

## Notice of Proposed Rule

### **AGENCY FOR HEALTH CARE ADMINISTRATION**

#### **Health Facility and Agency Licensing**

RULE NO: RULE TITLE

[59A-35.020](#): Applicability

[59A-35.030](#): Definitions

[59A-35.040](#): License required; display

[59A-35.050](#): Fees required; adjustments

[59A-35.060](#): Licensure application process.

[59A-35.062](#): Proof of Financial Ability to Operate

[59A-35.064](#): Initial Application

[59A-35.065](#): License Renewal

[59A-35.070](#): Change of ownership.

[59A-35.080](#): License categories.

[59A-35.090](#): Background screening; prohibited offenses.

[59A-35.100](#): Minimum license requirements.

[59A-35.110](#): Reporting requirements; Electronic submission

[59A-35.120](#): Right of inspection; copies; inspection reports

[59A-35.140](#): Administrative fines.

[59A-35.150](#): Moratorium; emergency suspension.

PURPOSE AND EFFECT: Chapter 59A-35, Florida Administrative Code, is being developed to establish uniform procedures for licensure of health care facilities as authorized in Chapter 408, Part II, Florida Statutes.

SUMMARY: This proposed rule will establish licensure requirements, application procedures and administrative proceedings for all health care providers licensed by the Agency for Health Care Administration.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: Subject: Chapter 59A-35, Florida Administrative Code (F.A.C.) is being promulgated under the authority of Chapter 408, Florida Statutes (F.S.), to establish uniform licensure procedures for facilities and services regulated by the Agency for Health Care Administration.

Statutory Authority (including citation authorizing new or increased fees): Section 408.819, F.S., grants the Agency rulemaking authority for administration of Part II of Chapter 408, F. S. Annual adjustment of licensure fees and fees for issuance of a revised or duplicate license are authorized in Section 408.805, F.S.

Small Business Impact Certification Statement:

Good faith estimate of transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule:

As some regulated entities are sole proprietors and others are large corporations, the sophistication of licensees varies so paperwork and submission time estimates are not feasible for the multiple types of providers regulated by the Agency. But it is expected that over time the transactional costs will not increase and may, in fact, decrease.

The entities and individuals affected by the proposed rule will be required to become familiar with new, standardized forms to be used by all regulated providers. While this familiarization will require some additional time in the first licensure submission, the standardization of the application processes will ultimately not require additional time across the two-year licensure period that is a part of these revisions. The elimination of one of the annual licensure applications (for most provider types) will represent an efficiency to the regulated entity.

The proposed rule would impose Background Screening Fees not previously required of some providers and require fee increases for categories of providers that do not currently pay fees sufficient to cover the cost or regulation of those providers. The following provider types do not currently pay fees that cover the cost of Agency licensing programs:

- Abortion Clinics
- Adult Family Care Homes (AFCH)
- Assisted Living Facilities (ALF)
- Ambulatory Surgical Centers
- Birth Centers
- Homemaker Companion Services Providers
- Health Care Services Pools
- Home Medical Equipment Providers
- Homes for Special Services (HHS)
- Hospices
- Hospitals
- Multiphasic Health Testing Centers (MHTC)
- Prescribed Pediatric Extended Care Centers (PPEC)
- Risk Managers

Licensed providers will be required to submit an application and license fee for a change of ownership sixty days prior to the change and will be charged a late fee of \$50 per day for each day that application is late. There will be a maximum of \$1,000 for these late fees.

Small entities that do not have electronic submission capabilities will be required to secure access to computers through public facilities such as libraries or purchase time or equipment to enable them to submit information electronically.

This rule will effect some local governments who hold licenses from AHCA. The impact is expected to be insignificant.

Analysis per Florida Statutes:

The Agency for Health Care Administration regulates thirty categories of health care providers totaling more than 32,000 licensees. In 2006, the Florida Legislature passed Chapter 2006-192, Laws of Florida, that established a revised licensure process, standardized across the many types of providers. These proposed rules will establish procedures for implementing that licensure with requirements and forms that are consistent for all providers and will accommodate the new two-year licensure period for all licensees. Each of the items provided by Section 120.541(2), Florida Statutes, is addressed for the

proposed Rule Chapter 59A-35, F.A.C.:

Good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule:

The proposed rule will affect all providers licensed by the Agency. There are approximately 32,000 individuals and entities licensed by the Agency in twenty-eight licensure categories. This number includes entities from small businesses to large corporations as well as individuals.

The categories of facilities licensed by the Agency are:

- Abortion Clinics
- Adult Day Care Centers (ADCC)
- Adult Family Care Homes (AFCH)
- Ambulatory Surgical Centers
- Assisted Living Facilities (ALF)
- Birth Centers
- Clinical Laboratories
- Crisis Stabilization Units and Short Term Residential Treatment Facilities
- Drug-free Workplace Laboratories
- Health Care Clinics
- Health Care Services Pools
- Homes for Special Services (HHS)
- Home Health Agencies
- Homemaker Companion Services
- Home Medical Equipment Providers
- Hospices
- Hospitals
- Intermediate Care Facilities for the Developmentally Disabled Persons (ICFDD)
- Multiphasic Health Testing Centers (MHTC)
- Nurse Registries
- Nursing Homes
- Organ, Tissue and Eye Procurement Organizations
- Prescribed Pediatric Extended Care Centers (PPEC)
- Residential Treatment Centers for Children and Adolescents
- Residential Treatment Facilities
- Risk Managers
- Transitional Living Facilities (TLF)

Agency regulatory programs include facilities that are not licensed under state law and do not pay fees under the proposed rule, but are certified and monitored by the Agency:

- Commercial HMOs/PHCs/EPOs
- Diagnostic Imaging Services
- Medicaid HMOs
- Comprehensive Outpatient Rehabilitation Facilities
- Partial Hospitalization Programs
- Portable X-ray Equipment
- Rehabilitation Agencies

- Rural Health Clinics

Good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues:

Implementing and enforcing the proposed standardized licensing rules will not result in significant increase in the costs to the Agency.

If the rule is challenged there will be litigation costs.

A small number of entities that are licensed to local government entities will be affected by these rules. The impact is expected to be insignificant.

The effect on state revenue other than licensure fees from regulated entities is negligible.

Forms, Definitions and Acronyms: (include or list where they can be found):

Definitions of terms used in these rules are found in Section 408.803, F.S., and in the proposed rule Chapter in Rule 59A-35.030, F.A.C.

Agency Small Business Outreach:

Notice of development of uniform licensure rules was published in the Florida Administrative Weekly and communicated to providers and provider organizations.

Organizations licensed and regulated by the Agency received correspondence detailing the revised procedures and submission requirements resulting from statutory revisions.

Comments Received on Rule (include where they can be found):

No comments were received from persons identifying themselves as representatives of small business concerns.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: [408.819 FS.](#)

LAW IMPLEMENTED: [408.819 FS.](#)

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: January 6, 2010, 1:30 p.m.

PLACE: Agency for Health Care Administration, 2727 Mahan Drive, Building 3, Conference Room A, Tallahassee, FL 32308

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: April Scott, 2727 Mahan Drive, MS #40, Tallahassee, FL 32308, or at (850)410-3400. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: April Scott, 2727 Mahan Drive, MS #40, Tallahassee, FL 32308 or at (850)410-3400

THE FULL TEXT OF THE PROPOSED RULE IS:

HEALTH CARE LICENSING: GENERAL PROVISIONS

59A-35.020 Applicability.

The requirements of Chapter 408, Part II, F.S., and this rule chapter apply to:

- (1) Drug Free Workplace Laboratories as provided under Section 112.0455 and Section 440.102, F.S.;
  - (2) Birth Centers, as provided under Chapter 383, F.S.;
  - (3) Abortion Clinics, as provided under Chapter 390, F.S.;
  - (4) Crisis Stabilization Units, as provided under Parts I and IV of Chapter 394, F.S.;
  - (5) Short Term Residential Treatment Units, as provided under Parts I and IV of Chapter 394, F.S.
  - (6) Residential Treatment Facilities, as provided under Part IV of Chapter 394, F.S.;
  - (7) Residential Treatment Centers for Children and Adolescents, as provided under Part IV of Chapter 394, F.S.;
  - (8) Hospitals, as provided under Part I of Chapter 395, F.S.;
  - (9) Ambulatory Surgical Centers, as provided under Part I of Chapter 395, F.S.;
  - (10) Mobile Surgical Facilities, as provided under Part I of Chapter 395, F.S.;
  - (11) Health Care Risk Managers, as provided under Part I of Chapter 395, F.S.;
  - (12) Nursing Homes, as provided under Part II of Chapter 400, F.S.;
  - (13) Home Health Agencies, as provided under Part III of Chapter 400, F.S.;
  - (14) Nurse Registries, as provided under Part III of Chapter 400, F.S.;
  - (15) Companion Services or Homemaker Services Providers, as provided under Part III of Chapter 400, F.S.;
  - (16) Hospices, as provided under Part IV of Chapter 400, F.S.;
  - (17) Homes for Special Services as provided under Part V of Chapter 400, F.S.;
  - (18) Transitional Living Facilities, as provided under Part V of Chapter 400, F.S.;
  - (19) Prescribed Pediatric Extended Care Centers, as provided under Part VI of Chapter 400, F.S.;
  - (20) Home Medical Equipment Providers, as provided under Part VII of Chapter 400, F.S.;
  - (21) Intermediate Care Facilities for the Developmentally Disabled, as provided under Part VIII of Chapter 400, F.S., F.S.;
  - (22) Health Care Services Pools, as provided under Part IX of Chapter 400, F.S.;
  - (23) Health Care Clinics, as provided under Part X of Chapter 400, F.S., including certificate of exemption;
  - (24) Assisted Living Facilities, as provided under Part I of Chapter 429, F.S.;
  - (25) Adult Family-Care Homes, as provided under Part II of Chapter 429, F.S.;
  - (26) Adult Day Care Centers, as provided under Part III of Chapter 429, F.S.;
  - (27) Clinical Laboratories, as provided under Part I of Chapter 483, F.S.;
  - (28) Multiphasic Health Testing Centers, as provided under Part II of Chapter 483, F.S.;
  - (29) Organ and Tissue Procurement Agencies, as provided under Chapter 381, F.S.
- Rulemaking Authority 408.819 FS. Law Implemented 408.802 FS. History—New \_\_\_\_\_.

#### 59A-35.030 Definitions.

- (1) “Address of record” means the location that is printed on the license and is the address at which the provider is licensed to operate. In the event a license displays multiple locations including branch offices, satellite offices, or off-site locations, the

address of record is the main or principle office address.

(2) “Agency notification” or “Agency request” means the Agency sends notification by:

- (a) Mail or personal delivery to the address of record for a licensee or applicant,
- (b) Mail to an alternative mailing address if requested by the licensee or applicant, or
- (c) Electronic mail if an electronic mail address has been provided.

(3) “Days” means calendar days.

(4) “Management company” means an entity retained by a licensee to administer or direct the operation of a provider. This does not include an entity that serves solely as a lender or lien holder.

Rulemaking Authority 408.819 FS. Law Implemented 408.803 FS. History–New \_\_\_\_\_.

#### 59A-35.040 License Required; Display.

(1) A license is valid only for the licensee, provider, and location for which the license is issued as it appears on the license.

(2) Any request to amend a license must be received by the Agency in advance of the requested effective date as detailed below. Requests to amend a license are not authorized until the license is issued.

(a) Requests to change the address of record must be received by the Agency 60 to 120 days in advance of the requested effective date for the following provider types:

1. Birth Centers, as provided under Chapter 383, F.S.;
  2. Abortion Clinics, as provided under Chapter 390, F.S.;
  3. Crisis Stabilization Units, as provided under Parts I and IV of Chapter 394, F.S.;
  4. Short Term Residential Treatment Units, as provided under Parts I and IV of Chapter 394, F.S.
  5. Residential Treatment Facilities, as provided under Part IV of Chapter 394, F.S.;
  6. Residential Treatment Centers for Children and Adolescents, as provided under Part IV of Chapter 394, F.S.;
  7. Hospitals, as provided under Part I of Chapter 395, F.S.;
  8. Ambulatory Surgical Centers, as provided under Part I of Chapter 395, F.S.;
  9. Nursing Homes, as provided under Part II of Chapter 400, F.S.;
  10. Hospices, as provided under Part IV of Chapter 400, F.S.;
  11. Homes for Special Services as provided under Part V of Chapter 400, F.S.;
  12. Transitional Living Facilities, as provided under Part V of Chapter 400, F.S.;
  13. Prescribed Pediatric Extended Care Centers, as provided under Part VI of Chapter 400, F.S.;
  14. Intermediate Care Facilities for the Developmentally Disabled, as provided under Part VIII of Chapter 400, F.S.;
  15. Assisted Living Facilities, as provided under Part I of Chapter 429, F.S.;
  16. Adult Family-Care Homes, as provided under Part II of Chapter 429, F.S.;
  17. Adult Day Care Centers, as provided under Part III of Chapter 429, F.S.
- (b) Requests to change the address of record must be received by the Agency 21 to 120 days in advance of the requested effective date for the following provider types:
1. Drug Free Workplace Laboratories as provided under Section 112.0455 and Section

440.102, F.S.;

2. Mobile Surgical Facilities, as provided under Part I of Chapter 395, F.S.;

3. Health Care Risk Managers, as provided under Part I of Chapter 395, F.S.;

4. Home Health Agencies, as provided under Part III of Chapter 400, F.S.;

5. Nurse Registries, as provided under Part III of Chapter 400, F.S.;

6. Companion Services or Homemaker Services Providers, as provided under Part III of Chapter 400, F.S.;

7. Home Medical Equipment Providers, as provided under Part VII of Chapter 400, F.S.;

8. Health Care Services Pools, as provided under Part IX of Chapter 400, F.S.;

9. Health Care Clinics, as provided under Part X of Chapter 400, F.S., including certificate of exemption;

10. Clinical Laboratories, as provided under Part I of Chapter 483, F.S.;

11. Multiphasic Health Testing Centers, as provided under Part II of Chapter 483, F.S.;

12. Organ and Tissue Procurement Agencies, as provided under Chapter 381, F.S.

(c) All other requests to amend a license including but not limited to services, licensed capacity, and other specifications which are required to be displayed on the license by authorizing statutes or applicable rules must be received by the Agency 60 to 120 days in advance of the requested effective date. This deadline does not apply to a request to amend hospital emergency services defined in Section 395.1041(2), F.S.

(3) Failure to submit a timely request shall result in a \$500 fine.

(4) A licensee is not authorized to operate in a new location until a license is obtained which specifies the new location. Failure to amend a license prior to a change of the address of record constitutes unlicensed activity.

(5) The licensee shall return the license certificate to the Agency upon the rendition of a final order revoking, cancelling or denying a license, an upon the voluntary discontinuance of operation.

Rulemaking Authority 408.819 FS. Law Implemented 408.804 FS. History—New \_\_\_\_\_.

59A-35.050 Fees Required; Adjustments.

(1) Licensure fees, as defined by authorizing statute or rule, are non-refundable once submitted to the Agency. An applicant may submit a request for refund if monies in excess of required fees are submitted to the Agency. Such requests must be made using State of Florida Department of Financial Services, Application for Refund form number DFS-AA-4, Rev. 0207, incorporated herein by reference, available online at: [http://myfloridacfo.com/aadir/refund\\_application.htm](http://myfloridacfo.com/aadir/refund_application.htm) and submitted to the appropriate licensing unit. The following are examples of excess fee payments that are eligible for refund:

(a) Fees in excess of the required fee amount;

(b) A renewal reminder letter indicates an error in the required fee amount;

(c) An inspection fee is submitted when no inspection fee is required;

(d) An excess fee is submitted as an accredited provider when the licensee or applicant is not accredited; or

(e) An application is returned due to early submission.

(2) When payment for licensure fees has been dishonored, the licensee has 10 days to remit to the Agency the licensure fee plus any applicable fees as provided by law in the form of a money order or cashier's check. In the event that the licensure fee is not paid, the license may be subject to revocation or suspension.

(3) A request for a replacement license must be accompanied by a \$25 fee.

(4) In addition to required application, per-bed, and inspection fees, a request to amend a license must be accompanied by a \$25 fee.

Rulemaking Authority 408.819 FS. Law Implemented 112.0455(17), 383.305(1), 390.14(3), 394.877, 395.044, 395.1097(3), 400.062(3), 400.471(5), 400.506(3), 400.605(2), 400.801(3), 400.805(2), 400.905(2), 400.931(5), 400.980(2), 400.9925(1), 429.07(4), 408.805 FS. History—New \_\_\_\_\_.

#### 59A-35.060 Licensure Application Process.

(1) The applicant must apply for licensure using the program specific forms listed below and AHCA Form 3110-1024, Rev. October 1, 2009, "Health Care Licensing Application Addendum". All forms are incorporated by reference and available online at: [ahca.myflorida.com/Publications/Forms/HQA.shtml](http://ahca.myflorida.com/Publications/Forms/HQA.shtml).

(a) Drug Free Workplace Laboratories as provided under Section 112.0455 and Section 440.102, F.S.; AHCA Form 3170-5001, Rev July 2009.

(b) Birth Centers, as provided under Chapter 383, F.S.; AHCA Form 3130-3001, Rev. July 2009.

(c) Abortion Clinics, as provided under Chapter 390, F.S.; AHCA Form 3130-1000, Rev. July 2009.

(d) Crisis Stabilization Units, as provided under Parts I and IV of Chapter 394, F.S.; AHCA Form 3180-5003, Rev. July 2009.

(e) Short Term Residential Treatment Units, as provided under Parts I and IV of Chapter 394, F.S.; AHCA Form 3180-5003, Rev. July 2009.

(f) Residential Treatment Facilities, as provided under Part IV of Chapter 394, F.S.; AHCA Form 3180-5003, Rev. July 2009.

(g) Residential Treatment Centers for Children and Adolescents, as provided under Part IV of Chapter 394, F.S.; AHCA Form 3180-5004, Rev. July 2009.

(h) Hospitals, as provided under Part I of Chapter 395, F.S.; AHCA Form 3130-8003, Rev. July 2009.

(i) Ambulatory Surgical Centers, as provided under Part I of Chapter 395, F.S.; AHCA Form 3130-2001, Rev. July 2009.

(j) Mobile Surgical Facilities, as provided under Part I of Chapter 395, F.S.; AHCA Form 3130-2001, Rev. July 2009.

(k) Health Care Risk Managers, as provided under Part I of Chapter 395, F.S.; AHCA Form RM-001, Rev. July 2009.

(l) Nursing Homes, as provided under Part II of Chapter 400, F.S.; AHCA Form 3110-6001, Rev. July 2009.

(m) Home Health Agencies, as provided under Part III of Chapter 400, F.S.; AHCA Form 3110-1011, Rev. July 2009.

(n) Nurse Registries, as provided under Part III of Chapter 400, F.S.; AHCA Form 3110-7004, Rev July 2009.

(o) Companion Services or Homemaker Services, as provided under Part III of Chapter 400, F.S.; AHCA Form 3110-1003, Rev. July 2009.

(p) Hospices, as provided under Part IV of Chapter 400, F.S.; AHCA Form 3110-4001, Rev. July 2009.

(q) Home for Special Services as provided under Part V of Chapter 400, F.S.; AHCA Recommended Form, July 2009.

(r) Transitional Living Facilities, as provided under Part V of Chapter 400, F.S.; AHCA Form 3110-9001, Rev. July 2009.

(s) Prescribed Pediatric Extended Care Centers, as provided under Part VI of Chapter 400, F.S.; AHCA Form 3110-8002, Rev. July 2009.

(t) Home Medical Equipment Providers, as provided under Part VII of Chapter 400, F.S.; AHCA Form 3110-1005, Rev. July 2009.

(u) Intermediate Care Facilities for the Developmentally Disabled, as provided under Part VIII of Chapter 400, F.S.; AHCA Form 3110-5003, Rev. July 2009.

(v) Health Care Services Pools, as provided under Part IX of Chapter 400, F.S.; AHCA Form 3110-1010, Rev. July 2009.

(w) Health Care Clinics, as provided under Part X of Chapter 400, F.S.; AHCA Form 3110-0013, Rev. July 2009 or for exempted clinics, AHCA Form 3110-0014, Rev. July 2009.

(x) Assisted Living Facilities, as provided under Part I of Chapter 429, F.S.; AHCA Form 3110-1008, Rev. July 2009.

(y) Adult Family-Care Homes, as provided under Part II of Chapter 429, F.S.; AHCA Form 3180-1022, Rev. July 2009.

(z) Adult Day Care Centers, as provided under Part III of Chapter 429, F.S.; AHCA Form 3180-1004, Rev. July 2009.

(aa) Clinical Laboratories, as provided under Part I of Chapter 483, F.S.; AHCA Form 3170-2004 (renewal), B (initial) or C (change of ownership), Rev. July 2009 or AHCA Form 3170-2004D (addition of specialty or subspecialty).

(bb) Multiphasic Health Testing Centers, as provided under Part II of Chapter 483, F.S.; AHCA Form 3170-4001, Rev. July 2009.

(cc) Organ and Tissue Procurement Agencies, as provided under Chapter 381, F.S.; AHCA Form 3140-2001, July 2009.

(2) The licensure fee must be included with any application. Applications will be returned to the applicant unprocessed if the fee does not accompany the application. Applications from state agencies must include a copy of the posted journal transactions by State Wide Document Number (SWDN) within benefiting Operating Level Organization (OLO) and site.

(3) Applications received more than 120 days prior to the date of license expiration or the effective date will be returned to the applicant unprocessed.

(4) If an applicant, licensee, or controlling interest is required to register or file with the Florida Secretary of State Division of Corporations, the principal, fictitious name and mailing addresses submitted with the licensure application for the applicant, licensee and controlling interests must be the same as the information registered with the Division of

Corporations.

(5) Unresponsive applicant. If certified mail sent to the provider's address of record, or mailing address if applicable, is returned as unclaimed or undeliverable, the Agency will send a copy of the letter by regular mail to the provider's address of record, or mailing address if applicable, with a copy to the applicant's address if different from the provider. The applicant must respond to the request within 14 days of the date of the letter sent by regular mail. If timely response is not received, the application will be subject to withdrawal or denial.

(6) An application is considered complete upon receipt of:

(a) All required documents and information and appropriate fee,

(b) All required background screening results, and

(c) Completion of a satisfactory inspection if required by authorizing statutes or rules.

Satisfactory inspection means no regulatory violations exist, or all prior violations found have been determined by the Agency to be corrected.

(7) A licensure inspection will not be authorized until paragraphs (5)(a) and (5)(b) of this section have been satisfied.

(8) An application for license renewal may only be filed by the licensee.

Rulemaking Authority 408.819 FS. Law Implemented 408.806 FS. History—New \_\_\_\_\_.

59A-35.062 Proof of Financial Ability to Operate.

(1) Proof of financial ability to operate must be demonstrated for initial licensure and change of ownership applications, by submitting AHCA Form 3100-0009, July 2009, Proof of Financial Ability to Operate, incorporated herein by reference, and available online at: [ahca.myflorida.com/Publications/Forms/HQA.shtml](http://ahca.myflorida.com/Publications/Forms/HQA.shtml), as provided under Section 408.810(8), F.S., for the following provider types:

(a) Nursing Home Facilities, as specified in Part II, Chapter 400, F.S.;

(b) Assisted Living Facilities, as specified in Part I, Chapter 429, F.S.;

(c) Home Health Agencies, as specified in Part III, Chapter 400, F.S.;

(d) Hospices, as specified in Part IV, Chapter 400, F.S.;

(e) Adult Day Care Centers, as specified in Part III, Chapter 429, F.S.;

(f) Prescribed Pediatric Extended Care Centers, as specified in Part VI, Chapter 400, F.S.;

(g) Home Medical Equipment Providers, as specified in Part VII, Chapter 400, F.S.;

(h) Intermediate Care Facilities for the Developmentally Disabled, as specified in Part VIII, Chapter 400, F.S.;

(i) Health Care Clinics, as specified in Part X, Chapter 400, F.S.; and

(2) Proof of financial ability must be demonstrated for initial licensure and change of ownership applications for Nurse Registries, as specified in Part III, Chapter 400, F.S., by submitting AHCA Form 3110-7004A, September 2009, Nurse Registry Proof of Financial Ability to Operate, incorporated herein by reference, and available online at: [ahca.myflorida.com/Publications/Forms/HQA.shtml](http://ahca.myflorida.com/Publications/Forms/HQA.shtml).

(3) Definitions. The following definitions apply to this section for proof of financial ability to operate.

(a) "Assumptions" means the basis and rationale used in the financial projections to

estimate the number and type of patients, the method of acquiring patients, the amount of resources needed to serve patients, the method by which these resources will be acquired, the method of recruiting and maintaining staff, the method of collecting revenue and paying expenses, and the basis for anticipated salaries and employee benefits.

(b) "Charity care" means the term as defined in Section 409.911, F.S.

(c) "Contingency funding" means a source of funding available to the licensee or applicant to cover the cost of events not considered in the financial projections, including, but not limited to, a drop in patient volume, a delay in Medicare and/or Medicaid certification, major repairs, purchase of capital equipment. The contingency fund will be a minimum of one month's average operating expense over the first year of operations.

(d) "Contractual adjustments" means the difference in the established charges or rates of the provider and the rates negotiated by Medicare, Medicaid, HMO/PPOs, and Insurers.

(e) "Financial instability" means the provider cannot meet its financial obligations. Evidence such as the issuance of bad checks, an accumulation of delinquent bills, or inability to meet current payroll needs shall constitute prima facie evidence that the ownership of the provider lacks the financial ability to operate. Evidence shall also include the Medicare or Medicaid program's indications or determination of financial instability or fraudulent handling of government funds by the provider.

(f) "Financial projections" means the expected operating results of the applicant as presented on AHCA Form 3100-0009, July 2009.

(g) "Full time equivalent" or "FTE" means a measure of full-time employment of 40 hours per week (1FTE = 40 hours per week or 2,080 hours annually).

(h) "Generally Accepted Accounting Principles" or "GAAP" means the term as defined in Rule 61H1-20.007, F.A.C., Department of Business and Professional Regulation, Board of Accountancy.

(i) "Liquid assets" means assets of the licensee or applicant that can easily and quickly be converted to cash such as publicly traded stocks, bonds, certificates of deposit, and money market accounts.

(j) "Net patient service revenue" means patient service revenue minus deductions from revenue. Deductions from revenue include contractual adjustments and charity care.

(k) "Operating expense" means total expenses incurred through the normal course of business.

(l) "Operating margin" means a measure of profitability and is calculated as follows: 
$$\frac{[\text{Net Patient Service Revenue} - \text{Operating Expenses}]}{\text{Net Patient Service Revenue}} = \text{Operating Margin}.$$

(m) "Patient service revenue" means the total charge for a service provided.

(n) "Pre-opening costs" means the costs necessary to begin operations including advertising, equipment purchases, legal fees, accounting fees, consulting fees, pre-paid insurance, pre-paid rent, licensure fees, deposits (rent, utilities), requirement, staffing, and training.

(o) "Working capital" means the cash needed to sustain operations until a positive cash flow is achieved. (Largest cumulative cash need from Schedule 7 Line 21 of AHCA

Form 3100-0009, July 2009).

(4) All documents required under this section must be prepared in accordance with generally accepted accounting principles and must be compiled and signed by a certified public accountant.

(5) A pro forma balance sheet, a pro forma cash flow statement and a pro forma income and expense statement for the first 2 years of operation which provide evidence of having sufficient assets, credit, and projected revenues to cover liabilities and expenses must be included. An application for change of ownership may elect not to complete the 2nd year of operations on AHCA Form 3100-0009, July 2009, if all of the following apply:

(a) As of the date of the application, the entity subject to the change of ownership has been licensed for at least 5 consecutive years;

(b) The applicant's assets, credit, and projected revenues meet or exceed projected liabilities and expenses by the end of the first year;

(c) The largest cumulative cash need on Schedule 7, Line 21 on AHCA Form 3100-0009, July 2009 occurs prior to month 12.

(6) The applicant shall have demonstrated financial ability to operate if the applicant's assets, credit, and projected revenues meet or exceed projected liabilities and expenses.

(7) An applicant for renewal of a license shall not be required to provide proof of financial ability to operate, unless the licensee or applicant has demonstrated financial instability. If an applicant or licensee has shown signs of financial instability at any time, the Agency may require the applicant or licensee to provide proof of financial ability to operate by submission of:

(a) AHCA Form 3100-0009, July 2009, Proof of Financial Ability Form, that includes a balance sheet and income and expense statement for the next 2 years of operation which provide evidence of having sufficient assets, credit, and projected revenues to cover liabilities and expenses, and

(b) Documentation of correction of the financial instability, including but not limited to, evidence of the payment of any bad checks, delinquent bills or liens. If complete payment cannot be made, evidence must be submitted of partial payment along with a plan for payment of any liens or delinquent bills. If the lien is with a government agency or repayment is ordered by a federal or state court, an accepted plan of repayment must be provided.

Rulemaking Authority 408.819 FS. Law Implemented 408.806, 408.810 FS. History—New \_\_\_\_\_.

59A-35.064 Initial Application.

A license will not be issued to an applicant that has had a license revoked by the Agency in the five years prior to the date of the application.

Rulemaking Authority 408.819 FS. Law Implemented 408.815 FS. History—New \_\_\_\_\_.

59A-35.065 License Renewal.

(1) An application for licensure renewal must be submitted to the Agency at least 60 but no more than 120 days prior to the date of expiration of the license. It is the responsibility of the licensee to submit an application within the specified timeframe regardless of

whether the licensee actually receives the reminder notification by the Agency of the impending expiration of the license.

(2) If an application for renewal is received after a license has expired, the renewal application will be rejected and returned to the applicant. Continuation of operation after a license expires constitutes unlicensed activity as specified in Section 408.812(2), F.S., unless otherwise permitted by law. In order to resume operation, an initial application must be submitted and a new license issued.

Rulemaking Authority 408.819 FS. Law Implemented 408.806,408.812 FS. History–New \_\_\_\_\_.

#### 59A-35.070 Change of Ownership.

(1) Effective dates of change of ownership.

(a) A change of ownership application must include the effective date of the change of ownership.

(b) The change of ownership effective date cannot be prior to the date the application is received by the Agency. Failure to submit an application for licensure prior to the effective date of a change of ownership to a different legal entity constitutes unlicensed activity.

(c) The effective date of the change of ownership shall not be extended more than 60 days from the effective date reported on the application; written notification of a change in the effective date must be received by the Agency prior to the originally reported effective date. The Agency will deem the application withdrawn if the change of ownership does not occur within 60 days of the reported effective date.

(2) All required application documents and information must be received with the application or within 21 days of the request by the Agency with the exception of the transferee's proof of right to occupy if required, which must be received by the Agency within 10 days after the effective date.

(3) If fines are not specified in authorizing statutes for the provider type as specified in Section 408.803(3), F.S., the failure to submit a change of ownership application and license fee at least 60 days prior to the change of ownership effective date will result in a \$50 per day late fee charged to the licensee up to a maximum of \$3,000.

(4) When a change of ownership application is submitted during the review of a renewal licensure application, the pending renewal will be administratively withdrawn from review if the change of ownership application is approved with an effective date prior to the expiration of the license.

(5) Expiration of a license prior to the approval of the change of ownership application, when no renewal application has been submitted, will result in the denial of a change of ownership application.

(6) If the applicant has not been issued the license on the effective date of the change of ownership, documentation must be submitted that provides for continuation of operation of the licensee for those days between the date of the change of ownership and the date the applicant is licensed by the Agency.

Rulemaking Authority 408.819 FS. Law Implemented 408.803(3), 408.803(5), 408.806, 408.807, 408.810, 408.813 FS. History– New \_\_\_\_\_.

### 59A-35.080 License Categories.

(1) Provisional License. If a license expires while an action to deny or revoke the license is pending, or while an action to withdraw a renewal application from further consideration is pending, and renewal applications are filed, the Agency may issue a provisional license for no more than two years. The provisional license shall identify the pending action. The provisional license will expire when the Agency action is final. The provisional license does not affect the revocation or denial action or constitute a defense on behalf of the licensee or applicant.

(2) Inactive License. An inactive license may be issued, as provided in Sections 408.808 (3) and 408.831(4), F.S.

(a) Requests for an inactive license must be submitted to the Agency as a written request that includes:

1. The reason that the provider will become inactive,
2. The proposed plan for transferring or discharging clients,
3. A plan for resuming services,
4. The date by which services are expected to resume, and
5. Evidence of a State of Emergency or disaster if applicable.

(b) The inactive license will not be issued until all clients have been properly transferred or discharged. The expiration date of the inactive license will be issued for a period not to exceed 12 months. An application to extend the inactive period for an additional 12 months must be submitted 30 days prior to the expiration of the inactive license.

(c) Notification to reactivate the license and a complete licensure renewal application must be submitted to the Agency at least 90 days prior to the requested reactivation date. An onsite inspection may be required prior to reactivation. Licensure fees will be prorated based on the provider's standard fee divided by the number of months remaining in the licensure cycle.

Rulemaking Authority 408.819 FS. Law Implemented 408.808(2), (3), 408.831(4) FS. History--  
New \_\_\_\_\_.

### 59A-35.090 Background Screening.

(1) Definitions:

(a) "Arrest Report" means the detailed narrative written by the arresting law enforcement officer explaining the circumstances of the arrest.

(b) "Disposition" means the sentencing or other final settlement of a criminal case which shall include, regardless of adjudication, a plea of nolo contendere or guilty, or a conviction by a judge or jury.

(c) "Disqualifying Offense" means any criminal offense prohibited in Section 435.03 or 435.04, F.S.

(d) "Exemption from Disqualification" means an exemption granted by the Agency following a review of the Application for Exemption, AHCA Form 3010-0019, October 2009, hereby incorporated by reference, and an informal hearing, if appropriate, during which the individual must present clear and convincing evidence to support a reasonable belief that he or she has been rehabilitated and does not present a danger to the health,

safety, and welfare of the patient or individual as described in Section 435.07, F.S.

(e) "FBI" means the Federal Bureau of Investigation.

(f) "FDLE" means the Florida Department of Law Enforcement.

(g) "Level 1 Screening" means an assessment of the criminal history record obtained from the FDLE to determine whether screened individuals have any disqualifying offenses pursuant to Section 435.03, F.S. An analysis and review of court dispositions and arrest reports may be required to make a final determination.

(h) "Level 2 Screening" means an assessment of the criminal history record obtained through a fingerprint search through the FDLE and FBI to determine whether screened individuals have any disqualifying offenses pursuant to Section 435.04, F.S. An analysis and review of court dispositions and arrest reports may be required to make a final determination.

(2) Processing Screening Requests, Required Documents and Fees.

(a) A provider may conduct Level 1 background screening for employees either directly through the FDLE or through the Agency. Requests through the Agency must be submitted using the Agency's background screening website at: [ahca.myflorida.com/MCHQ/Long\\_Term\\_Care/Background\\_Screening/logon.shtml](http://ahca.myflorida.com/MCHQ/Long_Term_Care/Background_Screening/logon.shtml). A user code and password is required for use of this site. A request for a Level 1 screening through the Agency must be accompanied by the cost required by the FDLE to pay for the cost of processing the request.

(b) Persons required to undergo Level 2 background screening must submit an Applicant Fingerprint Card, incorporated herein by reference, and available from the appropriate Agency licensure unit or by submitting a request to: [bgscreen@ahca.myflorida.com](mailto:bgscreen@ahca.myflorida.com). A health care provider licensed pursuant to this chapter may submit a Level 2 request and make payment electronically or by mail. A request for a Level 2 screening through the Agency must be accompanied by the cost required by the FDLE and the FBI to pay for the cost of processing the request.

1. Electronic submissions must be made through the Agency's background screening web site. The completed fingerprint card must be mailed to the Background Screening Unit at 2727 Mahan Drive, MS 40, Tallahassee, Florida 32308.

2. Mailed requests must be submitted to the Background Screening Unit at 2727 Mahan Drive, MS 40, Tallahassee, Florida 32308.

3. If a fingerprint card is rejected by the FBI due to illegible prints, the individual must submit a second fingerprint card in accordance with the guidelines established by the FBI. The second card must be submitted to the Agency within 21 days of the Agency's request or the screening request will be considered withdrawn. If withdrawn, the individual must submit a new fingerprint card accompanied by the required fee.

(3) Screening of Administrators, Owners, Chief Financial Officers and Controlling Interests.

(a) Persons required to undergo Level 2 background screening in accordance with a licensure application, must submit the completed and signed fingerprint card and screening fee with an application for licensure to the appropriate Agency licensing unit.

(b) As an alternative to a new background screen, persons required to undergo Level 2

background screening in accordance with Section 408.809, F.S., that have been screened within the previous 5 years by the Agency, Department of Health, Department of Children and Family Services, Agency for Persons with Disabilities or Department of Financial Services, or if the applicant has a certificate of authority to operate a continuing care retirement community, may submit to the appropriate Agency licensing unit:

1. A copy of the background screening result, and

2. An Affidavit of Compliance with Background Screening Requirements, AHCA Form 3100-0008, October 2009, herein incorporated by reference, and available from the Agency for Health Care Administration at: [ahca.myflorida.com/Publications/Forms/HQA.shtml](http://ahca.myflorida.com/Publications/Forms/HQA.shtml).

(4) Results of Screening and Notification.

(a) Results of background screening requests will be provided through the Agency's secure web site.

(b) When the dispositional information of a potentially disqualifying offense is unclear or not present in a Level 1 criminal history, a notice will be sent to the requesting licensee or entity to obtain the arrest report and dispositional information from the individual being screened. The information must then be forwarded to the Agency for a final determination or show such information cannot be obtained. If a Level 2 criminal history is incomplete, a certified letter will be sent to the individual being screened requesting the arrest report and dispositional information. If the letter is returned unclaimed, a copy of the letter will be sent regular mail. For Level 1 and Level 2, the missing information must be filed with the Agency within 30 days of the Agency's request, or the individual is subject to automatic disqualification in accordance with Section 435.05(1)(d), F.S.

(c) When the Agency or the provider obtains information indicating an individual has a disqualifying offense pursuant to Chapter 435, F.S., the individual is prohibited from working in a position that requires background screening until such time as the individual has applied for and been determined to be exempt from such disqualification.

(d) An alleged offense is not disqualifying until such time as there has been a disposition.

(5) Exemption from Disqualification.

(a) Requests for an exemption from disqualification shall be submitted in writing to the Agency using the "Application for Exemption from Disqualification" AHCA Form 3010-0019, October 2009. This form may be obtained from the Agency for Health Care Administration, Background Screening Unit, 2727 Mahan Drive, MS #40, Tallahassee, Florida 32308 or through the Agency's website at: [ahca.myflorida.com/MCHQ/Long\\_Term\\_Care/Background\\_Screening/exemption.shtml](http://ahca.myflorida.com/MCHQ/Long_Term_Care/Background_Screening/exemption.shtml).

(b) Individuals that are licensed or certified in a profession under the jurisdiction of the Department of Health must apply for an exemption to the appropriate licensing or certifying board at the Department of Health unless the individual will be working in a position other than for which they are licensed or certified.

(c) The individual shall bear the burden of setting forth clear and convincing evidence of rehabilitation which includes any information indicating the individual presents no danger to the safety or well being of others. The individual must present such evidence as arrest reports, court dispositions, parole/probation information, letters from employers,

and personal references. Other documents that may be included are records of successful participation in a rehabilitation program, further education or training, community or church involvement, special awards or recognition or testimony by self or others.

(d) An "Application for Exemption" will not be reviewed until all required documents are obtained. If the application is deemed incomplete after 30 days of receipt by the Agency, the application will be withdrawn.

(e) In deciding whether to grant or deny an exemption request, the Agency shall consider factors such as the facts and circumstances surrounding the disqualifying offense(s), the nature of the harm to the victim, whether the individual is on probation or parole, whether restitution has been made, the length of time since the last offense, the history of the person since the disqualifying offense(s), work experience, personal references, performance evaluations, probation or parole violations, education, other evidence of rehabilitation, and the honesty and candor of the disqualified individual.

(f) Any exemption granted by the Agency is limited to the disqualifying offense or offenses committed prior to the date of the request for exemption.

(g) The Agency shall void any exemption granted to an individual when there is evidence that information which would adversely affect the decision was not made available at the time of the determination or there is a disposition of a new disqualifying offense since the date the exemption was granted.

(6) Unless otherwise specified, information requested pursuant to this section must be filed with the Agency within 21 days of the Agency's request.

Rulemaking Authority 408.819 FS. Law Implemented 394.4572, 400.215, 400.512, 400.6065, 400.935, 400.964, 400.980, 400.991, 408.809, 408.810, 429.174, 429.67, 429.919 FS. History—  
New \_\_\_\_\_.

### 59A-35.100 Minimum Licensure Requirements.

#### (1) Provider location.

(a) A licensee must maintain proper authority for operation of the provider at the address of record. If such authority is denied, revoked or otherwise terminated by the local zoning or code enforcement authority, the Agency may deny or revoke an application or license, or impose sanctions.

(b) With the exception of federally authorized clinical laboratories, more than one license will not be issued to operate the same provider types at the identical physical or street address. Existing licensees must comply with this paragraph upon license renewal.

(2) Discontinuance of operation; unresponsive licensee. If certified mail sent to the provider's address of record or mailing address if applicable, is returned as unclaimed or undeliverable, the Agency will send a copy of the letter by regular mail to the provider's address of record or mailing address if applicable, with a copy to the licensee's address if different from the provider. The licensee must respond to the request within 14 days. If timely response is not received, the provider will be determined to have discontinued operation and the license shall be subject to revocation.

(3) If a licensee that is required to register or file with the Florida Secretary of State Division of Corporations is administratively dissolved, the licensee is presumed to have discontinued operation and shall be subject to revocation.

Rulemaking Authority 408.819 FS. Law Implemented 408.810 FS. History–New \_\_\_\_\_.

59A-35.110 Reporting Requirements; Electronic Submission.

(1) During the two year licensure period, any change or expiration of any information that is required to be reported under Chapter 408, Part II or authorizing statutes for the provider type as specified in Section 408.803(3), F.S., during the license application process must be reported to the Agency within 21 days of occurrence of the change, including:

(a) Insurance coverage renewal,

(b) Bond renewal,

(c) Change of administrator or the similarly titled person who is responsible for the day-to-day operation of the provider,

(d) Annual sanitation inspections,

(e) Fire inspections,

(f) Approval of revisions to emergency management plans.

(2) Electronic submission of information.

(a) The following required information must be reported through the Agency's Internet site at [ahca.myflorida.com/reporting/index.shtml](http://ahca.myflorida.com/reporting/index.shtml):

1. Nursing homes:

a. Semi-annual staffing ratios required pursuant to Section 400.141(15), F.S., and Rule 59A-4.103, F.A.C.

b. Adverse incident reports required pursuant to Sections 400.147(7) and (8), F.S., and Rule 59A-4.123, F.A.C.

c. Liability claim reports required pursuant to Section 400.147(9), F.S., and Rule 59A-4.123, F.A.C.

2. Assisted living facilities:

a. Adverse incident reports required pursuant to Sections 429.23(3) and (4), F.S., and Rule 58A-5.0241, F.A.C.

b. Liability claim reports required pursuant to Section 429.23(5), F.S., and Rule 58A-5.0242, F.A.C.

(b) The licensee must retain the receipt issued from the Internet site indicating that their transaction was accepted.

(c) If the Agency's Internet site is temporarily out of service, the required reports may be submitted by mail or facsimile as follows:

1. Semi-annual staffing ratios and liability claim reports are sent to the Agency for Health Care Administration, Central Systems Management Unit, 2727 Mahan Drive, MS 47, Tallahassee, FL 32308 or facsimile to (850)487-0470.

2. Adverse incident reports are sent to the Agency for Health Care Administration, Florida Center for Health Information and Policy Analysis, 2727 Mahan Drive, MS 16, Tallahassee, FL 32308 or facsimile to (850)922-2217.

Rulemaking Authority 408.806(8), 408.819 FS. Law Implemented 408.806, 408.810 FS. History–New \_\_\_\_\_.

59A-35.120 Inspections.

(1) When regulatory violations are identified by the Agency:

(a) Deficiencies must be corrected within 30 days of the date the Agency sends the deficiency notice to the provider, unless an alternative timeframe is required or approved by the Agency.

(b) The Agency may conduct an unannounced follow-up inspection or off-site review to verify correction of deficiencies at any time.

(2) If an inspection is completed through off-site record review, any records requested by the Agency in conjunction with the review, must be received within 7 days of request and provided at no cost to the Agency. Each licensee shall maintain the records including medical and treatment records of a client and provide access to the Agency.

(3) Providers that are exempt from Agency inspections due to accreditation oversight as prescribed in authorizing statutes must provide:

(a) Documentation from the accrediting agency including the name of the accrediting agency, the beginning and expiration dates of the provider's accreditation, accreditation status and type must be submitted at the time of license application, or within 21 days of accreditation.

(b) Documentation of each accreditation inspection including the accreditation organization's report of findings, the provider's response and the final determination must be submitted within 21 days of final determination or the provider is no longer exempt from Agency inspection.

Rulemaking Authority 408.819 FS. Law Implemented 408.811 FS. History—New \_\_\_\_\_.

59A-35.140 Administrative Fines.

Fines may be assessed for any violation of Chapter 408, Part II or this rule. Unless otherwise specified in Chapter 408, Part II, authorizing statutes or applicable rules for the provider type as specified in Section 408.803(3), F.S., a \$500 fine may be imposed for each violation. Each day a violation occurs constitutes a separate violation and is subject to a separate fine, up to a maximum of \$5,000.

Rulemaking Authority 408.819 FS. Law Implemented 408.803(3), 408.813 FS. History—New \_\_\_\_\_.

59A-35.150 Moratorium; Emergency Suspension.

In addition to other remedies permitted by law, violation of a moratorium issued by the Agency is subject to a fine of \$500 per day until the violation is corrected.

Rulemaking Authority 408.819 FS. Law Implemented 408.813, 408.814 FS. History—New \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Molly McKinstry, Bureau Chief, Long Term Care Services

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Thomas W. Arnold, Secretary, Agency for Health Care Administration

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 10, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 22, 2008