

By the Committee on Health Care Standards & Regulatory
Reform and Representative Geller

1 A bill to be entitled
2 An act relating to home medical equipment
3 providers; creating part IX of chapter 400,
4 F.S.; providing for regulation of home medical
5 equipment providers 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 fees;
11 providing for background screening; providing
12 for provisional licenses and temporary permits;
13 providing for administrative penalties;
14 providing for injunctions, emergency orders,
15 and moratoriums; providing for licensure
16 inspections and investigations; providing
17 minimum standards; providing for agency rules;
18 providing for patient records; providing for
19 notice of toll-free telephone number for the
20 central abuse registry; providing for
21 background screening of home medical equipment
22 provider personnel; providing penalties;
23 providing screening procedures; providing for
24 agency injunctions; prohibiting patient
25 referrals and rebates; providing for
26 application of the act to existing providers;
27 providing an appropriation; providing an
28 effective date.

29
30 Be It Enacted by the Legislature of the State of Florida:
31

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 every home medical
7 equipment provider and to provide for the development,
8 establishment, and enforcement of basic standards that will
9 ensure quality services to persons receiving home medical
10 equipment.

11 400.815 Definitions.--As used in this chapter, the
12 term:

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

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

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

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

30
31

1 (5) "Consumer or patient" means any person who uses
2 home medical equipment in his or her home or place of
3 residence.

4 (6) "Department" means the Department of Children and
5 Family Services.

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

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

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

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

23 (b) Home medical equipment that requires any home
24 medical equipment services.

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

28 (11) "Home medical equipment services" means equipment
29 management and consumer instruction, including selection,
30 delivery, set-up, and maintenance of equipment, and other
31

1 related services for the use of home medical equipment in the
2 consumer's regular or temporary place of residence.

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

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

12 (14) "Person" means any individual, firm, partnership,
13 corporation, or association.

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

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

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

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

31

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

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

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

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

20 (a) Providers operated by the Federal Government.

21 (b) Nursing homes licensed under part II.

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

23 (d) Hospices licensed under part VI.

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

27 (f) Hospitals and ambulatory surgical centers licensed
28 under chapter 395.

29 (g) Manufacturers and wholesale distributors when not
30 selling directly to consumers.

31

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

4 (i) Pharmacies licensed under chapter 465.

5 (6)(a) It is unlawful for any person to offer or
6 advertise home medical equipment and services to the public
7 unless he or she has a valid license under this part. It is
8 unlawful for any holder of a license issued under this part to
9 advertise or indicate to the public that it holds a home
10 medical equipment provider license other than the one it has
11 been issued.

12 (b) A person who violates paragraph (a) is subject to
13 an injunctive proceeding under s. 400.85. A violation of
14 paragraph (a) is a deceptive and unfair trade practice and
15 constitutes a violation of the Florida Deceptive and Unfair
16 Trade Practices Act.

17 (c) A person who violates paragraph (a) commits a
18 misdemeanor of the second degree, punishable as provided in s.
19 775.082 or s. 775.083. A person who commits a second or
20 subsequent violation commits a misdemeanor of the first
21 degree, punishable as provided in s. 775.082 or s. 775.083.
22 Each day of continuing violation constitutes a separate
23 offense.

24 (d) The following penalties shall be imposed for
25 operating an unlicensed home medical equipment provider:

26 1. Any person or entity who operates an unlicensed
27 provider commits a felony of the third degree.

28 2. For any person or entity who has received
29 government reimbursement for services provided by an
30 unlicensed provider, the agency shall make a fraud referral to
31 the appropriate government reimbursement program.

1 3. For any licensee found to be concurrently operating
2 licensed and unlicensed provider premises, the agency may
3 impose a fine or moratorium, or revoke existing licenses of
4 any or all of the licensee's licensed provider locations until
5 such time as the delinquent provider premises is licensed.

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

9 400.821 Application for license; fee; provisional
10 license; temporary permit.--

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

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

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

- 22 1. Respiratory modalities.
- 23 2. Ambulation aids.
- 24 3. Mobility aids.
- 25 4. Sickroom set-up.
- 26 5. Disposables.

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

- 31 1. Intake.

1 2. Equipment selection.

2 3. Delivery.

3 4. Set-up and installation.

4 5. Patient training.

5 6. Ongoing service and maintenance.

6 7. Retrieval.

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

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

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

18 (5) The applicant must file with the application
19 satisfactory proof of compliance with background screening
20 requirements as follows:

21 (a) Upon receipt of a completed, signed, and dated
22 application, the agency shall require background screening,
23 using the level 2 standards for screening set forth in chapter
24 435, for the applicant.

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

1 history records check. Upon completion of the state and
2 national criminal history records checks, the Department of
3 Law Enforcement shall report the findings to the agency. The
4 actual cost of such state and national criminal history
5 records checks shall be borne by the applicant.

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

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

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

30 (f) Upon licensure renewal, each applicant must submit
31 to the agency, under penalty of perjury, an affidavit of

1 compliance with the background screening provisions of this
2 section.

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

11 (h) Notwithstanding paragraph (d), a provisional
12 license may be granted to an applicant who has met the
13 standards for the abuse registry background check and the
14 Department of Law Enforcement background check, but for whom
15 background screening results from the Federal Bureau of
16 Investigation have not yet been received by the agency. A
17 standard license may be issued upon receipt of the Federal
18 Bureau of Investigation report of background screening
19 confirming that all standards have been met.

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) Initial licensure fees, renewal fees, and change
27 of ownership shall consist of 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 that requires issuance
2 of a license, a fee shall be assessed. The fee shall be based
3 on the actual cost of processing and issuing the license.

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

7 (15) When applications are mailed out upon request, a
8 fee shall 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.

31

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, 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 deems 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
30
31

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. For the purposes of this subsection,
19 "substandard" means less than full quality for the particular
20 item and "unsuitable" means inappropriate for the consumer at
21 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,
31

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 the 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.

31

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) Standards for contractual arrangements for the
18 provision of home medical equipment and services by providers
19 not employed by the home medical equipment provider providing
20 for the 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. 455.241, 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, 1997, 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, 1997.

14 (3) Proof of compliance with the screening
15 requirements of s. 39.076, s. 110.1127, s. 393.0655, s.
16 394.457, s. 397.451, s. 402.305, s. 402.313, s. 409.175, or s.
17 464.008 or this part shall 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 voluntary or paid employment a material fact
26 used in making a determination as to such person's
27 qualifications to be an 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 or registrant a
18 complete set of information necessary to conduct a screening
19 under this section. The person must sign an affidavit stating
20 whether the person meets the minimum standards for good moral
21 character under this section. The home medical equipment
22 provider shall submit the information to the Department of Law
23 Enforcement and to the department's central abuse registry and
24 tracking system for processing. If disposition information is
25 missing on a criminal record, it is the responsibility of the
26 person being screened to obtain and supply the missing
27 information within 30 days. Failure to supply the missing
28 information or to show reasonable efforts to obtain such
29 information will result in automatic disqualification for
30 employment.

31

1 (2) Home medical equipment provider personnel hired on
2 or after July 1, 1997, must be placed on probationary status
3 pending a determination of compliance with minimum standards
4 for good moral character.

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

10 (4) The general manager of each home medical equipment
11 provider must sign an affidavit annually, under penalty of
12 perjury, stating that all personnel hired on or after July 1,
13 1997, have been screened and that its remaining personnel have
14 worked for the home medical equipment provider continuously
15 since before July 1, 1997.

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

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

24 Section 2. Existing home medical equipment providers
25 subject to licensure under part IX of chapter 400, Florida
26 Statutes, as created in this act, shall submit an application
27 and applicable fees for licensure by December 31, 1997. Those
28 existing providers that submit applications and fees prior to
29 December 31, 1997, shall be deemed to meet licensure
30 requirements until the agency acts to deny or grant the
31 initial licensure application. After December 31, 1997,

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 \$596,350 to implement the provisions of this act.

7 Section 4. This act shall take effect July 1, 1997.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31