigative process to ensure compliance with all requirements for all reports.

(f) Maintain data to facilitate the production of aggregate statistical reports for monitoring patterns of abuse, neglect, or exploitation.

(g) Serve as a resource for the evaluation, management, and planning of preventive and remedial services for vulnerable adults who have been subject to abuse, neglect, or exploitation.

(2) Upon receiving an oral or written report of known or suspected abuse, neglect, or exploitation of a vulnerable adult, the central abuse hotline must determine if the report requires an immediate onsite protective investigation. For reports requiring an immediate onsite protective investigation, the central abuse hotline must immediately notify the department's designated protective investigative district staff responsible for protective investigations to ensure prompt initiation of an onsite investigation. For reports not requiring an immediate onsite protective investigation, the central abuse hotline must notify the department's designated protective investigative district staff responsible for protective investigations in sufficient time to allow for an investigation to be commenced within 24 hours. At the time of notification of district staff with respect to the report, the central abuse hotline must also provide any known information on any previous report concerning a subject of the present report or any pertinent information relative to the present report or any noted earlier reports. If the report is of known or suspected abuse of a vulnerable adult by someone other than a relative, caregiver, or household member, the report shall be immediately transferred to the appropriate county sheriff's office.

(3) The department shall set standards, priorities, and policies to maximize the efficiency and effectiveness of the central abuse hotline.

History.--ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, ch. 73-176; s. 1, ch. 77-174; ss. 3, 5, ch. 79-287; s. 15, ch. 79-298; s. 1, ch. 80-293; s. 1, ch. 83-82; s. 67, ch. 86-163; s. 29, ch. 86-220; s. 30, ch. 87-238; s. 16, ch. 88-337; s. 27, ch. 89-294; s. 2, ch. 90-50; s. 45, ch. 90-306; s. 2, ch. 91-57; s. 14, ch. 91-71; s. 36, ch. 95-210; s. 95, ch. 95-418; s. 27, ch. 2000-349; s. 3, ch. 2010-31.

415.1034 Mandatory reporting of abuse, neglect, or exploitation of vulnerable adults; mandatory reports of death.--

(1) MANDATORY REPORTING.--

(a) Any person, including, but not limited to, any:

1. Physician, osteopathic physician, medical examiner, chiropractic physician, nurse, paramedic, emergency medical technician, or hospital personnel engaged in the admission, examination, care, or treatment of vulnerable adults;
2. Health professional or mental health professional other than one listed in subparagraph 1.;
3. Practitioner who relies solely on spiritual means for healing;
4. Nursing home staff; assisted living facility staff; adult day care center staff; adult family-care home staff; social worker; or other professional adult care, residential, or institutional staff;
5. State, county, or municipal criminal justice employee or law enforcement officer;
6. An employee of the Department of Business and Professional Regulation conducting inspections of public lodging establishments under s. 509.032;
7. Florida advocacy council member or long-term care ombudsman council member; or
8. Bank, savings and loan, or credit union officer, trustee, or employee,

who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited shall immediately report such knowledge or suspicion to the central abuse hotline.

(b) To the extent possible, a report made pursuant to paragraph (a) must contain, but need not be limited to, the following information:

1. Name, age, race, sex, physical description, and location of each victim alleged to have been abused, neglected, or exploited.
2. Names, addresses, and telephone numbers of the victim's family members.
3. Name, address, and telephone number of each alleged perpetrator.
4. Name, address, and telephone number of the caregiver of the victim, if different from the alleged perpetrator.
5. Name, address, and telephone number of the person reporting the alleged abuse, neglect, or exploitation.
6. Description of the physical or psychological injuries sustained.
7. Actions taken by the reporter, if any, such as notification of the criminal justice agency.
8. Any other information available to the reporting person which may establish the cause of abuse, neglect, or exploitation that occurred or is occurring.

(2) **MANDATORY REPORTS OF DEATH.**--Any person who is required to investigate reports of abuse, neglect, or exploitation and who has reasonable cause to suspect that a vulnerable adult died as a result of abuse, neglect, or exploitation shall immediately report the suspicion to the appropriate medical examiner, to the appropriate criminal justice agency, and to the department, notwithstanding the existence of a death certificate signed by a practicing physician. The medical examiner shall accept the report for investigation pursuant to s. 406.11 and shall report the findings of the investigation, in writing, to the appropriate local criminal justice agency, the appropriate state attorney, and the department. Autopsy reports maintained by the medical examiner are not subject to the confidentiality requirements provided for in s. 415.107.

History.--s. 96, ch. 95-418; s. 10, ch. 97-98; s. 42, ch. 97-264; s. 256, ch. 98-166; s. 21, ch. 2000-263; s. 2, ch. 2000-318; s. 28, ch. 2000-349.

415.1035 Facility's duty to inform residents of their right to report abusive, neglectful, or exploitive practices.--The department shall work cooperatively with the Agency for Health Care Administration, the Agency for Persons with Disabilities, and the Department of Elderly Affairs to ensure that every facility that serves vulnerable adults informs residents of their right to report abusive, neglectful, or exploitive practices. Each facility must establish appropriate policies and procedures to facilitate such reporting.

History.--s. 97, ch. 95-418; s. 29, ch. 2000-349; s. 58, ch. 2006-227.

415.1036 Immunity.--

(1) Any person who participates in making a report under s. 415.1034 or participates in a judicial proceeding resulting therefrom is presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, is immune from any liability, civil or criminal, that otherwise might be incurred or imposed. This section does not grant immunity, civil or criminal, to any person who is suspected of having abused, neglected, or exploited, or committed any illegal act upon or against, a vulnerable adult. Further, a resident or employee of a facility that serves vulnerable adults may not be subjected to reprisal or discharge because of the

resident's or employee's actions in reporting abuse, neglect, or exploitation pursuant to s. 415.1034.

(2) Any person who makes a report under s. 415.1034 has a civil cause of action for appropriate compensatory and punitive damages against any person who causes detrimental changes in the employment status of the reporting party by reason of the reporting party's making the report. Any detrimental change made in the residency or employment status of such a person, such as, but not limited to, discharge, termination, demotion, transfer, or reduction in pay or benefits or work privileges, or negative evaluations, within 120 days after the report is made establishes a rebuttable presumption that the detrimental action was retaliatory.

History.--s. 98, ch. 95-418; s. 30, ch. 2000-349.

415.104 Protective investigations of cases of abuse, neglect, or exploitation of vulnerable adults; transmittal of records to state attorney.--

(1) The department shall, upon receipt of a report alleging abuse, neglect, or exploitation of a vulnerable adult, begin within 24 hours a protective investigation of the facts alleged therein. If a caregiver refuses to allow the department to begin a protective investigation or interferes with the conduct of such an investigation, the appropriate law enforcement agency shall be contacted for assistance. If, during the course of the investigation, the department has reason to believe that the abuse, neglect, or exploitation is perpetrated by a second party, the appropriate law enforcement agency and state attorney shall be orally notified. The department and the law enforcement agency shall cooperate to allow the criminal investigation to proceed concurrently with, and not be hindered by, the protective investigation. The department shall make a preliminary written report to the law enforcement agencies within 5 working days after the oral report. The department shall, within 24 hours after receipt of the report, notify the appropriate Florida local advocacy council, or long-term care ombudsman council, when appropriate, that an alleged abuse, neglect, or exploitation perpetrated by a second party has occurred. Notice to the Florida local advocacy council or long-term care ombudsman council may be accomplished orally or in writing and shall include the name and location of the vulnerable adult alleged to have been abused, neglected, or exploited and the nature of the report.

(2) Upon commencing an investigation, the protective investigator shall inform all of the vulnerable adults and alleged perpetrators named in the report of the following:

(a) The names of the investigators and identifying credentials from the department.

(b) The purpose of the investigation.

(c) That the victim, the victim's guardian, the victim's caregiver, and the alleged perpetrator, and legal counsel for any of those persons, have a right to a copy of the report at the conclusion of the investigation.

(d) The name and telephone number of the protective investigator's supervisor available to answer questions.

(e) That each person has the right to obtain his or her own attorney.

Any person being interviewed by a protective investigator may be represented by an attorney, at the person's own expense, or may choose to have another person present. The other person present may not be an alleged perpetrator in any report currently under investigation. Before

participating in such interview, the other person present shall execute an agreement to comply with the confidentiality requirements of ss. 415.101-415.113. The absence of an attorney or other person does not prevent the department from proceeding with other aspects of the investigation, including interviews with other persons. In an investigative interview with a vulnerable adult, the protective investigator may conduct the interview with no other person present.

(3) For each report it receives, the department shall perform an onsite investigation to:

(a) Determine that the person is a vulnerable adult as defined in s. 415.102.

(b) Determine whether the person is a vulnerable adult in need of services, as defined in s. 415.102.

(c) Determine the composition of the family or household, including the name, address, date of birth, social security number, sex, and race of each person in the household.

(d) Determine whether there is an indication that a vulnerable adult is abused, neglected, or exploited.

(e) Determine the nature and extent of present or prior injuries, abuse, or neglect, and any evidence thereof.

(f) Determine, if possible, the person or persons apparently responsible for the abuse, neglect, or exploitation, including name, address, date of birth, social security number, sex, and race.

(g) Determine the immediate and long-term risk to each vulnerable adult through utilization of standardized risk assessment instruments.

(h) Determine the protective, treatment, and ameliorative services necessary to safeguard and ensure the vulnerable adult's well-being and cause the delivery of those services.

(4) No later than 60 days after receiving the initial report, the designated protective investigative staff of the department shall complete the investigation and notify the guardian of the vulnerable adult, the vulnerable adult, and the caregiver of any recommendations of services to be provided to ameliorate the causes or effects of abuse, neglect, or exploitation.

(5) Whenever the law enforcement agency and the department have conducted independent investigations, the law enforcement agency shall, within 5 working days after concluding its investigation, report its findings to the state attorney and to the department.

(6) Upon receipt of a report which alleges that an employee or agent of the department acting in an official capacity has committed an act of abuse, neglect, or exploitation, the department shall commence, or cause to be commenced, a protective investigation and shall notify the state attorney in whose circuit the alleged abuse, neglect, or exploitation occurred.

(7) With respect to any case of reported abuse, neglect, or exploitation of a vulnerable adult, the department, when appropriate, shall transmit all relevant reports to the state attorney of the circuit where the incident occurred.

(8) Within 15 days after completion of the state attorney's investigation of a case reported to him or her pursuant to this section, the state attorney shall report his or her findings to the department and shall include a determination of whether or not prosecution is justified and appropriate in view of the circumstances of the specific case.

(9) The department shall not use a warning, reprimand, or disciplinary action against an employee, found in that employee's personnel records, as the sole basis for a finding of abuse, neglect, or exploitation.

History.--ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, ch. 73-176; s. 1, ch. 77-174; ss. 3, 5, ch. 79-287; s. 15, ch. 79-298; s. 1, ch. 80-293; s. 1, ch. 83-82; s. 5, ch. 84-226; s. 2, ch. 85-143; s. 30, ch. 86-220; s. 31, ch. 87-238; s. 17, ch. 88-337; s. 28, ch. 89-294; s. 3, ch. 90-50; s. 46, ch. 90-306; s. 3, ch. 91-57; s. 64, ch. 97-103; s. 200, ch. 99-8; s. 22, ch. 2000-263; s. 31, ch. 2000-349.

415.1045 Photographs, videotapes, and medical examinations; abrogation of privileged communications; confidential records and documents.--

(1) PHOTOGRAPHS AND VIDEOTAPES.--

(a) The protective investigator, while investigating a report of abuse, neglect, or exploitation, may take or cause to be taken photographs and videotapes of the vulnerable adult, and of his or her environment, which are relevant to the investigation. All photographs and videotapes taken during the course of the protective investigation are confidential and exempt from public disclosure as provided in s. 415.107.

(b) Any photographs or videotapes made pursuant to this subsection, or copies thereof, must be sent to the department as soon as possible.

(2) MEDICAL EXAMINATIONS.--

(a) With the consent of the vulnerable adult who has the capacity to consent or the vulnerable adult's guardian, or pursuant to s. 415.1051, the department may cause the vulnerable adult to be referred to a licensed physician or any emergency department in a hospital or health care facility for medical examination, diagnosis, or treatment if any of the following circumstances exist:

1. The areas of trauma visible on the vulnerable adult indicate a need for medical examination;
2. The vulnerable adult verbally complains or otherwise exhibits signs or symptoms indicating a need for medical attention as a consequence of suspected abuse, neglect, or exploitation; or
3. The vulnerable adult is alleged to have been sexually abused.

(b) Upon admission to a hospital or health care facility, with the consent of the vulnerable adult who has capacity to consent or that person's guardian, or pursuant to s. 415.1051, the medical staff of the facility may examine, diagnose, or treat the vulnerable adult. If a person who has legal authority to give consent for the provision of medical treatment to a vulnerable adult has not given or has refused to give such consent, examination and treatment must be limited to reasonable examination of the patient to determine the medical condition of the patient and treatment reasonably necessary to alleviate the medical condition or to stabilize the patient pending a determination by the court of the department's petition authorizing protective services. Any person may seek an expedited judicial intervention under rule 5.900 of the Florida Probate Rules concerning medical treatment procedures.

(c) Medical examination, diagnosis, and treatment provided under this subsection must be paid for by third-party reimbursement, if available, or by the vulnerable adult, if he or she is able to pay; or, if he or she is unable to pay, the department shall pay the costs within available emergency services funds.

(d) Reports of examination, diagnosis, and treatment made under this subsection, or copies thereof, must be sent to the department as soon as possible.

(e) This subsection does not obligate the department to pay for any treatment other than that necessary to alleviate the immediate presenting problems.

(3) **ABROGATION OF PRIVILEGED COMMUNICATIONS.**--The privileged quality of communication between husband and wife and between any professional and the professional's patient or client, and any other privileged communication except that between attorney and client or clergy and person, as such communication relates to both the competency of the witness and to the exclusion of confidential communications, does not apply to any situation involving known or suspected abuse, neglect, or exploitation of a vulnerable adult and does not constitute grounds for failure to report as required by s. 415.1034, for failure to cooperate with law enforcement or the department in its activities under ss. 415.101-415.113, or for failure to give evidence in any judicial or administrative proceeding relating to abuse, neglect, or exploitation of a vulnerable adult.

(4) **MEDICAL, SOCIAL, OR FINANCIAL RECORDS OR DOCUMENTS.**--

(a) The protective investigator, while investigating a report of abuse, neglect, or exploitation, must have access to, inspect, and copy all medical, social, or financial records or documents in the possession of any person, caregiver, guardian, or facility which are relevant to the allegations under investigation, unless specifically prohibited by the vulnerable adult who has capacity to consent.

(b) The confidentiality of any medical, social, or financial record or document that is confidential under state law does not constitute grounds for failure to:

1. Report as required by s. 415.1034;
2. Cooperate with the department in its activities under ss. 415.101-415.113;
3. Give access to such records or documents; or
4. Give evidence in any judicial or administrative proceeding relating to abuse, neglect, or exploitation of a vulnerable adult.

(5) **ACCESS TO RECORDS AND DOCUMENTS.**--If any person refuses to allow a law enforcement officer or the protective investigator to have access to, inspect, or copy any medical, social, or financial record or document in the possession of any person, caregiver, guardian, or facility which is relevant to the allegations under investigation, the department may petition the court for an order requiring the person to allow access to the record or document. The petition must allege specific facts sufficient to show that the record or document is relevant to the allegations under investigation and that the person refuses to allow access to such record or document. If the court finds by a preponderance of the evidence that the record or document is relevant to the allegations under investigation, the court may order the person to allow access to and permit the inspection or copying of the medical, social, or financial record or document.

(6) **WORKING AGREEMENTS.**— The department shall enter into working agreements with the jurisdictionally responsible county sheriff's office or local police department that will be the lead agency for conducting any criminal investigation arising from an allegation of abuse, neglect, or exploitation of a vulnerable adult. The working agreement must specify how the requirements of this chapter will be met. For the purposes of such agreement, the jurisdictionally responsible law enforcement entity may share Florida criminal history and local criminal history information that is not otherwise exempt from s. 119.07(1) with the district personnel. A law enforcement entity entering into such agreement must comply with s. 943.0525. Criminal justice

information provided by the law enforcement entity may be used only for the purposes specified in the agreement and shall be provided at no charge. Notwithstanding any other provision of law, the Department of Law Enforcement shall provide to the department electronic access to Florida criminal justice information that is lawfully available and not exempt from s. 119.07(1), only for the purpose of protective investigations and emergency placement. As a condition of access to the information, the department shall execute an appropriate user agreement addressing the access, use, dissemination, and destruction of such information and comply with all applicable laws and rules of the Department of Law Enforcement.

History.— s. 99, ch. 95-418; s. 2, ch. 98-182; s. 32, ch. 2000-349; s. 4, ch. 2002-174; s. 1, ch. 2003-262; s. 136, ch. 2010-102.

415.105 Provision of protective services with consent; withdrawal of consent; interference.-

(1) **PROTECTIVE SERVICES WITH CONSENT.**--If the department determines through its investigation that a vulnerable adult demonstrates a need for protective services or protective supervision, the department shall immediately provide, or arrange for the provision of, protective services or protective supervision, including in-home services, provided that the vulnerable adult consents. A vulnerable adult in need of services as defined in s. 415.102 shall be referred to the community care for disabled adults program, or to the community care for the elderly program administered by the Department of Elderly Affairs.

(2) **WITHDRAWAL OF CONSENT.**--If the vulnerable adult withdraws consent to the receipt of protective services or protective supervision, the services may not be provided, except pursuant to s. 415.1051.

(3) **INTERFERENCE WITH THE PROVISION OF PROTECTIVE SERVICES.**--When any person refuses to allow the provision of protective services to a vulnerable adult who has the capacity to consent to services, the department shall petition the court for an order enjoining the person from interfering with the provision of protective services. The petition must allege specific facts sufficient to show that the vulnerable adult is in need of protective services and that the person refuses to allow the provision of such services. If the court finds by clear and convincing evidence that the vulnerable adult is in need of protective services and that the person refuses to allow the provision of such services, the court may issue an order enjoining the person from interfering with the provision of protective services to the vulnerable adult.

History.--ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, ch. 73-176; s. 1, ch. 77-174; ss. 3, 5, ch. 79-287; s. 15, ch. 79-298; s. 1, ch. 80-293; s. 1, ch. 83-82; s. 31, ch. 86-220; s. 29, ch. 89-294; s. 21, ch. 95-144; s. 37, ch. 95-210; s. 100, ch. 95-418; s. 3, ch. 98-182; s. 33, ch. 2000-349.

415.1051 Protective services interventions when capacity to consent is lacking; nonemergencies; emergencies; orders; limitations.--

(1) **NONEMERGENCY PROTECTIVE SERVICES INTERVENTIONS.**--If the department has reasonable cause to believe that a vulnerable adult or a vulnerable adult in need of services is being abused, neglected, or exploited and is in need of protective services but lacks the capacity to consent to protective services, the department shall petition the court for an order authorizing the provision of protective services.

(a) *Nonemergency protective services petition.*--The petition must state the name, age, and address of the vulnerable adult, allege specific facts sufficient to show that the vulnerable adult is

in need of protective services and lacks the capacity to consent to them, and indicate the services needed.

(b) *Notice.*--Notice of the filing of the petition and a copy of the petition must be given to the vulnerable adult, to that person's spouse, guardian, and legal counsel, and, when known, to the adult children or next of kin of the vulnerable adult. Such notice must be given at least 5 days before the hearing.

(c) *Hearing.*--

1. The court shall set the case for hearing within 14 days after the filing of the petition. The vulnerable adult and any person given notice of the filing of the petition have the right to be present at the hearing. The department must make reasonable efforts to ensure the presence of the vulnerable adult at the hearing.

2. The vulnerable adult has the right to be represented by legal counsel at the hearing. The court shall appoint legal counsel to represent a vulnerable adult who is without legal representation.

3. The court shall determine whether:

a. Protective services, including in-home services, are necessary.

b. The vulnerable adult lacks the capacity to consent to the provision of such services.

(d) *Hearing findings.*--If at the hearing the court finds by clear and convincing evidence that the vulnerable adult is in need of protective services and lacks the capacity to consent, the court may issue an order authorizing the provision of protective services. If an order for protective services is issued, it must include a statement of the services to be provided and designate an individual or agency to be responsible for performing or obtaining the essential services on behalf of the vulnerable adult or otherwise consenting to protective services on behalf of the vulnerable adult.

(e) *Continued protective services.*--

1. No more than 60 days after the date of the order authorizing the provision of protective services, the department shall petition the court to determine whether:

a. Protective services will be continued with the consent of the vulnerable adult pursuant to this subsection;

b. Protective services will be continued for the vulnerable adult who lacks capacity;

c. Protective services will be discontinued; or

d. A petition for guardianship should be filed pursuant to chapter 744.

2. If the court determines that a petition for guardianship should be filed pursuant to chapter 744, the court, for good cause shown, may order continued protective services until it makes a determination regarding capacity.

3. If the department has a good faith belief that the vulnerable adult lacks the capacity to consent to protective services, the petition to determine incapacity under s. 744.3201 may be filed by the department. Once the petition is filed, the department may not be appointed guardian and may not provide legal counsel for the guardian.

(f) *Costs.*--The costs of services ordered under this section must be paid by the perpetrator if the perpetrator is financially able to do so; or by third-party reimbursement, if available. If the

vulnerable adult is unable to pay for guardianship, application may be made to the public guardian for public guardianship services, if available.

(2) **EMERGENCY PROTECTIVE SERVICES INTERVENTION.**--If the department has reasonable cause to believe that a vulnerable adult is suffering from abuse or neglect that presents a risk of death or serious physical injury to the vulnerable adult and that the vulnerable adult lacks the capacity to consent to emergency protective services, the department may take action under this subsection. If the vulnerable adult has the capacity to consent and refuses consent to emergency protective services, emergency protective services may not be provided.

(a) *Emergency entry of premises.*--If, upon arrival at the scene of the incident, consent is not obtained for access to the alleged victim for purposes of conducting a protective investigation under this subsection and the department has reason to believe that the situation presents a risk of death or serious physical injury, a representative of the department and a law enforcement officer may forcibly enter the premises. If, after obtaining access to the alleged victim, it is determined through a personal assessment of the situation that no emergency exists and there is no basis for emergency protective services intervention under this subsection, the department shall terminate the emergency entry.

(b) *Emergency removal from premises.*--If it appears that the vulnerable adult lacks the capacity to consent to emergency protective services and that the vulnerable adult, from the personal observations of the representative of the department and specified medical personnel or law enforcement officers, is likely to incur a risk of death or serious physical injury if such person is not immediately removed from the premises, then the representative of the department shall transport or arrange for the transportation of the vulnerable adult to an appropriate medical or protective services facility in order to provide emergency protective services. Law enforcement personnel have a duty to transport when medical transportation is not available or needed and the vulnerable adult presents a threat of injury to self or others. If the vulnerable adult's caregiver or guardian is present, the protective investigator must seek the caregiver's or guardian's consent pursuant to subsection (4) before the vulnerable adult may be removed from the premises, unless the protective investigator suspects that the vulnerable adult's caregiver or guardian has caused the abuse, neglect, or exploitation. The department shall, within 24 hours after providing or arranging for emergency removal of the vulnerable adult, excluding Saturdays, Sundays, and legal holidays, petition the court for an order authorizing emergency protective services.

(c) *Emergency medical treatment.*--If, upon admission to a medical facility, it is the opinion of the medical staff that immediate medical treatment is necessary to prevent serious physical injury or death, and that such treatment does not violate a known health care advance directive prepared by the vulnerable adult, the medical facility may proceed with treatment to the vulnerable adult. If a person with legal authority to give consent for the provision of medical treatment to a vulnerable adult has not given or has refused to give such consent, examination and treatment must be limited to reasonable examination of the patient to determine the medical condition of the patient and treatment reasonably necessary to alleviate the emergency medical condition or to stabilize the patient pending court determination of the department's petition authorizing emergency protective services. Any person may seek an expedited judicial intervention under rule 5.900 of the Florida Probate Rules concerning medical treatment procedures.

(d) *Emergency protective services petition.*--A petition filed under this subsection must state the name, age, and address of the vulnerable adult and allege the facts constituting the emergency protective services intervention and subsequent removal of the vulnerable adult or provision of

in-home services, the facts relating to the capacity of the vulnerable adult to consent to services, the efforts of the department to obtain consent, and the services needed or delivered.

(e) *Notice.*--Notice of the filing of the emergency protective services petition and a copy of the petition must be given to the vulnerable adult, to that person's spouse, to that person's guardian, if any, to legal counsel representing the vulnerable adult, and, when known, to adult children or next of kin of the vulnerable adult. Such notice must be given at least 24 hours before any hearing on the petition for emergency protective services.

(f) *Hearing.*--When emergency removal has occurred under this subsection, a hearing must be held within 4 days after the filing of the emergency protective services petition, excluding Saturday, Sunday, and legal holidays, to establish reasonable cause for grounds to continue emergency protective services.

1. The court shall determine, by clear and convincing evidence, whether an emergency existed which justified the emergency protective services intervention, whether the vulnerable adult is in need of emergency protective services, whether the vulnerable adult lacks the capacity to consent to emergency protective services, and whether:

- a. Emergency protective services will continue with the consent of the vulnerable adult;
- b. Emergency protective services will continue without the consent of the vulnerable adult; or
- c. Emergency protective services will be discontinued.

2. The vulnerable adult has the right to be represented by legal counsel at the hearing. The court shall appoint legal counsel to represent a vulnerable adult who is without legal representation.

3. The department must make reasonable efforts to ensure the presence of the vulnerable adult at the hearing.

4. If an order to continue emergency protective services is issued, it must state the services to be provided and designate an individual or agency to be responsible for performing or obtaining the essential services, or otherwise consenting to protective services on behalf of the vulnerable adult.

(g) *Continued emergency protective services.*--

1. Not more than 60 days after the date of the order authorizing the provision of emergency protective services, the department shall petition the court to determine whether:

- a. Emergency protective services will be continued with the consent of the vulnerable adult;
- b. Emergency protective services will be continued for the vulnerable adult who lacks capacity;
- c. Emergency protective services will be discontinued; or
- d. A petition should be filed under chapter 744.

2. If it is decided to file a petition under chapter 744, for good cause shown, the court may order continued emergency protective services until a determination is made by the court.

3. If the department has a good faith belief that the vulnerable adult lacks the capacity to consent to protective services, the petition to determine incapacity under s. 744.3201 may be filed by the department. Once the petition is filed, the department may not be appointed guardian and may not provide legal counsel for the guardian.

h) *Costs*.--The costs of services ordered under this section must be paid by the perpetrator if the perpetrator is financially able to do so, or by third-party reimbursement, if available.

(3) **PROTECTIVE SERVICES ORDER**.--In ordering any protective services under this section, the court shall adhere to the following limitations:

(a) Only such protective services as are necessary to ameliorate the conditions creating the abuse, neglect, or exploitation may be ordered, and the court shall specifically designate the approved services in the order of the court.

(b) Protective services ordered may not include a change of residence, unless the court specifically finds such action is necessary to ameliorate the conditions creating the abuse, neglect, or exploitation and the court gives specific approval for such action in the order. Placement may be made to such facilities as adult family-care homes, assisted living facilities, or nursing homes, or to other appropriate facilities. Placement may not be made to facilities for the acutely mentally ill, except as provided in chapter 394.

(c) If an order to continue emergency protective services is issued, it must include the designation of an individual or agency to be responsible for performing or obtaining the essential services on behalf of the vulnerable adult or otherwise consenting to protective services on behalf of the vulnerable adult.

(4) **PROTECTIVE SERVICES INTERVENTIONS WITH CAREGIVER OR GUARDIAN PRESENT**.--

(a) When a vulnerable adult who lacks the capacity to consent has been identified as the victim, the protective investigator must first request consent from the caregiver or guardian, if present, before providing protective services or protective supervision, unless the protective investigator suspects that the caregiver or guardian has caused the abuse, neglect, or exploitation.

(b) If the caregiver or guardian agrees to engage or provide services designed to prevent further abuse, neglect, or exploitation, the department may provide protective supervision.

(c) If the caregiver or guardian refuses to give consent or later withdraws consent to agreed-upon services, or otherwise fails to provide needed care and supervision, the department may provide emergency protective services as provided in subsection (2). If emergency protective services are so provided, the department must then petition the court for an order to provide emergency protective services under subsection (3).

(5) **INTERFERENCE WITH COURT-ORDERED PROTECTIVE SERVICES**.--When a court order exists authorizing protective services for a vulnerable adult who lacks capacity to consent and any person interferes with the provision of such court-ordered protective services, the appropriate law enforcement agency shall enforce the order of the court.

(6) **LIMITATIONS**.--This section does not limit in any way the authority of the court or a criminal justice officer, or any other duly appointed official, to intervene in emergency circumstances under existing statutes. This section does not limit the authority of any person to file a petition for guardianship under chapter 744.

History.--s. 101, ch. 95-418; s. 11, ch. 97-98; s. 34, ch. 2000-349; s. 2, ch. 2006-131; s. 4, ch. 2010-31.

415.1052 Interference with investigation or with the provision of protective services.--

(1) If, upon arrival of the protective investigator, any person refuses to allow the department to begin a protective investigation, interferes with the department's ability to conduct such an investigation, or refuses to give access to the vulnerable adult, the appropriate law enforcement agency must be contacted to assist the department in commencing the protective investigation.

(2) When any person refuses to allow the provision of protective services to the vulnerable adult who has the capacity to consent to services, the department shall petition the court for an order enjoining the person from interfering with the provision of protective services. The petition must allege specific facts sufficient to show that the vulnerable adult is in need of protective services and that the person refuses to allow the provision of such services. If the court finds by clear and convincing evidence that the vulnerable adult is in need of protective services and that the person refuses to allow the provision of such services, the court may issue an order enjoining the person from interfering with the provision of protective services to the vulnerable adult.

History.--s. 102, ch. 95-418; s. 35, ch. 2000-349.

415.1055 Notification to administrative entities.--

(1) Upon receipt of a report that alleges that an employee or agent of the department, the Agency for Persons with Disabilities, or the Department of Elderly Affairs, acting in an official capacity, has committed an act of abuse, neglect, or exploitation, the department shall notify the state attorney in whose circuit the abuse, neglect, or exploitation occurred. This notification may be oral or written.

(2) If at any time during a protective investigation the department has reasonable cause to believe that a vulnerable adult has been abused, neglected, or exploited by another person, the state attorney having jurisdiction in the county in which the abuse, neglect, or exploitation occurred shall be notified immediately, either orally or in writing.

(3) If at any time during a protective investigation the department has reasonable cause to believe that a vulnerable adult has been abused, neglected, or exploited by another person, the appropriate law enforcement agency shall be immediately notified. Such agency may begin a criminal investigation concurrent with or independent of the protective investigation of the department. This notification may be oral or written.

(4) If at any time during a protective investigation the department has reasonable cause to believe that abuse, neglect, or exploitation of a vulnerable adult has occurred within a facility that receives Medicaid funds, the department shall notify the Medicaid Fraud Control Unit within the Department of Legal Affairs, Office of the Attorney General, in order that it may begin an investigation concurrent with the protective investigation of the department. This notification may be oral or written.

(5) If at any time during a protective investigation the department has reasonable cause to believe that an employee of a facility, as defined in s. 415.102, is the alleged perpetrator of abuse, neglect, or exploitation of a vulnerable adult, the department shall notify the Agency for Health Care Administration, Division of Health Quality Assurance, in writing.

(6) If at any time during a protective investigation the department has reasonable cause to believe that professional licensure violations have occurred, the department shall notify the Division of

Medical Quality Assurance within the Department of Health. This notification must be in writing.

(7) The department shall notify the state attorney having jurisdiction in the county in which the abuse, neglect, or exploitation occurred if evidence indicates that further criminal investigation is warranted. This notification must be in writing.

(8) At the conclusion of a protective investigation at a facility, the department shall notify either the Florida local advocacy council or long-term care ombudsman council of the results of the investigation. This notification must be in writing.

(9) When a report involving a guardian of the person or property, or both, is received, the department shall notify the probate court having jurisdiction over the guardianship, in writing.

(10) When a report has been received and the department has reason to believe that a vulnerable adult resident of a facility licensed by the Agency for Health Care Administration or the Agency for Persons with Disabilities has been the victim of abuse, neglect, or exploitation, the department shall provide a copy of its investigation to the appropriate agency. If the investigation determines that a health professional licensed or certified under the Department of Health may have abused, neglected, or exploited a vulnerable adult, the department shall also provide a copy to the Department of Health.

History.--s. 103, ch. 95-418; s. 12, ch. 97-98; s. 30, ch. 98-166; s. 4, ch. 98-182; s. 69, ch. 2000-153; s. 23, ch. 2000-263; s. 36, ch. 2000-349; s. 59, ch. 2006-227.

415.106 Cooperation by the department and criminal justice and other agencies.--

(1) All criminal justice agencies have a duty and responsibility to cooperate fully with the department so as to enable the department to fulfill its responsibilities under ss. 415.101-415.113. Such duties include, but are not limited to, forced entry, emergency removal, emergency transportation, and the enforcement of court orders obtained under ss. 415.101-415.113.

(2) To ensure coordination, communication, and cooperation with the investigation of abuse, neglect, or exploitation of vulnerable adults, the department shall develop and maintain interprogram agreements or operational procedures among appropriate departmental programs and the State Long-Term Care Ombudsman Council, the Florida Statewide Advocacy Council, and other agencies that provide services to vulnerable adults. These agreements or procedures must cover such subjects as the appropriate roles and responsibilities of the department in identifying and responding to reports of abuse, neglect, or exploitation of vulnerable adults; the provision of services; and related coordinated activities.

(3) To the fullest extent possible, the department shall cooperate with and seek cooperation from all appropriate public and private agencies, including health agencies, educational agencies, social service agencies, courts, organizations, or programs providing or concerned with human services related to the prevention, identification, or treatment of abuse, neglect, or exploitation of vulnerable adults.

History.--ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, ch. 73-176; s. 1, ch. 77-174; ss. 3, 5, ch. 79-287; s. 15, ch. 79-298; s. 1, ch. 80-293; s. 1, ch. 83-82; s. 32, ch. 86-220; s. 27, ch. 93-177; s. 104, ch. 95-418; s. 24, ch. 2000-263; s. 37, ch. 2000-349.

415.107 Confidentiality of reports and records.--

(1) In order to protect the rights of the individual or other persons responsible for the welfare of a vulnerable adult, all records concerning reports of abuse, neglect, or exploitation of the vulnerable adult, including reports made to the central abuse hotline, and all records generated as a result of such reports shall be confidential and exempt from s. 119.07(1) and may not be disclosed except as specifically authorized by ss. 415.101-415.113.

(2) Upon the request of the committee chairperson, access to all records shall be granted to staff of the legislative committees with jurisdiction over issues and services related to vulnerable adults, or over the department. All confidentiality provisions that apply to the Department of Children and Family Services continue to apply to the records made available to legislative staff under this subsection.

(3) Access to all records, excluding the name of the reporter which shall be released only as provided in subsection (6), shall be granted only to the following persons, officials, and agencies:

(a) Employees or agents of the department, the Agency for Persons with Disabilities, the Agency for Health Care Administration, or the Department of Elderly Affairs who are responsible for carrying out protective investigations, ongoing protective services, or licensure or approval of nursing homes, assisted living facilities, adult day care centers, adult family-care homes, home care for the elderly, hospices, residential facilities licensed under chapter 393, or other facilities used for the placement of vulnerable adults.

(b) A criminal justice agency investigating a report of known or suspected abuse, neglect, or exploitation of a vulnerable adult.

(c) The state attorney of the judicial circuit in which the vulnerable adult resides or in which the alleged abuse, neglect, or exploitation occurred.

(d) Any victim, the victim's guardian, caregiver, or legal counsel, and any person who the department has determined might be abusing, neglecting, or exploiting the victim.

(e) A court, by subpoena, upon its finding that access to such records may be necessary for the determination of an issue before the court; however, such access must be limited to inspection in camera, unless the court determines that public disclosure of the information contained in such records is necessary for the resolution of an issue then pending before it.

(f) A grand jury, by subpoena, upon its determination that access to such records is necessary in the conduct of its official business.

(g) Any appropriate official of the Florida advocacy council or long-term care ombudsman council investigating a report of known or suspected abuse, neglect, or exploitation of a vulnerable adult.

(h) Any appropriate official of the department, the Agency for Persons with Disabilities, the Agency for Health Care Administration, or the Department of Elderly Affairs who is responsible for:

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

(i) Any person engaged in bona fide research or auditing. However, information identifying the subjects of the report must not be made available to the researcher.

(j) Employees or agents of an agency of another state that has jurisdiction comparable to the jurisdiction described in paragraph (a).

(k) The Public Employees Relations Commission for the sole purpose of obtaining evidence for appeals filed pursuant to s. 447.207. Records may be released only after deletion of all information that specifically identifies persons other than the employee.

(l) Any person in the event of the death of a vulnerable adult determined to be a result of abuse, neglect, or exploitation. Information identifying the person reporting abuse, neglect, or exploitation shall not be released. Any information otherwise made confidential or exempt by law shall not be released pursuant to this paragraph.

(4) The Department of Health, the Department of Business and Professional Regulation, and the Agency for Health Care Administration may have access to a report, excluding the name of the reporter, when considering disciplinary action against a licensee or certified nursing assistant pursuant to allegations of abuse, neglect, or exploitation.

(5) The department may release to any professional person such information as is necessary for the diagnosis and treatment of, and service delivery to, a vulnerable adult or the person perpetrating the abuse, neglect, or exploitation.

(6) The identity of any person reporting abuse, neglect, or exploitation of a vulnerable adult may not be released, without that person's written consent, to any person other than employees of the department responsible for protective services, the central abuse hotline, or the appropriate state attorney or law enforcement agency. This subsection grants protection only for the person who reported the abuse, neglect, or exploitation and protects only the fact that the person is the reporter. This subsection does not prohibit the subpoena of a person reporting the abuse, neglect, or exploitation when deemed necessary by the state attorney or the department to protect a vulnerable adult who is the subject of a report, if the fact that the person made the report is not disclosed.

(7) For the purposes of this section, the term "access" means a visual inspection or copy of the hard-copy record maintained in the district.

(8) Information in the central abuse hotline may not be used for employment screening.

History.--ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, ch. 73-176; s. 1, ch. 77-174; ss. 3, 5, ch. 79-287; s. 15, ch. 79-298; s. 1, ch. 80-293; s. 1, ch. 83-82; s. 33, ch. 86-220; s. 32, ch. 87-238; s. 7, ch. 88-219; s. 18, ch. 88-337; s. 4, ch. 89-170; s. 30, ch. 89-294; s. 4, ch. 90-50; s. 7, ch. 90-208; s. 47, ch. 90-306; s. 4, ch. 91-57; s. 15, ch. 91-71; ss. 43, 47, ch. 92-58; s. 31, ch. 93-39; s. 15, ch. 93-214; s. 57, ch. 94-218; s. 38, ch. 95-210; s. 106, ch. 95-418; s. 267, ch. 96-406; s. 1, ch. 98-111; s. 9, ch. 98-182; s. 2, ch. 98-255; s. 41, ch. 98-280; s. 70, ch. 2000-153; s. 25, ch. 2000-263; s. 38, ch. 2000-349; s. 3, ch. 2006-131; s. 60, ch. 2006-227.

415.1071 Release of confidential information.--

(1) Any person or organization, including the Department of Children and Family Services, may petition the court for an order making public the records of the Department of Children and Family Services which pertain to investigations of alleged abuse, neglect, or exploitation of a vulnerable adult. The court shall determine whether good cause exists for public access to the records sought or a portion thereof. In making this determination, the court shall balance the best interests of the vulnerable adult who is the focus of the investigation together with the privacy

right of other persons identified in the reports against the public interest. The public interest in access to such records is reflected in s. 119.01(1), and includes the need for citizens to know of and adequately evaluate the actions of the Department of Children and Family Services and the court system in providing vulnerable adults of this state with the protections enumerated in s. 415.101. However, this subsection does not contravene s. 415.107, which protects the name of any person reporting the abuse, neglect, or exploitation of a vulnerable adult.

(2) In cases involving serious bodily injury to a vulnerable adult, the Department of Children and Family Services may petition the court for an order for the immediate public release of records of the department which pertain to the protective investigation. The petition must be personally served upon the vulnerable adult, the vulnerable adult's legal guardian, if any, and any person named as an alleged perpetrator in the report of abuse, neglect, or exploitation. The court must determine whether good cause exists for the public release of the records sought no later than 24 hours, excluding Saturdays, Sundays, and legal holidays, after the date the department filed the petition with the court. If the court does not grant or deny the petition within the 24-hour time period, the department may release to the public summary information including:

- (a) A confirmation that an investigation has been conducted concerning the alleged victim.
- (b) The dates and brief description of procedural activities undertaken during the department's investigation.
- (c) The date of each judicial proceeding, a summary of each participant's recommendations made at the judicial proceeding, and the ruling of the court.

The summary information shall not include the name of, or other identifying information with respect to, any person identified in any investigation. In making a determination to release confidential information, the court shall balance the best interests of the vulnerable adult who is the focus of the investigation together with the privacy rights of other persons identified in the reports against the public interest for access to public records. However, this subsection does not contravene s. 415.107, which protects the name of any person reporting abuse, neglect, or exploitation of a vulnerable adult.

(3) When the court determines that good cause for public access exists, the court shall direct that the department redact the name of and other identifying information with respect to any person identified in any protective investigation report until such time as the court finds that there is probable cause to believe that the person identified committed an act of alleged abuse, neglect, or exploitation.

History.--s. 18, ch. 2004-335.

415.1099 Court and witness fees not allowed.--In all proceedings under ss. 415.101-415.113, court fees must not be charged to the department; to any party to a petition; to any legal custodian of records, documents, or persons; or to any adult named in a summons. In a proceeding under ss. 415.101-415.113, witness fees are not allowed to the department; to any party to a petition; to any legal custodian of records, documents, or persons; or to any adult named in a summons.

History.--s. 108, ch. 95-418.

415.1102 Adult protection teams.--

(1) Subject to an appropriation, the department may develop, maintain, and coordinate the services of one or more multidisciplinary adult protection teams in each of the districts of the department. As used in this section, the term "multidisciplinary adult protection team" means a team of two or more persons who are trained in the prevention, identification, and treatment of abuse of elderly persons, as defined in s. 430.602, or of dependent persons and who are qualified to provide a broad range of services related to abuse of elderly or dependent persons.

(2) Such teams may be composed of, but need not be limited to:

(a) Psychiatrists, psychologists, or other trained counseling personnel;

(b) Police officers or other law enforcement officers;

(c) Medical personnel who have sufficient training to provide health services;

(d) Social workers who have experience or training in preventing the abuse of elderly or dependent persons; and

(e) Public guardians as described in part IX of chapter 744.

(3) The department shall utilize and convene the teams to supplement the protective services activities of the protective services program of the department.

(4) This section does not prevent a person from reporting under s. 415.1034 all suspected or known cases of abuse, neglect, or exploitation of a vulnerable adult. The role of the teams is to support activities of the protective services program and to provide services deemed by the teams to be necessary and appropriate to abused, neglected, and exploited vulnerable adults upon referral. Services must be provided with the consent of the vulnerable adult or that person's guardian, or through court order.

(5) If an adult protection team is providing certain services to abused, neglected, or exploited vulnerable adults, other offices and units of the department shall avoid duplicating those services.

History.--s. 32, ch. 89-294; s. 48, ch. 90-306; s. 109, ch. 95-418; s. 6, ch. 98-182; s. 71, ch. 2000-153; s. 39, ch. 2000-349; s. 2, ch. 2003-262.

415.1105 Training programs.--

(1) The department shall develop rules governing preservice and inservice training for adult protective investigation staff and, within available resources, shall provide appropriate preservice and inservice training to such staff.

(2) Within available resources, the department shall cooperate with other appropriate agencies in developing and providing preservice and inservice training programs for those persons specified in s. 415.1034(1)(a).

History.--s. 110, ch. 95-418.

415.111 Criminal penalties.--

(1) A person who knowingly and willfully fails to report a case of known or suspected abuse, neglect, or exploitation of a vulnerable adult, or who knowingly and willfully prevents another

person from doing so, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) A person who knowingly and willfully makes public or discloses any confidential information contained in the central abuse hotline, or in other computer systems, or in the records of any case of abuse, neglect, or exploitation of a vulnerable adult, except as provided in ss. 415.101-415.113, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A person who has custody of records and documents the confidentiality of which is abrogated under s. 415.1045(3) and who refuses to grant access to such records commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) If the department or its authorized agent has determined after its investigation that a report is false, the department shall, with the consent of the alleged perpetrator, refer the reports to the local law enforcement agency having jurisdiction for an investigation to determine whether sufficient evidence exists to refer the case for prosecution for filing a false report as defined in s. 415.102. During the pendency of the investigation by the local law enforcement agency, the department must notify the local law enforcement agency of, and the local law enforcement agency must respond to, all subsequent reports concerning the same vulnerable adult in accordance with s. 415.104 or s. 415.1045. If the law enforcement agency believes that there are indicators of abuse, neglect, or exploitation, it must immediately notify the department, which must assure the safety of the vulnerable adult. If the law enforcement agency finds sufficient evidence for prosecution for filing a false report, it must refer the case to the appropriate state attorney for prosecution.

(5) A person who knowingly and willfully makes a false report of abuse, neglect, or exploitation of a vulnerable adult, or a person who advises another to make a false report, commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(a) The department shall establish procedures for determining whether a false report of abuse, neglect, or exploitation of a vulnerable adult has been made and for submitting all identifying information relating to such a false report to the local law enforcement agency as provided in this subsection and shall report annually to the Legislature the number of reports referred.

(b) Anyone making a report who is acting in good faith is immune from any liability under this subsection.

History.--ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, ch. 73-176; s. 1, ch. 77-174; ss. 3, 5, ch. 79-287; s. 15, ch. 79-298; s. 1, ch. 80-293; s. 1, ch. 83-82; s. 36, ch. 86-220; s. 19, ch. 88-337; s. 1, ch. 89-322; s. 49, ch. 90-306; s. 5, ch. 91-57; s. 16, ch. 91-71; s. 250, ch. 91-224; s. 1, ch. 91-258; s. 4, ch. 95-140; s. 20, ch. 95-158; s. 111, ch. 95-418; s. 7, ch. 96-293; s. 2, ch. 98-111; s. 10, ch. 98-182; s. 40, ch. 2000-349; s. 4, ch. 2002-70.

415.1111 Civil actions.--A vulnerable adult who has been abused, neglected, or exploited as specified in this chapter has a cause of action against any perpetrator and may recover actual and punitive damages for such abuse, neglect, or exploitation. The action may be brought by the vulnerable adult, or that person's guardian, by a person or organization acting on behalf of the vulnerable adult with the consent of that person or that person's guardian, or by the personal representative of the estate of a deceased victim without regard to whether the cause of death resulted from the abuse, neglect, or exploitation. The action may be brought in any court of competent jurisdiction to enforce such action and to recover actual and punitive damages for any

deprivation of or infringement on the rights of a vulnerable adult. A party who prevails in any such action may be entitled to recover reasonable attorney's fees, costs of the action, and damages. The remedies provided in this section are in addition to and cumulative with other legal and administrative remedies available to a vulnerable adult. Notwithstanding the foregoing, any civil action for damages against any licensee or entity who establishes, controls, conducts, manages, or operates a facility licensed under part II of chapter 400 relating to its operation of the licensed facility shall be brought pursuant to s. 400.023, or against any licensee or entity who establishes, controls, conducts, manages, or operates a facility licensed under part I of chapter 429 relating to its operation of the licensed facility shall be brought pursuant to s. 429.29. Such licensee or entity shall not be vicariously liable for the acts or omissions of its employees or agents or any other third party in an action brought under this section.

History.--s. 112, ch. 95-418; s. 23, ch. 96-418; s. 41, ch. 2000-349; s. 12, ch. 2001-45; s. 86, ch. 2006-197.

415.1113 Administrative fines for false report of abuse, neglect, or exploitation of a vulnerable adult.--

- (1) In addition to any other penalty authorized by this section, chapter 120, or other law, the department may impose a fine, not to exceed \$10,000 for each violation, upon a person who knowingly and willfully makes a false report of abuse, neglect, or exploitation of a vulnerable adult, or a person who counsels another to make a false report.
- (2) If the department alleges that a person has knowingly and willfully filed a false report with the central abuse hotline, the department must file a notice of intent that alleges the name, age, and address of the individual; the facts constituting the allegation that the individual made a false report; and the administrative fine that the department proposes to impose on the person. Each time that a false report is made constitutes a separate violation.
- (3) The notice of intent to impose the administrative fine must be served by certified mail, return receipt requested, upon the person alleged to have filed the false report and upon the person's legal counsel, if any.
- (4) Any person alleged to have filed the false report is entitled to an administrative hearing under chapter 120 before the imposition of the fine becomes final. The person must request an administrative hearing within 60 days after receipt of the notice of intent by filing a request with the department. Failure to request an administrative hearing within 60 days after receipt of the notice of intent constitutes a waiver of the right to a hearing, making the administrative fine final.
- (5) At the hearing, the department must prove by clear and convincing evidence that the person knowingly and willfully filed a false report with the central abuse hotline. The person has the right to be represented by legal counsel at the hearing.
- (6) In determining the amount of fine to be imposed, if any, the following factors must be considered:
 - (a) The gravity of the violation, including the probability that serious physical or emotional harm to any person will result or has resulted, the severity of the actual or potential harm, and the nature of the false allegation.
 - (b) Actions taken by the false reporter to retract the false report as an element of mitigation, or, in contrast, to encourage an investigation on the basis of false information.
 - (c) Any previous false reports filed by the same individual.

(7) A decision by the department, following the administrative hearing, to impose an administrative fine for filing a false report constitutes final agency action within the meaning of chapter 120. Notice of the imposition of the administrative fine must be served upon the person and upon the person's legal counsel, by certified mail, return receipt requested, and must state that the person may seek judicial review of the administrative fine under s. 120.68.

(8) All amounts collected under this section must be deposited into the Operations and Maintenance Trust Fund within the Adult Services Program of the department.

(9) A person who is determined to have filed a false report of abuse or neglect is not entitled to confidentiality. Subsequent to the conclusion of all administrative or other judicial proceedings concerning the filing of a false report, the name of the false reporter and the nature of the false report must be made public, pursuant to s. 119.01(1). Such information is admissible in any civil or criminal proceeding.

(10) Any person who makes a report and acts in good faith is immune from any liability under this section and continues to be entitled to have the confidentiality of his or her identity maintained.

History.--s. 113, ch. 95-418; s. 68, ch. 97-103; s. 3, ch. 98-111; s. 11, ch. 98-182; s. 201, ch. 99-8; s. 42, ch. 2000-349.

415.1115 Civil actions involving elderly parties; speedy trial.--In a civil action in which a person over the age of 65 is a party, such party may move the court to advance the trial on the docket. The presiding judge, after consideration of the age and health of the party, may advance the trial on the docket. The motion may be filed and served with the initial complaint or at any time thereafter.

History.--s. 1, ch. 91-251; s. 115, ch. 95-418.

Note.--Former s. 415.114.

415.112 Rules for implementation of ss. 415.101-415.113.--The department shall promulgate rules for the implementation of ss. 415.101-415.113.

History.--ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, ch. 73-176; s. 1, ch. 77-174; ss. 3, 5, ch. 79-287; s. 15, ch. 79-298; s. 1, ch. 80-293; s. 1, ch. 83-82; s. 37, ch. 86-220.

415.113 Statutory construction; treatment by spiritual means.--Nothing in ss. 415.101-415.112 shall be construed to mean a person is abused, neglected, or in need of emergency or protective services for the sole reason that the person relies upon and is, therefore, being furnished treatment by spiritual means through prayer alone in accordance with the tenets and practices of a well-recognized church or religious denomination or organization; nor shall anything in such sections be construed to authorize, permit, or require any medical care or treatment in contravention of the stated or implied objection of such person. Such construction does not:

(1) Eliminate the requirement that such a case be reported to the department;

(2) Prevent the department from investigating such a case; or

(3) Preclude a court from ordering, when the health of the individual requires it, the provision of medical services by a licensed physician or treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious denomination or organization.

History.--s. 1, ch. 85-143; s. 114, ch. 95-418; s. 43, ch. 2000-349.

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PART G:

Chapter 456, Florida Statutes, Health Professions and Occupations; General Provisions

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CHAPTER 456

HEALTH PROFESSIONS AND OCCUPATIONS: GENERAL PROVISIONS

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

- (1) "Board" means any board or commission, or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rulemaking functions, within the department, except that, for ss. 456.003-456.018, 456.022, 456.023, 456.025-456.034, and 456.039-456.082, "board" means only a board, or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rulemaking functions, within the Division of Medical Quality Assurance.
- (2) "Consumer member" means a person appointed to serve on a specific board or who has served on a specific board, who is not, and never has been, a member or practitioner of the profession, or of any closely related profession, regulated by such board.

(3) "Department" means the Department of Health.

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

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

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

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

History.--s. 33, ch. 97-261; s. 72, ch. 99-397; s. 36, ch. 2000-160; s. 2, ch. 2002-199.

Note.--Former s. 455.501.

456.002 Applicability.--This chapter applies only to the regulation by the department of professions.

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

Note.--Former s. 455.504.

456.003 Legislative intent; requirements.--

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

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

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

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

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

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

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

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

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

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

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

History.--s. 38, ch. 97-261; s. 135, ch. 99-251; s. 38, ch. 2000-160; s. 57, ch. 2001-277.

Note.--Former s. 455.517.

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

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

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

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

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

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

(6) Establish by rules procedures by which the department shall use the expert or technical advice of the appropriate board for the purposes of investigation, inspection, evaluation of

applications, other duties of the department, or any other areas the department may deem appropriate.

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

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

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

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

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

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

Note.--Former s. 455.521.

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

shall provide concise management reports to the boards quarterly. As part of the review process, the department shall evaluate:

- (1) Whether the department, including the boards and the various functions performed by the department, is operating efficiently and effectively and if there is a need for a board or council to assist in cost-effective regulation.
- (2) How and why the various professions are regulated.
- (3) Whether there is a need to continue regulation, and to what degree.
- (4) Whether or not consumer protection is adequate, and how it can be improved.
- (5) Whether there is consistency between the various practice acts.
- (6) Whether unlicensed activity is adequately enforced.

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

History.— s. 40, ch. 97-261; s. 40, ch. 2000-160; s. 61, ch. 2008-6; s. 148, ch. 2010-102.
Note.— Former s. 455.524.

456.006 Contacting boards through department.--Each board under the jurisdiction of the department may be contacted through the headquarters of the department in the City of Tallahassee.

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

Note.--Former s. 455.527.

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

History.--s. 2, ch. 84-161; s. 1, ch. 84-271; s. 3, ch. 88-392; s. 42, ch. 97-261; s. 17, ch. 97-264; s. 40, ch. 2000-160.
Note.--Former s. 455.206; s. 455.531.

456.008 Accountability and liability of board members.--

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

(2) Each board member and each former board member serving on a probable cause panel shall be exempt from civil liability for any act or omission when acting in the member's official capacity, and the department shall defend any such member in any action against any board or

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

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

Note.--Former s. 455.541.

456.009 Legal and investigative services.--

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

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

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

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

Note.--Former s. 455.594.

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

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

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

(3) The board shall meet at least once annually and may meet as often as is necessary. Meetings shall be conducted through teleconferencing or other technological means, unless disciplinary hearings involving standard of care, sexual misconduct, fraud, impairment, or felony convictions; licensure denial hearings; or controversial rule hearings are being conducted; or unless otherwise approved in advance of the meeting by the director of the Division of Medical Quality Assurance. The chairperson or a quorum of the board shall have the authority to call meetings, except as provided above relating to in-person meetings. A quorum shall be necessary for the conduct of official business by the board or any committee thereof. Unless otherwise provided by law, 51 percent or more of the appointed members of the board or any committee,

when applicable, shall constitute a quorum. The membership of committees of the board, except as otherwise authorized pursuant to this chapter or the applicable practice act, shall be composed of currently appointed members of the board. The vote of a majority of the members of the quorum shall be necessary for any official action by the board or committee. Three consecutive unexcused absences or absences constituting 50 percent or more of the board's meetings within any 12-month period shall cause the board membership of the member in question to become void, and the position shall be considered vacant. The board, or the department when there is no board, shall, by rule, define unexcused absences.

(4) Unless otherwise provided by law, a board member or former board member serving on a probable cause panel shall be compensated \$50 for each day in attendance at an official meeting of the board and for each day of participation in any other business involving the board. Each board shall adopt rules defining the phrase "other business involving the board," but the phrase may not routinely be defined to include telephone conference calls that last less than 4 hours. A board member also shall be entitled to reimbursement for expenses pursuant to s. 112.061. Travel out of state shall require the prior approval of the State Surgeon General.

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

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

Note.--Former s. 455.534.

456.012 Board rules; final agency action; challenges.--

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

- (a) Does not protect the public from any significant and discernible harm or damages;
- (b) Unreasonably restricts competition or the availability of professional services in the state or in a significant part of the state; or
- (c) Unnecessarily increases the cost of professional services without a corresponding or equivalent public benefit.

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

(2) In addition, either the State Surgeon General or the board shall be a substantially interested party for purposes of s. 120.54(7). The board may, as an adversely affected party, initiate and maintain an action pursuant to s. 120.68 challenging the final agency action.

(3) No board created within the department shall have standing to challenge a rule or proposed rule of another board. However, if there is a dispute between boards concerning a rule or proposed rule, the boards may avail themselves of the provisions of s. 456.011(5).

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

Note.--Former s. 455.544.

456.013 Department; general licensing provisions.--

(1)(a) Any person desiring to be licensed in a profession within the jurisdiction of the department shall apply to the department in writing to take the licensure examination. The application shall be made on a form prepared and furnished by the department. The application form must be available on the World Wide Web and the department may accept electronically submitted applications beginning July 1, 2001. The application shall require the social security number of the applicant, except as provided in paragraph (b). The form shall be supplemented as needed to reflect any material change in any circumstance or condition stated in the application which takes place between the initial filing of the application and the final grant or denial of the license and which might affect the decision of the department. If an application is submitted electronically, the department may require supplemental materials, including an original signature of the applicant and verification of credentials, to be submitted in a nonelectronic format. An incomplete application shall expire 1 year after initial filing. In order to further the economic development goals of the state, and notwithstanding any law to the contrary, the department may enter into an agreement with the county tax collector for the purpose of appointing the county tax collector as the department's agent to accept applications for licenses and applications for renewals of licenses. The agreement must specify the time within which the tax collector must forward any applications and accompanying application fees to the department.

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

(2) Before the issuance of any license, the department shall charge an initial license fee as determined by the applicable board or, if there is no board, by rule of the department. Upon receipt of the appropriate license fee, the department shall issue a license to any person certified by the appropriate board, or its designee, as having met the licensure requirements imposed by

law or rule. The license shall consist of a wallet-size identification card and a wall card measuring 6¹/₂ inches by 5 inches. The licensee shall surrender to the department the wallet-size identification card and the wall card if the licensee's license is issued in error or is revoked.

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

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

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

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

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

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

department if there is no board, may adopt rules granting continuing education hours in risk management for attending a board meeting at which another licensee is disciplined, for serving as a volunteer expert witness for the department in a disciplinary case, or for serving as a member of a probable cause panel following the expiration of a board member's term.

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

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

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

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

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

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

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

Note.--Former s. 455.2141; s. 455.564.

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

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

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

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

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

Note.—Former s. 455.647.

456.015 Limited licenses.--

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

(2) Any person desiring to obtain a limited license, when permitted by rule, shall submit to the board, or the department when there is no board, an application and fee, not to exceed \$300, and an affidavit stating that the applicant has been licensed to practice in any jurisdiction in the United States for at least 10 years in the profession for which the applicant seeks a limited

license. The affidavit shall also state that the applicant has retired or intends to retire from the practice of that profession and intends to practice only pursuant to the restrictions of the limited license granted pursuant to this section. If the applicant for a limited license submits a notarized statement from the employer stating that the applicant will not receive monetary compensation for any service involving the practice of her or his profession, the application and all licensure fees shall be waived.

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

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

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

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

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

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

Note.--Former s. 455.561.

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

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

Note.--Former s. 455.571.

456.017 Examinations.--

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

administration, scoring, score reporting, and evaluation of examinations, when such services are available and approved by the board.

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

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

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

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

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

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

(d) Each board, or the department when there is no board, shall adopt rules regarding the security and monitoring of examinations. The department shall implement those rules adopted by the respective boards. In order to maintain the security of examinations, the department may employ the procedures set forth in s. 456.065 to seek fines and injunctive relief against an examinee who

violates the provisions of s. 456.018 or the rules adopted pursuant to this paragraph. The department, or any agent thereof, may, for the purposes of investigation, confiscate any written, photographic, or recording material or device in the possession of the examinee at the examination site which the department deems necessary to enforce such provisions or rules. The scores of candidates who have taken state-developed examinations shall be provided to the candidates electronically using a candidate identification number, and the department shall post the aggregate scores on the department's website without identifying the names of the candidates.

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

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

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

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

(4) Meetings of any member of the department or of any board within the department held for the exclusive purpose of creating or reviewing licensure examination questions or proposed examination questions are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution. Any public records, such as tape recordings, minutes, or notes, generated during or as a result of such meetings are confidential and exempt from the provisions of s.

119.07(1) and s. 24(a), Art. I of the State Constitution. However, these exemptions shall not affect the right of any person to review an examination as provided in subsection (2).

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

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

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

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

Note.--Former s. 455.2173; s. 455.574.

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

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

Note.--Former s. 455.577.

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

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

Note.--Former s. 455.511.

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

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

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

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

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

Note.--Former s. 455.514.

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

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

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

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

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

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

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

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

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

(2) Upon request of a person who meets the requirements of subsection (1) and submits an examination fee, the department, for its boards, shall provide a written practical examination which tests the person's current ability to practice the profession competently in accordance with the actual practice of the profession. Evidence of meeting the requirements of subsection (1)

shall be treated by the department as evidence of the applicant's preparation in the academic and preprofessional fundamentals necessary for successful professional practice, and the applicant shall not be examined by the department on such fundamentals.

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

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

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

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

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

Note.--Former s. 455.581.

456.023 Exemption for certain out-of-state or foreign professionals; limited practice permitted.--

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

(a) Holds, if so required in the jurisdiction in which that person practices, an active license to practice that profession.

(b) Engages in the active practice of that profession outside the state.

(c) Is employed or designated in that professional capacity by a sports entity visiting the state for a specific sporting event.

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

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

Note.--Former s. 455.584.

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

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

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

¹ (3)(a) The board, or the department if there is no board, may issue a temporary professional license to the spouse of an active duty member of the Armed Forces of the United States who submits to the department:

1. A completed application upon a form prepared and furnished by the department in accordance with the board's rules;

2. The required application fee;

3. Proof that the applicant is married to a member of the Armed Forces of the United States who is on active duty;

4. Proof that the applicant holds a valid license for the profession issued by another state, the District of Columbia, or a possession or territory of the United States, and is not the subject of any disciplinary proceeding in any jurisdiction in which the applicant holds a license to practice a profession regulated by this chapter;

5. Proof that the applicant's spouse is assigned to a duty station in this state pursuant to the member's official active duty military orders; and

6. Proof that the applicant would otherwise be entitled to full licensure under the appropriate practice act, and is eligible to take the respective licensure examination as required in Florida.

(b) The applicant must also submit to the Department of Law Enforcement a complete set of fingerprints. The Department of Law Enforcement shall conduct a statewide criminal history check and forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check.

(c)Each board, or the department if there is no board, shall review the results of the state and federal criminal history checks according to the level 2 screening standards in s. 435.04 when granting an exemption and when granting or denying the temporary license.

(d)The applicant shall pay the cost of fingerprint processing. If the fingerprints are submitted through an authorized agency or vendor, the agency or vendor shall collect the required processing fees and remit the fees to the Department of Law Enforcement.

(e)The department shall set an application fee, which may not exceed the cost of issuing the license.

(f)A temporary license expires 12 months after the date of issuance and is not renewable.

(g)An applicant for a temporary license under this subsection is subject to the requirements under s. 456.013(3)(a) and (c).

(h)An applicant shall be deemed ineligible for a temporary license pursuant to this section if the applicant:

1.Has been convicted of or pled nolo contendere to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession;

2.Has had a health care provider license revoked or suspended from another of the United States, the District of Columbia, or a United States territory;

3.Has been reported to the National Practitioner Data Bank, unless the applicant has successfully appealed to have his or her name removed from the data bank; or

4.Has previously failed the Florida examination required to receive a license to practice the profession for which the applicant is seeking a license.

(i)The board, or department if there is no board, may revoke a temporary license upon finding that the individual violated the profession's governing practice act.

(j)An applicant who is issued a temporary professional license to practice as a dentist pursuant to this section must practice under the indirect supervision, as defined in s. 466.003, of a dentist licensed pursuant to chapter 466.

History.—s. 35, ch. 97-261; s. 19, ch. 99-7; s. 73, ch. 99-397; s. 54, ch. 2000-160; s. 1, ch. 2011-95.

¹Note.—Section 21, ch. 2011-95, provides that “[e]xcept as otherwise specifically provided in this act, this act shall take effect upon becoming a law, and shall not apply retroactively.”

Note.—Former s. 455.507.

456.025 Fees; receipts; disposition.--

(1) It is the intent of the Legislature that all costs of regulating health care professions and practitioners shall be borne solely by licensees and licensure applicants. It is also the intent of the Legislature that fees should be reasonable and not serve as a barrier to licensure. Moreover, it is the intent of the Legislature that the department operate as efficiently as possible and regularly report to the Legislature additional methods to streamline operational costs. Therefore, the boards in consultation with the department, or the department if there is no board, shall, by rule, set renewal fees which:

- (a) Shall be based on revenue projections prepared using generally accepted accounting procedures;
- (b) Shall be adequate to cover all expenses relating to that board identified in the department's long-range policy plan, as required by s. 456.005;
- (c) Shall be reasonable, fair, and not serve as a barrier to licensure;
- (d) Shall be based on potential earnings from working under the scope of the license;
- (e) Shall be similar to fees imposed on similar licensure types;
- (f) Shall not be more than 10 percent greater than the actual cost to regulate that profession for the previous biennium; and
- (g) Shall be subject to challenge pursuant to chapter 120.

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

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

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

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

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

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

(8) All moneys collected by the department from fees or fines or from costs awarded to the agency by a court shall be paid into a trust fund used by the department to implement this chapter. The Legislature shall appropriate funds from this trust fund sufficient to carry out this chapter and the provisions of law with respect to professions regulated by the Division of Medical Quality Assurance within the department and the boards. The department may contract with public and private entities to receive and deposit revenue pursuant to this section. The department shall maintain separate accounts in the trust fund used by the department to implement this chapter for every profession within the department. To the maximum extent possible, the department shall directly charge all expenses to the account of each regulated profession. For the purpose of this subsection, direct charge expenses include, but are not limited to, costs for investigations, examinations, and legal services. For expenses that cannot be charged directly, the department shall provide for the proportionate allocation among the accounts of expenses incurred by the department in the performance of its duties with respect to each regulated profession. The regulation by the department of professions, as defined in this chapter, shall be financed solely from revenue collected by it from fees and other charges and deposited in the Medical Quality Assurance Trust Fund, and all such revenue is hereby appropriated to the department. However, it is legislative intent that each profession shall operate within its anticipated fees. The department may not expend funds from the account of a profession to pay for the expenses incurred on behalf of another profession, except that the Board of Nursing must pay for any costs incurred in the regulation of certified nursing assistants. The department shall

maintain adequate records to support its allocation of agency expenses. The department shall provide any board with reasonable access to these records upon request. On or before October 1 of each year, the department shall provide each board an annual report of revenue and direct and allocated expenses related to the operation of that profession. The board shall use these reports and the department's adopted long-range plan to determine the amount of license fees. A condensed version of this information, with the department's recommendations, shall be included in the annual report to the Legislature prepared under s. 456.026.

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

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

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

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

Note.--Former s. 455.220; s. 455.587.

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

(1) The revenues, expenditures, and cash balances for the prior year, and a review of the adequacy of existing fees.

(2) The number of complaints received and investigated.

(3) The number of findings of probable cause made.

(4) The number of findings of no probable cause made.

(5) The number of administrative complaints filed.

(6) The disposition of all administrative complaints.

(7) A description of disciplinary actions taken.

(8) A description of any effort by the department to reduce or otherwise close any investigation or disciplinary proceeding not before the Division of Administrative Hearings under chapter 120 or otherwise not completed within 1 year after the initial filing of a complaint under this chapter.

(9) The status of the development and implementation of rules providing for disciplinary guidelines pursuant to s. 456.079.

(10) Such recommendations for administrative and statutory changes necessary to facilitate efficient and cost-effective operation of the department and the various boards.

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

Note.--Former s. 455.644.

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

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

Note.--Former s. 455.551.

456.028 Consultation with postsecondary education boards prior to adoption of changes to training requirements.--Any state agency or board that has jurisdiction over the regulation of a profession or occupation shall consult with the Commission for Independent Education, the Board of Governors of the State University System, and the State Board of Education prior to adopting any changes to training requirements relating to entry into the profession or occupation. This consultation must allow the educational board to provide advice regarding the impact of the proposed changes in terms of the length of time necessary to complete the training program and the fiscal impact of the changes. The educational board must be consulted only when an institution offering the training program falls under its jurisdiction.

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

Note.--Former s. 455.554.

456.029 Education; substituting demonstration of competency for clock-hour requirements.--Any board, or the department when there is no board, that requires student completion of a specific number of clock hours of classroom instruction for initial licensure purposes shall establish the minimal competencies that such students must demonstrate in order to be licensed. The demonstration of such competencies may be substituted for specific classroom clock-hour requirements established in statute or rule which are related to instructional programs for licensure purposes. Student demonstration of the established minimum competencies shall be certified by the educational institution. The provisions of this section shall not apply to boards for which federal licensure standards are more restrictive or stringent than the standards prescribed in statute.

History.--s. 47, ch. 97-261; s. 57, ch. 2000-160.

Note.--Former s. 455.547.

456.031 Requirement for instruction on domestic violence.--

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

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

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

(d) Any person holding two or more licenses subject to the provisions of this subsection shall be permitted to show proof of having taken one board-approved course on domestic violence, for purposes of relicensure or recertification for additional licenses.

(e) Failure to comply with the requirements of this subsection shall constitute grounds for disciplinary action under each respective practice act and under s. 456.072(1)(k). In addition to discipline by the board, the licensee shall be required to complete such course.

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

History.--s. 4, ch. 95-187; s. 61, ch. 97-261; s. 58, ch. 2000-160; s. 6, ch. 2000-295; s. 112, ch. 2000-318; s. 1, ch. 2001-176; s. 1, ch. 2001-250; s. 105, ch. 2001-277; s. 1, ch. 2006-251.

Note.--Former s. 455.222; s. 455.597.

456.032 Hepatitis B or HIV carriers.--

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

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

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

Note.--Former s. 455.2224; s. 455.601.

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

(1) Each person shall be required by the appropriate board to complete no later than upon first renewal a continuing educational course, approved by the board, on human immunodeficiency virus and acquired immune deficiency syndrome as part of biennial relicensure or recertification. The course shall consist of education on the modes of transmission, infection control procedures, clinical management, and prevention of human immunodeficiency virus and acquired immune

deficiency syndrome. Such course shall include information on current Florida law on acquired immune deficiency syndrome and its impact on testing, confidentiality of test results, treatment of patients, and any protocols and procedures applicable to human immunodeficiency virus counseling and testing, reporting, the offering of HIV testing to pregnant women, and partner notification issues pursuant to ss. 381.004 and 384.25.

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

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

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

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

History.--s. 63, ch. 97-261; s. 4, ch. 98-171; s. 9, ch. 99-331; s. 82, ch. 99-397; s. 60, ch. 2000-160; s. 113, ch. 2000-318; s. 2, ch. 2001-176; s. 2, ch. 2001-250; s. 106, ch. 2001-277; s. 2, ch. 2006-251.

Note.--Former s. 455.604.

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

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

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

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

(4) The board, or the department where there is no board, shall require, as a condition of granting a license under any of the chapters or parts thereof specified in subsection (1), that an applicant making initial application for licensure complete an educational course acceptable to the board, or the department where there is no board, on human immunodeficiency virus and acquired

immune deficiency syndrome. An applicant who has not taken a course at the time of licensure shall, upon an affidavit showing good cause, be allowed 6 months to complete this requirement.

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

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

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

Note.--Former s. 455.607.

456.035 Address of record.--

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

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

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

Note.--Former s. 455.717.

456.036 Licenses; active and inactive status; delinquency.--

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

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

(3) Each board, or the department if there is no board, shall by rule impose a fee for renewal of an active or inactive status license. The renewal fee for an inactive status license may not exceed the fee for an active status license.

(4) Notwithstanding any other provision of law to the contrary, a licensee may change licensure status at any time.

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

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

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

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

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

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

(8) Each board, or the department if there is no board, shall by rule impose an additional fee, not to exceed the biennial renewal fee for an active status license, for processing a licensee's request to change licensure status at any time other than at the beginning of a licensure cycle.

(9) Each board, or the department if there is no board, may by rule impose reasonable conditions, excluding full reexamination but including part of a national examination or a special purpose examination to assess current competency, necessary to ensure that a licensee who has been on inactive status for more than two consecutive biennial licensure cycles and who applies for active status can practice with the care and skill sufficient to protect the health, safety, and welfare of the public. Reactivation requirements may differ depending on the length of time licensees are inactive. The costs to meet reactivation requirements shall be borne by licensees requesting reactivation.

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

public. Requirements for reactivation of a license may differ depending on the length of time a licensee has been retired.

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

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

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

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

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

History.--s. 95, ch. 97-261; s. 63, ch. 2000-160; s. 31, ch. 2000-318; s. 3, ch. 2005-62.

Note.--Former s. 455.711.

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

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

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

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

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

(5) This section applies to any business establishment registered, permitted, or licensed by the department to do business. Business establishments include, but are not limited to, dental

laboratories, electrology facilities, massage establishments, pharmacies, and pain-management clinics required to be registered under s. 458.3265 or s. 459.0137.

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

Note.—Former s. 455.712.

456.038 Renewal and cancellation notices.--

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

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

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

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

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

Note.--Former s. 455.714.

456.039 Designated health care professionals; information required for licensure.--

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

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

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

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

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

5. The year that the applicant began practicing medicine.

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

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

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

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

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

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

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

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

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

(4)(a) An applicant for initial licensure must submit a set of fingerprints to the Department of Health in accordance with s. 458.311, s. 458.3115, s. 458.3124, s. 458.313, s. 459.0055, s. 460.406, or s. 461.006.

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

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

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

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

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

(c) Languages, other than English, used by the applicant to communicate with patients and identification of any translating service that may be available at the place where the applicant primarily conducts his or her practice.

(d) An indication of whether the person participates in the Medicaid program.

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

Note.--Former s. 455.565.

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

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

1. The name of each school or training program that the applicant has attended, with the months and years of attendance and the month and year of graduation, and a description of all graduate professional education completed by the applicant, excluding any coursework taken to satisfy continuing education requirements.
 2. The name of each location at which the applicant practices.
 3. The address at which the applicant will primarily conduct his or her practice.
 4. Any certification or designation that the applicant has received from a specialty or certification board that is recognized or approved by the regulatory board or department to which the applicant is applying.
 5. The year that the applicant received initial certification and began practicing the profession in any jurisdiction and the year that the applicant received initial certification in this state.
 6. Any appointment which the applicant currently holds to the faculty of a school related to the profession and an indication as to whether the applicant has had the responsibility for graduate education within the most recent 10 years.
 7. A description of any criminal offense of which the applicant has been found guilty, regardless of whether adjudication of guilt was withheld, or to which the applicant has pled guilty or nolo contendere. A criminal offense committed in another jurisdiction which would have been a felony or misdemeanor if committed in this state must be reported. If the applicant indicates that a criminal offense is under appeal and submits a copy of the notice for appeal of that criminal offense, the department must state that the criminal offense is under appeal if the criminal offense is reported in the applicant's profile. If the applicant indicates to the department that a criminal offense is under appeal, the applicant must, within 15 days after the disposition of the appeal, submit to the department a copy of the final written order of disposition.
 8. A description of any final disciplinary action taken within the previous 10 years against the applicant by a licensing or regulatory body in any jurisdiction, by a specialty board that is recognized by the board or department, or by a licensed hospital, health maintenance organization, prepaid health clinic, ambulatory surgical center, or nursing home. Disciplinary action includes resignation from or nonrenewal of staff membership or the restriction of privileges at a licensed hospital, health maintenance organization, prepaid health clinic, ambulatory surgical center, or nursing home taken in lieu of or in settlement of a pending disciplinary case related to competence or character. If the applicant indicates that the disciplinary action is under appeal and submits a copy of the document initiating an appeal of the disciplinary action, the department must state that the disciplinary action is under appeal if the disciplinary action is reported in the applicant's profile.
- (b) In addition to the information required under paragraph (a), each applicant for initial certification or certification renewal must provide the information required of licensees pursuant to s. 456.049.
- (2) The Department of Health shall send a notice to each person certified under s. 464.012 at the certificate holder's last known address of record regarding the requirements for information to be submitted by advanced registered nurse practitioners pursuant to this section in conjunction with the renewal of such certificate.
- (3) Each person certified under s. 464.012 who has submitted information pursuant to subsection (1) must update that information in writing by notifying the Department of Health within 45 days

after the occurrence of an event or the attainment of a status that is required to be reported by subsection (1). Failure to comply with the requirements of this subsection to update and submit information constitutes a ground for disciplinary action under chapter 464 and s. 456.072(1)(k). For failure to comply with the requirements of this subsection to update and submit information, the department or board, as appropriate, may:

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

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

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

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

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

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

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

(d) Any applicant for initial certification or renewal of certification as an advanced registered nurse practitioner who submits to the Department of Health a set of fingerprints and information required for the criminal history check required under this section shall not be required to

provide a subsequent set of fingerprints or other duplicate information required for a criminal history check to the Agency for Health Care Administration, the Department of Juvenile Justice, or the Department of Children and Family Services for employment or licensure with such agency or department, if the applicant has undergone a criminal history check as a condition of initial certification or renewal of certification as an advanced registered nurse practitioner with the Department of Health, notwithstanding any other provision of law to the contrary. In lieu of such duplicate submission, the Agency for Health Care Administration, the Department of Juvenile Justice, and the Department of Children and Family Services shall obtain criminal history information for employment or licensure of persons certified under s. 464.012 by such agency or department from the Department of Health's health care practitioner credentialing system.

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

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

History.--s. 152, ch. 2000-318.

456.0392 Prescription labeling.--

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

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

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

History.--s. 1, ch. 2004-8.

456.041 Practitioner profile; creation.--

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

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

(c) Within 30 calendar days after receiving an update of information required for the practitioner's profile, the department shall update the practitioner's profile in accordance with the requirements of ¹subsection (8).

(2) On the profile published under subsection (1), the department shall indicate if the information provided under s. 456.039(1)(a)7. or s. 456.0391(1)(a)7. is or is not corroborated by a criminal history check conducted according to this subsection. The department, or the board having regulatory authority over the practitioner acting on behalf of the department, shall investigate any information received by the department or the board.

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

(4) The Department of Health shall include, with respect to a practitioner licensed under chapter 458 or chapter 459, a statement of how the practitioner has elected to comply with the financial responsibility requirements of s. 458.320 or s. 459.0085. The department shall include, with respect to practitioners subject to s. 456.048, a statement of how the practitioner has elected to comply with the financial responsibility requirements of that section. The department shall include, with respect to practitioners licensed under chapter 461, information relating to liability actions which has been reported under s. 456.049 or s. 627.912 within the previous 10 years for any paid claim that exceeds \$5,000. The department shall include, with respect to practitioners

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

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

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

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

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

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

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

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

History.--s. 128, ch. 97-237; s. 4, ch. 97-273; s. 35, ch. 98-166; s. 77, ch. 99-397; s. 111, ch. 2000-153; s. 67, ch. 2000-160; ss. 22, 153, ch. 2000-318; s. 14, ch. 2003-416; s. 7, ch. 2005-62; s. 1, ch. 2005-266; s. 3, ch. 2006-251; s. 22, ch. 2009-223; s. 103, ch. 2010-5.

¹**Note.**--Redesignated as subsection (8) by s. 22, ch. 2009-223.

Note.--Former s. 455.5651.

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

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

Note.—Former s. 455.5652.

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

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

Note.—Former s. 455.5653.

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

History.--s. 131, ch. 97-237; s. 7, ch. 97-273; s. 113, ch. 2000-153; s. 70, ch. 2000-160; ss. 24, 155, ch. 2000-318.

Note.--Former s. 455.5654.

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

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

Note.--Former s. 455.5655.

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

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

Note.—Former s. 455.5656.

456.048 Financial responsibility requirements for certain health care practitioners.—

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

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

(a) Any person licensed under chapter 457, s. 458.3475, s. 459.023, chapter 460, chapter 461, s. 464.012, chapter 466, or chapter 467 who practices exclusively as an officer, employee, or agent of the Federal Government or of the state or its agencies or its subdivisions. For the purposes of this subsection, an agent of the state, its agencies, or its subdivisions is a person who

is eligible for coverage under any self-insurance or insurance program authorized by the provisions of s. 768.28(16) or who is a volunteer under s. 110.501(1).

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

(c) Any person holding a limited license pursuant to s. 456.015, and practicing under the scope of such limited license.

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

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

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

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

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

Note.—Former s. 455.2456; s. 455.694.

456.049 Health care practitioners; reports on professional liability claims and actions.— Any practitioner of medicine licensed pursuant to the provisions of chapter 458, practitioner of osteopathic medicine licensed pursuant to the provisions of chapter 459, podiatric physician licensed pursuant to the provisions of chapter 461, or dentist licensed pursuant to the provisions of chapter 466 shall report to the Office of Insurance Regulation any claim or action for damages for personal injury alleged to have been caused by error, omission, or negligence in the

performance of such licensee's professional services or based on a claimed performance of professional services without consent pursuant to s. 627.912.

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

Note.—Former s. 455.247; s. 455.697.

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

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

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

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

Note.—Former s. 455.698.

456.052 Disclosure of financial interest by production.—

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

(a) The existence of the investment interest.

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

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

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

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

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

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

Note.—Former s. 455.25; s. 455.701.

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

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

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

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

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

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

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

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

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

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

(g) "Fair market value" means value in arms length transactions, consistent with the general market value, and, with respect to rentals or leases, the value of rental property for general commercial purposes, not taking into account its intended use, and, in the case of a lease of space, not adjusted to reflect the additional value the prospective lessee or lessor would attribute to the proximity or convenience to the lessor where the lessor is a potential source of patient referrals to the lessee.

(h) "Group practice" means a group of two or more health care providers legally organized as a partnership, professional corporation, or similar association:

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

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

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

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

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

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

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

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

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

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

(l) "Investor" means a person or entity owning a legal or beneficial ownership or investment interest, directly or indirectly, including, without limitation, through an immediate family member, trust, or another entity related to the investor within the meaning of 42 C.F.R. s. 413.17, in an entity.

(m) "Outside referral for diagnostic imaging services" means a referral of a patient to a group practice or sole provider for diagnostic imaging services by a physician who is not a member of the group practice or of the sole provider's practice and who does not have an investment interest in the group practice or sole provider's practice, for which the group practice or sole provider billed for both the technical and the professional fee for the patient, and the patient did not become a patient of the group practice or sole provider's practice.

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

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

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

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

3. The following orders, recommendations, or plans of care shall not constitute a referral by a health care provider:

a. By a radiologist for diagnostic-imaging services.

b. By a physician specializing in the provision of radiation therapy services for such services.

- c. By a medical oncologist for drugs and solutions to be prepared and administered intravenously to such oncologist's patient, as well as for the supplies and equipment used in connection therewith to treat such patient for cancer and the complications thereof.
- d. By a cardiologist for cardiac catheterization services.
- e. By a pathologist for diagnostic clinical laboratory tests and pathological examination services, if furnished by or under the supervision of such pathologist pursuant to a consultation requested by another physician.
- f. By a health care provider who is the sole provider or member of a group practice for designated health services or other health care items or services that are prescribed or provided solely for such referring health care provider's or group practice's own patients, and that are provided or performed by or under the direct supervision of such referring health care provider or group practice; provided, however, that effective July 1, 1999, a physician licensed pursuant to chapter 458, chapter 459, chapter 460, or chapter 461 may refer a patient to a sole provider or group practice for diagnostic imaging services, excluding radiation therapy services, for which the sole provider or group practice billed both the technical and the professional fee for or on behalf of the patient, if the referring physician has no investment interest in the practice. The diagnostic imaging service referred to a group practice or sole provider must be a diagnostic imaging service normally provided within the scope of practice to the patients of the group practice or sole provider. The group practice or sole provider may accept no more than 15 percent of their patients receiving diagnostic imaging services from outside referrals, excluding radiation therapy services.
- g. By a health care provider for services provided by an ambulatory surgical center licensed under chapter 395.
- h. By a urologist for lithotripsy services.
- i. By a dentist for dental services performed by an employee of or health care provider who is an independent contractor with the dentist or group practice of which the dentist is a member.
- j. By a physician for infusion therapy services to a patient of that physician or a member of that physician's group practice.
- k. By a nephrologist for renal dialysis services and supplies, except laboratory services.
- l. By a health care provider whose principal professional practice consists of treating patients in their private residences for services to be rendered in such private residences, except for services rendered by a home health agency licensed under chapter 400. For purposes of this sub-subparagraph, the term "private residences" includes patients' private homes, independent living centers, and assisted living facilities, but does not include skilled nursing facilities.
- m. By a health care provider for sleep-related testing.

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

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

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

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

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

1. Diagnostic imaging services must be provided exclusively by a group practice physician or by a full-time or part-time employee of the group practice or of the sole provider's practice.
2. All equity in the group practice or sole provider's practice accepting outside referrals for diagnostic imaging must be held by the physicians comprising the group practice or the sole provider's practice, each of whom must provide at least 75 percent of his or her professional services to the group. Alternatively, the group must be incorporated under chapter 617 and must be exempt under the provisions of s. 501(c)(3) of the Internal Revenue Code and be part of a foundation in existence prior to January 1, 1999, that is created for the purpose of patient care, medical education, and research.
3. A group practice or sole provider may not enter into, extend or renew any contract with a practice management company that provides any financial incentives, directly or indirectly, based on an increase in outside referrals for diagnostic imaging services from any group or sole provider managed by the same practice management company.
4. The group practice or sole provider accepting outside referrals for diagnostic imaging services must bill for both the professional and technical component of the service on behalf of the patient, and no portion of the payment, or any type of consideration, either directly or indirectly, may be shared with the referring physician.
5. Group practices or sole providers that have a Medicaid provider agreement with the Agency for Health Care Administration must furnish diagnostic imaging services to their Medicaid patients and may not refer a Medicaid recipient to a hospital for outpatient diagnostic imaging

services unless the physician furnishes the hospital with documentation demonstrating the medical necessity for such a referral. If necessary, the Agency for Health Care Administration may apply for a federal waiver to implement this subparagraph.

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

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

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

(5) PROHIBITED REFERRALS AND CLAIMS FOR PAYMENT.--Except as provided in this section:

(a) A health care provider may not refer a patient for the provision of designated health services to an entity in which the health care provider is an investor or has an investment interest.

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

1. The provider's investment interest is in registered securities purchased on a national exchange or over-the-counter market and issued by a publicly held corporation:

a. Whose shares are traded on a national exchange or on the over-the-counter market; and

b. Whose total assets at the end of the corporation's most recent fiscal quarter exceeded \$50 million; or

2. With respect to an entity other than a publicly held corporation described in subparagraph 1., and a referring provider's investment interest in such entity, each of the following requirements are met:

a. No more than 50 percent of the value of the investment interests are held by investors who are in a position to make referrals to the entity.

b. The terms under which an investment interest is offered to an investor who is in a position to make referrals to the entity are no different from the terms offered to investors who are not in a position to make such referrals.

c. The terms under which an investment interest is offered to an investor who is in a position to make referrals to the entity are not related to the previous or expected volume of referrals from that investor to the entity.

d. There is no requirement that an investor make referrals or be in a position to make referrals to the entity as a condition for becoming or remaining an investor.

3. With respect to either such entity or publicly held corporation:

a. The entity or corporation does not loan funds to or guarantee a loan for an investor who is in a position to make referrals to the entity or corporation if the investor uses any part of such loan to obtain the investment interest.

b. The amount distributed to an investor representing a return on the investment interest is directly proportional to the amount of the capital investment, including the fair market value of any preoperational services rendered, invested in the entity or corporation by that investor.

4. Each board and, in the case of hospitals, the Agency for Health Care Administration, shall encourage the use by licensees of the declaratory statement procedure to determine the applicability of this section or any rule adopted pursuant to this section as it applies solely to the licensee. Boards shall submit to the Agency for Health Care Administration the name of any entity in which a provider investment interest has been approved pursuant to this section, and the Agency for Health Care Administration shall adopt rules providing for periodic quality assurance and utilization review of such entities.

(c) No claim for payment may be presented by an entity to any individual, third-party payor, or other entity for a service furnished pursuant to a referral prohibited under this section.

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

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

(f) Any health care provider or other entity that enters into an arrangement or scheme, such as a cross-referral arrangement, which the physician or entity knows or should know has a principal purpose of assuring referrals by the physician to a particular entity which, if the physician directly made referrals to such entity, would be in violation of this section, shall be subject to a

civil penalty of not more than \$100,000 for each such circumvention arrangement or scheme to be imposed and collected by the appropriate board.

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

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

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

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

History.--s. 7, ch. 92-178; s. 89, ch. 94-218; s. 60, ch. 95-144; s. 35, ch. 95-146; s. 8, ch. 96-296; s. 1083, ch. 97-103; s. 78, ch. 97-261; s. 70, ch. 97-264; s. 263, ch. 98-166; s. 62, ch. 98-171; s. 1, ch. 99-356; s. 10, ch. 2000-159; s. 77, ch. 2000-160; s. 14, ch. 2002-389; s. 23, ch. 2009-223.

Note.--Former s. 455.236; s. 455.654.

456.054 Kickbacks prohibited.--

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

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

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

History.--s. 8, ch. 92-178; s. 2, ch. 96-152; s. 79, ch. 97-261; s. 8, ch. 99-204; s. 78, ch. 2000-160; s. 6, ch. 2006-305.

Note.--Former s. 455.237; s. 455.657.

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

History.--s. 43, ch. 85-167; s. 87, ch. 97-261; ss. 191, 264, ch. 98-166; s. 78, ch. 2000-160.

Note.--Former s. 455.244; s. 455.684.

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

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

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

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

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

(2) A physician may refuse to treat a beneficiary. However, nothing contained in this section shall be construed to limit a physician's obligation under state or federal law to treat a patient for an emergency medical condition, regardless of the patient's ability to pay.

(3) If treatment is provided to a beneficiary for an emergency medical condition as defined in ¹s. 395.0142(2)(c), the physician must accept Medicare assignment provided that the requirement to accept Medicare assignment for an emergency medical condition shall not apply to treatment rendered after the patient is stabilized, or the treatment is unrelated to the original emergency medical condition. For the purpose of this subsection "stabilized" is defined to mean with respect to an emergency medical condition, that no material deterioration of the condition is likely within reasonable medical probability.

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

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

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

¹Note.--"Emergency medical condition" is no longer defined in s. 395.0142, which was amended and transferred to s. 395.1041 by s. 24, ch. 92-289.

Note.--Former s. 455.2455; s. 455.691.

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

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

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

- (a) Certified nursing assistants regulated under part II of chapter 464.
- (b) Pharmacists and pharmacies licensed under chapter 465.
- (c) Dental hygienists licensed under s. 466.023.
- (d) Nursing home administrators licensed under part II of chapter 468.
- (e) Respiratory therapists regulated under part V of chapter 468.
- (f) Athletic trainers licensed under part XIII of chapter 468.
- (g) Electrologists licensed under chapter 478.
- (h) Clinical laboratory personnel licensed under part III of chapter 483.
- (i) Medical physicists licensed under part IV of chapter 483.
- (j) Opticians and optical establishments licensed or permitted under part I of chapter 484.
- (k) Persons or entities practicing under s. 627.736(7).

(3) As used in this section, the term "records custodian" means any person or entity that:

- (a) Maintains documents that are authorized in subsection (2); or
- (b) Obtains medical records from a records owner.

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

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

(6) Any health care practitioner licensed by the department or a board within the department who makes a physical or mental examination of, or administers treatment or dispenses legend drugs to, any person shall, upon request of such person or the person's legal representative, furnish, in a timely manner, without delays for legal review, copies of all reports and records relating to such examination or treatment, including X rays and insurance information. However, when a patient's psychiatric, chapter 490 psychological, or chapter 491 psychotherapeutic records are requested by the patient or the patient's legal representative, the health care practitioner may provide a report of examination and treatment in lieu of copies of records. Upon a patient's

written request, complete copies of the patient's psychiatric records shall be provided directly to a subsequent treating psychiatrist. The furnishing of such report or copies shall not be conditioned upon payment of a fee for services rendered.

(7)(a) Except as otherwise provided in this section and in s. 440.13(4)(c), such records may not be furnished to, and the medical condition of a patient may not be discussed with, any person other than the patient or the patient's legal representative or other health care practitioners and providers involved in the care or treatment of the patient, except upon written authorization of the patient. However, such records may be furnished without written authorization under the following circumstances:

1. To any person, firm, or corporation that has procured or furnished such examination or treatment with the patient's consent.
2. When compulsory physical examination is made pursuant to Rule 1.360, Florida Rules of Civil Procedure, in which case copies of the medical records shall be furnished to both the defendant and the plaintiff.
3. In any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the patient or the patient's legal representative by the party seeking such records.
4. For statistical and scientific research, provided the information is abstracted in such a way as to protect the identity of the patient or provided written permission is received from the patient or the patient's legal representative.
5. To a regional poison control center for purposes of treating a poison episode under evaluation, case management of poison cases, or compliance with data collection and reporting requirements of s. 395.1027 and the professional organization that certifies poison control centers in accordance with federal law.

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

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

(9)(a)1. The department may obtain patient records pursuant to a subpoena without written authorization from the patient if the department and the probable cause panel of the appropriate board, if any, find reasonable cause to believe that a health care practitioner has excessively or inappropriately prescribed any controlled substance specified in chapter 893 in violation of this chapter or any professional practice act or that a health care practitioner has practiced his or her profession below that level of care, skill, and treatment required as defined by this chapter or any professional practice act and also find that appropriate, reasonable attempts were made to obtain a patient release. Notwithstanding the foregoing, the department need not attempt to obtain a patient release when investigating an offense involving the inappropriate prescribing,

overprescribing, or diversion of controlled substances and the offense involves a pain-management clinic. The department may obtain patient records without patient authorization or subpoena from any pain-management clinic required to be licensed if the department has probable cause to believe that a violation of any provision of s. 458.3265 or s. 459.0137 is occurring or has occurred and reasonably believes that obtaining such authorization is not feasible due to the volume of the dispensing and prescribing activity involving controlled substances and that obtaining patient authorization or the issuance of a subpoena would jeopardize the investigation

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

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

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

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

privilege is asserted, the department may petition the circuit court for an in camera review of the records by expert medical practitioners appointed by the court to determine if the records or any part thereof are protected under the psychotherapist-patient privilege.

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

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

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

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

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

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

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

(16) Licensees in violation of the provisions of this section shall be disciplined by the appropriate licensing authority.

(17) The Attorney General is authorized to enforce the provisions of this section for records owners not otherwise licensed by the state, through injunctive relief and fines not to exceed \$5,000 per violation.

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

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

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

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

History.--s. 1, ch. 79-302; s. 1, ch. 82-22; s. 1, ch. 83-108; s. 81, ch. 83-218; ss. 14, 119, ch. 83-329; s. 2, ch. 84-15; s. 41, ch. 85-175; s. 4, ch. 87-333; s. 9, ch. 88-1; s. 2, ch. 88-208; s. 14, ch. 88-219; s. 6, ch. 88-277; s. 10, ch. 88-392; s. 2, ch. 89-85; s. 14, ch. 89-124; s. 28, ch. 89-289; s. 1, ch. 90-263; s. 11, ch. 91-137; s. 6, ch. 91-140; s. 12, ch. 91-176; s. 4, ch. 91-269; s. 62, ch. 92-33; s. 32, ch. 92-149; s. 23, ch. 93-129; s. 315, ch. 94-119; ss. 90, 91, ch. 94-218; s. 308, ch. 96-406; s. 1084, ch. 97-103; s. 82, ch. 97-261; s. 6, ch. 98-166; s. 12, ch. 99-349; s. 86, ch. 99-397; s. 79, ch. 2000-160; s. 9, ch. 2000-163; s. 114, ch. 2000-318; s. 9, ch. 2001-222; ss. 69, 140, ch. 2001-277; s. 18, ch. 2003-416; s. 4, ch. 2005-256; s. 1, ch. 2006-271; s. 2, ch. 2010-211.

Note.--Former s. 455.241; s. 455.667.

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

History.--s. 8, ch. 2003-416.

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

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

Note.--Former s. 455.677.

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

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

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

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

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

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

Note.--Former s. 455.2415; s. 455.671.

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

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

(a) If a patient of the practitioner who has tested positive for human immunodeficiency virus discloses to the practitioner the identity of a sexual partner or a needle-sharing partner;

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

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

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

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

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

Note.--Former s. 455.2416; s. 455.674.

456.062 Advertisement by a health care practitioner of free or discounted services; required statement.--In any advertisement for a free, discounted fee, or reduced fee service, examination, or treatment by a health care practitioner licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 464, chapter 465, chapter 466, chapter 467, chapter 478, chapter 483, part I of chapter 484, chapter 486, chapter 490, or chapter 491, the following statement shall appear in capital letters clearly distinguishable from the rest of the text: THE PATIENT AND ANY OTHER PERSON RESPONSIBLE FOR PAYMENT HAS

A RIGHT TO REFUSE TO PAY, CANCEL PAYMENT, OR BE REIMBURSED FOR PAYMENT FOR ANY OTHER SERVICE, EXAMINATION, OR TREATMENT THAT IS PERFORMED AS A RESULT OF AND WITHIN 72 HOURS OF RESPONDING TO THE ADVERTISEMENT FOR THE FREE, DISCOUNTED FEE, OR REDUCED FEE SERVICE, EXAMINATION, OR TREATMENT. However, the required statement shall not be necessary as an accompaniment to an advertisement of a licensed health care practitioner defined by this section if the advertisement appears in a classified directory the primary purpose of which is to provide products and services at free, reduced, or discounted prices to consumers and in which the statement prominently appears in at least one place.

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

Note.--Former s. 455.664.

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

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

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

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

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

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

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

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

Note.--Former s. 455.2142; s. 455.567.

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

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

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

certificate, or registration to any applicant if the candidate or applicant or any principal, officer, agent, managing employee, or affiliated person of the applicant, has been:

- (a) Convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under chapter 409, chapter 817, chapter 893, 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396, unless the sentence and any subsequent period of probation for such conviction or pleas ended more than 15 years prior to the date of the application;
 - (b) Terminated for cause from the Florida Medicaid program pursuant to s. 409.913, unless the applicant has been in good standing with the Florida Medicaid program for the most recent 5 years;
 - (c) Terminated for cause, pursuant to the appeals procedures established by the state or Federal Government, from any other state Medicaid program or the federal Medicare program, unless the applicant has been in good standing with a state Medicaid program or the federal Medicare program for the most recent 5 years and the termination occurred at least 20 years prior to the date of the application.
- (3) Licensed health care practitioners shall report allegations of Medicaid fraud to the department, regardless of the practice setting in which the alleged Medicaid fraud occurred.
- (4) The acceptance by a licensing authority of a candidate's relinquishment of a license which is offered in response to or anticipation of the filing of administrative charges alleging Medicaid fraud or similar charges constitutes the permanent revocation of the license.

History.--s. 24, ch. 2009-223.

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

- (1) It is the intent of the Legislature that vigorous enforcement of licensure regulation for all health care professions is a state priority in order to protect Florida residents and visitors from the potentially serious and dangerous consequences of receiving medical and health care services from unlicensed persons whose professional education and training and other relevant qualifications have not been approved through the issuance of a license by the appropriate regulatory board or the department when there is no board. The unlicensed practice of a health care profession or the performance or delivery of medical or health care services to patients in this state without a valid, active license to practice that profession, regardless of the means of the performance or delivery of such services, is strictly prohibited.
- (2) The penalties for unlicensed practice of a health care profession shall include the following:
- (a) When the department has probable cause to believe that any person not licensed by the department, or the appropriate regulatory board within the department, has violated any provision of this chapter or any statute that relates to the practice of a profession regulated by the department, or any rule adopted pursuant thereto, the department may issue and deliver to such person a notice to cease and desist from such violation. In addition, the department may issue and deliver a notice to cease and desist to any person who aids and abets the unlicensed practice

of a profession by employing such unlicensed person. The issuance of a notice to cease and desist shall not constitute agency action for which a hearing under ss. 120.569 and 120.57 may be sought. For the purpose of enforcing a cease and desist order, the department may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person who violates any provisions of such order.

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

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

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

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

2. It is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, to practice a health care profession without an active, valid Florida license to practice that profession when such practice results in serious bodily injury. For purposes of this section, "serious bodily injury" means death; brain or spinal damage; disfigurement; fracture or dislocation of bones or joints; limitation of neurological, physical, or sensory function; or any

condition that required subsequent surgical repair. The minimum penalty for violating this subparagraph shall be a fine of \$1,000 and a minimum mandatory period of incarceration of 1 year.

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

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

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

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

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

Note.--Former s. 455.637.

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

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

Note.--Former s. 455.634.

456.067 Penalty for giving false information.--In addition to, or in lieu of, any other discipline imposed pursuant to s. 456.072, the act of knowingly giving false information in the course of applying for or obtaining a license from the department, or any board thereunder, with intent to mislead a public servant in the performance of his or her official duties, or the act of attempting

to obtain or obtaining a license from the department, or any board thereunder, to practice a profession by knowingly misleading statements or knowing misrepresentations constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

Note.--Former s. 455.631.

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

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

Note.--Former s. 455.699.

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

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

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

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

Note.--Former s. 455.681.

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

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

Note.--Former s. 455.611.

456.072 Grounds for discipline; penalties; enforcement.—

- (1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:
 - (a) Making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession.

- (b) Intentionally violating any rule adopted by the board or the department, as appropriate.
- (c) Being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession.
- (d) Using a Class III or a Class IV laser device or product, as defined by federal regulations, without having complied with the rules adopted under s. 501.122(2) governing the registration of the devices.
- (e) Failing to comply with the educational course requirements for human immunodeficiency virus and acquired immune deficiency syndrome.
- (f) Having a license or the authority to practice any regulated profession revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of any jurisdiction, including its agencies or subdivisions, for a violation that would constitute a violation under Florida law. The licensing authority's acceptance of a relinquishment of licensure, stipulation, consent order, or other settlement, offered in response to or in anticipation of the filing of charges against the license, shall be construed as action against the license.
- (g) Having been found liable in a civil proceeding for knowingly filing a false report or complaint with the department against another licensee.
- (h) Attempting to obtain, obtaining, or renewing a license to practice a profession by bribery, by fraudulent misrepresentation, or through an error of the department or the board.
- (i) Except as provided in s. 465.016, failing to report to the department any person who the licensee knows is in violation of this chapter, the chapter regulating the alleged violator, or the rules of the department or the board.
- (j) Aiding, assisting, procuring, employing, or advising any unlicensed person or entity to practice a profession contrary to this chapter, the chapter regulating the profession, or the rules of the department or the board.
- (k) Failing to perform any statutory or legal obligation placed upon a licensee. For purposes of this section, failing to repay a student loan issued or guaranteed by the state or the Federal Government in accordance with the terms of the loan or failing to comply with service scholarship obligations shall be considered a failure to perform a statutory or legal obligation, and the minimum disciplinary action imposed shall be a suspension of the license until new payment terms are agreed upon or the scholarship obligation is resumed, followed by probation for the duration of the student loan or remaining scholarship obligation period, and a fine equal to 10 percent of the defaulted loan amount. Fines collected shall be deposited into the Medical Quality Assurance Trust Fund.
- (l) Making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, or willfully impeding or obstructing another person to do so. Such reports or records shall include only those that are signed in the capacity of a licensee.
- (m) Making deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession.
- (n) Exercising influence on the patient or client for the purpose of financial gain of the licensee or a third party.

- (o) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities the licensee knows, or has reason to know, the licensee is not competent to perform.
- (p) Delegating or contracting for the performance of professional responsibilities by a person when the licensee delegating or contracting for performance of the responsibilities knows, or has reason to know, the person is not qualified by training, experience, and authorization when required to perform them.
- (q) Violating a lawful order of the department or the board, or failing to comply with a lawfully issued subpoena of the department.
- (r) Improperly interfering with an investigation or inspection authorized by statute, or with any disciplinary proceeding.
- (s) Failing to comply with the educational course requirements for domestic violence.
- (t) Failing to identify through written notice, which may include the wearing of a name tag, or orally to a patient the type of license under which the practitioner is practicing. Any advertisement for health care services naming the practitioner must identify the type of license the practitioner holds. This paragraph does not apply to a practitioner while the practitioner is providing services in a facility licensed under chapter 394, chapter 395, chapter 400, or chapter 429. Each board, or the department where there is no board, is authorized by rule to determine how its practitioners may comply with this disclosure requirement.
- (u) Failing to comply with the requirements of ss. 381.026 and 381.0261 to provide patients with information about their patient rights and how to file a patient complaint.
- (v) Engaging or attempting to engage in sexual misconduct as defined and prohibited in s. 456.063(1).
- (w) Failing to comply with the requirements for profiling and credentialing, including, but not limited to, failing to provide initial information, failing to timely provide updated information, or making misleading, untrue, deceptive, or fraudulent representations on a profile, credentialing, or initial or renewal licensure application.
- (x) Failing to report to the board, or the department if there is no board, in writing within 30 days after the licensee has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction. Convictions, findings, adjudications, and pleas entered into prior to the enactment of this paragraph must be reported in writing to the board, or department if there is no board, on or before October 1, 1999.
- (y) Using information about people involved in motor vehicle accidents which has been derived from accident reports made by law enforcement officers or persons involved in accidents under s. 316.066, or using information published in a newspaper or other news publication or through a radio or television broadcast that has used information gained from such reports, for the purposes of commercial or any other solicitation whatsoever of the people involved in the accidents.
- (z) Being unable to practice with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. In enforcing this paragraph, the department shall have, upon a finding of the State Surgeon General or the State Surgeon General's designee that probable cause

exists to believe that the licensee is unable to practice because of the reasons stated in this paragraph, the authority to issue an order to compel a licensee to submit to a mental or physical examination by physicians designated by the department. If the licensee refuses to comply with the order, the department's order directing the examination may be enforced by filing a petition for enforcement in the circuit court where the licensee resides or does business. The department shall be entitled to the summary procedure provided in s. 51.011. A licensee or certificateholder affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he or she can resume the competent practice of his or her profession with reasonable skill and safety to patients.

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

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

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

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

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

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

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

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

(ii) Being convicted of, or entering a plea of guilty or nolo contendere to, any misdemeanor or felony, regardless of adjudication, under 18 U.S.C. s. 669, ss. 285-287, s. 371, s. 1001, s. 1035, s.

1341, s. 1343, s. 1347, s. 1349, or s. 1518, or 42 U.S.C. ss. 1320a-7b, relating to the Medicaid program.

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

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

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

(mm) Failure to comply with controlled substance prescribing requirements of s. 456.44.

(nn) Violating any of the provisions of s. 790.338.

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

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

(b) Suspension or permanent revocation of a license.

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

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

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

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

(g) Corrective action.

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

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

(j) Requirement that the practitioner undergo remedial education.

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

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

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

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

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

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

(7) Notwithstanding subsection (2), upon a finding that a physician has prescribed or dispensed a controlled substance, or caused a controlled substance to be prescribed or dispensed, in a

manner that violates the standard of practice set forth in s. 458.331(1)(q) or (t), s. 459.015(1)(t) or (x), s. 461.013(1)(o) or (s), or s. 466.028(1)(p) or (x), the physician shall be suspended for a period of not less than 6 months and pay a fine of not less than \$10,000 per count. Repeated violations shall result in increased penalties.

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

History.—s. 69, ch. 97-261; s. 84, ch. 99-397; s. 90, ch. 2000-160; s. 26, ch. 2000-318; s. 71, ch. 2001-277; s. 2, ch. 2002-254; s. 6, ch. 2003-411; s. 19, ch. 2003-416; s. 10, ch. 2004-344; s. 1, ch. 2005-240; s. 2, ch. 2006-207; s. 111, ch. 2007-5; s. 64, ch. 2008-6; s. 25, ch. 2009-223; s. 3, ch. 2011-112; s. 1, ch. 2011-141.

Note.—Former s. 455.624.

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

History.--s. 3, ch. 2002-254.

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

(1) The department, for the boards under its jurisdiction, shall cause to be investigated any complaint that is filed before it if the complaint is in writing, signed by the complainant, and legally sufficient. A complaint filed by a state prisoner against a health care practitioner employed by or otherwise providing health care services within a facility of the Department of Corrections is not legally sufficient unless there is a showing that the prisoner complainant has exhausted all available administrative remedies within the state correctional system before filing the complaint. However, if the Department of Health determines after a preliminary inquiry of a state prisoner's complaint that the practitioner may present a serious threat to the health and safety of any individual who is not a state prisoner, the Department of Health may determine legal sufficiency and proceed with discipline. The Department of Health shall be notified within 15 days after the Department of Corrections disciplines or allows a health care practitioner to resign for an offense related to the practice of his or her profession. A complaint is legally sufficient if it contains ultimate facts that show that a violation of this chapter, of any of the practice acts relating to the professions regulated by the department, or of any rule adopted by the department or a regulatory board in the department has occurred. In order to determine legal

sufficiency, the department may require supporting information or documentation. The department may investigate, and the department or the appropriate board may take appropriate final action on, a complaint even though the original complainant withdraws it or otherwise indicates a desire not to cause the complaint to be investigated or prosecuted to completion. The department may investigate an anonymous complaint if the complaint is in writing and is legally sufficient, if the alleged violation of law or rules is substantial, and if the department has reason to believe, after preliminary inquiry, that the violations alleged in the complaint are true. The department may investigate a complaint made by a confidential informant if the complaint is legally sufficient, if the alleged violation of law or rule is substantial, and if the department has reason to believe, after preliminary inquiry, that the allegations of the complainant are true. The department may initiate an investigation if it has reasonable cause to believe that a licensee or a group of licensees has violated a Florida statute, a rule of the department, or a rule of a board. Notwithstanding subsection (13), the department may investigate information filed pursuant to s. 456.041(4) relating to liability actions with respect to practitioners licensed under chapter 458 or chapter 459 which have been reported under s. 456.049 or s. 627.912 within the previous 6 years for any paid claim that exceeds \$50,000. Except as provided in ss. 458.331(9), 459.015(9), 460.413(5), and 461.013(6), when an investigation of any subject is undertaken, the department shall promptly furnish to the subject or the subject's attorney a copy of the complaint or document that resulted in the initiation of the investigation. The subject may submit a written response to the information contained in such complaint or document within 20 days after service to the subject of the complaint or document. The subject's written response shall be considered by the probable cause panel. The right to respond does not prohibit the issuance of a summary emergency order if necessary to protect the public. However, if the State Surgeon General, or the State Surgeon General's designee, and the chair of the respective board or the chair of its probable cause panel agree in writing that such notification would be detrimental to the investigation, the department may withhold notification. The department may conduct an investigation without notification to any subject if the act under investigation is a criminal offense.

(2) The department shall allocate sufficient and adequately trained staff to expeditiously and thoroughly determine legal sufficiency and investigate all legally sufficient complaints. For purposes of this section, it is the intent of the Legislature that the term "expeditiously" means that the department complete the report of its initial investigative findings and recommendations concerning the existence of probable cause within 6 months after its receipt of the complaint. The failure of the department, for disciplinary cases under its jurisdiction, to comply with the time limits of this section while investigating a complaint against a licensee constitutes harmless error in any subsequent disciplinary action unless a court finds that either the fairness of the proceeding or the correctness of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure. When its investigation is complete and legally sufficient, the department shall prepare and submit to the probable cause panel of the appropriate regulatory board the investigative report of the department. The report shall contain the investigative findings and the recommendations of the department concerning the existence of probable cause. The department shall not recommend a letter of guidance in lieu of finding probable cause if the subject has already been issued a letter of guidance for a related offense. At any time after legal sufficiency is found, the department may dismiss any case, or any part thereof, if the department determines that there is insufficient evidence to support the prosecution

of allegations contained therein. The department shall provide a detailed report to the appropriate probable cause panel prior to dismissal of any case or part thereof, and to the subject of the complaint after dismissal of any case or part thereof, under this section. For cases dismissed prior to a finding of probable cause, such report is confidential and exempt from s. 119.07(1). The probable cause panel shall have access, upon request, to the investigative files pertaining to a case prior to dismissal of such case. If the department dismisses a case, the probable cause panel may retain independent legal counsel, employ investigators, and continue the investigation and prosecution of the case as it deems necessary.

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

(4) The determination as to whether probable cause exists shall be made by majority vote of a probable cause panel of the board, or by the department, as appropriate. Each regulatory board shall provide by rule that the determination of probable cause shall be made by a panel of its members or by the department. Each board may provide by rule for multiple probable cause panels composed of at least two members. Each board may provide by rule that one or more members of the panel or panels may be a former board member. The length of term or repetition of service of any such former board member on a probable cause panel may vary according to the direction of the board when authorized by board rule. Any probable cause panel must include one of the board's former or present consumer members, if one is available, is willing to serve, and is authorized to do so by the board chair. Any probable cause panel must include a present board member. Any probable cause panel must include a former or present professional board member. However, any former professional board member serving on the probable cause panel must hold an active valid license for that profession. All proceedings of the panel are exempt from s. 286.011 until 10 days after probable cause has been found to exist by the panel or until the subject of the investigation waives his or her privilege of confidentiality. The probable cause panel may make a reasonable request, and upon such request the department shall provide such additional investigative information as is necessary to the determination of probable cause. A request for additional investigative information shall be made within 15 days from the date of receipt by the probable cause panel of the investigative report of the department or the agency. The probable cause panel or the department, as may be appropriate, shall make its determination of probable cause within 30 days after receipt by it of the final investigative report of the department. The State Surgeon General may grant extensions of the 15-day and the 30-day time limits. In lieu of a finding of probable cause, the probable cause panel, or the department if there is no board, may issue a letter of guidance to the subject. If, within the 30-day time limit, as may be extended, the probable cause panel does not make a determination regarding the existence of probable cause or does not issue a letter of guidance in lieu of a finding of probable cause, the department must make a determination regarding the existence of probable cause within 10 days after the expiration of the time limit. If the probable cause panel finds that probable cause exists, it shall direct the department to file a formal complaint against the licensee. The department shall

follow the directions of the probable cause panel regarding the filing of a formal complaint. If directed to do so, the department shall file a formal complaint against the subject of the investigation and prosecute that complaint pursuant to chapter 120. However, the department may decide not to prosecute the complaint if it finds that probable cause has been improvidently found by the panel. In such cases, the department shall refer the matter to the board. The board may then file a formal complaint and prosecute the complaint pursuant to chapter 120. The department shall also refer to the board any investigation or disciplinary proceeding not before the Division of Administrative Hearings pursuant to chapter 120 or otherwise completed by the department within 1 year after the filing of a complaint. The department, for disciplinary cases under its jurisdiction, must establish a uniform reporting system to quarterly refer to each board the status of any investigation or disciplinary proceeding that is not before the Division of Administrative Hearings or otherwise completed by the department within 1 year after the filing of the complaint. Annually, the department, in consultation with the applicable probable cause panel, must establish a plan to expedite or otherwise close any investigation or disciplinary proceeding that is not before the Division of Administrative Hearings or otherwise completed by the department within 1 year after the filing of the complaint. A probable cause panel or a board may retain independent legal counsel, employ investigators, and continue the investigation as it deems necessary; all costs thereof shall be paid from a trust fund used by the department to implement this chapter. All proceedings of the probable cause panel are exempt from s. 120.525.

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

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

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

(8) Any proceeding for the purpose of summary suspension of a license, or for the restriction of the license, of a licensee pursuant to s. 120.60(6) shall be conducted by the State Surgeon General or his or her designee, as appropriate, who shall issue the final summary order.

(9)(a) The department shall periodically notify the person who filed the complaint, as well as the patient or the patient's legal representative, of the status of the investigation, indicating whether probable cause has been found and the status of any civil action or administrative proceeding or appeal.

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

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

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

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

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

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

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

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

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

History.--s. 68, ch. 97-261; s. 23, ch. 99-7; s. 114, ch. 2000-153; s. 91, ch. 2000-160; ss. 14, 72, ch. 2001-277; s. 5, ch. 2002-254; s. 1, ch. 2003-27; s. 20, ch. 2003-416; s. 65, ch. 2008-6.

Note.--Former s. 455.621.

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

(1) The department shall issue an emergency order suspending the license of any person licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 464, chapter 465, chapter 466, or chapter 484 who pleads guilty to, is convicted or found guilty of, or who enters a plea of nolo contendere to, regardless of adjudication, to:

(a) A felony under chapter 409, chapter 817, or chapter 893 or under 21 U.S.C. ss. 801-970 or under 42 U.S.C. ss. 1395-1396; or

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

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

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

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

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

Note.--Former s. 455.687.

456.075 Criminal proceedings against licensees; appearances by department

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

History.--s. 1, ch. 2002-81.

456.076 Treatment programs for impaired practitioners.--

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

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

(3)(a) Whenever the department receives a written or oral legally sufficient complaint alleging that a licensee under the jurisdiction of the Division of Medical Quality Assurance within the department is impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition which could affect the licensee's ability to practice with skill and safety, and no complaint against the licensee other than impairment exists, the reporting of such information shall not constitute grounds for discipline pursuant to s. 456.072 or the

corresponding grounds for discipline within the applicable practice act if the probable cause panel of the appropriate board, or the department when there is no board, finds:

1. The licensee has acknowledged the impairment problem.
 2. The licensee has voluntarily enrolled in an appropriate, approved treatment program.
 3. The licensee has voluntarily withdrawn from practice or limited the scope of practice as required by the consultant, in each case, until such time as the panel, or the department when there is no board, is satisfied the licensee has successfully completed an approved treatment program.
 4. The licensee has executed releases for medical records, authorizing the release of all records of evaluations, diagnoses, and treatment of the licensee, including records of treatment for emotional or mental conditions, to the consultant. The consultant shall make no copies or reports of records that do not regard the issue of the licensee's impairment and his or her participation in a treatment program.
- (b) If, however, the department has not received a legally sufficient complaint and the licensee agrees to withdraw from practice until such time as the consultant determines the licensee has satisfactorily completed an approved treatment program or evaluation, the probable cause panel, or the department when there is no board, shall not become involved in the licensee's case.
- (c) Inquiries related to impairment treatment programs designed to provide information to the licensee and others and which do not indicate that the licensee presents a danger to the public shall not constitute a complaint within the meaning of s. 456.073 and shall be exempt from the provisions of this subsection.
- (d) Whenever the department receives a legally sufficient complaint alleging that a licensee is impaired as described in paragraph (a) and no complaint against the licensee other than impairment exists, the department shall forward all information in its possession regarding the impaired licensee to the consultant. For the purposes of this section, a suspension from hospital staff privileges due to the impairment does not constitute a complaint.
- (e) The probable cause panel, or the department when there is no board, shall work directly with the consultant, and all information concerning a practitioner obtained from the consultant by the panel, or the department when there is no board, shall remain confidential and exempt from the provisions of s. 119.07(1), subject to the provisions of subsections (5) and (6).
- (f) A finding of probable cause shall not be made as long as the panel, or the department when there is no board, is satisfied, based upon information it receives from the consultant and the department, that the licensee is progressing satisfactorily in an approved impaired practitioner program and no other complaint against the licensee exists.
- (4) In any disciplinary action for a violation other than impairment in which a licensee establishes the violation for which the licensee is being prosecuted was due to or connected with

impairment and further establishes the licensee is satisfactorily progressing through or has successfully completed an approved treatment program pursuant to this section, such information may be considered by the board, or the department when there is no board, as a mitigating factor in determining the appropriate penalty. This subsection does not limit mitigating factors the board may consider.

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

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

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

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

1. The consultant indemnify the state for any liabilities incurred up to the limits set out in chapter 768.
2. The consultant establish a quality assurance program to monitor services delivered under the contract.
3. The consultant's quality assurance program, treatment, and monitoring records be evaluated quarterly.

4. The consultant's quality assurance program be subject to review and approval by the department.
5. The consultant operate under policies and procedures approved by the department.
6. The consultant provide to the department for approval a policy and procedure manual that comports with all statutes, rules, and contract provisions approved by the department.
7. The department be entitled to review the records relating to the consultant's performance under the contract for the purpose of management audits, financial audits, or program evaluation.
8. All performance measures and standards be subject to verification and approval by the department.
9. The department be entitled to terminate the contract with the consultant for noncompliance with the contract.

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

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

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

Note.--Former s. 455.261; s. 455.707.

456.077 Authority to issue citations.--

(1) Notwithstanding s. 456.073, the board, or the department if there is no board, shall adopt rules to permit the issuance of citations. The citation shall be issued to the subject and shall contain the subject's name and address, the subject's license number if applicable, a brief factual

statement, the sections of the law allegedly violated, and the penalty imposed. The citation must clearly state that the subject may choose, in lieu of accepting the citation, to follow the procedure under s. 456.073. If the subject disputes the matter in the citation, the procedures set forth in s. 456.073 must be followed. However, if the subject does not dispute the matter in the citation with the department within 30 days after the citation is served, the citation becomes a public final order and does not constitute discipline for a first offense, but does constitute discipline for a second or subsequent offense. The penalty shall be a fine or other conditions as established by rule.

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

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

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

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

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

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

Note.--Former s. 455.617.

456.078 Mediation.--

(1) Notwithstanding the provisions of s. 456.073, the board, or the department when there is no board, shall adopt rules to designate which violations of the applicable professional practice act are appropriate for mediation. The board, or the department when there is no board, shall designate as mediation offenses those complaints where harm caused by the licensee:

- (a) Is economic in nature except any act or omission involving intentional misconduct;
- (b) Can be remedied by the licensee;
- (c) Is not a standard of care violation involving any type of injury to a patient; or
- (d) Does not result in an adverse incident.

- (2) For the purposes of this section, an "adverse incident" means an event that results in:
- (a) The death of a patient;
 - (b) Brain or spinal damage to a patient;
 - (c) The performance of a surgical procedure on the wrong patient;
 - (d) The performance of a wrong-site surgical procedure;
 - (e) The performance of a surgical procedure that is medically unnecessary or otherwise unrelated to the patient's diagnosis or medical condition;
 - (f) The surgical repair of damage to a patient resulting from a planned surgical procedure, which damage is not a recognized specific risk as disclosed to the patient and documented through the informed-consent process;
 - (g) The performance of a procedure to remove unplanned foreign objects remaining from a surgical procedure; or
 - (h) The performance of any other surgical procedure that breached the standard of care.

(3) After the department determines a complaint is legally sufficient and the alleged violations are defined as mediation offenses, the department or any agent of the department may conduct informal mediation to resolve the complaint. If the complainant and the subject of the complaint agree to a resolution of a complaint within 14 days after contact by the mediator, the mediator shall notify the department of the terms of the resolution. The department or board shall take no further action unless the complainant and the subject each fail to record with the department an acknowledgment of satisfaction of the terms of mediation within 60 days of the mediator's notification to the department. A successful mediation shall not constitute discipline. In the event the complainant and subject fail to reach settlement terms or to record the required acknowledgment, the department shall process the complaint according to the provisions of s. 456.073.

(4) Conduct or statements made during mediation are inadmissible in any proceeding pursuant to s. 456.073. Further, any information relating to the mediation of a case shall be subject to the confidentiality provisions of s. 456.073.

(5) No licensee shall go through the mediation process more than three times without approval of the department. The department may consider the subject and dates of the earlier complaints in rendering its decision. Such decision shall not be considered a final agency action for purposes of chapter 120.

(6) Any board created on or after January 1, 1995, shall have 6 months to adopt rules designating which violations are appropriate for mediation, after which time the department shall have exclusive authority to adopt rules pursuant to this section. A board shall have continuing authority to amend its rules adopted pursuant to this section.

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

Note.--Former s. 455.614.

456.079 Disciplinary guidelines.--

(1) Each board, or the department if there is no board, shall adopt by rule and periodically review the disciplinary guidelines applicable to each ground for disciplinary action which may be

imposed by the board, or the department if there is no board, pursuant to this chapter, the respective practice acts, and any rule of the board or department.

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

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

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

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

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

Note.--Former s. 455.627.

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

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

Note.--Former s. 455.537.

456.082 Disclosure of confidential information.--

(1) No officer, employee, or person under contract with the department, or any board therein, or any subject of an investigation shall convey knowledge or information to any person who is not

lawfully entitled to such knowledge or information about any public meeting or public record, which at the time such knowledge or information is conveyed is exempt from the provisions of s. 119.01, s. 119.07(1), or s. 286.011.

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

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

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

Note.--Former s. 455.651.

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

History.--s. 34, ch. 2000-318.

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

History.--s. 20, ch. 2000-140.

456.41 Complementary or alternative health care treatments.--

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

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

(a) "Complementary or alternative health care treatment" means any treatment that is designed to provide patients with an effective option to the prevailing or conventional treatment methods

associated with the services provided by a health care practitioner. Such a treatment may be provided in addition to or in place of other treatment options.

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

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

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

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

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

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

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

History.--s. 1, ch. 2001-116.

456.42 Written prescriptions for medicinal drugs.—

(1)A written prescription for a medicinal drug issued by a health care practitioner licensed by law to prescribe such drug must be legibly printed or typed so as to be capable of being understood by the pharmacist filling the prescription; must contain the name of the prescribing practitioner, the name and strength of the drug prescribed, the quantity of the drug prescribed, and the directions for use of the drug; must be dated; and must be signed by the prescribing practitioner on the day when issued. However, a prescription that is electronically generated and transmitted must contain the name of the prescribing practitioner, the name and strength of the drug prescribed, the quantity of the drug prescribed in numerical format, and the directions for use of the drug and must be dated and signed by the prescribing practitioner only on the day issued, which signature may be in an electronic format as defined in s. 668.003(4).

(2)A written prescription for a controlled substance listed in chapter 893 must have the quantity of the drug prescribed in both textual and numerical formats, must be dated with the abbreviated month written out on the face of the prescription, and must be either written on a standardized counterfeit-proof prescription pad produced by a vendor approved by the department or electronically prescribed as that term is used in s. 408.0611. As a condition of

being an approved vendor, a prescription pad vendor must submit a monthly report to the department which, at a minimum, documents the number of prescription pads sold and identifies the purchasers. The department may, by rule, require the reporting of additional information.

History.—s. 1, ch. 2003-41; s. 2, ch. 2006-271; s. 2, ch. 2009-202; s. 2, ch. 2011-141.

456.43 Electronic prescribing for medicinal drugs.--

- (1) Electronic prescribing shall not interfere with a patient's freedom to choose a pharmacy.
- (2) Electronic prescribing software shall not use any means or permit any other person to use any means, including, but not limited to, advertising, instant messaging, and pop-up ads, to influence or attempt to influence, through economic incentives or otherwise, the prescribing decision of a prescribing practitioner at the point of care. Such means shall not be triggered or in specific response to the input, selection, or act of a prescribing practitioner or his or her agent in prescribing a certain pharmaceutical or directing a patient to a certain pharmacy.
 - (a) The term "prescribing decision" means a prescribing practitioner's decision to prescribe a certain pharmaceutical.
 - (b) The term "point of care" means the time that a prescribing practitioner or his or her agent is in the act of prescribing a certain pharmaceutical.
- (3) Electronic prescribing software may show information regarding a payor's formulary as long as nothing is designed to preclude or make more difficult the act of a prescribing practitioner or patient selecting any particular pharmacy or pharmaceutical.

History.--s. 3, ch. 2006-271.

456.44 Controlled substance prescribing.—

(1) DEFINITIONS.—

(a) "Addiction medicine specialist" means a board-certified psychiatrist with a subspecialty certification in addiction medicine or who is eligible for such subspecialty certification in addiction medicine, an addiction medicine physician certified or eligible for certification by the American Society of Addiction Medicine, or an osteopathic physician who holds a certificate of added qualification in Addiction Medicine through the American Osteopathic Association.

(b) "Adverse incident" means any incident set forth in s. [458.351\(4\)\(a\)-\(e\)](#) or s. [459.026\(4\)\(a\)-\(e\)](#).

(c) "Board-certified pain management physician" means a physician who possesses board certification in pain medicine by the American Board of Pain Medicine, board certification by the American Board of Interventional Pain Physicians, or board certification or subcertification in pain management by a specialty board recognized by the American Association of Physician Specialists or an osteopathic physician who holds a certificate in Pain Management by the American Osteopathic Association.

(d)“Chronic nonmalignant pain” means pain unrelated to cancer or rheumatoid arthritis which persists beyond the usual course of disease or the injury that is the cause of the pain or more than 90 days after surgery.

(e)“Mental health addiction facility” means a facility licensed under chapter 394 or chapter 397.

(2)REGISTRATION.—Effective January 1, 2012, a physician licensed under chapter 458, chapter 459, chapter 461, or chapter 466 who prescribes any controlled substance, as defined in s. 893.03, for the treatment of chronic nonmalignant pain, must:

(a)Designate himself or herself as a controlled substance prescribing practitioner on the physician’s practitioner profile.

(b)Comply with the requirements of this section and applicable board rules.

(3)STANDARDS OF PRACTICE.—The standards of practice in this section do not supersede the level of care, skill, and treatment recognized in general law related to health care licensure.

(a)A complete medical history and a physical examination must be conducted before beginning any treatment and must be documented in the medical record. The exact components of the physical examination shall be left to the judgment of the clinician who is expected to perform a physical examination proportionate to the diagnosis that justifies a treatment. The medical record must, at a minimum, document the nature and intensity of the pain, current and past treatments for pain, underlying or coexisting diseases or conditions, the effect of the pain on physical and psychological function, a review of previous medical records, previous diagnostic studies, and history of alcohol and substance abuse. The medical record shall also document the presence of one or more recognized medical indications for the use of a controlled substance. Each registrant must develop a written plan for assessing each patient’s risk of aberrant drug-related behavior, which may include patient drug testing. Registrants must assess each patient’s risk for aberrant drug-related behavior and monitor that risk on an ongoing basis in accordance with the plan.

(b)Each registrant must develop a written individualized treatment plan for each patient. The treatment plan shall state objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function, and shall indicate if any further diagnostic evaluations or other treatments are planned. After treatment begins, the physician shall adjust drug therapy to the individual medical needs of each patient. Other treatment modalities, including a rehabilitation program, shall be considered depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment. The interdisciplinary nature of the treatment plan shall be documented.

(c)The physician shall discuss the risks and benefits of the use of controlled substances, including the risks of abuse and addiction, as well as physical dependence and its consequences, with the patient, persons designated by the patient, or the patient’s surrogate or guardian if the

patient is incompetent. The physician shall use a written controlled substance agreement between the physician and the patient outlining the patient's responsibilities, including, but not limited to:

1. Number and frequency of controlled substance prescriptions and refills.
2. Patient compliance and reasons for which drug therapy may be discontinued, such as a violation of the agreement.
3. An agreement that controlled substances for the treatment of chronic nonmalignant pain shall be prescribed by a single treating physician unless otherwise authorized by the treating physician and documented in the medical record.

(d) The patient shall be seen by the physician at regular intervals, not to exceed 3 months, to assess the efficacy of treatment, ensure that controlled substance therapy remains indicated, evaluate the patient's progress toward treatment objectives, consider adverse drug effects, and review the etiology of the pain. Continuation or modification of therapy shall depend on the physician's evaluation of the patient's progress. If treatment goals are not being achieved, despite medication adjustments, the physician shall reevaluate the appropriateness of continued treatment. The physician shall monitor patient compliance in medication usage, related treatment plans, controlled substance agreements, and indications of substance abuse or diversion at a minimum of 3-month intervals.

(e) The physician shall refer the patient as necessary for additional evaluation and treatment in order to achieve treatment objectives. Special attention shall be given to those patients who are at risk for misusing their medications and those whose living arrangements pose a risk for medication misuse or diversion. The management of pain in patients with a history of substance abuse or with a comorbid psychiatric disorder requires extra care, monitoring, and documentation and requires consultation with or referral to an addictionologist or psychiatrist.

(f) A physician registered under this section must maintain accurate, current, and complete records that are accessible and readily available for review and comply with the requirements of this section, the applicable practice act, and applicable board rules. The medical records must include, but are not limited to:

1. The complete medical history and a physical examination, including history of drug abuse or dependence.
2. Diagnostic, therapeutic, and laboratory results.
3. Evaluations and consultations.
4. Treatment objectives.
5. Discussion of risks and benefits.
6. Treatments.

7. Medications, including date, type, dosage, and quantity prescribed.

8. Instructions and agreements.

9. Periodic reviews.

10. Results of any drug testing.

11. A photocopy of the patient's government-issued photo identification.

12. If a written prescription for a controlled substance is given to the patient, a duplicate of the prescription.

13. The physician's full name presented in a legible manner.

(g) Patients with signs or symptoms of substance abuse shall be immediately referred to a board-certified pain management physician, an addiction medicine specialist, or a mental health addiction facility as it pertains to drug abuse or addiction unless the physician is board-certified or board-eligible in pain management. Throughout the period of time before receiving the consultant's report, a prescribing physician shall clearly and completely document medical justification for continued treatment with controlled substances and those steps taken to ensure medically appropriate use of controlled substances by the patient. Upon receipt of the consultant's written report, the prescribing physician shall incorporate the consultant's recommendations for continuing, modifying, or discontinuing controlled substance therapy. The resulting changes in treatment shall be specifically documented in the patient's medical record. Evidence or behavioral indications of diversion shall be followed by discontinuation of controlled substance therapy, and the patient shall be discharged, and all results of testing and actions taken by the physician shall be documented in the patient's medical record.

This subsection does not apply to a board-certified anesthesiologist, physiatrist, or neurologist, or to a board-certified physician who has surgical privileges at a hospital or ambulatory surgery center and primarily provides surgical services. This subsection does not apply to a board-certified medical specialist who has also completed a fellowship in pain medicine approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association, or who is board certified in pain medicine by a board approved by the American Board of Medical Specialties or the American Osteopathic Association and performs interventional pain procedures of the type routinely billed using surgical codes.

History.—s. 3, ch. 2011-141.

456.50 Repeated medical malpractice.--

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

(a) "Board" means the Board of Medicine, in the case of a physician licensed pursuant to chapter 458, or the Board of Osteopathic Medicine, in the case of an osteopathic physician licensed pursuant to chapter 459.

(b) "Final administrative agency decision" means a final order of the licensing board following a hearing as provided in s. 120.57(1) or (2) or s. 120.574 finding that the licensee has violated s. 458.331(1)(t) or s. 459.015(1)(x).

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

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

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

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

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

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

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

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

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

History.--s. 2, ch. 2005-266.

