

By Representative Geller

1                                   A bill to be entitled  
 2           An act relating to home medical equipment  
 3           suppliers; creating part IX of chapter 400,  
 4           F.S.; providing for regulation of home medical  
 5           equipment suppliers by the Agency for Health  
 6           Care Administration; providing legislative  
 7           intent; providing definitions; providing for  
 8           licensure and exemptions; providing unlawful  
 9           acts; providing penalties; providing for  
 10          license applications; providing for a fee;  
 11          providing for provisional licenses and  
 12          temporary permits; providing for administrative  
 13          penalties; providing for injunctions, emergency  
 14          orders, and moratoriums; providing for  
 15          licensure inspections; providing minimum  
 16          standards; providing for agency rules;  
 17          providing for clinical records; providing for  
 18          notice of toll-free telephone number for the  
 19          central abuse registry; providing for  
 20          background screening of home medical equipment  
 21          supplier personnel; providing screening  
 22          procedures; providing for agency injunctions;  
 23          prohibiting referrals to home medical equipment  
 24          suppliers; prohibiting rebates; providing  
 25          penalties; providing an effective date.

26  
 27 Be It Enacted by the Legislature of the State of Florida:

28  
 29           Section 1. Part IX of chapter 400, Florida Statutes,  
 30           consisting of sections 400.81, 400.815, 400.82, 400.821,  
 31

1 400.822, 400.823, 400.824, 400.825, 400.83, 400.84, 400.843,  
2 400.845, 400.85, 400.86, and 400.865, is created to read:

3 400.81 Legislative intent.--It is the intent of the  
4 Legislature to provide for the licensure of every home medical  
5 equipment supplier and to provide for the development,  
6 establishment, and enforcement of basic standards that will  
7 ensure quality services to persons receiving home medical  
8 equipment.

9 400.815 Definitions.--As used in this chapter, the  
10 term:

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

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

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

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

27 (5) "Consumer or patient" means any person who uses  
28 home medical equipment in his or her home or place of  
29 residence.

30 (6) "Department" means the Department of Children and  
31 Family Services.

1           (7) "General manager" means the individual who has the  
2 general administrative charge of a licensed home medical  
3 equipment supplier premises.

4           (8) "Home medical equipment" includes any product as  
5 defined by the Federal Drug Administration's Drugs, Devices  
6 and Cosmetics Act, any product reimbursed under the Medicare  
7 Durable Medical Equipment benefits, or any product reimbursed  
8 under the Florida Medicaid Durable Medical Equipment program.  
9 Home medical equipment includes, but is not limited to, oxygen  
10 products and equipment. Home medical equipment does not  
11 include prosthetics or customized orthotics.

12           (9) "Home medical equipment services" means equipment  
13 management and consumer instruction, including selection,  
14 delivery, set-up, and maintenance of equipment, and other  
15 related services for use of home medical equipment in the  
16 consumer's regular or temporary place of residence.

17           (10) "Home medical equipment supplier" means any  
18 person or entity that sells or rents or offers to sell or rent  
19 to or 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           (11) "Home medical equipment supplier personnel" means  
24 persons who are employed by or under contract with a home  
25 medical equipment supplier.

26           (12) "Moratorium" means a mandated temporary cessation  
27 or suspension of the sale, rental, or offering of equipment  
28 after the imposition of the moratorium. Services related to  
29 equipment sold prior to the moratorium must be continued  
30 without interruption, unless deemed otherwise by the agency.

31

1           (13) "Premises" means those buildings and equipment  
2 that are located at the address of the licensed home medical  
3 equipment supplier for the provision of home medical equipment  
4 services and are in such reasonable proximity as to appear to  
5 the public to be a single supplier location.

6           (14) "Residence" means the consumer's home or place of  
7 residence and includes nursing homes, assisted living  
8 facilities, transitional living facilities, adult family-care  
9 homes, or other congregate residential facilities.

10           400.82 Home medical equipment suppliers to be  
11 licensed; expiration of license; exemptions; unlawful acts;  
12 penalties.--

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

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

21           (3) Any home medical equipment supplier must be  
22 licensed by the agency to operate in this state. A standard  
23 license issued to a home medical equipment supplier, unless  
24 sooner suspended or revoked, expires 2 years after its  
25 effective date.

26           (4) A separate license is required of all home medical  
27 equipment suppliers operating on separate premises, even if  
28 the suppliers are operated under the same management.

29           (5) No more than one licensed home medical equipment  
30 supplier may operate from the same premises.

31

1       (6) The following are exempt from home medical  
2 equipment supplier licensure, unless they have a separate  
3 company, corporation, division, or other business entity that  
4 is in the business of providing home medical equipment and  
5 services for sale or rent to consumers at their residences  
6 pursuant to the provisions of this part:

7       (a) Suppliers operated by the Federal Government.

8       (b) Nursing homes licensed under part II.

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

10      (d) Hospices licensed under part VI.

11      (e) Intermediate care facilities, homes for special  
12 services, and transitional living facilities licensed under  
13 part VIII.

14      (f) Hospitals and ambulatory surgical centers licensed  
15 under chapter 395.

16      (g) Manufacturers and wholesale distributors when not  
17 selling directly to consumers.

18      (h) Licensed health care practitioners who utilize  
19 home medical equipment in the course of their practice, but do  
20 not sell home medical equipment to their patients.

21      (i) Pharmacies licensed under chapter 465.

22      (7)(a) It is unlawful for any person to offer or  
23 advertise home medical equipment and services to the public  
24 unless he or she has a valid license under this part. It is  
25 unlawful for any holder of a license issued under this part to  
26 advertise or indicate to the public that it holds a home  
27 medical equipment supplier license other than the one it has  
28 been issued.

29      (b) A person who violates paragraph (a) is subject to  
30 an injunctive proceeding under s. 400.85. A violation of  
31 paragraph (a) is a deceptive and unfair trade practice and

1 constitutes a violation of the Florida Deceptive and Unfair  
2 Trade Practices Act.

3 (c) A person who violates paragraph (a) commits a  
4 misdemeanor of the second degree, punishable as provided in s.  
5 775.082 or s. 775.083. Any person who commits a second or  
6 subsequent violation commits a misdemeanor of the first  
7 degree, punishable as provided in s. 775.082 or s. 775.083.  
8 Each day of continuing violation constitutes a separate  
9 offense.

10 (d) A fine may be imposed against a licensee found to  
11 be concurrently operating licensed and unlicensed supplier  
12 premises. Any person who violates this section who previously  
13 operated a licensed supplier premises or concurrently operates  
14 a licensed supplier premises and an unlicensed supplier  
15 premises, commits a felony of the third degree. When a  
16 licensee has an interest in more than one supplier location  
17 and fails to license any one of these locations, the agency  
18 may revoke the license or impose a moratorium on any or all of  
19 the licensed supplier locations until such time as the  
20 delinquent supplier premises is licensed. If the supplier has  
21 received government reimbursement for services provided by an  
22 unlicensed supplier premises, the agency shall make a fraud  
23 referral to the appropriate government reimbursement program.

24 (e) A supplier found to be operating without a license  
25 may apply for licensure, and must cease operations until a  
26 license is awarded by the agency.

27 400.821 Application for license; fee; provisional  
28 license; temporary permit.--

29 (1) Application for an initial license or for renewal  
30 of an existing license must be made under oath to the agency  
31

1 on forms furnished by it and must be accompanied by the  
2 appropriate license fee as provided in subsection (10).

3 (2) The applicant must file with the application  
4 satisfactory proof that the home medical equipment supplier is  
5 in compliance with this part and applicable rules, including:

6 (a) A listing of equipment and services to be  
7 provided, by category, indicating those offered either  
8 directly by the applicant or through contractual arrangements  
9 with existing suppliers. Categories include oxygen and  
10 oxygen-related equipment, respiratory equipment,  
11 rehabilitation environmental control equipment, diagnostic  
12 equipment, rehabilitation seating, ambulation assistance  
13 equipment, mobility equipment, beds and related products, and  
14 orthotics.

15 (b) A listing of those with whom the applicant  
16 contracts, both suppliers the applicant uses to provide  
17 equipment or services to its consumers and suppliers for whom  
18 the applicant provides services or equipment.

19 (c) The number and discipline of professional staff to  
20 be employed, including full-time, part-time, or contract  
21 status.

22 (3) An applicant for initial licensure, including  
23 change of ownership, must demonstrate financial ability to  
24 operate by submitting projected financial statements for the  
25 first 2 years of operation. These statements shall include a  
26 balance sheet and income and expense statement which provide  
27 evidence of having sufficient assets, credit, and projected  
28 revenues to cover liabilities and expenses. The applicant  
29 shall have demonstrated financial ability to operate if the  
30 assets, credit, and projected revenues meet or exceed  
31 projected liabilities and expenses. All documents required

1 under this subsection must be prepared in accordance with  
2 generally accepted accounting principles and signed by a  
3 certified public accountant.

4 (4) An applicant for renewal who has demonstrated  
5 financial inability to operate must demonstrate financial  
6 ability to operate by submitting audited financial statements  
7 for the most recent 2 years of operation which provide  
8 evidence of having sufficient assets, credit, and revenues to  
9 cover liabilities and expenses. The applicant shall have  
10 demonstrated financial ability to operate if the assets,  
11 credit, and projected revenues meet or exceed liabilities and  
12 expenses. All documents required under this subsection must be  
13 prepared in accordance with generally accepted accounting  
14 principles and signed by a certified public accountant.

15 (5) The applicant must file with the application  
16 satisfactory proof of compliance with background screening  
17 requirements, as follows:

18 (a) Upon receipt of a completed, signed, and dated  
19 application, the agency shall require background screening  
20 using the level 2 standards for screening set forth in chapter  
21 435 for the applicant.

22 (b) Such background screening shall require each  
23 applicant to submit to the Department of Law Enforcement the  
24 information necessary, including a full set of fingerprints,  
25 to enable a criminal background investigation to be conducted  
26 for a state criminal and juvenile history records check. The  
27 Department of Law Enforcement shall forward the fingerprints  
28 to the Federal Bureau of Investigation for a national criminal  
29 history records check. Upon completion of the state and  
30 national criminal history records checks, the Department of  
31 Law Enforcement shall report the findings to the agency. The



1 actual cost of such state and national criminal history  
2 records checks shall be borne by the applicant.

3 (c) Such background screening shall also require each  
4 applicant to submit to the Department of Children and Family  
5 Services a complete set of information necessary to conduct a  
6 records check through the central abuse registry. The actual  
7 costs of searching the department's central abuse registry  
8 shall be borne by the applicant.

9 (d) A license shall not be granted to any applicant  
10 who has been found guilty of, regardless of adjudication, or  
11 who has entered a plea of nolo contendere or guilty to, any  
12 offense prohibited under the level 2 standards of chapter 435.  
13 A license shall not be granted to any applicant having a  
14 confirmed report of abuse, neglect, or exploitation as defined  
15 in s. 415.102 which has been uncontested or upheld under  
16 chapter 415, or having a proposed confirmed report that  
17 remains unserved and is maintained in the central abuse  
18 registry and tracking system pursuant to s. 415.1065(2)(c).

19 (e) The agency shall also require every applicant, as  
20 a condition of license application, to submit information  
21 concerning any prior violation, fine, suspension, termination,  
22 or other administrative action taken under the laws, rules, or  
23 regulations of any regulatory body of this state or of any  
24 other state or the Federal Government; and any prior violation  
25 of the laws, rules, or regulations relating to the Medicaid or  
26 Medicare programs.

27 (f) Upon licensure renewal, each applicant must submit  
28 to the agency, under penalty of perjury, an affidavit of  
29 compliance with the background screening provisions of this  
30 section.

31

1       (g) Proof of compliance with the level 2 background  
2 screening requirements of chapter 435 submitted within the  
3 previous 5 years for any other Florida health care licensure  
4 requirements shall be accepted to fulfill the Department of  
5 Law Enforcement and Department of Children and Family Services  
6 background check, provided that such proof of compliance is  
7 accompanied, under penalty of perjury, by an affidavit of  
8 compliance with these background screening provisions.

9       (6) The home medical equipment supplier must also  
10 obtain and maintain professional and commercial liability  
11 insurance. Proof of liability insurance, as defined in s.  
12 624.605, must be submitted with the application. The agency  
13 shall set the required amounts of liability insurance by rule,  
14 but the required amount must not be less than \$250,000 per  
15 claim. In the case of contracted services, it is required that  
16 the contractor have liability insurance of not less than  
17 \$250,000 per claim.

18       (7) A provisional license shall be issued to an  
19 approved applicant for initial licensure for a period of 45  
20 days, during which time a survey must be conducted  
21 demonstrating substantial compliance with this section. If  
22 substantial compliance is demonstrated, a standard license  
23 shall be issued to expire 2 years after the effective date of  
24 the provisional license.

25       (8) Ninety days before the expiration date, an  
26 application for renewal must be submitted to the agency under  
27 oath on forms furnished by the agency, and a license shall be  
28 renewed if the applicant has met the requirements established  
29 under this part and applicable rules. The home medical  
30 equipment supplier must file with the application satisfactory  
31 proof that it is in compliance with this part and applicable

1 rules. The home medical equipment supplier must submit  
2 satisfactory proof of its financial ability to comply with the  
3 requirements of this part.

4 (9) When a change of ownership of a home medical  
5 equipment supplier occurs, the prospective owner must submit  
6 an initial application for a license at least 60 days before  
7 the effective date of the change of ownership. An application  
8 for change of ownership of a license is required when  
9 ownership, a majority of the ownership, or controlling  
10 interest of a licensed home medical equipment supplier is  
11 transferred or assigned and when a licensee agrees to  
12 undertake or provide services to the extent that legal  
13 liability for operation of the home medical equipment supplier  
14 rests with the licensee. A provisional license shall be issued  
15 to the new owner for a period of 45 days, during which time a  
16 survey must be conducted demonstrating substantial compliance  
17 with this section. If substantial compliance is demonstrated,  
18 a standard license shall be issued to expire 2 years after the  
19 issuance of the provisional license.

20 (10) The license fee, annual renewal fee, and change  
21 of ownership fee required of a home medical equipment supplier  
22 is nonrefundable. The agency shall set the fees in an amount  
23 that is sufficient to cover its costs in carrying out its  
24 responsibilities under this part. However, state, county, or  
25 municipal governments applying for licenses under this part  
26 are exempt from the payment of license fees. All fees  
27 collected under this part must be deposited in the Health Care  
28 Trust Fund for the administration of this part.

29 (11) When a duplicate license must be issued, a fee  
30 shall be assessed, not to exceed the actual cost of  
31 duplicating and mailing.

1       (12) When applications are mailed out upon request, a  
2 fee shall be assessed, not to exceed the cost of the printing,  
3 preparation, and mailing.

4       (13) The license must be displayed in a conspicuous  
5 place in the administrative office of the home medical  
6 equipment supplier and is valid only while in the possession  
7 of the person or entity to which it is issued. The license may  
8 not be sold, assigned, or otherwise transferred, voluntarily  
9 or involuntarily, and is valid only for the home medical  
10 equipment supplier and location for which originally issued.

11       (14) A home medical equipment supplier that offers or  
12 advertises to the public that it provides any service for  
13 which licensure is required under this section must include in  
14 such advertisement the license number issued to it by the  
15 agency.

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

24       400.822 Administrative penalties; injunctions;  
25 emergency orders; moratoriums.--

26       (1) The agency may deny, revoke, or suspend a license,  
27 or impose an administrative fine not to exceed \$10,000 per  
28 violation, per day, or initiate injunctive proceedings under  
29 s. 400.85.

30  
31

1           (2) Any of the following actions by a home medical  
2 equipment supplier 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 of any officer, director, agent, manager,  
13 employee, affiliated person, partner, or shareholder who may  
14 not be eligible to participate;

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

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

25           (4) The agency may issue an emergency order  
26 immediately suspending or revoking a license when it  
27 determines that any condition in the licensed supplier  
28 presents a clear and present danger to public health and  
29 safety.

30           (5) The agency may impose an immediate moratorium on  
31 any licensed home medical equipment supplier when the agency

1 determines that any condition in the home medical equipment  
2 supplier presents a threat to public health or safety.

3 400.823 Licensure inspection.--

4 (1) The agency shall make or cause to be made such  
5 inspections and investigations as it deems necessary,  
6 including:

7 (a) Licensure inspections.

8 (b) Inspections directed by the federal Health Care  
9 Financing Administration.

10 (c) Licensure complaint investigations, including full  
11 licensure investigations with a review of all licensure  
12 standards as outlined in administrative rules. Complaints  
13 received by the agency from individuals, organizations, or  
14 other sources are subject to review and investigation by the  
15 agency.

16 (2) The agency shall accept, in lieu of its own  
17 periodic inspections for licensure, the survey or inspection  
18 of an accrediting organization, provided the accreditation of  
19 the licensed home medical equipment supplier is not  
20 provisional and provided the licensed home medical equipment  
21 supplier authorizes release of, and the agency receives the  
22 report of, the accrediting organization. The agency shall  
23 develop, and adopt by rule, criteria for accepting survey  
24 reports of accrediting organizations in lieu of conducting a  
25 state licensure inspection.

26 400.824 Minimum standards.--As a requirement of  
27 licensure, home medical equipment suppliers shall:

28 (1) Offer and provide home medical equipment, and  
29 services as necessary, to consumers who purchase or rent  
30 equipment that requires such services.

31

- 1           (2) Provide at least one category of equipment  
2 directly, filling orders from its own inventory.
- 3           (3) Respond to orders received for other equipment by  
4 filling those orders from its own inventory or inventory from  
5 other companies with which it has contracted to fill such  
6 orders, or by fabricating or fitting items for sale from  
7 supplies purchased under contract.
- 8           (4) Maintain trained personnel to coordinate order  
9 fulfillment and schedule timely equipment and service  
10 delivery.
- 11           (5) As necessary in relation to the sophistication of  
12 the equipment and services being provided, ensure that  
13 delivery personnel are appropriately trained to conduct an  
14 environment and equipment compatibility assessment;  
15 appropriately and safely set up the equipment; instruct  
16 patients and caregivers in the safe operation and client  
17 maintenance of the equipment; and recognize when additional  
18 education or followup patient compliance monitoring is  
19 appropriate.
- 20           (6) Ensure that patients are made aware of service  
21 hours and emergency service procedures.
- 22           (7) At the time of the initial delivery, set up an  
23 appropriate followup home medical equipment service schedule  
24 as needed for such times as, but not limited to, periodic  
25 maintenance, supply delivery, and other related activities.
- 26           (8) Arrange for emergency service after normal  
27 business hours; provide refresher and review training for  
28 appropriate personnel; establish a system for resolution of  
29 complaints and service problems; and provide for timely  
30 replacement or delivery of disposable or consumable equipment  
31 supplies.

- 1       (9) Honor all warranties express and implied under  
2 applicable state law.
- 3       (10) Answer any questions or complaints a consumer has  
4 about an item or use of an item that the consumer purchases or  
5 rents.
- 6       (11) Maintain and repair directly, or through a  
7 service contract with another company, items rented to  
8 consumers.
- 9       (12) Accept returns of substandard or unsuitable items  
10 from consumers. For purposes of this subsection,  
11 "substandard" means less than full quality for the particular  
12 item and "unsuitable" means inappropriate for the consumer at  
13 the time it was fitted or sold.
- 14       (13) Disclose consumer information to each consumer  
15 who rents or purchases items, including all applicable  
16 warranty information. This information consists of the  
17 supplier standards to which it must conform.
- 18       (14) Maintain patient payment and service records in  
19 accordance with the requirements of this part.
- 20       (15)(a) Designate appropriate staff as intake  
21 coordinators, and ensure that order intake personnel are  
22 appropriately trained in the types of equipment and products,  
23 commonly occurring medical conditions, service procedures,  
24 third-party billing, and insurance requirements and coverage.
- 25       (b) Train intake coordinators in a basic understanding  
26 of the following areas: dealing with patient and caregiver  
27 needs; and other, nonhome medical equipment provider services  
28 as they relate to home medical equipment services and home  
29 care patient crisis management.
- 30       (16) Establish procedures for maintaining a record of  
31 the employment history, including background screening as



1 required by s. 400.843, of all home medical equipment supplier  
2 personnel. A home medical equipment supplier must require its  
3 personnel to submit an employment history to the home medical  
4 equipment supplier and must verify the employment history,  
5 unless through diligent efforts such verification is not  
6 possible. There is no monetary liability on the part of, and  
7 no cause of action for damages arising against a former  
8 employer, a prospective employee, or a prospective independent  
9 contractor with a licensed home medical equipment supplier who  
10 reasonably and in good faith communicates his or her honest  
11 opinions about the former employee's job performance. This  
12 subsection does not affect the official immunity of an officer  
13 or employee of a public corporation.

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

19 (18) Maintain safe premises.

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

21 400.825 Rules establishing minimum standards.--The  
22 agency shall adopt, publish, and enforce rules to implement  
23 this part, which must provide reasonable and fair minimum  
24 standards relating to:

25 (1) The qualifications and minimum training  
26 requirements of all home medical equipment supplier personnel.

27 (2) License application and renewal.

28 (3) License and inspection fees.

29 (4) Financial ability to operate.

30 (5) The administration of the home medical equipment  
31 supplier.

- 1           (6) Procedures for maintaining patient records.  
2           (7) Ensuring that the home medical equipment and  
3 services provided by a home medical equipment supplier are in  
4 accordance with the plan of treatment established for each  
5 patient, when provided as a part of a plan of treatment.  
6           (8) Standards for contractual arrangements for the  
7 provision of home medical equipment and services by providers  
8 not employed by the home medical equipment supplier providing  
9 for the consumer's needs.  
10          (9) Physical location and zoning requirements.  
11          (10) Customized orthotics.  
12          (11) Home medical equipment requiring home medical  
13 equipment services.  
14          400.83 Clinical records.--The home medical equipment  
15 supplier must maintain for each patient a clinical record that  
16 includes the products the home medical equipment supplier has  
17 provided. Such records must contain any physician's orders,  
18 pertinent past and current medical, nursing, social, and other  
19 therapeutic information, the plan of treatment, and other such  
20 information as is necessary for the safe and adequate care of  
21 the patient. When home medical equipment supplier services are  
22 terminated, the record must show the date and reason for  
23 termination. Such records are considered patient records under  
24 s. 455.241, and must be maintained by the home medical  
25 equipment supplier for 5 years following termination of  
26 services. If a patient transfers to another home medical  
27 equipment supplier, a copy of his or her record must be  
28 provided to the other home medical equipment supplier upon  
29 request.  
30          400.84 Notice of toll-free telephone number for  
31 central abuse registry.--On or before the first day home

1 medical equipment is delivered to patient's home, any home  
2 medical equipment supplier licensed under this part must  
3 inform the consumer and his or her immediate family, if  
4 appropriate, of the right to report abusive, neglectful, or  
5 exploitative practices. The statewide toll-free telephone  
6 number for the central abuse registry must be provided to  
7 consumers in a manner that is clearly legible and must include  
8 the words: "To report abuse, neglect, or exploitation, please  
9 call toll-free (phone number)." Home medical equipment  
10 suppliers shall establish appropriate policies and procedures  
11 for providing such notice to consumers.

12 400.843 Background screening of home medical equipment  
13 supplier personnel.--The agency shall require employment  
14 screening as provided in chapter 435, using the level 1  
15 standards for screening set forth in that chapter, for home  
16 medical equipment supplier personnel.

17 (1) The agency may grant exemptions from  
18 disqualification from employment under this section as  
19 provided in s. 435.07.

20 (2) The general manager of each home medical equipment  
21 supplier must sign an affidavit annually, under penalty of  
22 perjury, stating that all home medical equipment supplier  
23 personnel hired on or after October 1, 1997, who enter the  
24 home of a patient in the capacity of their employment have  
25 been screened and that its remaining personnel have worked for  
26 the home medical equipment supplier continuously since before  
27 October 1, 1997.

28 (3) Proof of compliance with the screening  
29 requirements of s. 39.076, s. 110.1127, s. 393.0655, s.  
30 394.457, s. 397.451, s. 402.305, s. 402.313, s. 409.175, or s.  
31 464.008 or this part shall be accepted in lieu of the

1 requirements of this section if the person has been  
2 continuously employed in the same type of occupation for which  
3 he or she is seeking employment without a breach in service  
4 that exceeds 180 days, the proof of compliance is not more  
5 than 2 years old, and the person has been screened through the  
6 central abuse registry and tracking system of the department  
7 and by the Department of Law Enforcement. An employer or  
8 contractor shall directly provide proof of compliance to  
9 another employer or contractor, and a potential employer or  
10 contractor may not accept any proof of compliance directly  
11 from the person requiring screening. Proof of compliance with  
12 the screening requirements of this section shall be provided  
13 upon request to the person screened by the home medical  
14 equipment supplier.

15 (4) There is no monetary liability on the part of, and  
16 no cause of action for damages arises against, a licensed home  
17 medical equipment supplier, that, upon notice of a confirmed  
18 report of adult abuse, neglect, or exploitation under chapter  
19 415, terminates the employee against whom the report was  
20 issued, whether or not the employee has filed for an exemption  
21 with the agency, and whether or not the time for filing has  
22 expired.

23 (5) The costs of processing the statewide  
24 correspondence criminal records checks and the search of the  
25 department's central abuse registry must be borne by the home  
26 medical equipment supplier or by the person being screened, at  
27 the discretion of the home medical equipment supplier.

28 (6) Neither the agency nor the home medical equipment  
29 supplier may use the criminal records, juvenile records, or  
30 central abuse registry information of a person for any purpose  
31 other than determining whether that person meets minimum

1 standards of good moral character for home medical equipment  
2 supplier personnel.

3 (7)(a) It is a misdemeanor of the first degree,  
4 punishable under s. 775.082 or s. 775.083, for any person  
5 willfully, knowingly, or intentionally to:

6 1. Fail, by false statement, misrepresentation,  
7 impersonation, or other fraudulent means, to disclose in any  
8 application for voluntary or paid employment a material fact  
9 used in making a determination as to such person's  
10 qualifications to be an employee under this section;

11 2. Operate or attempt to operate an entity licensed  
12 under this part with persons who do not meet the minimum  
13 standards for good moral character as contained in this  
14 section; or

15 3. Use information from the criminal records or  
16 central abuse registry obtained under this section for any  
17 purpose other than screening that person for employment as  
18 specified in this section, or release such information to any  
19 other person for any purpose other than screening for  
20 employment under this section.

21 (b) It is a felony of the third degree, punishable  
22 under s. 775.082, s. 775.083, or s. 775.084, for any person  
23 willfully, knowingly, or intentionally to use information from  
24 the juvenile records of a person obtained under this section  
25 for any purpose other than screening for employment under this  
26 section.

27 400.845 Procedures for screening of home medical  
28 equipment supplier personnel.--A person employed by home  
29 medical equipment suppliers shall, within 5 working days after  
30 starting to work, submit to the home medical equipment  
31 supplier or registrant a complete set of information necessary

1 to conduct a screening under this section. The person must  
2 sign an affidavit stating whether the person meets the minimum  
3 standards for good moral character under this section. The  
4 home medical equipment supplier shall submit the information  
5 to the Department of Law Enforcement and to the department's  
6 central abuse registry and tracking system for processing. If  
7 disposition information is missing on a criminal record, it is  
8 the responsibility of the person being screened to obtain and  
9 supply the missing information within 30 days. Failure to  
10 supply the missing information or to show reasonable efforts  
11 to obtain such information will result in automatic  
12 disqualification for employment.

13 (1) Home medical equipment supplier personnel hired on  
14 or after October 1, 1997, must be placed on probationary  
15 status pending a determination of compliance with minimum  
16 standards for good moral character.

17 (2) The home medical equipment supplier must  
18 automatically terminate the employment of any of its personnel  
19 found to be in noncompliance with the minimum standards for  
20 good moral character under this section unless such person has  
21 obtained an exemption under s. 400.843(1).

22 (3) The general manager of each home medical equipment  
23 supplier must sign an affidavit annually, under penalty of  
24 perjury, stating that all personnel hired on or after October  
25 1, 1997, have been screened and that its remaining personnel  
26 have worked for the home medical equipment supplier  
27 continuously since before October 1, 1997.

28 400.85 Injunction proceedings.--The agency may  
29 institute injunction proceedings in a court of competent  
30 jurisdiction when violation of this part or of applicable

31

1 rules constitutes an emergency affecting the immediate health  
2 and safety of a patient or consumer.

3 400.86 Prohibited referrals to home medical equipment  
4 suppliers.--

5 (1) A physician licensed under chapter 458 or chapter  
6 459 must comply with s. 455.236.

7 (2) A hospital or an ambulatory surgical center that  
8 has a financial interest in a home medical equipment supplier  
9 is prohibited from requiring any physician on its staff to  
10 refer a patient to the home medical equipment supplier.

11 (3)(a) A violation of this section is punishable by an  
12 administrative fine not to exceed \$15,000. The proceeds of  
13 such fines must be deposited into the Health Care Trust Fund.

14 (b) A physician who violates this section is subject  
15 to disciplinary action by the appropriate board under s.  
16 458.331(2) or s. 459.015(2). A hospital or ambulatory surgical  
17 center that violates this section is subject to the rules  
18 adopted by the agency under s. 395.0185(2).

19 400.65 Rebates prohibited; penalties.--

20 (1) It is unlawful for any person to pay or receive  
21 any commission, bonus, kickback, or rebate or engage in any  
22 split-fee arrangement, in any form whatsoever, with any  
23 physician, surgeon, organization, or person, either directly  
24 or indirectly, for patients referred to a licensed supplier.

25 (2) The agency shall adopt rules which assess  
26 administrative penalties for acts prohibited in subsection  
27 (1). In the case of an entity licensed by the agency, such  
28 penalties may include any disciplinary action available to the  
29 agency under the appropriate licensing laws. In the case of an  
30 entity not licensed by the agency, such penalties may include  
31 a fine not to exceed \$50,000.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

Section 2. This act shall take effect October 1, 1997.

\*\*\*\*\*

HOUSE SUMMARY

Provides for licensure and regulation of home medical  
equipment suppliers by the Agency for Health Care  
Administration.