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A bill to be entitled  
An act relating to home medical equipment  
providers; creating part IX of chapter 400,  
F.S.; providing for regulation of home medical  
equipment providers by the Agency for Health  
Care Administration; providing legislative  
intent; providing definitions; providing for  
licensure and exemptions; providing unlawful  
acts; providing penalties; providing for  
license applications; providing for fees;  
providing for background screening; providing  
for provisional licenses and temporary permits;  
providing for administrative penalties;  
providing for injunctions, emergency orders,  
and moratoriums; providing for licensure  
inspections and investigations; providing  
minimum standards; providing for agency rules;  
providing for patient records; providing for  
notice of toll-free telephone number for the  
central abuse registry; providing for  
background screening of home medical equipment  
provider personnel; providing penalties;  
providing screening procedures; providing for  
agency injunctions; prohibiting patient  
referrals and rebates; providing for  
application of the act to existing providers;  
providing an appropriation; providing an  
effective date.

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

1           Section 1. Part IX of chapter 400, Florida Statutes,  
2 consisting of sections 400.81, 400.815, 400.82, 400.821,  
3 400.822, 400.823, 400.824, 400.825, 400.83, 400.84, 400.843,  
4 400.845, 400.85, and 400.86, is created to read:

5           400.81 Legislative intent.--It is the intent of the  
6 Legislature to provide for the licensure of home medical  
7 equipment providers and to provide for the development,  
8 establishment, and enforcement of basic standards that will  
9 ensure quality home medical equipment, products, and services.

10           400.815 Definitions.--As used in this part, the term:

11           (1) "Accrediting organizations" means the Joint  
12 Commission on Accreditation of Healthcare Organizations or  
13 other national accreditation agencies whose standards for  
14 accreditation are comparable to those required by this part  
15 for licensure.

16           (2) "Affiliated person" means any person who directly  
17 or indirectly manages, controls, or oversees the operation of  
18 a corporation or other business entity that is a licensee,  
19 regardless of whether such person is a partner, shareholder,  
20 owner, officer, director, agent, or employee of the entity.

21           (3) "Agency" means the Agency for Health Care  
22 Administration.

23           (4) "Applicant" means an individual applicant in the  
24 case of a sole proprietorship, or any officer, director,  
25 agent, managing employee, general manager, or affiliated  
26 person, or any partner or shareholder having an ownership  
27 interest equal to 5 percent or greater in the corporation,  
28 partnership, or other business entity.

29           (5) "Consumer" or "patient" means any person who uses  
30 home medical equipment in his or her place of residence.  
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1           (6) "Department" means the Department of Children and  
2 Family Services.

3           (7) "General manager" means the individual who has the  
4 general administrative charge of the premises of a licensed  
5 home medical equipment provider.

6           (8) "Home medical equipment" includes any product as  
7 defined by the Federal Drug Administration's Drugs, Devices  
8 and Cosmetics Act, any products reimbursed under the Medicare  
9 Part B Durable Medical Equipment benefits, or any products  
10 reimbursed under the Florida Medicaid durable medical  
11 equipment program. Home medical equipment includes, but is not  
12 limited to, oxygen and related respiratory equipment. Home  
13 medical equipment includes customized wheelchairs and related  
14 seating and positioning, but does not include prosthetics or  
15 orthotics or any splints, braces, or aids custom fabricated by  
16 a licensed health care practitioner.

17           (9) "Home medical equipment provider" means any person  
18 or entity that sells or rents or offers to sell or rent to or  
19 for a consumer:

20           (a) Any home medical equipment and services; or

21           (b) Home medical equipment that requires any home  
22 medical equipment services.

23           (10) "Home medical equipment provider personnel" means  
24 persons who are employed by or under contract with a home  
25 medical equipment provider.

26           (11) "Home medical equipment services" means equipment  
27 management and consumer instruction, including selection,  
28 delivery, setup, and maintenance of equipment, and other  
29 related services for the use of home medical equipment in the  
30 consumer's regular or temporary place of residence.

1           (12) "Licensee" means the person or entity to whom a  
2 license to operate as a home medical equipment provider is  
3 issued by the agency.

4           (13) "Moratorium" means a mandated temporary cessation  
5 or suspension of the sale, rental, or offering of equipment  
6 after the imposition of the moratorium. Services related to  
7 equipment sold or rented prior to the moratorium must be  
8 continued without interruption, unless deemed otherwise by the  
9 agency.

10           (14) "Person" means any individual, firm, partnership,  
11 corporation, or association.

12           (15) "Premises" means those buildings and equipment  
13 which are located at the address of the licensed home medical  
14 equipment provider for the provision of home medical equipment  
15 services, which are in such reasonable proximity as to appear  
16 to the public to be a single provider location, and which  
17 comply with zoning ordinances.

18           (16) "Residence" means the consumer's home or place of  
19 residence, which may include nursing homes, assisted living  
20 facilities, transitional living facilities, adult family-care  
21 homes, or other congregate residential facilities.

22           400.82 Home medical equipment providers to be  
23 licensed; expiration of license; exemptions; unlawful acts;  
24 penalties.--

25           (1) Any person or entity that holds itself out to the  
26 public as providing home medical equipment and services or  
27 accepts physician orders for home medical equipment and  
28 services is subject to licensure under this part.

29           (2) Any person or entity that holds itself out to the  
30 public as providing home medical equipment that typically  
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1 requires home medical services is subject to licensure under  
2 this part.

3 (3) A home medical equipment provider must be licensed  
4 by the agency to operate in this state or to provide home  
5 medical equipment and services to consumers in this state. A  
6 standard license issued to a home medical equipment provider,  
7 unless sooner suspended or revoked, expires 2 years after its  
8 effective date.

9 (4) A separate license is required of all home medical  
10 equipment providers operating on separate premises, even if  
11 the providers are operated under the same management.

12 (5) The following are exempt from home medical  
13 equipment provider licensure, unless they have a separate  
14 corporation that is in the business of providing home medical  
15 equipment and services for sale or rent to consumers at their  
16 regular or temporary place of residence pursuant to the  
17 provisions of this part:

18 (a) Providers operated by the Federal Government.

19 (b) Nursing homes licensed under part II.

20 (c) Home health agencies licensed under part IV.

21 (d) Hospices licensed under part VI.

22 (e) Intermediate care facilities, homes for special  
23 services, and transitional living facilities licensed under  
24 part VIII.

25 (f) Hospitals and ambulatory surgical centers licensed  
26 under chapter 395.

27 (g) Manufacturers and wholesale distributors when not  
28 selling directly to consumers.

29 (h) Licensed health care practitioners who utilize  
30 home medical equipment in the course of their practice, but do  
31 not sell or rent home medical equipment to their patients.

- 1           (i) Pharmacies licensed under chapter 465.  
2  
3           (6)(a) It is unlawful for any person to offer or  
4 advertise home medical equipment and services to the public  
5 unless he or she has a valid license under this part or is  
6 exempted from licensure under subsection (5). It is unlawful  
7 for any holder of a license issued under this part to  
8 advertise or indicate to the public that it holds a home  
9 medical equipment provider license other than the one it has  
10 been issued.  
11           (b) A person who violates paragraph (a) is subject to  
12 an injunctive proceeding under s. 400.85. A violation of  
13 paragraph (a) is a deceptive and unfair trade practice and  
14 constitutes a violation of the Florida Deceptive and Unfair  
15 Trade Practices Act.  
16           (c) A person who violates paragraph (a) commits a  
17 misdemeanor of the second degree, punishable as provided in s.  
18 775.082 or s. 775.083. A person who commits a second or  
19 subsequent violation commits a misdemeanor of the first  
20 degree, punishable as provided in s. 775.082 or s. 775.083.  
21 Each day of continuing violation constitutes a separate  
22 offense.  
23           (d) The following penalties shall be imposed for  
24 operating an unlicensed home medical equipment provider:  
25           1. Any person or entity who operates an unlicensed  
26 provider commits a felony of the third degree.  
27           2. For any person or entity who has received  
28 government reimbursement for services provided by an  
29 unlicensed provider, the agency shall make a fraud referral to  
30 the appropriate government reimbursement program.  
31           3. For any licensee found to be concurrently operating  
licensed and unlicensed provider premises, the agency may

1 impose a fine or moratorium, or revoke existing licenses of  
2 any or all of the licensee's licensed provider locations until  
3 such time as the unlicensed provider premises is licensed.

4 (e) A provider found to be operating without a license  
5 may apply for licensure, and must cease operations until a  
6 license is awarded by the agency.

7 400.821 Application for license; fee; provisional  
8 license; temporary permit.--

9 (1) Application for an initial license or for renewal  
10 of an existing license must be made under oath to the agency  
11 on forms furnished by it and must be accompanied by the  
12 appropriate license fee as provided in subsection (12).

13 (2) The applicant must file with the application  
14 satisfactory proof that the home medical equipment provider is  
15 in compliance with this part and applicable rules, including:

16 (a) A report, by category, of the equipment to be  
17 provided, indicating those offered either directly by the  
18 applicant or through contractual arrangements with existing  
19 providers. Categories of equipment include:

- 20 1. Respiratory modalities.
- 21 2. Ambulation aids.
- 22 3. Mobility aids.
- 23 4. Sickroom setup.
- 24 5. Disposables.

25 (b) A report, by category, of the services to be  
26 provided, indicating those offered either directly by the  
27 applicant or through contractual arrangements with existing  
28 providers. Categories of services include:

- 29 1. Intake.
- 30 2. Equipment selection.
- 31 3. Delivery.

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4. Setup and installation.

5. Patient training.

6. Ongoing service and maintenance.

7. Retrieval.

(c) A listing of those with whom the applicant contracts, both the providers the applicant uses to provide equipment or services to its consumers and the providers for whom the applicant provides services or equipment.

(3) The applicant for initial licensure must demonstrate financial ability to operate, which may be accomplished by the submission of a \$50,000 surety bond to the agency.

(4) An applicant for renewal who has demonstrated financial inability to operate must demonstrate financial ability to operate.

(5) Each applicant for licensure must comply with the following requirements:

(a) Upon receipt of a completed, signed, and dated application, the agency shall require background screening of the applicant, in accordance with the level 2 standards for screening set forth in chapter 435. As used in this subsection, the term "applicant" means the general manager and the financial officer or similarly titled individual who is responsible for the financial operation of the licensed facility.

(b) The agency may require background screening for a member of the board of directors of the licensee or an officer or an individual owning 5 percent or more of the licensee if the agency has probable cause to believe that such individual has been convicted of an offense prohibited under the level 2 standards for screening set forth in chapter 435.



1           (c) Proof of compliance with the level 2 background  
2 screening requirements of chapter 435 which has been submitted  
3 within the previous 5 years in compliance with any other  
4 health care licensure requirements of this state is acceptable  
5 in fulfillment of paragraph (a).

6           (d) Each applicant must submit to the agency, with its  
7 application, a description and explanation of any exclusions,  
8 permanent suspensions, or terminations of the applicant from  
9 the Medicare or Medicaid programs. Proof of compliance with  
10 disclosure of ownership and control interest requirements of  
11 the Medicaid or Medicare programs shall be accepted in lieu of  
12 this submission.

13           (e) Each applicant must submit to the agency a  
14 description and explanation of any conviction of an offense  
15 prohibited under the level 2 standards of chapter 435 by a  
16 member of the board of directors of the applicant, its  
17 officers, or any individual owning 5 percent or more of the  
18 applicant. This requirement does not apply to a director of a  
19 not-for-profit corporation or organization if the director  
20 serves solely in a voluntary capacity for the corporation or  
21 organization, does not regularly take part in the day-to-day  
22 operational decisions of the corporation or organization,  
23 receives no remuneration for his or her services on the  
24 corporation's or organization's board of directors, and has no  
25 financial interest and has no family members with a financial  
26 interest in the corporation or organization, provided that the  
27 director and the not-for-profit corporation or organization  
28 include in the application a statement affirming that the  
29 director's relationship to the corporation satisfies the  
30 requirements of this provision.  
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1           (f) A license may not be granted to any potential  
2 licensee if any applicant, administrator, or financial officer  
3 has been found guilty of, regardless of adjudication, or has  
4 entered a plea of nolo contendere or guilty to, any offense  
5 prohibited under the level 2 standards for screening set forth  
6 in chapter 435, unless an exemption from disqualification has  
7 been granted by the agency as set forth in chapter 435.

8           (g) The agency may deny or revoke licensure to any  
9 potential licensee if any applicant:

10           1. Has falsely represented a material fact in the  
11 application required by paragraphs (d) and (e), or has omitted  
12 any material fact from the application required by paragraphs  
13 (d) and (e); or

14           2. Has had prior Medicaid or Medicare action taken  
15 against the applicant as set forth in paragraph (d).

16           (h) Upon licensure renewal, each applicant must submit  
17 to the agency, under penalty of perjury, an affidavit of  
18 compliance with the background screening provisions of this  
19 section.

20           (6) The home medical equipment provider must also  
21 obtain and maintain professional and commercial liability  
22 insurance. Proof of liability insurance, as defined in s.  
23 624.605, must be submitted with the application. The agency  
24 shall set the required amounts of liability insurance by rule,  
25 but the required amount must not be less than \$250,000 per  
26 claim. In the case of contracted services, it is required that  
27 the contractor have liability insurance not less than \$250,000  
28 per claim.

29           (7) A provisional license shall be issued to an  
30 approved applicant for initial licensure for a period of 90  
31 days, during which time a survey must be conducted

1 demonstrating substantial compliance with this section. A  
2 provisional license shall also be issued pending the results  
3 of an applicant's Federal Bureau of Investigation report of  
4 background screening confirming that all standards have been  
5 met. If substantial compliance is demonstrated, a standard  
6 license shall be issued to expire 2 years after the effective  
7 date of the provisional license.

8 (8) Ninety days before the expiration date, an  
9 application for license renewal must be submitted to the  
10 agency under oath on forms furnished by the agency, and a  
11 license shall be renewed if the applicant has met the  
12 requirements established under this part and applicable rules.  
13 The home medical equipment provider must file with the  
14 application satisfactory proof that it is in compliance with  
15 this part and applicable rules. The home medical equipment  
16 provider must submit satisfactory proof of its financial  
17 ability to comply with the requirements of this part.

18 (9) When a change of ownership of a home medical  
19 equipment provider occurs, the prospective owner must submit  
20 an initial application for a license at least 15 days before  
21 the effective date of the change of ownership. An application  
22 for change of ownership of a license is required when  
23 ownership, a majority of the ownership, or controlling  
24 interest of a licensed home medical equipment provider is  
25 transferred or assigned and when a licensee agrees to  
26 undertake or provide services to the extent that legal  
27 liability for operation of the home medical equipment provider  
28 rests with the licensee. A provisional license shall be issued  
29 to the new owner for a period of 90 days, during which time  
30 all required documentation must be submitted and a survey must  
31 be conducted demonstrating substantial compliance with this

1 section. If substantial compliance is demonstrated, a standard  
2 license shall be issued to expire 2 years after the issuance  
3 of the provisional license.

4 (10) When a change of the general manager of a home  
5 medical equipment provider occurs, the licensee must notify  
6 the agency of the change within 45 days thereof and must  
7 provide evidence of compliance with the background screening  
8 requirements in subsection (5); except that a general manager  
9 who has met the standards for the abuse registry background  
10 check and the Department of Law Enforcement background check,  
11 but for whom background screening results from the Federal  
12 Bureau of Investigation have not yet been received, may be  
13 employed pending receipt of the Federal Bureau of  
14 Investigation background screening report. An individual may  
15 not continue to serve as general manager if the Federal Bureau  
16 of Investigation background screening report indicates any  
17 violation of background screening standards.

18 (11) All licensure fees required of a home medical  
19 equipment provider are nonrefundable. The agency shall set the  
20 fees in an amount that is sufficient to cover its costs in  
21 carrying out its responsibilities under this part. However,  
22 state, county, or municipal governments applying for licenses  
23 under this part are exempt from the payment of license fees.  
24 All fees collected under this part must be deposited in the  
25 Health Care Trust Fund for the administration of this part.

26 (12) An applicant for initial licensure, renewal, or  
27 change of ownership shall pay a license processing fee not to  
28 exceed \$300, to be paid by all applicants, and an inspection  
29 fee not to exceed \$400, to be paid by all applicants except  
30 those not subject to licensure inspection by the agency as  
31 described in s. 400.823(2).

1           (13) When a change is reported which requires issuance  
2 of a license, a fee must be assessed. The fee must be based on  
3 the actual cost of processing and issuing the license.

4           (14) When a duplicate license is issued, a fee must be  
5 assessed, not to exceed the actual cost of duplicating and  
6 mailing.

7           (15) When applications are mailed out upon request, a  
8 fee must be assessed, not to exceed the cost of the printing,  
9 preparation, and mailing.

10           (16) The license must be displayed in a conspicuous  
11 place in the administrative office of the home medical  
12 equipment provider and is valid only while in the possession  
13 of the person or entity to which it is issued. The license may  
14 not be sold, assigned, or otherwise transferred, voluntarily  
15 or involuntarily, and is valid only for the home medical  
16 equipment provider and location for which originally issued.

17           (17) A home medical equipment provider against whom a  
18 proceeding for revocation or suspension, or for denial of a  
19 renewal application, is pending at the time of license renewal  
20 may be issued a provisional license effective until final  
21 disposition by the agency of such proceedings. If judicial  
22 relief is sought from the final disposition, the court that  
23 has jurisdiction may issue a temporary permit for the duration  
24 of the judicial proceeding.

25           400.822 Administrative penalties; injunctions;  
26 emergency orders; moratoriums.--

27           (1) The agency may deny, revoke, or suspend a license,  
28 or impose an administrative fine not to exceed \$5,000 per  
29 violation, per day, or initiate injunctive proceedings under  
30 s. 400.85.

1           (2) Any of the following actions by a home medical  
2 equipment provider or any of its employees is grounds for  
3 administrative action or penalties by the agency:

4           (a) Violation of this part or of applicable rules.

5           (b) An intentional, reckless, or negligent act that  
6 materially affects the health or safety of a patient.

7           (3) The agency may deny or revoke the license of any  
8 applicant that:

9           (a) Made a false representation or omission of any  
10 material fact in making the application, including the  
11 submission of an application that conceals the controlling or  
12 ownership interest or any officer, director, agent, managing  
13 employee, affiliated person, partner, or shareholder who may  
14 not be eligible to participate;

15           (b) Has been previously found by any professional  
16 licensing, certifying, or standards board or agency to have  
17 violated the standards or conditions relating to licensure or  
18 certification or the quality of services provided.

19 "Professional licensing, certifying, or standards board or  
20 agency" shall include, but is not limited to, practitioners,  
21 health care facilities, programs, or services, or residential  
22 care, treatment programs, or other human services; or

23           (c) Has been or is currently excluded, suspended, or  
24 terminated from, or has involuntarily withdrawn from,  
25 participation in Florida's Medicaid program or any other  
26 state's Medicaid program, or participation in the Medicare  
27 program or any other governmental or private health care or  
28 health insurance program.

29           (4) The agency may issue an emergency order  
30 immediately suspending or revoking a license when it  
31 determines that any condition within the responsibility of the

1 home medical equipment provider presents a clear and present  
2 danger to public health and safety.

3 (5) The agency may impose an immediate moratorium on  
4 any licensed home medical equipment provider when the agency  
5 determines that any condition within the responsibility of the  
6 home medical equipment provider presents a threat to public  
7 health or safety.

8 400.823 Licensure inspections and investigations.--

9 (1) The agency shall make or cause to be made such  
10 inspections and investigations as it considers necessary,  
11 including:

12 (a) Licensure inspections.

13 (b) Inspections directed by the federal Health Care  
14 Financing Administration.

15 (c) Licensure complaint investigations, including full  
16 licensure investigations with a review of all licensure  
17 standards as outlined in the administrative rules. Complaints  
18 received by the agency from individuals, organizations, or  
19 other sources are subject to review and investigation by the  
20 agency.

21 (2) The agency shall accept, in lieu of its own  
22 periodic inspections for licensure, submission of the  
23 following:

24 (a) The survey or inspection of an accrediting  
25 organization, provided the accreditation of the licensed home  
26 medical equipment provider is not provisional and provided the  
27 licensed home medical equipment provider authorizes release  
28 of, and the agency receives the report of, the accrediting  
29 organization; or

1           (b) A copy of a valid medical oxygen retail  
2 establishment permit issued by the Department of Health,  
3 pursuant to chapter 499.

4           400.824 Minimum standards.--As a requirement of  
5 licensure, home medical equipment providers shall:

6           (1) Offer and provide home medical equipment and  
7 services, as necessary, to consumers who purchase or rent  
8 equipment that requires such services.

9           (2) Provide at least one category of equipment  
10 directly, filling orders from its own inventory.

11           (3) Respond to orders received for other equipment by  
12 filling those orders from its own inventory or inventory from  
13 other companies with which it has contracted to fill such  
14 orders; or customizing or fitting items for sale from supplies  
15 purchased under contract.

16           (4) Maintain trained personnel to coordinate order  
17 fulfillment and schedule timely equipment and service  
18 delivery.

19           (5) As necessary in relation to the sophistication of  
20 the equipment and services being provided, ensure that  
21 delivery personnel are appropriately trained to conduct an  
22 environment and equipment compatibility assessment;  
23 appropriately and safely set up the equipment; instruct  
24 patients and caregivers in the safe operation and client  
25 maintenance of the equipment; and recognize when additional  
26 education or followup patient compliance monitoring is  
27 appropriate.

28           (6) Ensure that patients are made aware of service  
29 hours and emergency service procedures.

30           (7) At the time of the initial delivery, set up an  
31 appropriate followup home medical equipment service schedule



1 as needed for such times as, but not limited to, periodic  
2 maintenance, supply delivery, and other related activities.

3 (8) Arrange for emergency service after normal  
4 business hours; provide refresher and review training for  
5 appropriate personnel; establish a system for resolution of  
6 complaints and service problems; and provide for timely  
7 replacement or delivery of disposable or consumable equipment  
8 supplies.

9 (9) Honor all warranties expressed and implied under  
10 applicable state law.

11 (10) Answer any questions or complaints a consumer has  
12 about an item or the use of an item that the consumer  
13 purchases or rents.

14 (11) Maintain and repair directly, or through a  
15 service contract with another company, items rented to  
16 consumers.

17 (12) Accept returns of substandard or unsuitable items  
18 from consumers. As used in this subsection, the term  
19 "substandard" means less than full quality for the particular  
20 item and the term "unsuitable" means inappropriate for the  
21 consumer at the time it was fitted or sold.

22 (13) Disclose consumer information to each consumer  
23 who rents or purchases items, including all applicable  
24 warranty information. This information consists of the  
25 provider standards to which the item must conform.

26 (14) Maintain patient payment and service records in  
27 accordance with the requirements of this part.

28 (15)(a) Designate appropriate staff as intake  
29 coordinators, and ensure that order intake personnel are  
30 appropriately trained in the types of equipment and products,  
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1 commonly occurring medical conditions, service procedures,  
2 third-party billing, and insurance requirements and coverage.

3 (b) Train intake coordinators in a basic understanding  
4 of the following areas: dealing with patient and caregiver  
5 needs; other, nonhome medical equipment provider services as  
6 they relate to home medical equipment services and home care  
7 patient crisis management.

8 (16) Establish procedures for maintaining a record of  
9 the employment history, including background screening as  
10 required by s. 400.843, of all home medical equipment provider  
11 personnel. A home medical equipment provider must require its  
12 personnel to submit an employment history to the home medical  
13 equipment provider and must verify the employment history for  
14 at least the previous 5 years, unless through diligent efforts  
15 such verification is not possible. There is no monetary  
16 liability on the part of, and no cause of action for damages  
17 arising against a former employer, a prospective employee, or  
18 a prospective independent contractor with a licensed home  
19 medical equipment provider, who reasonably and in good faith  
20 communicates his or her honest opinions about a former  
21 employee's job performance. This subsection does not affect  
22 the official immunity of an officer or employee of a public  
23 corporation.

24 (17) Upon request by the consumer or as otherwise  
25 required by state or federal laws, rules, and regulations,  
26 assist consumers with meeting the necessary filing  
27 requirements to obtain third-party payment to which a consumer  
28 may be entitled.

29 (18) Maintain safe premises.

30 (19) Comply with all other state and federal laws.

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1           400.825 Rules establishing minimum standards.--The  
2 agency shall adopt, publish, and enforce rules to implement  
3 this part, which must provide reasonable and fair minimum  
4 standards relating to:

5           (1) The qualifications and minimum training  
6 requirements of all home medical equipment provider personnel.

7           (2) License application and renewal.

8           (3) License and inspection fees.

9           (4) Financial ability to operate.

10           (5) The administration of the home medical equipment  
11 provider.

12           (6) Procedures for maintaining patient records.

13           (7) Ensuring that the home medical equipment and  
14 services provided by a home medical equipment provider are in  
15 accordance with the plan of treatment established for each  
16 patient, when provided as a part of a plan of treatment.

17           (8) Contractual arrangements for the provision of home  
18 medical equipment and services by providers not employed by  
19 the home medical equipment provider providing for the  
20 consumer's needs.

21           (9) Physical location and zoning requirements.

22           (10) Home medical equipment requiring home medical  
23 equipment services.

24           400.83 Patient records.--

25           (1) The home medical equipment provider must maintain,  
26 for each patient, a patient record that includes the home  
27 medical equipment and services the home medical equipment  
28 provider has provided. Such records must contain:

29           (a) Any physician's order or certificate of medical  
30 necessity, if the equipment was ordered by a physician.  
31

1           (b) Signed and dated delivery slips verifying  
2 delivery.

3           (c) Notes reflecting all services and maintenance  
4 performed, and any equipment exchanges.

5           (d) The date on which rental equipment was retrieved.

6           (e) Such other information as is appropriate to  
7 specific patients in light of the particular equipment  
8 provided to them.

9           (2) Such records are considered patient records under  
10 s. 455.667, and must be maintained by the home medical  
11 equipment provider for 5 years following termination of  
12 services. If a patient transfers to another home medical  
13 equipment provider, a copy of his or her record must be  
14 provided to the other home medical equipment provider, upon  
15 request.

16           400.84 Notice of toll-free telephone number for  
17 central abuse registry.--On or before the first day home  
18 medical equipment is delivered to the patient's home, any home  
19 medical equipment provider licensed under this part must  
20 inform the consumer and his or her immediate family, if  
21 appropriate, of the right to report abusive, neglectful, or  
22 exploitative practices. The statewide toll-free telephone  
23 number for the central abuse registry must be provided to  
24 consumers in a manner that is clearly legible and must include  
25 the words: "To report abuse, neglect, or exploitation, please  
26 call toll-free 1-800-962-2873." Home medical equipment  
27 providers shall establish appropriate policies and procedures  
28 for providing such notice to consumers.

29           400.843 Background screening of home medical equipment  
30 provider personnel.--The agency shall require employment  
31 screening as provided in chapter 435, using the level 1

1 standards for screening set forth in that chapter, for home  
2 medical equipment provider personnel.

3 (1) The agency may grant exemptions from  
4 disqualification from employment under this section as  
5 provided in s. 435.07.

6 (2) The general manager of each home medical equipment  
7 provider must sign an affidavit annually, under penalty of  
8 perjury, stating that all home medical equipment provider  
9 personnel hired on or after July 1, 1998, who enter the home  
10 of a patient in the capacity of their employment have been  
11 screened and that its remaining personnel have worked for the  
12 home medical equipment provider continuously since before July  
13 1, 1998.

14 (3) Proof of compliance with the screening  
15 requirements of s. 110.1127, s. 393.0655, s. 394.4572, s.  
16 397.451, s. 402.305, s. 402.313, s. 409.175, s. 464.008, or s.  
17 985.407 or this part must be accepted in lieu of the  
18 requirements of this section if the person has been  
19 continuously employed in the same type of occupation for which  
20 he or she is seeking employment without a breach in service  
21 that exceeds 180 days, the proof of compliance is not more  
22 than 2 years old, and the person has been screened through the  
23 central abuse registry and tracking system of the department  
24 and by the Department of Law Enforcement. An employer or  
25 contractor shall directly provide proof of compliance to  
26 another employer or contractor, and a potential employer or  
27 contractor may not accept any proof of compliance directly  
28 from the person requiring screening. Proof of compliance with  
29 the screening requirements of this section shall be provided,  
30 upon request, to the person screened by the home medical  
31 equipment provider.

1           (4) There is no monetary liability on the part of, and  
2 no cause of action for damages arising against, a licensed  
3 home medical equipment provider that, upon notice of a  
4 confirmed report of adult abuse, neglect, or exploitation  
5 under chapter 415, terminates the employee against whom the  
6 report was issued, whether or not the employee has filed for  
7 an exemption with the agency and whether or not the time for  
8 filing has expired.

9           (5) The costs of processing the statewide  
10 correspondence criminal records checks and the search of the  
11 department's central abuse registry must be borne by the home  
12 medical equipment provider or by the person being screened, at  
13 the discretion of the home medical equipment provider.

14           (6) Neither the agency nor the home medical equipment  
15 provider may use the criminal records, juvenile records, or  
16 central abuse registry information of a person for any purpose  
17 other than determining whether that person meets minimum  
18 standards of good moral character for home medical equipment  
19 provider personnel.

20           (7)(a) It is a misdemeanor of the first degree,  
21 punishable as provided in s. 775.082 or s. 775.083, for any  
22 person willfully, knowingly, or intentionally to:

23           1. Fail, by false statement, misrepresentation,  
24 impersonation, or other fraudulent means, to disclose in any  
25 application for paid employment a material fact used in making  
26 a determination as to the person's qualifications to be an  
27 employee under this section;

28           2. Operate or attempt to operate an entity licensed  
29 under this part with persons who do not meet the minimum  
30 standards for good moral character as contained in this  
31 section; or

1           3. Use information from the criminal records or  
2 central abuse registry obtained under this section for any  
3 purpose other than screening that person for employment as  
4 specified in this section, or release such information to any  
5 other person for any purpose other than screening for  
6 employment under this section.

7           (b) It is a felony of the third degree, punishable as  
8 provided in s. 775.082, s. 775.083, or s. 775.084, for any  
9 person willfully, knowingly, or intentionally to use  
10 information from the juvenile records of a person obtained  
11 under this section for any purpose other than screening for  
12 employment under this section.

13           400.845 Procedures for screening of home medical  
14 equipment provider personnel.--

15           (1) A person employed by a home medical equipment  
16 provider shall, within 5 working days after starting to work,  
17 submit to the home medical equipment provider a complete set  
18 of information necessary to conduct a screening under this  
19 section. The person must sign an affidavit stating whether the  
20 person meets the minimum standards for good moral character  
21 under this section. The home medical equipment provider shall  
22 submit the information to the Department of Law Enforcement  
23 and to the department's central abuse registry and tracking  
24 system for processing. If disposition information is missing  
25 on a criminal record, it is the responsibility of the person  
26 being screened to obtain and supply the missing information  
27 within 30 days. Failure to supply the missing information or  
28 to show reasonable efforts to obtain such information will  
29 result in automatic disqualification for employment.

30           (2) Home medical equipment provider personnel hired on  
31 or after July 1, 1998, must be placed on probationary status

1 pending a determination of compliance with minimum standards  
2 for good moral character.

3 (3) The home medical equipment provider must  
4 automatically terminate the employment of any of its personnel  
5 found to be in noncompliance with the minimum standards for  
6 good moral character under this section, unless such person  
7 has obtained an exemption under s. 400.843(1).

8 (4) The general manager of each home medical equipment  
9 provider must sign an affidavit annually, under penalty of  
10 perjury, stating that all personnel hired on or after July 1,  
11 1998, have been screened and that its remaining personnel have  
12 worked for the home medical equipment provider continuously  
13 since before July 1, 1998.

14 400.85 Injunction proceedings.--The agency may  
15 institute injunction proceedings in a court of competent  
16 jurisdiction when violation of this part or of applicable  
17 rules constitutes an emergency affecting the immediate health  
18 and safety of a patient or consumer.

19 400.86 Prohibited acts.--Compliance with state and  
20 federal laws regarding prohibited patient referrals and  
21 rebates shall be a condition of licensure.

22 Section 2. Home medical equipment providers in  
23 existence on the effective date of this act who are subject to  
24 licensure under part IX of chapter 400, Florida Statutes, as  
25 created in this act, shall submit an application and  
26 applicable fees for licensure by December 31, 1998. Those  
27 existing providers that submit applications and fees prior to  
28 December 31, 1998, shall be deemed to meet licensure  
29 requirements until the agency acts to deny or grant the  
30 initial licensure application. After December 31, 1998,  
31



1 applicants for licensure may not operate until they are  
2 approved and obtain a license.

3           Section 3. There is hereby appropriated from the  
4 Health Care Trust Fund to the Agency for Health Care  
5 Administration 13 full-time-equivalent staff positions and  
6 \$634,845 to implement the provisions of this act.

7           Section 4. This act shall take effect July 1 of the  
8 year in which enacted.  
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