

/\* Florida, part 2 \*/

384.286 Temporary leave.-Persons who have been hospitalized, placed in another health care or residential facility, or isolated in their residences may be granted a short term temporary leave at the discretion of the department or its authorized representatives provided the department determines that the emergency leave will be closely monitored and will not endanger the public health. Temporary leave may be granted for therapeutic purposes, in the event of death or critical illness in the person's family, or for another emergency.

384.288 Fees and other compensation; payment by board of county commissioners.-

(1) For the services required to be performed under the provisions of ss. 384.27, 384.28, and 384.281, compensation shall be paid as follows:

(a) The sheriff shall receive the same fees and mileage as are prescribed for like services in criminal cases.

(b) The counsel appointed by the court to represent an indigent person shall receive such reasonable compensation as is fixed by the court appointing him.

(2) All court-related fees, mileage, and charges shall be taxed by the court as costs in each proceeding and shall be paid by the board of county commissioners out of the general fund or fine and forfeiture fund of the county.

384.29 Confidentiality.-

(1) All information and records held by the department or its authorized representatives relating to known or suspected cases of sexually transmissible diseases are strictly confidential and exempt from the provisions of s. 119.07(1). This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14. Such information shall not be released or made public by the department or its authorized representatives, or by a court or parties to a lawsuit upon revelation by subpoena, except under the following circumstances:

(a) When made with the consent of all persons to which the information applies;

(b) When made for statistical purposes, and medical or epidemiologic information is summarized so that no person can be identified and no names are revealed;

(c) When made to medical personnel, appropriate state agencies, public health agencies, or courts of appropriate jurisdiction, to enforce the provisions of this chapter or s. 775.0877 and related rules;

- (d) When made in a medical emergency, but only to the extent necessary to protect the health or life of a named party, or an injured officer, firefighter, paramedic, or emergency medical technician, as provided in s. 796.08(6); or
- (e) When made to the proper authorities as required by chapter 415.
- (2) When disclosure is made pursuant to a subpoena, the court shall seal such information from further disclosure, except as deemed necessary by the court to reach a decision, unless otherwise agreed to by all parties. Except as provided in this section, such information that is disclosed pursuant to a subpoena is confidential and exempt from the provisions of s. 119.07(1). This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.
- (3) No employee of the department or its authorized representatives shall be examined in a civil, criminal, special, or other proceeding as to the existence or contents of pertinent records of a person examined or treated for a sexually transmissible disease by the department or its authorized representatives, or of the existence or contents of such reports received from a private physician or private health facility, without the consent of the person examined and treated for such diseases, except in proceedings under ss. 384.27 and or involving offenders pursuant to s. 775.0877.

#### 384.30 Minors' consent to treatment.-

- (1) The department and its authorized representatives, each physician licensed to practice medicine under the provisions of chapter 458 or chapter 459, each health care professional licensed under the provisions of chapter 464 who is acting pursuant to the scope of his license, and each public or private hospital, clinic, or other health facility may examine and provide treatment for sexually transmissible diseases to any minor, if the physician, health care professional, or facility is qualified to provide such treatment. The consent of the parents or guardians of a minor is not a prerequisite for an examination or treatment.
- 1(2) The fact of consultation, examination, and treatment of a minor for a sexually transmissible disease is confidential and exempt from the provisions of s. 119.07(1) and shall not be divulged in any direct or indirect manner, such as sending a bill for services rendered to a parent or guardian, except as provided in s. 384.29. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

#### 384.31 Serological testing of pregnant women; duty of the

attendant.-Every person, including every physician licensed under chapter 458 or chapter 459 or midwife licensed under chapter 464 or chapter 467, attending a pregnant woman for conditions relating to pregnancy during the period of gestation and delivery shall take or cause to be taken a sample of venous blood at a time or times specified by the department. Each sample of blood shall be tested by a laboratory approved for such purposes under part I of chapter 483 for sexually transmissible diseases as required by rule of the department.

#### 384.32 Prisoners.-

(1) The department and its authorized representatives may, at its discretion, enter any state, county, or municipal detention facility to interview, examine, and treat any prisoner for a sexually transmissible disease. Any such state, county, or municipal detention facility shall cooperate with the department and its authorized representatives to provide such space as is necessary for the examination and treatment of all prisoners suffering from or suspected of having a sexually transmissible disease.

(2) Nothing in this section shall be construed as relieving the Department of Corrections, counties, or municipalities of their primary responsibility for providing medical treatment for prisoners, including treatment for sexually transmissible diseases.

384.33 Rules. The department may adopt rules carry out the provisions of this chapter.

#### 384.34 Penalties.-

(1) Any person who violates the provisions of s. 384.24 is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person who violates the provisions of s. 384.26 or s. 384.29 is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Any person who maliciously disseminates any false information or report concerning the existence of any sexually transmissible disease is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) Any person who violates the provisions of the to department's rules pertaining to sexually transmissible diseases may be punished by a fine not to exceed \$500 for each violation. Any penalties enforced under this subsection shall be in addition to other penalties provided by this act.

402.41 Educational materials and training concerning human immunodeficiency virus infections and acquired immune deficiency syndrome.-The Department of Health and Rehabilitative Services shall develop educational materials and training about the transmission, control, and prevention of human immunodeficiency virus infections and acquired immune deficiency syndrome and other communicable diseases relevant for use in those facilities licensed under the provisions of this chapter.

408.033 Local and state health planning.-

(1) LOCAL HEALTH COUNCILS.

(a) Local health councils are hereby established as public or private nonprofit agencies serving the counties of a district of the department. The members of each council shall be appointed in an equitable manner by the county commissions having jurisdiction in the respective district. Each council shall be composed of a number of persons equal to 1 1/2 times the number of counties which compose the district or 12 members, whichever is greater. Each county in a district shall be entitled to at least one member on the council. The balance of the membership of the council shall be allocated among the counties of the district on the basis of population rounded to the nearest whole number; except that in a district composed of only two counties, no county shall have fewer than four members. The appointees shall be representatives of health care providers, health care purchasers, and nongovernmental health care consumers, but not excluding elected government officials. The members of the consumer group shall include a representative number of persons over 60 years of age. A majority of council members shall consist of health care purchasers and health care consumers. The local health council shall provide each county commission a schedule for appointing council members to ensure that council membership complies with the requirements of this paragraph. The members of the local health council shall elect a chairman. Members shall serve for terms of 2 years and may be eligible for reappointment.

(b) Each local health council shall:

1. Develop a district health plan that is consistent with the objectives and strategies in the state health plan, but that shall permit each local health council to develop strategies and set priorities for implementation based on its unique local health needs. The district health plan must contain preferences for the development of health services and facilities, which must be considered by the department in its review of certificate-of-need applications. The district health plan shall be submitted to the department and updated periodically. The district health plans shall use a uniform format and be submitted to the

department according to a schedule developed by the department in conjunction with the Statewide Health Council and the local health councils. The schedule must provide for coordination between the development of the state health plan and the district health plans and for the development of district health plans by major sections over a multiyear period. The elements of a district plan which are necessary to the review of certificate-of-need applications for proposed projects within the district shall be adopted by the department as a part of its rules.

2. Advise the department on health care issues and resource allocations.

3. Promote public awareness of community health needs, emphasizing health promotion and cost-effective health service selection.

4. Collect data and conduct analyses and studies related to health care needs of the district, including the needs of medically indigent persons, and assist the department and other state agencies in carrying out data collection activities that relate to the functions in this subsection.

5. Monitor the onsite construction progress, if any, of certificate-of-need approved projects and report council findings to the department on forms provided by the department.

6. Advise and assist any regional planning councils within each district that have elected to address health issues in their strategic regional policy plans with the development of the health element of the plans to address the health goals and policies in the State Comprehensive Plan.

7. Advise and assist local governments within each district on the development of an optional health plan element of the comprehensive plan provided in chapter 163, to assure compatibility with the health goals and policies in the State Comprehensive Plan and district health plan. To facilitate the implementation of this section, the local health council shall annually provide the local governments in its service area, upon request, with:

a. A copy and appropriate updates of the district health plan;

b. A report of hospital and nursing home utilization statistics for facilities within the local government jurisdiction; and

c. Applicable department rules and calculated need methodologies for health facilities and services regulated under s. 381.704 for the district served by the local health council.

8. Monitor and evaluate the adequacy, appropriateness, and effectiveness, within the district, of local, state, federal, and private funds distributed to meet the needs of the medically indigent and other underserved population groups.

9. In conjunction with the Department of Health and

Rehabilitative Services and Statewide Health Council, plan for services at the local level for persons infected with the human immunodeficiency virus.

10. Provide technical assistance to encourage and support activities by providers, purchasers, consumers, and local, regional, and state agencies in meeting the health care goals, objectives, and policies adopted by the local health council.

11. Provide the department with data required by rule for the review of certificate-of-need applications and the projection of need for health services and facilities in the district.

(c) Local health councils may conduct public hearings pursuant to s. 381.709(3)(b).

(d) Each local health council shall enter into a memorandum of agreement with each regional planning council in its district that elects to address health issues in its strategic regional policy plan. In addition, each local health council shall enter into a memorandum of agreement with each local government that includes an optional health element in its comprehensive plan. Each memorandum of agreement must specify the manner in which each local government, regional planning council, and local health council will coordinate its activities to ensure a unified approach to health planning and implementation efforts.

(e) Local health councils may employ personnel to carry out the councils' purposes. Such personnel shall possess qualifications and be compensated in a manner commensurate with comparable positions in the Career Service System. However, such personnel shall not be deemed to be state employees.

(f) Personnel of the local health councils shall provide an annual orientation to council members about council member responsibilities. The orientation shall include presentations and participation by department staff.

(g) Each local health council is authorized to accept and receive, in furtherance of its health planning functions, funds, grants, and services from governmental agencies and from private or civic sources and to perform studies related to local health planning in exchange for such funds, grants, or services. Each local health council shall, no later than January 30 of each year, render an accounting of the receipt and disbursement of such funds received by it to the department. The department shall consolidate all such reports and submit such consolidated report to the Legislature no later than March 1 of each year. Funds received by a local health council pursuant to this paragraph shall not be deemed to be a substitute for, or an offset against, any funding provided pursuant to subsection (3).

(2) STATEWIDE HEALTH COUNCIL.-The Statewide Health Council is hereby established as a state-level comprehensive health planning

and policy advisory board. For administrative purposes, the council shall be located within the agency. The Statewide Health Council shall be composed of: the State Health Officer; the Deputy Director for Health Policy and Cost Control and the Deputy Director for Health Quality Assurance of the department; the director of the Health Care Board; the Insurance Commissioner or his designee; the Vice Chancellor for Health Affairs of the Board of Regents; three chairmen of regional planning councils, selected by the regional planning councils; five chairmen of local health councils, selected by the local health councils; four members appointed by the Governor, one of whom is a consumer over 60 years of age, one of whom is a representative of organized labor, one of whom is a physician, and one of whom represents the nursing home industry; five members appointed by the President of the Senate, one of whom is a representative of the insurance industry in this state, one of whom is the chief executive officer of a business with more than 300 employees in this state, one of whom represents the hospital industry, one of whom is a primary care physician, and one of whom is a nurse, and five members appointed by the Speaker of the House of Representatives, one of whom is a consumer who represents a minority group in this state, one of whom represents the home health care industry in this state, one of whom is an allied health care professional, one of whom is the chief executive officer of a business with fewer than 25 employees in this state, and one of whom represents a county social services program that provides health care services to the indigent. Appointed members of the council shall serve for 2-year terms commencing October 1 of each even-numbered year. The council shall elect a president from among the members who are not state employees. The Statewide Health Council shall:

(a) Advise the Governor, the Legislature, and the department on state health policy issues, state and local health planning activities, and state health regulation programs;

(b) Prepare a state health plan that specifies subgoals, quantifiable objectives, strategies, and resource requirements to implement the goals and policies of the health element of the State Comprehensive Plan. The plan must assess the health status of residents of this state; evaluate the adequacy, accessibility, and affordability of health services and facilities; assess government-financed programs and private health care insurance coverages; and address other topical local and state health care issues. Within 2 years after the health element of the State Comprehensive Plan is amended, and by July 1 of every 3rd year, if it is not amended, the Statewide Health Council shall submit the state health plan to the Executive Office of the Governor,

the secretary of the department, the President of the Senate, and the Speaker of the House of Representatives;

(c) Promote public awareness of state health care issues and, in conjunction with the local health councils, conduct public forums throughout the state to solicit the comments and advice of the public on the adequacy, accessibility, and affordability of health care services in this state and other health care issues;

(d) Consult with local health councils, the Health Care Cost Containment Board, the Department of Insurance, the Department of Health and Rehabilitative Services, and other appropriate public and private entities, including health care industry representatives regarding the development of health policies;

(e) Serve as a forum for the discussion of local health planning issues of concern to the local health councils and regional planning councils;

(f) Review district health plans for consistency with the State Comprehensive Plan and the state health plan;

(g) Review the health components of agency functional plans for consistency with the health element of the State Comprehensive Plan, advise the Executive Office of the Governor regarding inconsistencies, and recommend revisions to agency functional plans to make them consistent with the State Comprehensive Plan;

(h) Review any strategic regional plans that address health issues for consistency with the health element of the State Comprehensive Plan, advise the Executive Office of the Governor regarding inconsistencies, and recommend revisions to strategic regional policy plans to make them consistent with the State Comprehensive Plan;

(i) Assist the Department of Community Affairs in the review of local government comprehensive plans to ensure consistency with policy developed in the district health plans;

(j) With the assistance of the local health councils, conduct public forums and use other means to determine the opinions of health care consumers, providers, payers, and insurers regarding the state's health care goals and policies and develop suggested revisions to the health element of the State Comprehensive Plan. The council shall submit the proposed revisions to the health element of the State Comprehensive Plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 1993, and shall widely circulate the proposed revisions to affected parties. The council shall periodically assess the progress made in achieving the goals and policies contained in the health element of the State Comprehensive Plan and report to the department, the Governor, the President of the Senate, and the Speaker of the House of Representatives; and



(k) Conduct any other functions or studies and analyses falling under the duties listed above.

(3) FUNDING.

(a) The Legislature intends that the cost of local health councils and the Statewide Health Council be borne by application fees for certificates of need and by assessments on selected health care facilities subject to facility licensure by the Agency for Health Care Administration, including abortion clinics, adult congregate living facilities, ambulatory surgical centers, birthing centers, clinical laboratories except community nonprofit blood banks, home health agencies, hospices, hospitals, intermediate care facilities for the developmentally disabled, nursing homes, and multiphasic testing centers and by assessments on organizations subject to certification by the agency pursuant to chapter 641, part III, including health maintenance organizations and prepaid health clinics.

(b)1. A hospital licensed under chapter 395, a nursing home licensed under chapter 400, and an adult congregate living facility licensed under chapter 400 shall be assessed an annual fee based on number of beds.

2. All other facilities and organizations listed in paragraph (a) shall each be assessed an annual fee of \$150.

3. Facilities operated by the Department of Health and Rehabilitative Services or the Department of Corrections and any hospital which meets the definition of rural hospital pursuant to s. 395.602 are exempt from the assessment required in this subsection.

(c)1. The agency shall, by rule, establish fees for hospitals and nursing homes based on an assessment of \$2 per bed. However, no such facility shall be assessed more than a total of \$500 under this subsection.

2. The agency shall, by rule, establish fees for adult congregate living facilities based on an assessment of \$1 per bed. However, no such facility shall be assessed more than a total of \$150 under this subsection.

3. The agency shall, by rule, establish an annual fee of \$150 for all other facilities and organizations listed in paragraph (a).

(d) The agency shall, by rule, establish a facility billing and collection process for the billing and collection of the health facility fees authorized by this subsection.

(e) A health facility which is assessed a fee under this subsection is subject to a fine of \$100 per day for each day in which the facility is late in submitting its annual fee up to maximum of the annual fee owed by the facility. A facility which refuses to pay the fee or fine is subject to the forfeiture of

its license.

(f) The agency shall deposit in the Health Care Trust Fund all health care facility assessments that are assessed under this subsection and proceeds from the certificate-of-need application fees which are sufficient to maintain the aggregate funding level for the local health councils and the Statewide Health Council as in the general appropriations act. The remain-certificate-of-need application fees shall be used j for the purpose of administering the Health Facility and Services Development Act.

(4) DUTIES AND RESPONSIBILITIES OF THE DEPARTMENT.

(a) The department, in conjunction with the Statewide Health Council and the local health councils, is responsible for the planning of all health care services in the state and for assisting the Statewide Health Council in the preparation of the state health plan.

(b) The department shall develop and maintain a comprehensive health care data base for the purpose of health planning and for certificate-of-need determinations. The department or its contractor is authorized to require the submission of information from health facilities, health service providers, and licensed health professionals which is determined by the department, through rule, to be necessary for meeting the department's responsibilities as established in this section.

(c) The department shall assist personnel of the local health councils in providing an annual orientation to council members about council member responsibilities.

(d) The department shall contract with the local health councils for the services specified in subsection (1). All contract funds shall be distributed according to an allocation plan developed by the department that provides for a minimum and equal funding base for each local health council. Any remaining funds shall be distributed based on adjustments for workload. The department may also make grants to or reimburse local health councils from federal funds provided to the state for activities related to those functions set forth in this section. The department may withhold funds from a local health council or cancel its contract with a local health council which does not meet performance standards agreed upon by the department and local health councils.

455.2224 Hepatitis B or human immunodeficiency carriers.-The Department of Professional Regulation 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.

455.2226 Requirement for instruction on human immunodeficiency virus and acquired immune deficiency syndrome.-

- (1) As of July 1, 1991, the appropriate board shall require each person licensed or certified under chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 463; chapter 464; chapter 465; chapter 466; part II, part III, or part V of chapter 468; chapter 470; or chapter 486 to complete 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, and treatment of patients.
- (2) Each such licensee or certificateholder shall submit confirmation of having completed said course, on a form as provided by the board, when submitting fees for each biennial 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. 455.227(1)(e). In addition to discipline by the board, the licensee shall be required to complete said course.
- (6) The board shall require as a condition of granting a license under the chapters specified in subsection (1) that an applicant making initial application for licensure complete an educational course acceptable to the 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.

(7) The board shall have the authority to adopt rules to carry out the provisions of this section.

(8) The board shall report to the Legislature by March 1 of each year as to the implementation and compliance with the requirements of this section.

455.2228 Requirement for instruction on human immunodeficiency virus and acquired immune deficiency syndrome.-

(1) The board shall require each person licensed or certified under chapter 476, chapter 477, or chapter 480 to complete 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 modes of transmission, infection control procedures, clinical management, and prevention of human immunodeficiency virus and acquired deficiency syndrome, with an emphasis on behavior and attitude change.

(2) When filing fees for each biennial renewal, each licensee shall submit confirmation of having completed said 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 shall have the authority to approve additional equivalent courses that may be used to satisfy the requirements in subsection (1).

(4) As of December 31, 1992, the board shall require, as a condition of granting a license under the chapters specified in subsection (1), that an applicant making initial application for licensure complete an educational course acceptable to the 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 the requirement.

(5) The board shall have the authority to adopt rules to carry out the provisions of this section.

(6) The board shall report to the Legislature by March 1 of each year as to the implementation and compliance with the requirements of this section.

(7) 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 on human immunodeficiency virus and acquired immune deficiency syndrome, for purposes of relicensure or recertification for additional licenses.

455.2416 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 a 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 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 and Rehabilitative Services.

(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.

483.314 Collection and transmittal of specimens.

(1) A center shall forward the specimens collected by it to a clinical laboratory for such analyses as are authorized by the medical director of the center, Multiphasic health testing centers are authorized to conduct dipstick urinalysis and fecal occult blood tests only if such tests are conducted by licensed registered nurses, practical nurses, medical technicians, medical assistants, or clinical laboratory technicians trained to perform and interpret these tests,

(2) Consumer multiphasic health testing centers shall report the results of an analysis directly to the medical director of the center that requested it and shall forward the results to the person from whom the specimen was collected within 5 days after

the date the specimen was collected, When test results deviate significantly from established ranges, indicating the presence of a potential pathological condition, the contract multiphasic health testing center must forward the results to the person from whom the specimen was collected and the person's designated physician within 5 days after the date the specimen was collected, Complete results of contract multiphasic health testing must be forwarded to the medical director of the contracting employer within 30 days after the date the specimen was collected,

(3) A multiphasic health testing center may not collect specimens from the human body where prudent medical practice requires that such specimens only be collected during the course of a physical examination by a physician. The agency, which may consult with the Board of Medicine and the Board of Osteopathic Medicine, shall develop rules to implement this subsection,

(4) A center may not perform or hold itself out to the public as providing for testing for the human immunodeficiency virus (HIV) unless it complies with s. 381,004.

499.005 Prohibited acts. It is unlawful to perform or cause the performance of any of the following acts in this state:

(1) The manufacture, repackaging, sale, delivery, or holding or offering for sale of any drug, device, or cosmetic that is adulterated or misbranded or has otherwise been rendered unfit for human or animal use.

(2) The adulteration or misbranding of any drug, device, or cosmetic.

(3) The receipt of any drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery of such drug, device, or cosmetic, for pay or otherwise.

(4) The sale, distribution, purchase, trade, holding, or offering of any drug, device, or cosmetic in violation of ss. 499.001-499.081.

(5) The dissemination of any false or misleading advertisement of a drug, device, or cosmetic.

(6) The refusal:

(a) To allow the department to enter or inspect an establishment in which drugs, devices, or cosmetics are manufactured, processed, repackaged, sold, brokered, or held;

(b) To allow inspection of any record of that establishment;

(c) To allow the department to enter and inspect any vehicle that is being used to transport drugs, devices, or cosmetics; or

(d) To allow the department to take samples of any drug, device, or cosmetic.

(7) The giving of a false guaranty or false undertaking with

respect to a drug, device, or cosmetic, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of, the person residing in this state from whom he received in good faith the drug, device, or cosmetic.

(8) Committing any act that causes a drug, device, or cosmetic to be a counterfeit drug, device, or cosmetic; or selling, dispensing, or holding for sale a counterfeit drug, device, or cosmetic.

(9) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of a drug, device, or cosmetic, or the doing of any other act with respect to a drug, device, or cosmetic, if the act is done while the drug, device, or cosmetic is held for sale and the act results in the drug, device, or cosmetic being misbranded.

(10) Forging; counterfeiting; simulating; falsely representing any drug, device, or cosmetic; or, without the authority of the manufacturer, using any mark, stamp, tag, label, or other identification device authorized or required by rules adopted under ss. 499.001-499.081.

(11) The use, on the labeling of any drug or in any advertisement relating to such drug, of any representation or suggestion that an application of the drug is effective when it is not or that the drug complies with ss. 499.001-499.081 when it does not.

(12) The possession of any drug in violation of ss. 499.001-499.081.

(13) The sale, delivery, holding, or offering for sale of any self-testing kits designed to tell persons their status concerning human immunodeficiency virus or acquired immune deficiency syndrome or related disorders or conditions.

(14) The purchase or receipt of a legend drug from a person that is not authorized under the law of the state in which the person resides to distribute legend drugs.

(15) The sale or transfer of a legend drug to a person that is not authorized under the law of the jurisdiction in which the person resides to purchase or possess legend drugs.

(16) The purchase or receipt of a compressed medical gas from a person that is not authorized under the law of the state in which the person resides to distribute compressed medical gases.

(17) The sale, purchase, or trade, or the offer to sell, purchase, or trade, a drug sample as defined in s. 499.028; the distribution of a drug sample in violation of s. 499.028; or the failure to otherwise comply with s. 499.028.

(18) Failure to maintain records as required by ss. 499.001-499.081 and rules adopted under those sections.

(19) Providing the department with false or fraudulent records,

or making false or fraudulent statements, regarding a drug, device, or cosmetic.

(20) The importation of a legend drug except as provided by s. 801(d) of the Federal Food, Drug, and Cosmetic Act.

(21) The wholesale distribution of any prescription drug that was:

(a) Purchased by a public or private hospital or other health care entity; or

(b) Donated or supplied at a reduced price to a charitable organization.

(22) Failure to obtain a permit or registration, or operating without a valid permit, as required by ss. 499.001-499.081.

499.0053 Power to administer oaths, take depositions, and issue and serve subpoenas. For the purpose of any investigation or proceeding conducted by the department under ss. 499.001-499.081, the department may administer oaths, take depositions, issue and serve subpoenas, and compel the attendance of witnesses and the production of books, papers, documents, or other evidence. The department shall exercise this power on its own initiative. Challenges to, and enforcement of, the subpoenas and orders shall be handled as provided in s. 120.58.

499.0054 Advertising and labeling of drugs, devices, and cosmetics.-It is a violation of the Florida Drug and Cosmetic Act to perform or cause the performance of any of the following acts:

(1) The dissemination of any false advertisement of any drug, device, or cosmetic. An advertisement is false if it is false or misleading in any way.

(2) The distribution in commerce of any drug, device, or cosmetic, if its labeling or advertising is in violation of ss. 499.001-499.081.

(3) The manufacturing, repackaging, packaging, selling, delivery, holding, or offering for sale of any drug, device, or cosmetic for which the advertising or labeling is false or misleading.

(4) The advertising of any drug, device, or cosmetic that is adulterated or misbranded.

(5) The receiving in commerce of any drug, device, or cosmetic that is falsely advertised or labeled or the delivering or proffering for delivery of any such drug, device, or cosmetic.

(6) The advertising of any drug or device represented to have any effect in any of the following conditions, disorders, diseases, or processes:

(a) Blood disorders.

(b) Bone or joint diseases.



- (c) Kidney diseases or disorders.
- (d) Cancer.
- (e) Diabetes.
- (f) Gall bladder diseases or disorders.
- (g) Heart and vascular diseases.
- (h) High blood pressure.
- (i) Diseases or disorders of the ear or auditory apparatus, including hearing loss or deafness.
- (j) Mental disease or mental retardation.
- (k) Paralysis.
- (l) Prostate gland disorders.
- (m) Conditions of the scalp affecting hair loss.
- (n) Baldness.
- (o) Endocrine disorders.
- (p) Sexual impotence.
- (q) Tumors.
- (r) Venereal diseases.
- (s) Varicose ulcers.
- (t) Breast enlargement.
- (u) Purifying blood.
- (v) Metabolic disorders.
- (w) Immune system disorders or conditions affecting the immune system.
- (x) Extension of life expectancy.
- (y) Stress and tension.
- (z) Brain stimulation or performance.
- (aa) The body's natural defense mechanisms.
- (bb) Blood flow.
- (cc) Depression.
- (dd) Human immunodeficiency virus or acquired immune deficiency syndrome or related disorders or conditions.

627.4237 Sickness disability or disability due to sickness.-  
 Notwithstanding any provision of law to the contrary, the term "sickness disability" or "disability due to sickness," as used in individual or group disability insurance policies issued in this state on or after October 1, 1992, includes any restriction of a health care practitioner's ability to perform his occupation because of action taken by his state licensing board as a result of his testing positive on a human immunodeficiency virus test. The provisions of this section do not require payment of disability income benefits under any policy without the insured experiencing an actual loss of income as may be required under the terms of the policy as a condition of receiving such benefits.

627.429 Medical tests for human immunodeficiency virus infection and acquired immune deficiency syndrome for insurance purposes.

(1) PURPOSE.-The purpose of this section is to prohibit unfair practices in the underwriting of insurance with respect to exposure to the human immunodeficiency virus infection and related matters, and thereby to reduce the possibility that a person may suffer unfair discrimination when purchasing insurance.

(2) SCOPE.-

(a) This section applies to all insurance policies, and the underwriting thereof, which are issued in this state or are issued outside this state pursuant to s. 627.5515 or s. 627.6515 covering residents of this state and to multiple-employer welfare arrangements defined in s. 624.437. For the purposes of this section, "insurer" includes authorized multiple-employer welfare arrangements.

(b) This section does not prohibit an insurer from contesting a policy or claim to the extent allowed by law.

(3) DEFINITIONS.-As used in this section:

(a) "AIDS" means acquired immune deficiency syndrome.

(b) "ARC" means AIDS-related complex.

(c) "HIV" means the human immunodeficiency virus identified as the causative agent of AIDS.

(4) USE OF MEDICAL TESTS FOR UNDERWRITING.

(a) With respect to the issuance of or the underwriting of a policy regarding exposure to the HIV infection and sickness or medical conditions derived from HIV infection, the insurer may use only medical tests that are reliable predictors of risk. A test which is recommended by the Centers for Disease Control or by the federal Food and Drug Administration is reliable for the purposes of this section. A test which is rejected or not recommended by the Centers for Disease Control or the federal Food and Drug Administration is not reliable for the purposes of this section. If a specific test recommended by the Centers for Disease Control or the federal Food and Drug Administration indicates the existence or potential existence of exposure to the HIV infection or a sickness or medical condition related to the HIV infection, the insurer shall, before relying on a single test result to deny or limit coverage or to rate the coverage, follow the applicable Centers for Disease Control or federal Food and Drug Administration recommended test protocol and shall use any applicable followup tests or series of tests recommended by the Centers for Disease Control or federal Food and Drug Administration to confirm the indication.

(b) Prior to testing, the insurer shall disclose its intent to

test the person for the HIV infection or for a specific sickness or medical condition derived therefrom and shall obtain the person's written informed consent to administer the test. The written informed consent required by this paragraph shall include a fair explanation of the test, including its purpose, potential uses, and limitations, and the meaning of its results and the right to confidential treatment of information. Use of a form approved by the department raises a conclusive presumption of informed consent.

(c) An applicant shall be notified of a positive test result by a physician designated by the applicant or, in the absence of such designation, by the Department of Health and Rehabilitative Services. Notification must include all of the following:

1. Face-to-face posttest counseling on the meaning of the test results, the possible need for additional testing, and the need to eliminate behavior which might spread the disease to others.
2. The availability in the person's geographic area of any appropriate health care services, including mental health care, and appropriate social and Support services.
3. The benefits of locating and counseling any individual by whom the infected individual may have been exposed to human immunodeficiency virus and any individual whom the infected individual may have exposed to the virus.
4. The availability, if any, of the services of public health authorities with respect to locating and counseling any individual described in subparagraph 3.

(d) A medical test for exposure to the HIV infection or for a sickness or medical condition derived from such infection may be required of or given to a person only if the test is based on the person's current medical condition or medical history or if the test is triggered by threshold coverage amounts which apply to all persons within the risk class. Sexual orientation may not be used in the underwriting process or in the determination of which applicants shall be tested for exposure to the HIV infection. The marital status, living arrangements, occupation, gender, beneficiary designation, or zip code or other territorial classification of an applicant may not be used to establish the applicant's sexual orientation.

(e) An insurer may inquire whether a person has been tested positive for exposure to the HIV infection or been diagnosed as having ARC or AIDS caused by the HIV infection or other sickness or condition derived from such infection. An insurer may not inquire whether the person has been tested for or has received a negative result from a specific test for exposure to the HIV infection or for a sickness or a medical condition derived from such infection.

(f) Insurers shall maintain strict confidentiality regarding medical test results with respect to exposure to the HIV infection or a specific sickness or medical condition derived from such exposure. The insurer may not disclose information regarding specific test results outside of the insurance company or its employees, insurance affiliates, agents, or reinsurers, except to the person tested and to persons designated in writing by the person tested. The insurer may not furnish specific test results for exposure to the HIV infection to an insurer industry data bank if a review of the information would identify the individual and the specific test results.

(g) A laboratory may be used by an insurer or insurance support organization for the processing of HIV related tests only if it is certified by the United States Department of Health and Human Services under the Clinical Laboratories Improvement Act of 1967, permitting testing of specimens obtained in interstate commerce, and only if the laboratory subjects itself to ongoing proficiency testing by the College of American Pathologists, the American Association of Bio Analysts, or an equivalent program approved by the Centers for Disease Control of the United States Department of Health and Human Services.

(5) RESTRICTIONS ON COVERAGE EXCLUSIONS AND LIMITATIONS.-

(a) An insurer of a group policy may not exclude coverage of an eligible individual because of a positive test result for exposure to the HIV infection or a specific sickness or medical condition derived from such exposure, either as a condition for or subsequent to the issuance of the policy. This paragraph does not apply to individuals applying for coverage where individual underwriting is otherwise allowed by law.

(b) Subject to the total benefits limits in a health insurance policy, no health insurance policy shall contain an exclusion or limitation with respect to coverage for exposure to the HIV infection or a specific sickness or medical condition derived from such infection, except as provided in a preexisting condition clause. This paragraph does not prohibit the issuance of accident-only or specified disease health policies.

(c) Except for preexisting conditions specifically applying to a sickness or medical condition of the insured, benefits under a life insurance policy shall not be denied or limited based on the fact that the insured's death was caused, directly or indirectly, by exposure to the HIV infection or a specific sickness or medical condition derived from such infection. This paragraph does not prohibit the issuance of accidental death only or specified disease policies.

(d) Any major medical or comprehensive accident and health policy for which individual underwriting is authorized by law may

contain a provision excluding coverage for expenses related to AIDS or ARC if, in the opinion of a legally qualified physician, the insured, prior to the first anniversary of the insured's coverage under the policy, first exhibited objective manifestations of AIDS or ARC, as defined by the Centers for Disease Control, which objective manifestations are attributable to no other cause or was diagnosed as having AIDS or ARC if all of the following apply:

1. The applicant for the policy is not required to submit to any medical test for HIV infection.
2. The policy provision:
  - a. Is set forth separately from the other exclusion and limitation provisions of the policy.
  - b. Has an appropriate caption or heading.
  - c. Is disclosed and referenced in a conspicuous manner on the policy data page.
  - d. Contains a statement that the exclusion will not apply to any person if the insurer does not assert the defense before the person has been insured under the policy for 2 years.
3. The insurer must notify the insured in writing of a determination that the insured would be subject to the effect of the exclusion within 90 days after the insurer first determines that an insured would be subject to the effect of the exclusion, even if there are no claims for AIDS or ARC. Failure to provide timely written notice under this subparagraph bars the insurer from using the exclusion.
4. Objective manifestations of AIDS or ARC first exhibited after the 12-month manifestation period must be covered the same as any other illness.

627.6265 Cancellation or nonrenewal prohibited.-Notwithstanding any other provision of law to the contrary, no insurer shall cancel or nonrenew the health insurance policy of any insured because of diagnosis or treatment of human immunodeficiency virus infection or acquired immune deficiency syndrome.

627.6646 Cancellation or nonrenewal prohibited.-Notwithstanding any other provision of law to the contrary, no insurer shall cancel or nonrenew the health insurance policy of any insured because of diagnosis or treatment of human immunodeficiency virus infection or acquired immune deficiency syndrome.

1641.3007 Human immunodeficiency virus infection and acquired immune deficiency syndrome for contract purposes.-

(1) PURPOSE.-The purpose of this section is to prohibit unfair practices in a health maintenance organization contract with

respect to exposure to the human immunodeficiency virus infection and related matters, and thereby reduce the possibility that a health maintenance organization subscriber or applicant may suffer unfair discrimination when subscribing to or applying for the contractual services of a health maintenance organization.

(2) SCOPE.-This section applies to all health maintenance contracts which are issued in this state or which are issued outside this state but cover residents of this state. This section shall not prohibit a health maintenance organization from contesting a contract or claim to the extent allowed by law.

(3) DEFINITIONS. As used in this section:

(a) "AIDS" means acquired immune deficiency syndrome.

(b) "ARC" means AIDS-related complex.

(c) "HIV" means human immunodeficiency virus identified as the causative agent of AIDS.

(4) UTILIZATION OF MEDICAL TESTS.-

-(a) With respect to the issuance of or the underwriting of a health maintenance organization contract regarding exposure to the HIV infection and sickness or medical conditions derived from such infection, a health maintenance organization shall only utilize medical tests which are reliable predictors of risk. A test which is recommended by the Centers for Disease Control or by the federal Food and Drug Administration is deemed to be reliable for the purposes of this section. A test which is rejected or not recommended by the Centers for Disease Control or the federal Food and Drug Administration is a test which is deemed to be not reliable for the purposes of this section. If a specific Centers for Disease Control or federal Food and Drug Administration recommended test indicates the existence or potential existence of exposure by the HIV infection or a sickness or medical condition related to the HIV infection, before relying on a single test result to deny or limit coverage or to rate the coverage, the health maintenance organization shall follow the applicable Centers for Disease Control or federal Food and Drug Administration recommended test protocol and shall utilize any applicable Centers for Disease Control or federal Food and Drug Administration recommended followup tests or series of tests to confirm the indication.

(b) Prior to testing, the health maintenance organization must disclose its intent to test the person for the HIV infection or for a specific sickness or medical condition derived therefrom and must obtain the person's written informed consent to administer the test. Written informed consent shall include a fair explanation of the test, including its purpose, potential uses, and limitations, and the meaning of its results and the right to confidential treatment of information. Use of a form

approved by the department shall raise a conclusive presumption of informed consent.

(c) An applicant shall be notified of a positive test result by a physician designated by the applicant or, in the absence of such designation, by the Department of Health and Rehabilitative Services. Such notification must include:

1. Face-to-face posttest counseling on the meaning of the test results; the possible need for additional testing; and the need to eliminate behavior which might spread the disease to others;
2. The availability in the geographic area of any appropriate health care services, including mental health care, and appropriate social and support services;
3. The benefits of locating and counseling any individual by whom the infected individual may have been exposed to human immunodeficiency virus and any individual whom the infected individual may have exposed to the virus; and
4. The availability, if any, of the services of public health authorities with respect to locating and counseling any individual described in subparagraph 3.

(d) A medical test for exposure to the HIV infection or for a sickness or medical condition derived from such infection shall only be required of or given to a person if the test is required or given to all subscribers or applicants or if the decision to require the test is based on the person's medical history. Sexual orientation shall not be used in the underwriting process or in the determination of which subscribers or applicants for enrollment shall be tested for exposure to the HIV infection. Neither the marital status, the living arrangements, the occupation, the gender, the beneficiary designation, nor the zip code or other territorial classification of an applicant shall be used to establish the applicant's sexual orientation.

(e) A health maintenance organization may inquire whether a person has been tested positive for exposure to the HIV infection or been diagnosed as having AIDS or ARC caused by the HIV infection or other sickness or medical condition derived from such infection. A health maintenance organization shall not inquire whether a person has been tested for or has received a negative result from a specific test for exposure to the HIV infection or for a sickness or medical condition derived from such infection.

(f) A health maintenance organization shall maintain strict confidentiality regarding medical test results with respect to the HIV infection or a specific sickness or medical condition derived from such infection. Information regarding specific test results shall not be disclosed outside the health maintenance organization, its employees, its marketing representatives, or

its insurance affiliates, except to the person tested and to persons designated in writing by the person tested. Specific test results shall not be furnished to an insurance industry or health maintenance organization data bank if a review of the information would identify the individual and the specific test results.

(g) No laboratory may be used by an insurer or insurance support organization for the processing of HIV-related tests unless it is certified by the United States Department of Health and Human Services under the Clinical Laboratories Improvement Act of 1967, permitting testing of specimens obtained in interstate commerce, and subjects itself to ongoing proficiency testing by the College of American Pathologists, the American Association of Bioanalysts, or an equivalent program approved by the Centers for Disease Control of the United States Department of Health and Human Services.

(5) RESTRICTIONS ON CONTRACT EXCLUSIONS AND LIMITATIONS.-

(a) A health maintenance organization contract shall not exclude coverage of a member of a subscriber group because of a positive test result for exposure to the HIV infection or a specific sickness or medical condition derived from such infection, either as a condition for or subsequent to the issuance of the contract, provided that this prohibition shall not apply to persons applying for enrollment where individual underwriting is otherwise allowed by law.

(b) No health maintenance organization contract shall exclude or limit coverage for exposure to the HIV infection or a specific sickness or medical condition derived from such infection, except as provided in a preexisting condition clause.

689.25 Failure to disclose diagnosis of HIV or AIDS infection in an occupant of real property.

(1) The fact that an occupant of real property is infected or has been infected with human immunodeficiency virus or diagnosed with acquired immune deficiency syndrome is not a material fact that must be disclosed in a real estate transaction.

(2) No cause of action arises against an owner of real property or his or her agent, or against any agent of a transferee of real property, for the failure to disclose to the transferee that an occupant of that property was infected with human immunodeficiency virus or diagnosed with acquired immune deficiency syndrome.

760.50 Discrimination on the basis of acquired immune deficiency syndrome, acquired immune deficiency syndrome related complex, and human immunodeficiency virus prohibited.-

(1) The Legislature finds and declares that persons infected or



believed to be infected with human immunodeficiency virus have suffered and will continue to suffer irrational and scientifically unfounded discrimination. The Legislature further finds and declares that society itself is harmed by this discrimination, as otherwise able-bodied persons are deprived of the means of supporting themselves, providing for their own health care, housing themselves, and participating in the opportunities otherwise available to them in society. The Legislature further finds and declares that remedies are needed to correct these problems.

(2) Any person with or perceived as having acquired immune deficiency syndrome, acquired immune deficiency syndrome related complex, or human immunodeficiency virus shall have every protection made available to handicapped persons.

(3)(a) No person may require an individual to take a human immunodeficiency virus-related test as a condition of hiring, promotion, or continued employment unless the absence of human immunodeficiency virus infection is a bona fide occupational qualification for the job in question.

(b) No person may fail or refuse to hire or discharge any individual, segregate or classify any individual in any way which would deprive or tend to deprive that individual of employment opportunities or adversely affect his status as an employee, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment on the basis of knowledge or belief that the individual has taken a human immunodeficiency virus test or the results or perceived results of such test unless the absence of human immunodeficiency virus infection is a bona fide occupational qualification of the job in question.

(c) A person who asserts that a bona fide occupational qualification exists for human immunodeficiency virus-related testing shall have the burden of proving that:

1. The human immunodeficiency virus-related test is necessary to ascertain whether an employee is currently able to perform in a reasonable manner the duties of the particular job or whether an employee will present a significant risk of transmitting human immunodeficiency virus infection to other persons in the course of normal work activities; and
2. There exists no means of reasonable accommodation short of requiring that the individual be free of human immunodeficiency virus infection.

(4)(a) A person may not discriminate against an otherwise qualified individual in housing, public accommodations, or governmental services on the basis of the fact that such individual is, or is regarded as being, infected with human

immunodeficiency virus.

(b) A person or other entity receiving or benefiting from state financial assistance may not discriminate against an otherwise qualified individual on the basis of the fact that such individual is, or is regarded as being, infected with human immunodeficiency virus.

(c) A person who asserts that an individual who is infected with human immunodeficiency virus is not otherwise qualified shall have the burden of proving that no reasonable accommodation can be made to prevent the likelihood that the individual will, under the circumstances involved, expose other individuals to a significant possibility of being infected with human immunodeficiency virus.

(d) A person may not fail or refuse to hire or discharge any individual, segregate or classify any individual in any way which would deprive or tend to deprive that individual of employment opportunities or adversely affect his or her status as an employee, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment on the basis of the fact that the individual is a licensed health care professional or health care worker who treats or provides patient care to persons infected with human immunodeficiency virus.

(5) Every employer who provides or administers health insurance benefits or life insurance benefits to its employees shall develop and implement procedures to maintain the confidentiality of all records and information in its possession relating to the medical condition or status of any person covered by the health insurance benefits or life insurance benefits which it provides or administers. An employer shall be liable in damages to any person damaged by its failure to implement such a procedure.

(6)(a) Any person aggrieved by a violation of this section shall have a right of action in the circuit court and may recover for each violation:

1. Against any person who violates a provision of this section, liquidated damages of \$1,000 or actual damages, whichever is greater.

2. Against any person who intentionally or recklessly violates a provision of this section, liquidated damages of \$5,000 or actual damages, whichever is greater.

3. Reasonable attorney's fees.

4. Such other relief, including an injunction, as the court may deem appropriate.

(b) Nothing in this section limits the right of the person aggrieved by a violation of this section to recover damages or other relief under any other applicable law.

775.0877 Criminal transmission of HIV; procedures; penalties.

(1) In any case in which a person has been convicted of or has pled nolo contendere or guilty to, regardless of whether adjudication is withheld, any of the following offenses, or the attempt thereof, which offense or attempted offense involves the transmission of body fluids from one person to another:

- (a) Section 794.011, relating to sexual battery,
- (b) Section 826.04, relating to incest,
- (c) Section 800.04(1), (2), and (3), relating to lewd, lascivious, or indecent assault or act upon any person less than 16 years of age,
- (d) Sections 784.011, 784.07(2)(a), and 784.08(2)(d), relating to assault,
- (e) Sections 784.021, 784.07(2)(c), and 784.08(2)(b), relating to aggravated assault,
- (f) Sections 784.03, 784.07(2)(b), and 784.08(2)(c), relating to battery,
- (g) Sections 784.045, 784.07(2)(d), and 784.08(2)(d), relating to aggravated battery,
- (h) Section 827.03, relating to aggravated child abuse,
- (i) Section 827.04, relating to child abuse,
- (j) Section 827.071, relating to sexual performance by person less than 18 years of age,
- (k) Sections 796.03, 796.07, and 796.08, relating to prostitution,
- (l) Section 381.0041(11)(b), relating to donation of blood, plasma, organs, skin, or other human tissue, the court shall order the offender to undergo HIV testing, to be performed under the direction of the Department of Health and Rehabilitative Services in accordance with s. 381.004, unless the offender has undergone HIV testing voluntarily or pursuant to procedures established in s. 381.004(3)(i)6. or s. 951.27, or any other applicable law or rule providing for HIV testing of criminal offenders or inmates, subsequent to his arrest for an offense enumerated in paragraphs (a)-(l) for which he was convicted or to which he pled nolo contendere or guilty. The results of an HIV test performed on an offender pursuant to this subsection are not admissible in any criminal proceeding arising out of the alleged offense.

(2) The results of the HIV test must be disclosed under the direction of the Department of Health and Rehabilitative Services, to the offender who has been convicted of or pled nolo contendere or guilty to an offense specified in subsection (1), the public health agency of the county in which the conviction occurred and, if different, the county of residence of the

offender, and, upon request pursuant to the provisions of s. 960.003, to the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor. The test results may not be disclosed to any other person except as expressly authorized by law or court order.

(3) An offender who has undergone HIV testing pursuant to subsection (1), and to whom positive test results have been disclosed pursuant to subsection (2), who commits a second or subsequent offense enumerated in paragraphs (1)(a)-(l), commits criminal transmission of HIV, a felony of the third degree, punishable as provided in subsection (7). A person may be convicted and sentenced separately for a violation of this subsection and for the underlying crime enumerated in paragraphs (1)(a)-(l).

(4) An offender may challenge the positive results of an HIV test performed pursuant to this section and may introduce results of a backup test performed at his own expense.

(5) Nothing in this section requires that an HIV infection have occurred in order for an offender to have committed criminal transmission of HIV.

(6) For an alleged violation of any offense enumerated in paragraphs (1)(a)-(l) for which the consent of the victim may be raised as a defense in a criminal prosecution, it is an affirmative defense to a charge of violating this section that the person exposed knew that the offender was infected with HIV, knew that the action being taken could result in transmission of the HIV infection, and consented to the action voluntarily with that knowledge.

(7) In addition to any other penalty provided by law for an offense enumerated in paragraphs (1)(a)-(l), the court may require an offender convicted of criminal transmission of HIV to serve a term of criminal quarantine community control, as described in s. 948.001.

796.08 Screening for sexually transmissible diseases; providing penalties.

(1)(a) For the purposes of this section, "sexually transmissible disease" means a bacterial, viral, fungal, or parasitic disease, determined by rule of the Department of Health and Rehabilitative Services to be sexually transmissible, a threat to the public health and welfare, and a disease for which a legitimate public interest is served by providing for regulation and treatment.

(b) In considering which diseases are designated as sexually transmissible diseases, the Department of Health and Rehabilitative Services shall consider such diseases as chancroid, gonorrhea, granuloma inguinale, lymphogranuloma

venereum, genital herpes simplex, chlamydia, nongonococcal urethritis (NGU), pelvic inflammatory disease (PID)/acute salpingitis, syphilis, and human immunodeficiency virus infection for designation and shall consider the recommendations and classifications of the Centers for Disease Control and other nationally recognized authorities. Not all diseases that are sexually transmissible need be designated for purposes of this section.

(2) A person arrested under s. 796.07 may request screening for a sexually transmissible disease under direction of the Department of Health and Rehabilitative Services and, if infected, shall submit to appropriate treatment and counseling. A person who requests screening for a sexually transmissible disease under this subsection must pay any costs associated with such screening.

(3) A person convicted under s. 796.07 of prostitution or procuring another to commit prostitution must undergo screening for a sexually transmissible disease, including, but not limited to, screening to detect exposure to the human immunodeficiency virus, under direction of the Department of Health and Rehabilitative Services. If the person is infected, he or she must submit to treatment and counseling prior to release from probation, community control, or incarceration. Notwithstanding the provisions of s. 384.29, the results of tests conducted pursuant to this subsection shall be made available by the Department of Health and Rehabilitative Services to the offender, medical personnel, appropriate state agencies, state attorneys, and courts of appropriate jurisdiction in need of such information in order to enforce the provisions of this chapter.

(4) A person who commits prostitution or procures another for prostitution and who, prior to the commission of such crime, had tested positive for a sexually transmissible disease other than human immunodeficiency virus infection and knew or had been informed that he or she had tested positive for such sexually transmissible disease and could possibly communicate such disease to another person through sexual activity commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A person may be convicted and sentenced separately for a violation of this subsection and for the underlying crime of prostitution or procurement of prostitution.

(5) A person who commits prostitution or procures another for prostitution by engaging in sexual activity in a manner likely to transmit the human immunodeficiency virus and who, prior to the commission of such crime, had tested positive for human immunodeficiency virus and knew or had been informed that he or she had tested positive for human immunodeficiency virus and

could possibly communicate such disease to another person through sexual activity commits criminal transmission of HIV, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 775.0877(7). A person may be convicted and sentenced separately for a violation of this subsection and for the underlying crime of prostitution or procurement of prostitution.

(6)(a) The Department of Health and Rehabilitative Services or its authorized representatives may examine or cause to be examined any person or inmate who injures an officer as defined in s.943.10(14), a firefighter, or a paramedic or emergency medical technician acting within the scope of employment. Evidence of injury and a statement by a licensed physician that the nature of the injury is such as to result in the transmission of a sexually transmissible disease constitutes probable cause for issuance of a warrant by a court of competent jurisdiction.

(b) The results of any test authorized by this subsection are exempt from the requirements of s. 384.29 solely for the purpose of releasing the results to the injured employee after a licensed physician documents in the medical records of the injured employee that the information is medically necessary to determine the course of treatment for the injured employee.

(c) A person who receives the results of an HIV test pursuant to this subsection shall maintain the confidentiality of the person who injured the officer, firefighter, paramedic, or emergency medical technician. Anyone who violates this provision commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. The identities of the person who is the source of the injury and the injured officer, firefighter, paramedic, or emergency medical technician are confidential and exempt from the provisions of s. 119.07(1). This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

921.187 Disposition and sentencing; alternatives; restitution.-

(1) The alternatives provided in this section for the disposition of criminal cases shall be used in a manner which will best serve the needs of society, which will punish criminal offenders, and which will provide the opportunity for rehabilitation. A court may:

(a) If state incarceration is the best alternative:

1. Impose a split sentence whereby the offender is to be placed on probation upon completion of any specified period of such sentence, which period may include a term of years or less.

2. Sentence an offender to imprisonment in a state correctional institution.

3. Make any other disposition that is authorized by law.
- (b) If the offender is sentenced for a felony with respect to which the presumptive sentence pursuant to the sentencing guidelines allows incarceration in the state prison system for up to 22 months:
  1. Place the offender on probation with or without an adjudication of guilt pursuant to s. 948.01.
  2. Impose a fine and probation pursuant to s. 948.011 when the offense is punishable by both a fine and imprisonment and probation is authorized.
  3. Place the offender into community control requiring intensive supervision and surveillance pursuant to chapter 948.
  4. Impose, as a condition of probation or community control, a period of treatment which shall be restricted to a county facility, a Department of Corrections probation and restitution center, a probation program drug punishment treatment community, or a community residential or nonresidential facility, excluding a community correctional center as defined in s. 944.026, which is owned and operated by any qualified public or private entity providing such services. Before admission to such a facility, the court shall obtain an individual assessment and recommendations on the appropriate treatment needs pursuant to chapter 953 or to the Community Control Implementation Manual, which assessment and recommendations shall be considered by the court in ordering such placements. Placement in such a facility, except for a county residential probation facility, may not exceed 364 days; however, with respect to a probation program drug punishment treatment community, such 364-day restriction shall apply only to the phase I secure residential institutional facilities. Placement in a county residential probation facility may not exceed 3 years. Early termination of placement shall be recommended to the court, when appropriate, by the center supervisor, the supervising probation officer, or the probation program manager.
  5. Sentence the offender pursuant to s. 922.051 to imprisonment in a county jail when a statute directs imprisonment in a state prison, if the offender's cumulative sentence, whether from the same circuit or from separate circuits, is not more than 364 days.
  6. Sentence the offender who is to be punished by imprisonment in a county jail to a jail in another county if there is no jail within the county suitable for such prisoner pursuant to s. 950.01.
  7. Require the offender to participate in a work-release or educational or vocational training program pursuant to s. 951.24 while serving a sentence in a county jail, if such a program is available.

8. Require the offender to perform a specified public service pursuant to s. 775.091.
  9. Require the offender who violates chapter 893 or violates any law while under the influence of a controlled substance or alcohol to participate in a substance abuse program.
  - 10.a. Require the offender who violates any criminal provision of chapter 893 to pay an additional assessment in an amount up to the amount of any fine imposed, pursuant to ss. 893.13(4)(a) and 893.16.
  - b. Require the offender who violates any provision of s. 893.13 to pay an additional assessment in an amount of \$100, pursuant to ss. 893.13(4)(b) and 943.361.
  11. Impose a split sentence whereby the offender is to be placed in a county jail or county work camp upon the completion of any specified term of community supervision.
  12. Impose split probation whereby upon satisfactory completion of half the term of probation, the Department of Corrections may place the offender on administrative probation pursuant to s. 948.01 for the remainder of the term of supervision.
  13. Require residence in a state probation and restitution center or private drug treatment program for offenders on community control or who have violated conditions of probation.
  14. Impose any other sanction which is provided within the community and approved as an intermediate sanction by that community's county correctional planning committee as described in s. 951.26.
  15. Impose, as a condition of community control, probation, or probation following incarceration, a requirement that an offender who has not obtained a high school diploma or high school equivalency diploma or who lacks basic or functional literacy skills, upon acceptance by an adult education program, make a good faith effort toward completion of such basic or functional literacy skills or high school equivalency diploma, as defined in s. 229.814, in accordance with the assessed adult general education needs of the individual offender.
- (c)1. Notwithstanding any provision of s. 921.001 or s. 775.084 to the contrary, on or after October 1, 1993, require any defendant who violates s. 893.13(1)(a)1., (1)(d)1., (1)(e)2., or (1)(i)2., and meets the criteria described in s. 893.13(6), to successfully complete a term of probation pursuant to the terms and conditions set forth in s. 948.034(1), in lieu of serving a term of imprisonment.
2. Notwithstanding any provision of s. 921.001 or s. 775.084 to the contrary, on or after October 1, 1993, require any defendant who violates s. 893.13(1)(a), (1)(d), or (1)(f), and meets the criteria described in s. 893.13(7), to successfully complete a



term of probation pursuant to the terms and conditions set forth in s. 948.034(2), in lieu of serving a term of imprisonment.

(2) In addition to any other penalty provided by law for an offense enumerated in s. 775.0877(1)(a)-(l), if the offender is convicted of criminal transmission of HIV pursuant to s. 775.0877, the court may sentence the offender to criminal quarantine community control as described in s. 948.001.

(3) The court shall require an offender to make restitution pursuant to s. 775.089, unless the court finds clear and compelling reasons not to order such restitution as provided in that section. If the court does not order restitution, or orders restitution of only a portion of the damages, as provided in s. 775.089, the court shall state on the record in detail the reasons therefor. An order requiring an offender to make restitution to a victim pursuant to s. 775.089 does not remove or diminish the requirement that the court order payment to the Crimes Compensation Trust Fund pursuant to chapter 960.

948.01 When court may place defendant on probation or into community control.-

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(14) The court may place a defendant who is being sentenced for criminal transmission of HIV in violation of s. 775.0877 on criminal quarantine community control. The Department of Corrections shall develop and administer a criminal quarantine community control program emphasizing intensive supervision with 24-hour-per-day electronic monitoring. Criminal quarantine community control status must include surveillance and may include other measures normally associated with community control, except that specific conditions necessary to monitor this population may be ordered.

951.27 Blood tests of inmates.-

(1) Each county and each municipal detention facility shall have a written procedure developed, in consultation with the facility medical provider, establishing conditions under which an inmate will be tested for infectious disease, including human immunodeficiency virus pursuant to s. 775.0877, which procedure is consistent with guidelines of the Centers for Disease Control and recommendations of the Correctional Medical Authority. It is not unlawful for the person receiving the test results to divulge the test results to the sheriff or chief correctional officer. However, such information is exempt from the provisions of ss. 119.01 and 119.07.

(2) Serologic blood test results obtained pursuant to subsection (1) are confidential except they may be shared with employees or

officers of the sheriff or chief correctional officer who are responsible for the custody and care of the affected inmate and have a need to know such information, and as provided in ss. 775.0877 and 960.003. In addition, upon request of the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor, the results of any HIV test performed on an inmate who has been arrested for any sexual offense involving oral, anal, or vaginal penetration by, or union with, the sexual organ of another, shall be disclosed to the victim or the victim's legal guardian, or to the parent or legal guardian of the victim if the victim is a minor. In such cases, the county or municipal detention facility shall furnish the test results to the Department of Health and Rehabilitative Services, which is responsible for disclosing the results to public health agencies as provided in s. 775.0877 and to the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor, as provided in s. 960.003(3). No person to whom the results of a test have been disclosed under this section may disclose the test results to another person not authorized under this section.

(3) The results of any serologic blood test on an inmate are a part of that inmate's permanent medical file. Upon transfer of the inmate to any other correctional facility, such file is also transferred, and all relevant authorized persons must be notified of positive HIV test results, as required in s. 775.0877.

960.003 Human immunodeficiency virus testing for persons charged with or alleged by petition for delinquency to have committed certain offenses; disclosure of results to victims.-

(1) LEGISLATIVE INTENT.-The Legislature finds that a victim of a criminal offense which involves the transmission of body fluids is entitled to know at the earliest possible opportunity whether the person charged with or alleged by petition for delinquency to have committed the offense has tested positive for human immunodeficiency virus (HIV) infection. The Legislature finds that to deny victims access to HIV test results causes unnecessary mental anguish in persons who have already suffered trauma. The Legislature further finds that since medical science now recognizes that early diagnosis is a critical factor in the treatment of HIV infection, both the victim and the person charged with or alleged by petition for delinquency to have committed the offense benefit from prompt disclosure of test results. The Legislature finds that HIV test results can be disclosed to the victim of a criminal offense which involves the transmission of body fluids while confidentiality is protected in other respects.

(2) TESTING OF PERSON CHARGED WITH OR ALLEGED BY PETITION FOR DELINQUENCY TO HAVE COMMITTED CERTAIN OFFENSES. In any case in which a person has been charged by information or indictment with or alleged by petition for delinquency to have committed any offense enumerated in s. 775.0877(1)(a)-(l), which involves the transmission of body fluids from one person to another, upon request of the victim or the victim's legal guardian, or of the parent or legal guardian of the victim if the victim is a minor, the court shall order such person to undergo HIV testing. The testing shall be performed under the direction of the Department of Health and Rehabilitative Services in accordance with s. 381.004. The results of an HIV test performed on a defendant or juvenile offender pursuant to this subsection shall not be admissible in any criminal or juvenile proceeding arising out of the alleged offense.

(3) DISCLOSURE OF RESULTS.-

(a) The results of the test shall be disclosed, under the direction of the Department of Health and Rehabilitative Services, to the person charged with or alleged by petition for delinquency to have committed the offense, and, upon request, to the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor, and to public health agencies pursuant to s. 775.0877. If the alleged offender is a juvenile, the test results shall also be disclosed to the parent or guardian. The test results shall not be disclosed to any other person except as expressly authorized by law or court order.

(b) At the time that the results are disclosed to the victim or the victim's legal guardian, or to the parent or legal guardian of a victim if the victim is a minor, the same immediate opportunity for face-to-face counseling which must be made available under s. 381.004(3)(e) to those who undergo HIV testing shall also be afforded to the victim or the victim's legal guardian, or to the parent or legal guardian of the victim if the victim is a minor. The Department of Health and Rehabilitative Services is responsible for ensuring that test results are disclosed in accordance with the terms of this subsection.

(4) POSTCONVICTION TESTING.- If, for any reason, the testing requested under subsection (2) has not been undertaken, then upon request of the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor, the court shall order the offender to undergo HIV testing following conviction or delinquency adjudication. The testing shall be performed under the direction of the Department of Health and Rehabilitative Services, and the results shall be dis

closed in accordance with the provisions of subsection (3). The test results shall not be disclosed to any other person except as expressly authorized by law or court order.

(5) EXCEPTIONS.-The provisions of subsections

(2) and (4) do not apply if:

(a) The person charged with or convicted of or alleged by petition for delinquency to have committed or been adjudicated delinquent for an offense described in subsection (2) has undergone HIV testing voluntarily or pursuant to procedures established in s. 381.004(3)(i)6. or s. 951.27, or any other applicable law or rule providing for HIV testing of criminal defendants, inmates, or juvenile offenders, subsequent to his arrest, conviction, or delinquency adjudication for the offense for which he was charged or alleged by petition for delinquency to have committed; and

(b) The results of such HIV testing have been furnished to the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor.

(6) TESTING DURING INCARCERATION, DETENTION, OR PLACEMENT;

DISCLOSURE.-In any case in which a person convicted of or adjudicated delinquent for an offense described in subsection (2) has not been tested under subsection (2), but undergoes HIV testing during his incarceration, detention, or placement, the results of the initial HIV testing shall be disclosed to the victim or the victim's legal guardian, or to the parent or legal guardian of the victim if the victim is a minor, upon request. Except as otherwise requested by the victim or the victim's legal guardian, or the parent or guardian of the victim if the victim is a minor, if the initial test is conducted within the first year of the imprisonment, detention, or placement, the request for disclosure shall be considered a standing request for any subsequent HIV test results obtained within 1 year after the initial HIV test performed, and need not be repeated for each test administration. Where the inmate or juvenile offender has previously been tested pursuant to subsection (2) the request for disclosure under this subsection shall be considered a standing request for subsequent HIV results conducted within 1 year of the test performed pursuant to subsection (2). If the HIV testing is performed by an agency other than the Department of Health and Rehabilitative Services, that agency shall be responsible for forwarding the test results to the Department of Health and Rehabilitative Services for disclosure to the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor, in accordance with subsection (3). This subsection shall not be limited to results of HIV tests administered subsequent to June 27, 1990, but shall also apply to

the results of all HIV tests performed on inmates convicted of or juvenile offenders adjudicated delinquent for sex offenses as described in subsection (2) during their incarceration, detention, or placement prior to June 27, 1990. The test results shall not be disclosed to any other person except as expressly authorized by law or court order.