

By the Committee on Health Care Licensing & Regulation and
Representatives Fasano, Ogles, Heyman, Ritter, Morroni and
Kelly

1 A bill to be entitled
2 An act relating to home health agencies;
3 amending s. 400.462, F.S.; providing
4 definitions; amending s. 400.464, F.S.;
5 revising requirements for licensure and
6 exemptions from licensure; amending s. 400.471,
7 F.S.; revising requirements for insurance
8 coverage and license renewal; specifying
9 additional circumstances in which a license may
10 not be issued; amending s. 400.474, F.S.;
11 revising grounds for disciplinary action;
12 providing penalties for operating without a
13 license; providing grounds for denial,
14 suspension, or revocation of a license or
15 imposition of an administrative fine; amending
16 s. 400.484, F.S.; establishing administrative
17 fines for various classes of deficiencies in
18 the operation of a home health agency; amending
19 s. 400.487, F.S.; revising provisions relating
20 to patient assessment, plan of care, and
21 provision of services; creating s. 400.488,
22 F.S.; providing for assistance with
23 self-administration of medication; authorizing
24 rules of the Agency for Health Care
25 Administration; amending s. 400.491, F.S.;
26 providing for maintenance of service provision
27 plans; amending s. 400.497, F.S.; revising
28 authority to adopt rules relating to minimum
29 standards; amending s. 400.506, F.S.; revising
30 requirements for licensure of nurse registries;
31 providing for referral of home health aides by

1 nurse registries; amending s. 400.509, F.S.;
2 revising registration requirements for
3 particular service providers exempt from
4 licensure; providing background screening
5 requirements; amending s. 400.512, F.S.;
6 revising background screening requirements for
7 home health agency personnel; amending s.
8 408.032, F.S.; correcting a cross reference;
9 establishing a Task Force on Home Health
10 Services Licensure; providing duties; requiring
11 a report; providing an effective date.

12

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

14

15 Section 1. Section 400.462, Florida Statutes, is
16 amended to read:

17 400.462 Definitions.--As used in this part, the term:

18 (1) "Administrator" means a direct employee of the
19 home health agency, or of a related organization, or of a
20 management company that has a contract to manage the home
21 health agency, to whom the governing body has delegated the
22 responsibility for day-to-day administration of the home
23 health agency. The administrator must be a licensed physician,
24 a physician assistant or registered nurse licensed to practice
25 in this state, or an individual with at least 1 year of
26 supervisory or administrative experience in home health care
27 or in a facility licensed under chapter 395 or under part II
28 or part III of this chapter. An administrator may manage a
29 maximum of five licensed home health agencies located within
30 one agency service district or within an immediately
31 contiguous county. If the home health agency is licensed under

1 this chapter and is part of a retirement community that
2 provides multiple levels of care, an employee of the
3 retirement community may administer the home health agency and
4 up to a maximum of four entities licensed under this chapter
5 that are owned, operated, or managed by the same corporate
6 entity. An administrator shall designate, in writing, for each
7 licensed entity, a qualified alternate administrator to serve
8 during the absence of the administrator.

9 (2) "Agency" means the Agency for Health Care
10 Administration.

11 (3)(1) "Certified nursing assistant" means any person
12 who has been issued a certificate under after fulfilling the
13 requirements of s. 400.211. The licensed home health agency or
14 licensed nurse registry shall ensure that the certified
15 nursing assistant employed by or under contract with the home
16 health agency or licensed nurse registry is adequately trained
17 to perform the tasks of a home health aide in the home
18 setting.

19 (4) "Client" means an elderly, handicapped, or
20 convalescent individual who receives personal care services,
21 companion services, or homemaker services in the individual's
22 home or place of residence.

23 (5)(2) "Companion" or "sitter" means a person who
24 cares for an elderly, handicapped, or convalescent individual
25 and accompanies such individual on trips and outings and may
26 prepare and serve meals to such individual. A companion may
27 not provide hands-on personal care to a client.

28 (6)(3) "Department" means the Department of Children
29 and Family Health and Rehabilitative Services.

30 (7) "Director of nursing" means a registered nurse,
31 and direct employee of the agency or related business entity,

1 who is a graduate of an approved school of nursing and is
2 licensed in this state; who has at least 1 year of supervisory
3 experience as a registered nurse in a licensed home health
4 agency, a facility licensed under chapter 395, or a facility
5 licensed under part II or part III of this chapter; and who is
6 responsible for overseeing the professional nursing and home
7 health aid delivery of services of the agency. An employee may
8 be the director of nursing of a maximum of five licensed home
9 health agencies operated by a related business entity and
10 located within one agency service district or within an
11 immediately contiguous county. If the home health agency is
12 licensed under this chapter and is part of a retirement
13 community that provides multiple levels of care, an employee
14 of the retirement community may serve as the director of
15 nursing of the home health agency and up to four entities
16 licensed under this chapter that are located on the same
17 campus and owned, operated, or managed by the same corporate
18 entity. A director of nursing shall designate, in writing, for
19 each licensed entity, a qualified alternate registered nurse
20 to serve during the absence of the director of nursing.

21 (8)(4) "Home health agency" means an organization that
22 provides home health services and staffing services ~~for health~~
23 ~~care facilities.~~

24 (9)(5) "Home health agency personnel" means persons
25 who are employed by or under contract with a home health
26 agency and enter the home or place of residence of patients at
27 any time in the course of their employment or contract.

28 (10)(6) "Home health services" means health and
29 medical services and medical supplies furnished by an
30 organization to an individual ~~by home health agency personnel~~
31 ~~or by others under arrangements with the agency, on a visiting~~

1 ~~basis,~~in the individual's home or place of residence. The
2 term includes organizations that provide one or more of, ~~but~~
3 ~~is not limited to,~~the following:
4 (a) Nursing care.
5 (b) Physical, occupational, respiratory, or speech
6 therapy.
7 (c) Home health aide services.
8 (d) Dietetics and nutrition practice and nutrition
9 counseling ~~Nutritional guidance~~.
10 (e) Medical supplies, restricted to drugs and
11 biologicals prescribed by a physician.
12 (11) "Home health aide" means a person who provides
13 hands-on personal care, performs simple procedures as an
14 extension of therapy or nursing services, assists in
15 ambulation or exercises, or assists in administering
16 medications as permitted in rule, and for which the person has
17 received training established by the agency pursuant to s.
18 400.497(1).
19 (12) "Home infusion therapy" means the administration
20 of intravenous pharmacological or nutritional products to a
21 patient in the patient's home.
22 (13) "Home infusion therapy provider" means an
23 organization that employs, contracts with, or refers to a
24 licensed professional who has received advanced training and
25 experience in intravenous infusion therapy and who administers
26 infusion therapy to a patient in the patient's home or place
27 of residence.
28 (14)~~(7)~~ "Homemaker" means a person who performs
29 household chores that include housekeeping, meal planning and
30 preparation, shopping assistance, and routine household
31 activities for an elderly, handicapped, or convalescent

1 individual. A homemaker may not provide hands-on personal care
2 to a client.

3 (15)(8) "Nurse registry" means any person that
4 procures, offers, promises, or attempts to secure
5 health-care-related contracts for registered nurses, licensed
6 practical nurses, certified nursing assistants, home health
7 aides sitters, companions, or homemakers, who are compensated
8 by fees as independent contractors, including, but not limited
9 to, contracts for the provision of services to patients and
10 contracts to provide private duty or staffing services to
11 health care facilities licensed under chapter 395 or this
12 chapter or to other business entities.

13 (16) "Organization" means a corporation, government or
14 governmental subdivision or agency, partnership, or
15 association, two or more persons having a joint or common
16 interest, or any other legal or commercial entity. The term
17 does not include an entity that provides services using only
18 volunteers or only individuals related by blood or marriage to
19 the patient or client.

20 (17)(9) "Patient" means any person who receives home
21 health services in his or her home or place of residence.

22 (18) "Personal care" means assisting a patient in the
23 activities of daily living, such as dressing, bathing, eating,
24 or personal hygiene, assisting in physical transfer and
25 ambulation, and assisting in administering medications as
26 permitted in rule.

27 (19) "Physician" means a person licensed under chapter
28 458, chapter 459, chapter 460, or chapter 461.

29 (20)(10) "Screening" means the assessment of the
30 background of home health agency personnel, nurse registry
31 personnel, and persons registered under s. 400.509 and

1 includes employment or contractual history checks, records
2 checks of the department's central abuse hotline under chapter
3 415 relating to vulnerable adults, and statewide criminal
4 records correspondence checks through the Department of Law
5 Enforcement.

6 (21) "Skilled care" means nursing services or
7 therapeutic services delivered by a health care professional
8 who is licensed under chapter 464; part I, part III, or part V
9 of chapter 468; or chapter 486, and who is employed by or
10 under contract with a licensed home health agency or is
11 referred by a licensed nurse registry.

12 (22)~~(11)~~ "Staffing services" means services provided
13 to a health care facility, or other business entity, on a
14 temporary basis by licensed health care personnel, including
15 certified nursing assistants and home health aides who are
16 employed by, or work under, the auspices of a licensed home
17 health agency or who are registered with a licensed nurse
18 registry.

19 Section 2. Section 400.464, Florida Statutes, is
20 amended to read:

21 400.464 Home health agencies to be licensed;
22 expiration of license; exemptions; unlawful acts; penalties.--

23 (1) Any home health agency must be licensed by the
24 agency ~~for Health Care Administration~~ to operate in this
25 state. A license issued to a home health agency, unless
26 sooner suspended or revoked, expires 1 year after its date of
27 issuance. ~~However, any home health agency that is operated by~~
28 ~~the Federal Government is exempt from this part.~~

29 (2) If the licensed home health agency operates
30 related offices, each related office outside the county where
31 the main office is located must be separately licensed. The

1 counties where the related offices are operating must be
2 specified on the license in the main office.

3 (3) An entity receiving a certificate-of-need
4 exemption under s. 408.036 may request one home health agency
5 license to provide Medicare and non-Medicare home health
6 services to residents of the facility and non-Medicare home
7 health services to persons in one or more counties within the
8 agency service district where the main office of the home
9 health agency is located.

10 ~~(3) The furnishing of only home dialysis services,~~
11 ~~supplies, or equipment, or personal care services as provided~~
12 ~~by a community-care-for-the-elderly lead agency under s.~~
13 ~~430.205, or personal care services provided through a~~
14 ~~community-care-for-disabled-adults program under s. 410.604,~~
15 ~~is exempt from this part. The personal care services~~
16 ~~exemptions apply only to community-care-for-the-elderly lead~~
17 ~~agencies and community-care-for-disabled-adults programs that~~
18 ~~directly provide only personal care services to their clients~~
19 ~~and do not provide other home health services.~~

20 ~~(4) Any program offered through a county health~~
21 ~~department that makes home visits for the purpose of providing~~
22 ~~only environmental assessments, case management, health~~
23 ~~education, or personal care services is exempt from this part.~~

24 ~~(5)(a) It is unlawful for any person to offer or~~
25 ~~advertise home health services to the public unless he or she~~
26 ~~has a valid license under this part. It is unlawful for any~~
27 ~~holder of a license issued under this part to advertise or~~
28 ~~indicate to the public that it holds a home health agency~~
29 ~~license other than the one it has been issued.~~

30 ~~(b) A person who violates paragraph (a) is subject to~~
31 ~~an injunctive proceeding under s. 400.515. A violation of~~

1 ~~paragraph (a) is a deceptive and unfair trade practice and~~
2 ~~constitutes a violation of the Florida Deceptive and Unfair~~
3 ~~Trade Practices Act.~~

4 ~~(c) A person who violates paragraph (a) commits a~~
5 ~~misdemeanor of the second degree, punishable as provided in s.~~
6 ~~775.082 or s. 775.083. Any person who commits a second or~~
7 ~~subsequent violation commits a misdemeanor of the first~~
8 ~~degree, punishable as provided in s. 775.082 or s. 775.083.~~

9
10 ~~Each day of continuing violation constitutes a separate~~
11 ~~offense.~~

12 ~~(4)(6)~~ Any home infusion therapy provider shall be
13 licensed as a home health agency or nurse registry. Any home
14 infusion therapy provider currently authorized to receive
15 Medicare reimbursement under a DME - Part B Provider number
16 for the provision of infusion therapy shall be licensed as a
17 noncertified home health agency. Such a provider shall
18 continue to receive that specified Medicare reimbursement
19 without being certified so long as the reimbursement is
20 limited to those items authorized pursuant to the DME - Part B
21 Provider Agreement and the agency is licensed in compliance
22 with the other provisions of this part.

23 (5)(a) An organization may not provide, offer, or
24 advertise home health services to the public unless the
25 organization has a valid license or is specifically exempted
26 from licensure under this part. An organization that offers or
27 advertises to the public any service for which licensure or
28 registration is required under this part must include in the
29 advertisement the license or registration number issued to the
30 organization by the agency. The agency shall assess a fine of
31 not less than \$100 to any licensee or registrant who fails to

1 include the license or registration number when submitting the
2 advertisement for publication, broadcast, or printing. The
3 holder of a license issued under this part may not advertise
4 or indicate to the public that it holds a home health agency
5 or nurse registry license other than the one it has been
6 issued.

7 (b) A person who violates paragraph (a) is subject to
8 an injunctive proceeding under s. 400.515. A violation of
9 paragraph (a) is a deceptive and unfair trade practice and
10 constitutes a violation of the Florida Deceptive and Unfair
11 Trade Practices Act.

12 (c) A person who violates paragraph (a) commits a
13 misdemeanor of the second degree, punishable as provided in s.
14 775.082 or s. 775.083. A person who commits a second or
15 subsequent violation commits a misdemeanor of the first
16 degree, punishable as provided in s.775.082 or s. 775.083.
17 Each day of continuing violation constitutes a separate
18 offense.

19 (6) The following shall be exempt from the licensure
20 requirements of this part:

21 (a) A home health agency operated by the Federal
22 Government.

23 (b) Home health services provided by a state agency,
24 either directly or through a contractor with:

25 1. The Department of Elderly Affairs.

26 2. The Department of Health, a community health
27 center, or a rural health network which furnishes home visits
28 for the purpose of providing environmental assessments, case
29 management, health education, personal care services, family
30 planning, or followup treatment, or for the purpose of
31 monitoring and tracking disease.

1 3. Persons who have a developmental disability, as
2 defined in s. 393.063.

3 (c) A health care professional, whether or not
4 incorporated, who is licensed under chapter 458, chapter 459,
5 chapter 464, part I, part III, part V, or part X of chapter
6 468, chapter 480, chapter 486, chapter 490, or chapter 491,
7 and who is acting alone within the scope of his or her
8 professional license to provide care to patients in their
9 homes.

10 (d) A home health aide or certified nursing assistant
11 who is acting in his or her individual capacity, within the
12 definitions and standards of such individual's respective
13 occupation, and who provides hands-on care to patients in
14 their homes.

15 (e) An individual who acts alone, in his or her
16 individual capacity, and who is not employed by or affiliated
17 with a licensed home health agency or registered with a
18 licensed nurse registry. This exemption does not entitle an
19 individual to perform home health services without the
20 required professional license.

21 (f) The delivery of instructional services in home
22 dialysis and home dialysis supplies and equipment.

23 (g) The delivery of nursing home services, for which
24 the nursing home is licensed under part II of this chapter, to
25 serve the residents in its facility.

26 (h) The delivery of assisted living facility services,
27 for which the assisted living facility is licensed under part
28 III of this chapter, to serve the residents in its facility.

29 (i) The delivery of hospice services, for which the
30 hospice is licensed under part VI of this chapter, to serve
31 hospice patients admitted to its service.

1 (j) A hospital that provides services for which it is
2 licensed under chapter 395.

3 (k) The delivery of community residential services,
4 for which the community residential home is licensed under
5 chapter 419, to serve the residents in its facility.

6 (l) A not-for-profit, community-based agency that
7 provides early intervention services to infants and toddlers.

8 (m) Certified rehabilitation agencies and
9 comprehensive outpatient rehabilitation facilities that are
10 certified under Title XVIII of the Social Security Act.

11 (n) The delivery of adult family-care home services,
12 for which the adult family-care home is licensed under part
13 VII of this chapter, to serve the residents in its facility.

14 Section 3. Section 400.471, Florida Statutes, 1998
15 Supplement, is amended to read:

16 400.471 Application for license; fee; provisional
17 license; temporary permit.--

18 (1) Application for an initial license or for renewal
19 of an existing license must be made under oath to the agency
20 ~~for Health Care Administration~~ on forms furnished by it and
21 must be accompanied by the appropriate license fee as provided
22 in subsection (8). The agency must take final action on an
23 initial licensure application within 60 days after receipt of
24 all required documentation.

25 (2) The applicant must file with the application
26 satisfactory proof that the home health agency is in
27 compliance with this part and applicable rules, including:

28 (a) A listing of services to be provided, either
29 directly by the applicant or through contractual arrangements
30 with existing providers;

31

1 (b) The number and discipline of professional staff to
2 be employed; and

3 (c) Proof of financial ability to operate.
4

5 If the applicant has applied for a certificate of need under
6 ss. 408.031-408.045 within the preceding 12 months, the
7 applicant may submit the proof required during the
8 certificate-of-need process along with an attestation that
9 there has been no substantial change in the facts and
10 circumstances underlying the original submission.

11 (3) An applicant for initial licensure must
12 demonstrate financial ability to operate by submitting a
13 balance sheet and income and expense statement for the first 2
14 years of operation which provide evidence of having sufficient
15 assets, credit, and projected revenues to cover liabilities
16 and expenses. The applicant shall have demonstrated financial
17 ability to operate if the applicant's assets, credit, and
18 projected revenues meet or exceed projected liabilities and
19 expenses. All documents required under this subsection must
20 be prepared in accordance with generally accepted accounting
21 principles and the financial statement must be signed by a
22 certified public accountant.

23 (4) Each applicant for licensure must comply with the
24 following requirements:

25 (a) Upon receipt of a completed, signed, and dated
26 application, the agency shall require background screening of
27 the applicant, in accordance with the level 2 standards for
28 screening set forth in chapter 435. As used in this
29 subsection, the term "applicant" means the administrator, or a
30 similarly titled person who is responsible for the day-to-day
31 operation of the licensed home health agency, and the

1 financial officer, or similarly titled individual who is
2 responsible for the financial operation of the licensed home
3 health agency.

4 (b) The agency may require background screening for a
5 member of the board of directors of the licensee or an officer
6 or an individual owning 5 percent or more of the licensee if
7 the agency reasonably suspects that such individual has been
8 convicted of an offense prohibited under the level 2 standards
9 for screening set forth in chapter 435.

10 (c) Proof of compliance with the level 2 background
11 screening requirements of chapter 435 which has been submitted
12 within the previous 5 years in compliance with any other
13 health care or assisted living licensure requirements of this
14 state is acceptable in fulfillment of paragraph (a). Proof of
15 compliance with background screening which has been submitted
16 within the previous 5 years to fulfill the requirements of the
17 Department of Insurance pursuant to chapter 651 as part of an
18 application for a certificate of authority to operate a
19 continuing care retirement community is acceptable in
20 fulfillment of the Department of Law Enforcement and Federal
21 Bureau of Investigation background check.

22 (d) A provisional license may be granted to an
23 applicant when each individual required by this section to
24 undergo background screening has met the standards for the
25 abuse registry background check and the Department of Law
26 Enforcement background check, but the agency has not yet
27 received background screening results from the Federal Bureau
28 of Investigation. A standard license may be granted to the
29 licensee upon the agency's receipt of a report of the results
30 of the Federal Bureau of Investigation background screening
31 for each individual required by this section to undergo

1 background screening which confirms that all standards have
2 been met, or upon the granting of a disqualification exemption
3 by the agency as set forth in chapter 435. Any other person
4 who is required to undergo level 2 background screening may
5 serve in his or her capacity pending the agency's receipt of
6 the report from the Federal Bureau of Investigation. However,
7 the person may not continue to serve if the report indicates
8 any violation of background screening standards and a
9 disqualification exemption has not been requested of and
10 granted by the agency as set forth in chapter 435.

11 (e) Each applicant must submit to the agency, with its
12 application, a description and explanation of any exclusions,
13 permanent suspensions, or terminations of the licensee or
14 potential licensee from the Medicare or Medicaid programs.
15 Proof of compliance with the requirements for disclosure of
16 ownership and control interest under the Medicaid or Medicare
17 programs may be accepted in lieu of this submission.

18 (f) Each applicant must submit to the agency a
19 description and explanation of any conviction of an offense
20 prohibited under the level 2 standards of chapter 435 by a
21 member of the board of directors of the applicant, its
22 officers, or any individual owning 5 percent or more of the
23 applicant. This requirement does not apply to a director of a
24 not-for-profit corporation or organization if the director
25 serves solely in a voluntary capacity for the corporation or
26 organization, does not regularly take part in the day-to-day
27 operational decisions of the corporation or organization,
28 receives no remuneration for his or her services on the
29 corporation or organization's board of directors, and has no
30 financial interest and has no family members with a financial
31 interest in the corporation or organization, provided that the

1 director and the not-for-profit corporation or organization
2 include in the application a statement affirming that the
3 director's relationship to the corporation satisfies the
4 requirements of this paragraph.

5 (g) A license may not be granted to an applicant if
6 the applicant, administrator, or financial officer has been
7 found guilty of, regardless of adjudication, or has entered a
8 plea of nolo contendere or guilty to, any offense prohibited
9 under the level 2 standards for screening set forth in chapter
10 435, unless an exemption from disqualification has been
11 granted by the agency as set forth in chapter 435.

12 (h) The agency may deny or revoke licensure if the
13 applicant:

14 1. Has falsely represented a material fact in the
15 application required by paragraph (e) or paragraph (f), or has
16 omitted any material fact from the application required by
17 paragraph (e) or paragraph (f); or

18 2. Has been or is currently excluded, suspended,
19 terminated from, or has involuntarily withdrawn from
20 participation in this state's Medicaid program, or the
21 Medicaid program of any other state, or from participation in
22 the Medicare program or any other governmental or private
23 health care or health insurance program.

24 (i) An application for license renewal must contain
25 the information required under paragraphs (e) and (f).

26 (5) The home health agency must ~~also~~ obtain and
27 maintain the following insurance coverages, in an liability
28 insurance. ~~Proof of liability insurance, as defined in s.~~
29 ~~624.605, must be submitted with the application. The Agency~~
30 ~~for Health Care Administration shall set the required amounts~~
31 ~~of liability insurance by rule, but the required amount must~~

1 not ~~be~~ less than \$250,000 per claim, and the home health
2 agency must submit proof of such coverage with an initial
3 application for licensure and with each annual application for
4 license renewal:

5 (a) Malpractice insurance, as defined in s.
6 624.605(1)(k); and

7 (b) Liability insurance, as defined in s.
8 624.605(1)(b).

9 (6) Ninety ~~Sixty~~ days before the expiration date, an
10 application for renewal must be submitted to the agency ~~for~~
11 ~~Health Care Administration~~ under oath on forms furnished by
12 it, and a license must be renewed if the applicant has met the
13 requirements established under this part and applicable rules.
14 The home health agency must file with the application
15 satisfactory proof that it is in compliance with this part and
16 applicable rules. If there is evidence of financial
17 instability, the home health agency must submit satisfactory
18 proof of its financial ability to comply with the requirements
19 of this part.

20 (7) When transferring the ownership of a home health
21 agency, the transferee must submit an application for a
22 license at least 60 days before the effective date of the
23 transfer. If the home health agency is being leased, a copy
24 of the lease agreement must be filed with the application.

25 (8) The license fee and annual renewal fee required of
26 a home health agency are ~~is~~ nonrefundable. The agency ~~for~~
27 ~~Health Care Administration~~ shall set the fees in an amount
28 that is sufficient to cover its costs in carrying out its
29 responsibilities under this part, but not to exceed \$1,000.
30 However, state, county, or municipal governments applying for
31 licenses under this part are exempt from the payment of

1 license fees. All fees collected under this part must be
2 deposited in the Health Care Trust Fund for the administration
3 of this part.

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

11 (10) A home health agency against whom a revocation or
12 suspension proceeding is pending at the time of license
13 renewal may be issued a provisional license effective until
14 final disposition by the agency ~~for Health Care Administration~~
15 of such proceedings. If judicial relief is sought from the
16 final disposition, the court that has jurisdiction may issue a
17 temporary permit for the duration of the judicial proceeding.

18 (11) The agency may ~~department shall~~ not issue a
19 license designated as certified to a home health agency that
20 ~~which~~ fails to receive a certificate of need under the
21 ~~provisions of ss. 408.031-408.045~~ or that fails to satisfy the
22 requirements of a Medicare certification survey from the
23 agency.

24 (12) The agency may not issue a license to a home
25 health agency that has any unpaid fines assessed under this
26 part.

27 Section 4. Section 400.474, Florida Statutes, 1998
28 Supplement, is amended to read:

29 400.474 Denial, suspension, revocation of license;
30 injunction; grounds.--
31

1 (1) The agency ~~for Health Care Administration~~ may
2 deny, revoke, or suspend a license, or impose an
3 administrative fine in the manner provided in chapter 120, or
4 initiate injunctive proceedings under s. 400.515.

5 (2) Any of the following actions by a home health
6 agency ~~or its employee~~ is grounds for disciplinary action by
7 the agency ~~for Health Care Administration~~:

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

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

11 (c) Knowingly providing home health services in an
12 unlicensed assisted living facility or unlicensed adult
13 family-care home, unless the home health agency or employee
14 reports the unlicensed facility or home to the agency within
15 72 hours after providing the services.

16 (d) Failure to provide at least one of the services
17 listed in s. 400.462(10) directly to patients for a period of
18 6 consecutive months.

19 (3) The agency may impose the following penalties for
20 operating without a license upon an applicant or owner who has
21 in the past operated, or who currently operates, a licensed
22 home health agency:

23 (a) If a home health agency that is found to be
24 operating without a license wishes to apply for a license, the
25 home health agency may submit an application only after the
26 agency has verified that the home health agency no longer
27 operates an unlicensed home health agency.

28 (b) Any person, partnership, or corporation that
29 violates paragraph (a) and that previously operated a licensed
30 home health agency or concurrently operates both a licensed
31 home health agency and an unlicensed home health agency

1 commits a felony of the third degree, punishable as provided
2 in s. 775.082, s. 775.083, or s. 775.084. If an owner has an
3 interest in more than one home health agency and fails to
4 license any one of those home health agencies, the agency must
5 issue a cease and desist order for the activities of the
6 unlicensed home health agency and impose a moratorium on any
7 or all of the related licensed home health agencies until the
8 unlicensed home health agency is licensed.

9 (c) If any home health agency meets the criteria in
10 paragraph (a) or paragraph (b) and that home health agency has
11 received any government reimbursement for services provided by
12 an unlicensed home health agency, the agency shall make a
13 fraud referral to the appropriate government reimbursement
14 program.

15 (4) The agency may deny, revoke, or suspend the
16 license of a home health agency, or may impose on a home
17 health agency administrative fines not to exceed the aggregate
18 sum of \$5,000, if:

19 (a) The agency is unable to obtain entry to the home
20 health agency to conduct a licensure survey, complaint
21 investigation, surveillance visit, or monitoring visit.

22 (b) An applicant or a licensed home health agency has
23 falsely represented a material fact in its application, or has
24 omitted from the application any material fact, including, but
25 not limited to, the fact that the controlling or ownership
26 interest is held by any officer, director, agent, manager,
27 employee, affiliated person, partner, or shareholder who may
28 not be eligible to participate.

29 (c) An applicant, owner, or person who has a 5 percent
30 or greater interest in a licensed entity:

31

1 1. Has been previously found by any licensing,
2 certifying, or professional standards board or agency to have
3 violated standards or conditions that relate to home
4 health-related licensure or certification, or to the quality
5 of home health-related services provided.

6 2. Has been or is currently excluded, suspended, or
7 terminated from, or has involuntarily withdrawn from,
8 participation in the Medicaid program of this state or any
9 other state, the Medicare program, or any other governmental
10 health care or health insurance program.

11 Section 5. Section 400.484, Florida Statutes, is
12 amended to read:

13 400.484 Right of inspection.--

14 (1) Any duly authorized officer or employee of the
15 agency ~~for Health Care Administration~~ may make such
16 inspections and investigations as are necessary in order to
17 determine the state of compliance with this part and with
18 applicable rules. The right of inspection extends to any
19 business that the agency ~~for Health Care Administration~~ has
20 reason to believe is being operated as a home health agency
21 without a license, but such inspection of any such business
22 may not be made without the permission of the owner or person
23 in charge unless a warrant is first obtained from a circuit
24 court. Any application for a license issued under this part or
25 for license renewal constitutes permission for an appropriate
26 inspection to verify the information submitted on or in
27 connection with the application.

28 (2) The agency shall impose fines for various classes
29 of deficiencies in accordance with the following schedule:

30 (a) A class I deficiency is any act, omission, or
31 practice that results in a patient's death, disablement, or

1 permanent injury, or places a patient at imminent risk of
2 death, disablement, or permanent injury. Upon finding a class
3 I deficiency, the agency may impose an administrative fine in
4 the amount of \$5,000 for each occurrence and each day that the
5 deficiency exists. In addition, the agency may immediately
6 revoke the license, or impose a moratorium on the admission of
7 new patients, until the factors causing the deficiency have
8 been corrected.

9 (b) A class II deficiency is any act, omission, or
10 practice that has a direct adverse effect on the health,
11 safety, or security of a patient. Upon finding a class II
12 deficiency, the agency may impose an administrative fine in
13 the amount of \$1,000 for each occurrence and each day that the
14 deficiency exists. In addition, the agency may suspend the
15 license, or impose a moratorium on the admission of new
16 patients, until the factors causing the deficiency have been
17 corrected.

18 (c) A class III deficiency is any act, omission, or
19 practice that has an indirect, adverse effect on the health,
20 safety, or security of a patient. Upon finding an uncorrected
21 or repeated class III deficiency, the agency may impose an
22 administrative fine not to exceed \$500 for each occurrence and
23 each day that the uncorrected or repeated deficiency exists.

24 (d) A class IV deficiency is any act, omission, or
25 practice related to required reports, forms, or documents that
26 do not have the potential of negatively affecting patients.
27 These violations are of a type that the agency determines do
28 not threaten the health, safety, or security of patients. Upon
29 finding an uncorrected or repeated class IV deficiency, the
30 agency may impose an administrative fine not to exceed \$200
31

1 for each occurrence and each day that the uncorrected or
2 repeated deficiency exists.

3 Section 6. Section 400.487, Florida Statutes, is
4 amended to read:

5 400.487 Patient assessment; establishment and review
6 of plan of care; provision of services.--

7 (1) The home health agency providing skilled care ~~and~~
8 ~~treatment~~ must make an assessment of the patient's needs
9 within 48 hours after the start of services.

10 (2) The attending physician for a patient who is to
11 receive skilled ~~receiving~~ care ~~or treatment provided by a~~
12 ~~licensed nurse or by a physical, occupational, or speech~~
13 ~~therapist~~ must establish treatment orders ~~a plan of care for~~
14 ~~the patient on behalf of the home health agency that provides~~
15 ~~services to the patient.~~ The ~~original~~ plan of treatment
16 orders must be signed by the physician within 24 days after
17 the start of care and reviewed, at least every 62 days or more
18 frequently if the patient's illness requires, by the physician
19 in consultation with home health agency personnel that provide
20 services to the patient.

21 (3) If a client is accepted for home health aide
22 services or homemaker or companion services and such services
23 do not require a physician's order, the home health agency
24 shall establish a service provision plan and maintain a record
25 of the services provided.

26 (4)~~(3)~~ Each patient or client has the right to be
27 informed of and to participate in the planning of his or her
28 care. Each patient or client must be provided, upon request,
29 a copy of the plan of care or service provision plan
30 established and maintained for that patient or client by the
31 home health agency.

1 ~~(4) Home health services that are provided to a~~
2 ~~patient must be evaluated in the patient's home by a physician~~
3 ~~licensed under chapter 458, chapter 459, chapter 460, or~~
4 ~~chapter 461 or by a registered nurse licensed under chapter~~
5 ~~464 as frequently as necessary to assure safe and adequate~~
6 ~~care, but not less frequently than once every 62 days.~~

7 (5) When nursing services are ordered, the home health
8 agency to which a patient has been admitted for care must
9 provide the initial admission visit, all service evaluation
10 visits, and the discharge visit by qualified personnel who are
11 on the payroll of, and to whom an Internal Revenue Service
12 payroll form W-2 will be issued by, the home health agency.~~A~~
13 ~~home health agency must provide at least one home health~~
14 ~~service to patients for whom it has agreed to provide care.~~
15 Services provided by others under contractual arrangements to
16 a home health agency ~~agency's patients~~ must be monitored and
17 managed controlled by the admitting home health agency. The
18 admitting home health agency is fully responsible for ensuring
19 that all care provided through its employees or contract staff
20 is delivered in accordance with this part and applicable
21 rules.

22 (6) The skilled care ~~services~~ provided by a home
23 health agency, directly or under contract, must be supervised
24 and coordinated in accordance with the plan of care.

25 Section 7. Section 400.488, Florida Statutes, is
26 created to read:

27 400.488 Assistance with self-administration of
28 medication.--

29 (1) For purposes of of this section, the term:

30 (a) "Informed consent" means advising the patient, or
31 the patient's surrogate, guardian, or attorney in fact, that

1 the patient may be receiving assistance with
2 self-administration of medication from an unlicensed person.

3 (b) "Unlicensed person" means an individual not
4 currently licensed to practice nursing or medicine who is
5 employed by or under contract to a home health agency and who
6 has received training with respect to assisting with the
7 self-administration of medication as provided by agency rule.

8 (2) Patients who are capable of self-administering
9 their own medications without assistance shall be encouraged
10 and allowed to do so. However, an unlicensed person may,
11 consistent with a dispensed prescription's label or the
12 package directions of an over-the-counter medication, assist a
13 patient whose condition is medically stable with the
14 self-administration of routine, regularly scheduled
15 medications that are intended to be self-administered.
16 Assistance with self-medication by an unlicensed person may
17 occur only upon a documented request by, and the written
18 informed consent of, a patient or the patient's surrogate,
19 guardian, or attorney in fact. For purposes of this section,
20 self-administered medications include both legend and
21 over-the-counter oral dosage forms, topical dosage forms, and
22 topical ophthalmic, otic, and nasal dosage forms, including
23 solutions, suspensions, sprays, and inhalers.

24 (3) Assistance with self-administration of medication
25 includes:

26 (a) Taking the medication, in its previously
27 dispensed, properly labeled container, from where it is stored
28 and bringing it to the patient.

29 (b) In the presence of the patient, reading the label,
30 opening the container, removing a prescribed amount of
31 medication from the container, and closing the container.

- 1 (c) Placing an oral dosage in the patient's hand or
2 placing the dosage in another container and helping the
3 patient by lifting the container to his or her mouth.
- 4 (d) Applying topical medications.
- 5 (e) Returning the medication container to proper
6 storage.
- 7 (f) Keeping a record of when a patient receives
8 assistance with self-administration under this section.
- 9 (4) Assistance with self-administration does not
10 include:
- 11 (a) Mixing, compounding, converting, or calculating
12 medication doses, except for measuring a prescribed amount of
13 liquid medication or breaking a scored tablet or crushing a
14 tablet as prescribed.
- 15 (b) The preparation of syringes for injection or the
16 administration of medications by any injectable route.
- 17 (c) Administration of medications through intermittent
18 positive pressure breathing machines or a nebulizer.
- 19 (d) Administration of medications by way of a tube
20 inserted in a cavity of the body.
- 21 (e) Administration of parenteral preparations.
- 22 (f) Irrigations or debriding agents used in the
23 treatment of a skin condition.
- 24 (g) Rectal, urethral, or vaginal preparations.
- 25 (h) Medications ordered by the physician or health
26 care professional with prescriptive authority to be given "as
27 needed," unless the order is written with specific parameters
28 that preclude independent judgment on the part of the
29 unlicensed person, and at the request of a competent patient.
- 30 (i) Medications for which the time of administration,
31 the amount, the strength of dosage, the method of

1 administration, or the reason for administration requires
2 judgment or discretion on the part of the unlicensed person.

3 (5) Assistance with the self-administration of
4 medication by an unlicensed person as described in this
5 section shall not be considered administration as defined in
6 s. 465.003.

7 (6) The agency may by rule establish procedures and
8 interpret terms as necessary to implement this section.

9 Section 8. Section 400.491, Florida Statutes, 1998
10 Supplement, is amended to read:

11 400.491 Clinical records.--

12 (1) The home health agency must maintain for each
13 patient who receives skilled care a clinical record that
14 ~~includes the services the home health agency provides directly~~
15 ~~and those provided through arrangement with another health~~
16 ~~care provider, except for those services provided by persons~~
17 ~~referred under s. 400.509. Such records must contain~~
18 pertinent past and current medical, nursing, social and other
19 therapeutic information, the ~~plan of~~ treatment orders, and
20 other such information as is necessary for the safe and
21 adequate care of the patient. When home health services are
22 terminated, the record must show the date and reason for
23 termination. Such records are considered patient records
24 under s. 455.667, and must be maintained by the home health
25 agency for 5 years following termination of services. If a
26 patient transfers to another home health agency, a copy of his
27 or her record must be provided to the other home health agency
28 upon request.

29 (2) The home health agency must maintain for each
30 client who receives nonskilled care a service provision plan.

31

1 Such records must be maintained by the home health agency for
2 1 year following termination of services.

3 Section 9. Section 400.497, Florida Statutes, is
4 amended to read:

5 400.497 Rules establishing minimum standards.--The
6 agency for ~~Health Care Administration~~ shall adopt, publish,
7 and enforce rules to implement this part, including, as
8 applicable, ss. 400.506 and 400.509, which ~~must~~ provide
9 reasonable and fair minimum standards relating to:

10 ~~(1) Scope of home health services to be provided.~~

11 (1)(2) The qualifications, and minimum training
12 requirements, and supervision requirements of all home health
13 agency personnel. The agency shall establish the curriculum
14 and instructor qualifications for home health aide training.
15 Licensed home health agencies may provide this training and
16 shall furnish documentation of such training to other licensed
17 home health agencies upon request. The agency shall allow
18 shared staffing if the home health agency is part of a
19 retirement community that provides multiple levels of care, is
20 located on one campus, is licensed under this chapter, and
21 otherwise meets the requirements of law and rule.

22 (2)(3) Requirements for prospective employees.

23 ~~Procedures for maintaining a record of the employment history~~
24 ~~of all home health agency personnel.~~ A home health agency
25 must require prospective employees and contractors ~~its~~
26 ~~personnel~~ to submit an employment or contractual history ~~to~~
27 ~~the home health agency,~~ and it must verify the employment or
28 contractual history unless through diligent efforts such
29 verification is not possible. The agency ~~for Health Care~~
30 ~~Administration~~ shall prescribe by rule the minimum
31 requirements for establishing that diligent efforts have been

1 made. ~~The administrator of a home health agency must review~~
2 ~~the employment history and references of home health agency~~
3 ~~personnel and applicants for employment. The Agency for~~
4 ~~Health Care Administration must review the employment history~~
5 ~~and references of each administrator of a home health agency.~~
6 There is no monetary liability on the part of, and no cause of
7 action for damages arising ~~arises~~ against, a former employer
8 of a prospective employee of or prospective independent
9 contractor with a licensed home health agency who reasonably
10 and in good faith communicates his or her honest opinions
11 about the former employee's job performance. This subsection
12 does not affect the official immunity of an officer or
13 employee of a public corporation.

14 (3)~~(4)~~ Licensure application and renewal.

15 (4)~~(5)~~ The administration of the home health agency,
16 including a requirement for onsite and electronic
17 accessibility of supervisory personnel.

18 (5)~~(6)~~ Procedures for administering drugs and
19 biologicals.

20 (6)~~(7)~~ Procedures for maintaining patients'~~patient~~
21 records.

22 (7)~~(8)~~ Ensuring that ~~the~~ home health services ~~provided~~
23 ~~by a home health agency~~ are provided in accordance with the
24 ~~plan of treatment~~ orders established for each patient for whom
25 physician orders are required.

26 (8)~~(9)~~ Geographic service areas.

27 (9)~~(10)~~ Standards for contractual arrangements for the
28 provision of home health services by providers not employed by
29 the home health agency, to which the patient has been admitted
30 ~~providing for the patient's care and treatment.~~

31

1 Section 10. Subsections (1), (10), and (13) of section
2 400.506, Florida Statutes, 1998 Supplement, are amended to
3 read:

4 400.506 Licensure of nurse registries; requirements;
5 penalties.--

6 (1) A nurse registry is exempt from the licensing
7 requirements of a home health agency, but must be licensed as
8 a nurse registry. Each operational site of the nurse registry
9 must be licensed, unless there is more than one site within a
10 county. If there is more than one site within a county, only
11 one license per county shall be required. Each operational
12 site shall be listed on the license.

13 (10)(a) A nurse registry may refer for contract in
14 private residences registered nurses and licensed practical
15 nurses registered and licensed under chapter 464, certified
16 nursing assistants certified under s. 400.211, home health
17 aides who present documented proof of successful completion of
18 the training required by rule of the agency, and ~~sitters,~~
19 companions, or homemakers for the purposes of providing those
20 services authorized under s. 400.509(1). Each person referred
21 by a nurse registry must provide current documentation that he
22 or she is free from communicable diseases.

23 (b) A certified nursing assistant or home health aide
24 may be referred for a contract to provide care to a patient in
25 his or her home only if that patient is under a physician's
26 care. A certified nursing assistant or home health aide
27 referred for contract in a private residence shall be limited
28 to assisting a patient with bathing, dressing, toileting,
29 grooming, eating, physical transfer, and those normal daily
30 routines the patient could perform for himself or herself were
31 he or she physically capable. A certified nursing assistant

1 or home health aide may not provide medical or other health
2 care services that require specialized training and that may
3 be performed only by licensed health care professionals. The
4 nurse registry shall obtain the name and address of the
5 attending physician and send written notification to the
6 physician within 48 hours after a contract is concluded that a
7 certified nursing assistant or home health aide will be
8 providing care for that patient.

9 (c) A registered nurse shall make monthly visits to
10 the patient's home to assess the patient's condition and the
11 quality of care being provided by the certified nursing
12 assistant or home health aide. Any condition which in the
13 professional judgment of the nurse requires further medical
14 attention shall be reported to the attending physician and the
15 nurse registry. The assessment shall become a part of the
16 patient's file with the nurse registry and may be reviewed by
17 the agency ~~for Health Care Administration~~ during its ~~their~~
18 survey procedure.

19 ~~(d) In order to refer for contract in private~~
20 ~~residences a certified nursing assistant or any person~~
21 ~~specified in s. 400.509(1), the nurse registry and such person~~
22 ~~registered with the nurse registry must also be registered~~
23 ~~under s. 400.509. Any person registered as an independent~~
24 ~~contractor with a nurse registry for the purpose of providing~~
25 ~~services authorized under s. 400.509(1) on or before October~~
26 ~~1, 1990, is exempt from registration under s. 400.509 so long~~
27 ~~as such person remains continuously registered with that nurse~~
28 ~~registry.~~

29 (13) Each nurse registry must comply with the
30 procedures set forth in s. 400.497(2) regarding~~(3) for~~
31 ~~maintaining records of the employment~~ or contractual history

1 of all persons referred for contract and is subject to the
2 standards and conditions set forth in s. 400.512. However, an
3 initial screening may not be required for persons who have
4 been continuously registered with the nurse registry since
5 September 30, 1990.

6 Section 11. Present subsections (1) through (6) of
7 section 400.509, Florida Statutes, are amended, present
8 subsections (4) through (13) are renumbered as subsections (5)
9 through (14), respectively, and a new subsection (4) is added
10 to said section, to read:

11 400.509 Registration of particular service providers
12 exempt from licensure; certificate of registration; regulation
13 of registrants.--

14 (1) Any organization ~~person~~ that provides ~~domestic~~
15 ~~maid services, sitter services,~~ companion services, or
16 homemaker services and does not provide a home health services
17 ~~service~~ to a person is exempt from licensure under this part.
18 However, any organization ~~person~~ that provides ~~sitter services~~
19 ~~for adults,~~ companion services, or homemaker services must
20 register with the agency for ~~Health Care Administration~~.

21 (2) Registration consists of annually filing with the
22 agency for ~~Health Care Administration~~, under oath, on forms
23 provided by it, the following information:

24 (a) ~~The name, address, date of birth, and social~~
25 ~~security number of the individual, or the name and address of~~
26 ~~the person, providing the service.~~

27 (a)(b) If the registrant is a firm or partnership, the
28 name, address, date of birth, and social security number of
29 every member.

30 (b)(c) If the registrant is a corporation or
31 association, its name and address, the name, address, date of

1 birth, and social security number of each of its directors and
2 officers, and the name and address of each person having at
3 least a 5-percent ~~10-percent~~ interest in the corporation or
4 association.

5 ~~(c)(d)~~ The name, address, date of birth, and social
6 security number of each person employed by, or under contract
7 with, the organization.

8 (3) ~~The agency for Health Care Administration~~ shall
9 charge a registration fee of \$25 to be submitted with the
10 information required under subsection (2).

11 (4) Each applicant for registration must comply with
12 the following requirements:

13 (a) Upon receipt of a completed, signed, and dated
14 application, the agency shall require background screening, in
15 accordance with the level 1 standards for screening as set
16 forth in chapter 435, of every individual who will have
17 contact with a client. The agency shall require background
18 screening of the managing employee, or other similarly titled
19 individual who is responsible for the operation of the entity,
20 and of the financial officer, or other similarly titled
21 individual who is responsible for the financial operation of
22 the entity, including billings for client services, in
23 accordance with the level 2 standards for background screening
24 as set forth in chapter 435.

25 (b) The agency may require background screening of any
26 other individual who is affiliated with the applicant if the
27 agency has a reasonable basis for believing that he or she has
28 been convicted of a crime or has committed any other offense
29 prohibited under the level 2 standards for screening as set
30 forth in chapter 435.

31

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 or assisted living licensure requirements of this
5 state is acceptable in fulfillment of paragraph (a).

6 (d) A provisional registration may be granted to an
7 applicant when each individual required by this section to
8 undergo background screening has met the standards for the
9 abuse registry background check and the Department of Law
10 Enforcement background check, but the agency has not yet
11 received background screening results from the Federal Bureau
12 of Investigation. A standard registration may be granted to
13 the applicant upon the agency's receipt of a report of the
14 results of the Florida Bureau of Investigation background
15 screening for each individual required by this section to
16 undergo background screening, which report confirms that all
17 standards have been met, or upon the granting of an exemption
18 from disqualification by the agency as set forth in chapter
19 435. Any other person who is required to undergo level 2
20 background screening may serve in his or her capacity pending
21 the agency's receipt of the report from the Federal Bureau of
22 Investigation. However, the person may not continue to serve
23 if the report indicates any violation of background screening
24 standards and an exemption from disqualification has not been
25 requested of and granted by the agency as set forth in chapter
26 435.

27 (e) Each applicant must submit to the agency, with its
28 application, a description and explanation of any exclusions,
29 permanent suspensions, or terminations of the applicant from
30 the Medicare or Medicaid programs. Proof of compliance with
31 the requirements for disclosure of ownership and controlling

1 interests under the Medicaid or Medicare programs may be
2 accepted in lieu of this submission.

3 (f) Each applicant must submit to the agency a
4 description and explanation of any conviction of an offense
5 prohibited under the level 2 standards of chapter 435 by a
6 member of the board of directors of the applicant, its
7 officers, or any individual owning 5 percent or more of the
8 applicant. This requirement does not apply to a director of a
9 not-for-profit corporation or organization if the director
10 serves solely in a voluntary capacity for the corporation or
11 organization, does not regularly take part in the day-to-day
12 operational decisions of the corporation or organization,
13 receives no remuneration for his or her services on the
14 corporation or organization's board of directors, and has no
15 financial interest and has no family members with a financial
16 interest in the corporation or organization, provided that the
17 director and the not-for-profit corporation or organization
18 include in the application a statement affirming that the
19 director's relationship to the corporation satisfies the
20 requirements of this paragraph.

21 (g) A registration may not be granted to an applicant
22 if the applicant or managing employee has been found guilty
23 of, regardless of adjudication, or has entered a plea of nolo
24 contendere or guilty to, any offense prohibited under the
25 level 2 standards for screening as set forth in chapter 435,
26 unless an exemption from disqualification has been granted by
27 the agency as set forth in chapter 435.

28 (h) The agency may deny or revoke the registration if
29 any applicant:

30 1. Has falsely represented a material fact in the
31 application required by paragraph (e) or paragraph (f), or has

1 omitted any material fact from the application required by
2 paragraph (e) or paragraph (f); or

3 2. Has had prior action taken against the applicant
4 under the Medicare or Medicaid programs as set forth in
5 paragraph (e).

6 (i) An application for licensure renewal must contain
7 the information required under paragraphs (e) and (f).

8 (5)(4) Each registrant must ~~obtain~~ establish the
9 employment ~~or contractual~~ history of persons employed ~~by,~~ or
10 under contract ~~with the organization who will have~~ having
11 contact at any time with ~~clients~~ patients in their homes by:

12 (a) Requiring such persons ~~employed or under contract~~
13 to submit an employment ~~or contractual~~ history to the
14 registrant; and

15 (b) Verifying the employment or contractual history,
16 unless through diligent efforts such verification is not
17 possible. The agency ~~for Health Care Administration~~ shall
18 prescribe by rule the minimum requirements for establishing
19 that diligent efforts have been made.

20
21 There is no monetary liability on the part of, and no cause of
22 action for damages arises against, a former employer of a
23 prospective employee of or prospective independent contractor
24 with a registrant who reasonably and in good faith
25 communicates his or her honest opinions about the former
26 employee's or contractor's job performance. This subsection
27 does not affect the official immunity of an officer or
28 employee of a public corporation.

29 (6)(5) On or before the first day on which services
30 are provided to a ~~client~~ patient, any registrant under this
31 part must inform the ~~client~~ patient and his or her immediate

1 family, if appropriate, of the right to report abusive,
2 neglectful, or exploitative practices. The statewide
3 toll-free telephone number for the central abuse registry must
4 be provided to clients ~~patients~~ in a manner that is clearly
5 legible and must include the words: "To report abuse, neglect,
6 or exploitation, please call toll-free ...(phone number)...."
7 Registrants must establish appropriate policies and procedures
8 for providing such notice to clients ~~patients~~.

9 ~~(7)(6)~~ The provisions of s. 400.512 regarding
10 screening apply to any person or business entity registered
11 under this section on or after October 1, 1994 ~~1989~~.

12 Section 12. Section 400.512, Florida Statutes, is
13 amended to read:

14 400.512 Screening of home health agency personnel;
15 nurse registry personnel; and ~~sitters, companions, and~~
16 homemakers.--The agency for ~~Health Care Administration~~ shall
17 require employment or contractor screening as provided in
18 chapter 435, using the level 1 standards for screening set
19 forth in that chapter, for home health agency personnel;
20 persons referred for employment by nurse registries; and
21 persons employed by ~~sitter, companion, or homemaker~~ services
22 registered under s. 400.509.

23 (1) The agency for ~~Health Care Administration~~ may
24 grant exemptions from disqualification from employment or
25 contracting under this section as provided in s. 435.07.

26 (2) The administrator of each home health agency, the
27 managing employee of each nurse registry, and the managing
28 employee of each ~~or sitter, companion, or homemaker~~ service
29 registered under s. 400.509 must sign an affidavit annually,
30 under penalty of perjury, stating that all personnel hired,
31 contracted with, or registered, on or after October 1, 1994

1 ~~1989~~, who enter the home of a patient or client in ~~the~~
2 ~~capacity of their service capacity employment~~ have been
3 screened and that its remaining personnel have worked for the
4 home health agency or registrant continuously since before
5 October 1, 1994 ~~1989~~.

6 (3) As a prerequisite to operating as a home health
7 agency, nurse registry, ~~or sitter~~, companion, or homemaker
8 service under s. 400.509, the administrator or managing
9 employee, respectively, must submit to the agency his or her
10 ~~for Health Care Administration~~ their name and any other
11 information necessary to conduct a complete screening
12 according to this section. The agency ~~for Health Care~~
13 ~~Administration~~ shall submit the information to the Department
14 of Law Enforcement and the department's abuse hotline for
15 state processing. The agency ~~for Health Care Administration~~
16 shall review the record of the administrator or manager with
17 respect to the offenses specified in this section and shall
18 notify the owner of its findings. If disposition information
19 is missing on a criminal record, the administrator or manager,
20 upon request of the agency ~~for Health Care Administration~~,
21 must obtain and supply within 30 days the missing disposition
22 information to the agency ~~for Health Care Administration~~.
23 Failure to supply missing information within 30 days or to
24 show reasonable efforts to obtain such information will result
25 in automatic disqualification.

26 (4) Proof of compliance with the screening
27 requirements of chapter 435 shall be accepted in lieu of the
28 requirements of this section if the ~~provided that such~~ person
29 has been continuously employed or registered without a breach
30 in service that exceeds 180 days, the proof of compliance is
31 not more than 2 years old, and the person has been screened

1 through the department's central abuse registry and tracking
2 system and by the Department of Law Enforcement. A home health
3 agency, nurse registry, or companion or homemaker service
4 registered under s. 400.509 shall directly provide proof of
5 compliance to another home health agency, nurse registry, or
6 companion or homemaker service registered under s. 400.509.
7 The recipient home health agency, nurse registry, or companion
8 or homemaker service registered under s. 400.509 may not
9 accept any proof of compliance directly from the person who
10 requires screening. Proof of compliance with the screening
11 requirements of this section shall be provided upon request to
12 the person screened by the home health agencies, ~~and~~ nurse
13 registries, ~~and~~ ~~sitter~~, companion, ~~and~~ homemaker services
14 registered under s. 400.509.

15 (5) There is no monetary liability on the part of, and
16 no cause of action for damages arising ~~arises~~ against, a
17 licensed home health agency, licensed nurse registry, or
18 ~~sitter~~, companion, ~~and~~ homemaker service registered under s.
19 400.509, that, upon notice of a confirmed report of adult
20 abuse, neglect, or exploitation ~~under paragraph (2)(b)~~,
21 terminates the employee or contractor against whom the report
22 was issued, whether or not the employee or contractor has
23 filed for an exemption with the agency in accordance with
24 chapter 435 for Health Care Administration under subparagraph
25 ~~(3)(a)5~~ and whether or not the time for filing has expired.

26 (6) The costs of processing the statewide
27 correspondence criminal records checks and the search of the
28 department's central abuse hotline must be borne by the home
29 health agency, ~~and~~ ~~the~~ nurse registry, ~~and~~ ~~sitter~~, companion, ~~and~~
30 homemaker service registered under s. 400.509, or by the
31

1 person being screened, at the discretion of the home health
2 agency, nurse registry, or s. 400.509 registrant.

3 ~~(7) The Agency for Health Care Administration; the~~
4 ~~home health agency; nurse registry; or sitter, companion, or~~
5 ~~homemaker service registered under s. 400.509 may not use the~~
6 ~~criminal records, juvenile records, or central abuse hotline~~
7 ~~information of a person for any purpose other than determining~~
8 ~~whether that person meets minimum standards of good moral~~
9 ~~character for home health agency personnel. The criminal~~
10 ~~records, juvenile records, or central abuse hotline~~
11 ~~information obtained by the Agency for Health Care~~
12 ~~Administration; home health agency; nurse registry; or sitter,~~
13 ~~companion, or homemaker service for determining the moral~~
14 ~~character of such personnel are confidential and exempt from~~
15 ~~the provisions of s. 119.07(1) and s. 24(a), Art. I of the~~
16 ~~State Constitution.~~

17 (7)(8)(a) It is a misdemeanor of the first degree,
18 punishable under s. 775.082 or s. 775.083, for any person
19 willfully, knowingly, or intentionally to:

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

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

29 3. Use information from the criminal records or
30 central abuse hotline obtained under this section for any
31 purpose other than screening that person for employment as

1 specified in this section or release such information to any
2 other person for any purpose other than screening for
3 employment under this section.

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

10 Section 13. Subsection (9) of section 408.032, Florida
11 Statutes, is amended to read:

12 408.032 Definitions.--As used in ss. 408.031-408.045,
13 the term:

14 (9) "Home health agency" means an organization, as
15 defined in s. 400.462(8)~~(4)~~, that is certified or seeks
16 certification as a Medicare home health service provider.

17 Section 14. Task Force on Home Health Services
18 Licensure.--There is hereby created a task force composed of
19 representatives of the Agency for Health Care Administration,
20 the Department of Elderly Affairs, the Department of Health,
21 Private Care Association of Florida, and Associated Home
22 Health Industries to review the provisions of part IV of
23 chapter 400, Florida Statutes, and recommend additional
24 legislative revisions to said part. The review shall
25 encompass, at a minimum, the following issues: whether adult
26 abuse registry screening should continue to be mandated;
27 whether individuals who provide home health services should be
28 exempted from all state regulatory oversight; and whether
29 mandatory registration for organizations that provide
30 companion and homemaker services should continue. The task
31

1 force shall submit a report to the appropriate legislative
2 committees no later than December 31, 1999.

3 Section 15. This act shall take effect October 1,
4 1999.

5
6 *****

7 HOUSE SUMMARY

8
9 Revises provisions relating to the regulation of home
10 health agencies. Revises definitions and requirements for
11 licensure, renewal, exemptions from licensure, and
12 insurance coverage. Revises grounds for disciplinary
13 action. Provides penalties for operating without a
14 license. Provides grounds for denial, suspension, or
15 revocation of a license or imposition of an
16 administrative fine for violations relating to licensure.
17 Establishes administrative fines for various classes of
18 deficiencies relating to operation of a home health
19 agency. Revises provisions relating to patient
20 assessment, plan of care, and provision of services.
21 Provides for treatment orders and service provision
22 plans. Establishes requirements and procedures for
23 assistance with self-administration of medication, and
24 authorizes rules of the Agency for Health Care
25 Administration therefor. Revises the agency's authority
26 to adopt rules relating to minimum standards. Revises
27 requirements for licensure of nurse registries and
28 provides for referral of home health aides by the
29 registries. Revises registration requirements for
30 companion and homemaker services, provides for background
31 screening of persons providing such services, and removes
references to domestic maid and sitter services. Revises
background screening requirements for home health agency
personnel, and includes screening of contractors.
Establishes a Task Force on Home Health Services
Licensure. Requires a report to the Legislature.