

By Senator Thomas

3-938B-99

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 establishing licensure and exemptions from
6 licensure requirements for home health
7 agencies; amending s. 400.471, F.S.; providing
8 insurance coverage requirements; amending s.
9 400.474, F.S.; providing grounds for
10 disciplinary action, penalties for operating
11 without a license, and grounds for revocation
12 or suspension of license; amending s. 400.484,
13 F.S.; establishing administrative fines for
14 various classes of deficiencies; amending s.
15 400.487, F.S.; providing for patient assessment
16 and establishment and review of plan of care;
17 creating s. 400.488, F.S.; providing for
18 assistance with self-administration of
19 medication; amending s. 400.491, F.S.;
20 providing for maintenance of service provision
21 plan; amending s. 400.497, F.S.; providing for
22 establishment of rules; amending s. 400.506,
23 F.S.; providing for licensure of nurse
24 registries; amending s. 400.509, F.S.;
25 providing for registration of particular
26 service providers; amending s. 400.512, F.S.;
27 providing for screening of home health agency
28 personnel; establishing a Task Force on Home
29 Health Services Licensure Provisions; providing
30 an effective date.
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1 Be It Enacted by the Legislature of the State of Florida:

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3 Section 1. Section 400.462, Florida Statutes, is
4 amended to read:

5 400.462 Definitions.--As used in this part, the term:

6 (1) "Administrator" means a direct employee of the
7 home health agency or a related organization, or of a
8 management company that has a contract to manage the home
9 health agency, to whom the governing body has delegated the
10 responsibility for day-to-day administration of the home
11 health agency. The administrator must be a licensed
12 physician, physician assistant, or registered nurse licensed
13 to practice in this state or an individual having at least 1
14 year of supervisory or administrative experience in home
15 health care or in a facility licensed under chapter 395 or
16 under part II or part III of chapter 400. An administrator
17 may manage a maximum of five licensed home health agencies
18 located within one agency service district or within an
19 immediately contiguous county. If the home health agency is
20 licensed under this chapter and is part of a retirement
21 community that provides multiple levels of care, an employee
22 of the retirement community may administer the home health
23 agency and up to a maximum of four entities licensed under
24 chapter 400 that are owned, operated, or managed by the same
25 corporate entity. An administrator shall designate, in
26 writing, for each licensed entity, a qualified alternate
27 administrator to serve during absences.

28 (2) "Agency" means the Agency for Health Care
29 Administration.

30 (3)~~(1)~~ "Certified nursing assistant" means any person
31 who has been issued a certificate under ~~after fulfilling the~~

1 ~~requirements of s. 400.211. The licensed home health agency or~~
2 licensed nurse registry shall ensure that the certified
3 nursing assistant employed by or under contract with the home
4 health agency or licensed nurse registry is adequately trained
5 to perform the tasks of a home health aide in the home
6 setting.

7 (4) "Client" means an elderly, handicapped, or
8 convalescent individual who receives personal care services,
9 companion services, or homemaker services in the individual's
10 home or place of residence.

11 (5)~~(2)~~ "Companion" or "sitter" means a person who
12 cares for an elderly, handicapped, or convalescent individual
13 and accompanies such individual on trips and outings and may
14 prepare and serve meals to such individual. A companion may
15 not provide hands-on personal care to a client.

16 (6)~~(3)~~ "Department" means the Department of Children
17 and Family Health and Rehabilitative Services.

18 (7) "Director of nursing" means a registered nurse and
19 direct employee of the agency or related business entity who
20 is a graduate of an approved school of nursing and is licensed
21 in this state; who has at least 1 year of supervisory
22 experience as a registered nurse in a licensed home health
23 agency, a facility licensed under chapter 395, or a facility
24 licensed under part II or part III of chapter 400; and who is
25 responsible for overseeing the professional nursing and home
26 health aid delivery of services of the agency. An employee
27 may be the director of nursing of a maximum of five licensed
28 home health agencies operated by a related business entity and
29 located within one agency service district or within an
30 immediately contiguous county. If the home health agency is
31 licensed under this chapter and is part of a retirement

1 community that provides multiple levels of care, an employee
2 of the retirement community may serve as the director of
3 nursing of the home health agency and of up to four entities
4 licensed under chapter 400 which are owned, operated, or
5 managed by the same corporate entity. A director of nursing
6 shall designate, in writing, for each licensed entity, a
7 qualified alternate registered nurse to serve during the
8 absence of the director of nursing.

9 (8)(4) "Home health agency" means an organization that
10 provides home health services and staffing services ~~for health~~
11 ~~care facilities.~~

12 (9)(5) "Home health agency personnel" means persons
13 who are employed by or under contract with a home health
14 agency and enter the home or place of residence of patients at
15 any time in the course of their employment or contract.

16 (10)(6) "Home health services" means health and
17 medical services and medical supplies furnished by an
18 organization to an individual ~~by home health agency personnel~~
19 ~~or by others under arrangements with the agency, on a visiting~~
20 ~~basis,~~ in the individual's home or place of residence. The
21 term includes organizations that provide one or more of, but
22 ~~is not limited to,~~ the following:

- 23 (a) Nursing care.
24 (b) Physical, occupational, respiratory, or speech
25 therapy.
26 (c) Home health aide services.
27 (d) Dietetics and nutrition practice and nutrition
28 counseling ~~Nutritional guidance.~~
29 (e) Medical supplies, restricted to drugs and
30 biologicals prescribed by a physician.

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1 (11) "Home health aide" means a person who provides
2 hands-on personal care, performs simple procedures as an
3 extension of therapy or nursing services, assists in
4 ambulation or exercises, or assists in administering
5 medications as permitted in rule and for which the person has
6 received training established by the agency under s.
7 400.497(1).

8 (12)~~(7)~~ "Homemaker" means a person who performs
9 household chores that include housekeeping, meal planning and
10 preparation, shopping assistance, and routine household
11 activities for an elderly, handicapped, or convalescent
12 individual. A homemaker may not provide hands-on personal care
13 to a client.

14 (13) "Home infusion therapy provider" means an
15 organization that employs, contracts with, or refers a
16 licensed professional, who has received advanced training and
17 experience in intravenous infusion therapy and who administers
18 infusion therapy to a patient in the patient's home or place
19 of residence.

20 (14) "Home infusion therapy" means the administration
21 of intravenous pharmacological or nutritional products to a
22 patient in his or her home.

23 (15)~~(8)~~ "Nurse registry" means any person that
24 procures, offers, promises, or attempts to secure
25 health-care-related contracts for registered nurses, licensed
26 practical nurses, certified nursing assistants, home health
27 aides ~~sitters~~, companions, or homemakers, who are compensated
28 by fees as independent contractors, including, but not limited
29 to, contracts for the provision of services to patients and
30 contracts to provide private duty or staffing services to
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1 health care facilities licensed under chapter 395 or this
2 chapter or other business entities.

3 (16) "Organization" means a corporation, government or
4 governmental subdivision or agency, partnership or
5 association, two or more persons having a joint or common
6 interest, or any other legal or commercial entity. The term
7 does not include an entity that provides services using only
8 volunteers or only individuals related by blood or marriage to
9 the patient or client.

10 (17)~~(9)~~ "Patient" means any person who receives home
11 health services in his or her home or place of residence.

12 (18) "Personal care" means assistance to a patient in
13 the activities of daily living, such as dressing, bathing,
14 eating, or personal hygiene, and assistance in physical
15 transfer, ambulation, and in administering medications as
16 permitted by rule.

17 (19) "Physician" means a person licensed under chapter
18 458, chapter 459, chapter 460, or chapter 461.

19 (20)~~(10)~~ "Screening" means the assessment of the
20 background of home health agency personnel, nurse registry
21 personnel, and persons registered under s. 400.509 and
22 includes employment or contractual history checks, records
23 checks of the department's central abuse hotline under chapter
24 415 relating to vulnerable adults, and statewide criminal
25 records correspondence checks through the Department of Law
26 Enforcement.

27 (21) "Skilled care" means nursing services or
28 therapeutic services delivered by a health care professional
29 who is licensed under chapter 464; part I, part III, or part V
30 of chapter 468; or chapter 486 and who is employed by or under
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1 contract with a licensed home health agency or is referred by
2 a licensed nurse registry.

3 (22)(11) "Staffing services" means services provided
4 to a health care facility or other business entity on a
5 temporary basis by licensed health care personnel, including
6 certified nursing assistants and home health aides who are
7 employed by, or work under the auspices of, a licensed home
8 health agency or who are registered with a licensed nurse
9 registry.

10 Section 2. Section 400.464, Florida Statutes, is
11 amended to read:

12 400.464 Home health agencies to be licensed;
13 expiration of license; exemptions; unlawful acts; penalties.--

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

20 (2) If the licensed home health agency operates
21 related offices, each related office outside the county where
22 the main office is located must be separately licensed. The
23 counties where the related offices are operating must be
24 specified on the license in the main office.

25 (3) An entity receiving a certificate-of-need
26 exemption under s. 408.0366 may request one home health agency
27 license to provide Medicare and non-Medicare home health
28 services to residents of the facility and non-Medicare home
29 health services to persons in one or more counties within the
30 agency service district where the main office of the home
31 health agency is located.

1 ~~(3) The furnishing of only home dialysis services,~~
2 ~~supplies, or equipment, or personal care services as provided~~
3 ~~by a community-care-for-the-elderly lead agency under s.~~
4 ~~430.205, or personal care services provided through a~~
5 ~~community-care-for-disabled-adults program under s. 410.604,~~
6 ~~is exempt from this part. The personal care services~~
7 ~~exemptions apply only to community-care-for-the-elderly lead~~
8 ~~agencies and community-care-for-disabled-adults programs that~~
9 ~~directly provide only personal care services to their clients~~
10 ~~and do not provide other home health services.~~

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

15 ~~(5)(a) It is unlawful for any person to offer or~~
16 ~~advertise home health services to the public unless he or she~~
17 ~~has a valid license under this part. It is unlawful for any~~
18 ~~holder of a license issued under this part to advertise or~~
19 ~~indicate to the public that it holds a home health agency~~
20 ~~license other than the one it has been issued.~~

21 ~~(b) A person who violates paragraph (a) is subject to~~
22 ~~an injunctive proceeding under s. 400.515. A violation of~~
23 ~~paragraph (a) is a deceptive and unfair trade practice and~~
24 ~~constitutes a violation of the Florida Deceptive and Unfair~~
25 ~~Trade Practices Act.~~

26 ~~(c) A person who violates paragraph (a) commits a~~
27 ~~misdemeanor of the second degree, punishable as provided in s.~~
28 ~~775.082 or s. 775.083. Any person who commits a second or~~
29 ~~subsequent violation commits a misdemeanor of the first~~
30 ~~degree, punishable as provided in s. 775.082 or s. 775.083.~~

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1 ~~Each day of continuing violation constitutes a separate~~
2 ~~offense.~~

3 (4)~~(6)~~ Any infusion therapy provider shall be licensed
4 as a home health agency. Any infusion therapy provider
5 currently authorized to receive Medicare reimbursement under a
6 DME - Part B Provider number for the provision of infusion
7 therapy shall be licensed as a noncertified home health
8 agency. Such a provider shall continue to receive that
9 specified Medicare reimbursement without being certified so
10 long as the reimbursement is limited to those items authorized
11 pursuant to the DME - Part B Provider Agreement and the agency
12 is licensed in compliance with the other provisions of this
13 part.

14 (5)(a) An organization may not provide, offer, or
15 advertise home health services to the public unless the
16 organization has a valid license or is specifically exempted
17 under this part. An organization that offers or advertises to
18 the public any service for which licensure or registration is
19 required under this part must include in the advertisement the
20 license number or regulation number issued to the organization
21 by the agency. The agency shall assess a fine of not less
22 than \$100 to any licensee or registrant who fails to include
23 the license or registration number when submitting the
24 advertisement for publication, broadcast or printing. The
25 holder of a license issued under this part may not advertise
26 or indicate to the public that it holds a home health agency
27 or nurse registry license other than the one it has been
28 issued.

29 (b) A person who violates paragraph (a) is subject to
30 an injunctive proceeding under s. 400.515. A violation of
31 paragraph (a) is a deceptive and unfair trade practice and

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

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

10 (6) The following are exempt from the licensure
11 requirements of this part:

12 (a) A home health agency operated by the Federal
13 Government.

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

16 1. The Department of Elderly Affairs.

17 2. The Department of Health, a community health
18 center, or a rural health network that furnishes home visits
19 for the purpose of providing environmental assessments, case
20 management, health education, personal-care services, family
21 planning, or follow-up treatment, or for the purpose of
22 monitoring and tracking disease.

23 3. Services provided to persons who have developmental
24 disabilities, as defined in s. 393.063(11).

25 (c) A health care professional, whether or not
26 incorporated, who is licensed under chapter 458, chapter 459,
27 chapter 464, part I, part III, part V, or part X of chapter
28 468, chapter 480, chapter 486, chapter 490, or chapter 491,
29 and who is acting alone within the scope of his or her
30 professional license to provide care to patients in their
31 homes.

1 (d) A home health aide or certified nursing assistant
2 who is acting in his or her individual capacity, within the
3 definitions and standards of his or her occupation, and who
4 provides hands-on care to patients in their homes.

5 (e) An individual who acts alone, in his or her
6 individual capacity, and who is not employed by or affiliated
7 with a licensed home health agency or registered with a
8 licensed nurse registry. This exemption does not entitle an
9 individual to perform home health services without the
10 required professional license.

11 (f) The delivery of instructional services in home
12 dialysis and home dialysis supplies and equipment.

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

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

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

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

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

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

29 (m) Certified rehabilitation agencies and
30 comprehensive outpatient rehabilitation facilities that are
31 certified under Title 18 of the Social Security Act.

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

4 Section 3. Section 400.471, Florida Statutes, 1998
5 Supplement, is amended to read:

6 400.471 Application for license; fee; provisional
7 license; temporary permit.--

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

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

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

21 (b) The number and discipline of professional staff to
22 be employed; and

23 (c) Proof of financial ability to operate.

24
25 If the applicant has applied for a certificate of need under
26 ss. 408.0331-408.045 within the preceding 12 months, the
27 applicant may submit the proof required during the
28 certificate-of-need process along with an attestation that
29 there has been no substantial change in the facts and
30 circumstances underlying the original submission.

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

13 (4) Each applicant for licensure must comply with the
14 following requirements:

15 (a) Upon receipt of a completed, signed, and dated
16 application, the agency shall require background screening of
17 the applicant, in accordance with the level 2 standards for
18 screening set forth in chapter 435. As used in this
19 subsection, the term "applicant" means the administrator, or a
20 similarly titled person who is responsible for the day-to-day
21 operation of the licensed home health agency, and the
22 financial officer, or similarly titled individual who is
23 responsible for the financial operation of the licensed home
24 health agency.

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

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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). Proof of
6 compliance with background screening which has been submitted
7 within the previous 5 years to fulfill the requirements of the
8 Department of Insurance pursuant to chapter 651 as part of an
9 application for a certificate of authority to operate a
10 continuing care retirement community is acceptable in
11 fulfillment of the Department of Law Enforcement and Federal
12 Bureau of Investigation background check.

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

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1 disqualification exemption has not been requested of and
2 granted by the agency as set forth in chapter 435.

3 (e) Each applicant must submit to the agency, with its
4 application, a description and explanation of any exclusions,
5 permanent suspensions, or terminations of the licensee or
6 potential licensee from the Medicare or Medicaid programs.
7 Proof of compliance with the requirements for disclosure of
8 ownership and control interest under the Medicaid or Medicare
9 programs may be accepted in lieu of this submission.

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

28 (g) A license may not be granted to an applicant if
29 the applicant, administrator, or financial officer has been
30 found guilty of, regardless of adjudication, or has entered a
31 plea of nolo contendere or guilty to, any offense prohibited

1 under the level 2 standards for screening set forth in chapter
2 435, unless an exemption from disqualification has been
3 granted by the agency as set forth in chapter 435.

4 (h) The agency may deny or revoke licensure if the
5 applicant:

6 1. Has falsely represented a material fact in the
7 application required by paragraph (e) or paragraph (f), or has
8 omitted any material fact from the application required by
9 paragraph (e) or paragraph (f); or

10 2. Has been or is currently excluded, suspended,
11 terminated from, or has involuntarily withdrawn from
12 participation in this state's Medicaid program, or the
13 Medicaid program of any other state, or from participation in
14 the Medicare program or any other governmental or private
15 health care or health insurance program.

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

18 (5) The home health agency must also obtain and
19 maintain the following liability insurance coverages in an
20 Proof of liability insurance, as defined in s. 624.605, must
21 be submitted with the application. The Agency for Health Care
22 Administration shall set the required amounts of liability
23 insurance by rule, but the required amount of must not be less
24 than \$250,000 per claim, and the home health agency must
25 submit proof of coverage with an initial application for
26 licensure and with each annual application for license
27 renewal:

28 (a) Malpractice insurance as defined in s.
29 624.605(1)(k);

30 (b) Liability insurance as defined in s.
31 624.605(1)(b).

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

12 (7) When transferring the ownership of a home health
13 agency, the transferee must submit an application for a
14 license at least 60 days before the effective date of the
15 transfer. If the home health agency is being leased, a copy
16 of the lease agreement must be filed with the application.

17 (8) The license fee and annual renewal fee required of
18 a home health agency are ~~is~~ nonrefundable. The agency ~~for~~
19 ~~Health Care Administration~~ shall set the fees in an amount
20 that is sufficient to cover its costs in carrying out its
21 responsibilities under this part, but not to exceed \$1,000.
22 However, state, county, or municipal governments applying for
23 licenses under this part are exempt from the payment of
24 license fees. All fees collected under this part must be
25 deposited in the Health Care Trust Fund for the administration
26 of this part.

27 (9) The license must be displayed in a conspicuous
28 place in the administrative office of the home health agency
29 and is valid only while in the possession of the person to
30 which it is issued. The license may not be sold, assigned, or
31 otherwise transferred, voluntarily or involuntarily, and is

1 valid only for the home health agency and location for which
2 originally issued.

3 (10) A home health agency against whom a revocation or
4 suspension proceeding is pending at the time of license
5 renewal may be issued a provisional license effective until
6 final disposition by the agency ~~for Health Care Administration~~
7 of such proceedings. If judicial relief is sought from the
8 final disposition, the court that has jurisdiction may issue a
9 temporary permit for the duration of the judicial proceeding.

10 (11) The agency may ~~department shall~~ not issue a
11 license designated as certified to a home health agency that
12 ~~which~~ fails to receive a certificate of need under the
13 provisions of ss. 408.031-408.045 or that fails to satisfy the
14 requirements of a Medicare certification survey from the
15 agency.

16 (12) The agency may not issue a license to a home
17 health agency that has any unpaid fines assessed under this
18 part.

19 Section 4. Section 400.474, Florida Statutes, 1998
20 Supplement, is amended to read:

21 400.474 Denial, suspension, revocation of license;
22 injunction; grounds; penalties.--

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

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

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

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

3 (c) Failure to provide at least one of the services
4 listed in s. 400.462(10) directly to patients for a period of
5 6 consecutive months ~~Knowingly providing home health services~~
6 ~~in an unlicensed assisted living facility or unlicensed adult~~
7 ~~family-care home, unless the home health agency or employee~~
8 ~~reports the unlicensed facility or home to the agency within~~
9 ~~72 hours after providing the services.~~

10 (3) The agency may impose the following penalties for
11 operating without a license upon an applicant or owner who has
12 in the past operated, or who currently operates, a licensed
13 home health agency.

14 (a) If a home health agency that is found to be
15 operating without a license wishes to apply for a license, the
16 home health agency may submit an application only after the
17 agency has verified that the home health agency no longer
18 operates an unlicensed home health agency.

19 (b) Any person, partnership, or corporation that
20 violates paragraph (a) and that previously operated a licensed
21 home health agency or concurrently operates both a licensed
22 home health agency and an unlicensed home health agency
23 commits a felony of the third degree punishable as provided in
24 s. 775.082, s. 775.083, or s. 775.084. If an owner has an
25 interest in more than one home health agency and fails to
26 license any one of those home health agencies, the agency must
27 issue a cease and desist order for the activities of the
28 unlicensed home health agency and impose a moratorium on any
29 or all of the licensed related home health agencies until the
30 unlicensed home health agency is licensed.

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1 (c) If any home health agency meets the criteria in
2 paragraph (a) or paragraph (b) and that home health agency has
3 received any government reimbursement for services provided by
4 an unlicensed home health agency, the agency shall make a
5 fraud referral to the appropriate government reimbursement
6 program.

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

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

14 (b) An applicant or a licensed home health agency has
15 falsely represented a material fact in the application, or has
16 omitted from the application any material fact, including, but
17 not limited to, the fact that the controlling or ownership
18 interest is held by any officer, director, agent, manager,
19 employee, affiliated person, partner, or shareholder who is
20 not eligible to participate.

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

23 1. Has been previously found by any licensing,
24 certifying, or professional standards board or agency to have
25 violated the standards or conditions that relate to home
26 health-related licensure or certification, or to the quality
27 of home health-related services provided; or

28 2. Has been or is currently excluded, suspended,
29 terminated from, or has involuntarily withdrawn from,
30 participation in the Medicaid program of this state or any
31

1 other state, the Medicare program, or any other governmental
2 health care or health insurance program.

3 Section 5. Section 400.484, Florida Statutes, is
4 amended to read:

5 400.484 Right of inspection; deficiencies; fines.--

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

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

22 (a) A class I deficiency is any act, omission, or
23 practice that results in a patient's death, disablement, or
24 permanent injury, or places a patient at imminent risk of
25 death, disablement, or permanent injury. Upon finding a class
26 I deficiency, the agency may impose an administrative fine in
27 the amount of \$5,000 for each occurrence and each day that the
28 deficiency exists. In addition, the agency may immediately
29 revoke the license, or impose a moratorium on the admission of
30 new patients, until the factors causing the deficiency have
31 been corrected.

1 (b) A class II deficiency is any act, omission, or
2 practice that has a direct adverse effect on the health,
3 safety, or security of a patient. Upon finding a class II
4 deficiency, the agency may impose an administrative fine in
5 the amount of \$1,000 for each occurrence and each day that the
6 deficiency exists. In addition, the agency may suspend the
7 license, or impose a moratorium on the admission of new
8 patients, until the deficiency has been corrected.

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

15 (d) A class IV deficiency is any act, omission, or
16 practice related to required reports, forms, or documents
17 which does not have the potential of negatively affecting
18 patients. These violations are of a type that the agency
19 determines do not threaten the health, safety, or security of
20 patients. Upon finding an uncorrected or repeated class IV
21 deficiency, the agency may impose an administrative fine not
22 to exceed \$200 for each occurrence and each day that the
23 uncorrected or repeated deficiency exists.

24 Section 6. Section 400.487, Florida Statutes, is
25 amended to read:

26 400.487 Patient assessment; establishment and review
27 of plan of care; provision of services.--

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

31

1 (2) The attending physician for a patient who is to
2 receive skilled receiving care or treatment provided by a
3 licensed nurse or by a physical, occupational, or speech
4 therapist must establish treatment orders a plan of care for
5 the patient on behalf of the home health agency that provides
6 services to the patient. The original plan of treatment
7 orders must be signed by the physician within 24 days after
8 the start of care and must be reviewed, at least every 62 days
9 or more frequently if the patient's illness requires, by the
10 physician in consultation with home health agency personnel
11 that provide services to the patient.

12 (3) If a client is accepted for home health aide
13 services or homemaker or companion services and such services
14 do not require a physician's order, the home health agency
15 shall establish a service provision plan and maintain a record
16 of the services provided.

17 (4)(3) Each patient or client has the right to be
18 informed of and to participate in the planning of his or her
19 care. Each patient must be provided, upon request, a copy of
20 the plan of care or service provision plan established and
21 maintained for that patient or client by the home health
22 agency.

23 (4) ~~Home health services that are provided to a~~
24 ~~patient must be evaluated in the patient's home by a physician~~
25 ~~licensed under chapter 458, chapter 459, chapter 460, or~~
26 ~~chapter 461 or by a registered nurse licensed under chapter~~
27 ~~464 as frequently as necessary to assure safe and adequate~~
28 ~~care, but not less frequently than once every 62 days.~~

29 (5) When nursing services are ordered, the home health
30 agency to which a patient has been admitted for care must
31 provide the initial admission visit, all service evaluation

1 visits, and the discharge visit by qualified personnel who are
2 on the payroll of, and to whom an IRS payroll form W-2 will be
3 issued by, the home health agency.~~A home health agency must~~
4 ~~provide at least one home health service to patients for whom~~
5 ~~it has agreed to provide care.~~Services provided by others
6 under contractual arrangements to a home health agency
7 ~~agency's patients~~ must be monitored and managed ~~controlled~~ by
8 the admitting home health agency. The admitting home health
9 agency is fully responsible for ensuring that all care
10 provided through its employees or contract staff is delivered
11 in accordance with this part and applicable rules.

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

15 Section 7. Section 400.488, Florida Statutes, is
16 created to read:

17 400.488 Assistance with self-administration of
18 medication.--

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

20 (a) "Informed consent" means advising the patient, or
21 the patient's surrogate, guardian, or attorney in fact, that
22 the patient may be receiving assistance with
23 self-administration of medication from an unlicensed person.

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

29 (2) Patients who are capable of self-administering
30 their own medications without assistance shall be encouraged
31 and allowed to do so. However, an unlicensed person may,

1 consistent with a dispensed prescription's label or the
2 package directions of an over-the-counter medication, assist a
3 patient whose condition is medically stable with the
4 self-administration of routine, regularly scheduled
5 medications that are intended to be self-administered.
6 Assistance with self-medication by an unlicensed person may
7 occur only upon a documented request by, and the written
8 informed consent of, a patient or the patient's surrogate,
9 guardian, or attorney in fact. For purposes of this section,
10 self-administered medications include both legend and
11 over-the-counter oral dosage forms, topical dosage forms, and
12 topical ophthalmic, otic, and nasal dosage forms, including
13 solutions, suspensions, sprays, and inhalers.

14 (3) Assistance with self-administration of medication
15 includes:

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

19 (b) In the presence of the patient, reading the label,
20 opening the container, removing a prescribed amount of
21 medication from the container, and closing the container.

22 (c) Placing an oral dosage in the patient's hand or
23 placing the dosage in another container and helping the
24 patient by lifting the container to his or her mouth.

25 (d) Applying topical medications.

26 (e) Returning the medication container to proper
27 storage.

28 (f) Keeping a record of when a patient receives
29 assistance with self-administration under this section.

30 (4) Assistance with self-administration does not
31 include:

1 (a) Mixing, compounding, converting, or calculating
2 medication doses, except for measuring a prescribed amount of
3 liquid medication or breaking a scored tablet or crushing a
4 tablet as prescribed.

5 (b) The preparation of syringes for injection or the
6 administration of medications by any injectable route.

7 (c) Administration of medications through intermittent
8 positive pressure breathing machines or a nebulizer.

9 (d) Administration of medications by way of a tube
10 inserted in a cavity of the body.

11 (e) Administration of parenteral preparations.

12 (f) Irrigations or debriding agents used in the
13 treatment of a skin condition.

14 (g) Rectal, urethral, or vaginal preparations.

15 (h) Medications ordered by the physician or health
16 care professional with prescriptive authority to be given "as
17 needed," unless the order is written with specific parameters
18 that preclude independent judgment on the part of the
19 unlicensed person, and at the request of a competent patient.

20 (i) Medications for which the time of administration,
21 the amount, the strength of dosage, the method of
22 administration, or the reason for administration requires
23 judgment or discretion on the part of the unlicensed person.

24 (5) Assistance with the self-administration of
25 medication by an unlicensed person as described in this
26 section does not constitute administration as defined in s.
27 465.003.

28 (6) The agency may by rule establish procedures and
29 interpret terms as necessary to administer this section.

30 Section 8. Section 400.491, Florida Statutes, 1998
31 Supplement, is amended to read:

1 400.491 Clinical records.--

2 (1) The home health agency must maintain for each
3 patient who receives skilled care a clinical record that
4 includes ~~the services the home health agency provides directly~~
5 ~~and those provided through arrangement with another health~~
6 ~~care provider, except for those services provided by persons~~
7 ~~referred under s. 400.509.~~ Such records must contain
8 pertinent past and current medical, nursing, social and other
9 therapeutic information, the ~~plan of~~ treatment orders, and
10 other such information as is necessary for the safe and
11 adequate care of the patient. When home health services are
12 terminated, the record must show the date and reason for
13 termination. Such records are considered patient records
14 under s. 455.241 ~~s. 455.667~~, and must be maintained by the
15 home health agency for 5 years following termination of
16 services. If a patient transfers to another home health
17 agency, a copy of his or her record must be provided to the
18 other home health agency upon request.

19 (2) The home health agency must maintain for each
20 client who receives nonskilled care a service-provision plan.
21 Such records must be maintained by the home health agency for
22 1 year following termination of services.

23 Section 9. Section 400.497, Florida Statutes, is
24 amended to read:

25 400.497 Rules establishing minimum standards.--The
26 agency ~~for Health Care Administration~~ shall adopt, publish,
27 and enforce rules to implement this part, including, as
28 applicable, ss. 400.506 and 400.509, which must provide
29 reasonable and fair minimum standards relating to:

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

31

1 ~~(1)(2)~~ The qualifications, ~~and~~ and minimum training
2 requirements, and supervision requirements of all home health
3 agency personnel. The agency shall establish the curriculum
4 and instructor qualifications for home health aide training.
5 Licensed home health agencies may provide this training and
6 shall furnish documentation of such training to other licensed
7 home health agencies upon request. The agency shall allow
8 shared staffing if the home health agency is part of a
9 retirement community that provides multiple levels of care, is
10 located on one campus, is licensed under this chapter, and
11 otherwise meets the requirements of law and rule.

12 ~~(2)(3)~~ Requirements for prospective employees
13 ~~procedures for maintaining a record of the employment history~~
14 ~~of all home health agency personnel.~~ A home health agency
15 must require prospective employees and contractors ~~its~~
16 ~~personnel~~ to submit an employment or contractual history ~~to~~
17 ~~the home health agency,~~ and it must verify the employment or
18 contractual history unless through diligent efforts such
19 verification is not possible. The agency ~~for Health Care~~
20 ~~Administration~~ shall prescribe by rule the minimum
21 requirements for establishing that diligent efforts have been
22 made. ~~The administrator of a home health agency must review~~
23 ~~the employment history and references of home health agency~~
24 ~~personnel and applicants for employment.~~ The Agency for
25 ~~Health Care Administration must review the employment history~~
26 ~~and references of each administrator of a home health agency.~~
27 There is no monetary liability on the part of, and no cause of
28 action for damages arising ~~arises~~ against, a former employer
29 of a prospective employee of or prospective independent
30 contractor with a licensed home health agency who reasonably
31 and in good faith communicates his or her honest opinions

1 about the former employee's job performance. This subsection
2 does not affect the official immunity of an officer or
3 employee of a public corporation.

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

5 (4)~~(5)~~ The administration of the home health agency,
6 including requirements for onsite and electronic accessibility
7 of supervisory personnel.

8 (5)~~(6)~~ Procedures for administering drugs and
9 biologicals.

10 (6)~~(7)~~ Procedures for maintaining patients'~~patient~~
11 records.

12 (7)~~(8)~~ Ensuring that ~~the~~ home health services ~~provided~~
13 ~~by a home health agency~~ are provided in accordance with the
14 ~~plan of treatment~~ orders established for each patient for whom
15 physician orders are required.

16 (8)~~(9)~~ Geographic service areas.

17 (9)~~(10)~~ Standards for contractual arrangements for the
18 provision of home health services by providers not employed by
19 the home health agency to whom the patient has been admitted
20 ~~providing for the patient's care and treatment.~~

21 Section 10. Subsections (1) and (10) of section
22 400.506, Florida Statutes, 1998 Supplement, are amended to
23 read:

24 400.506 Licensure of nurse registries; requirements;
25 penalties.--

26 (1) A nurse registry is exempt from the licensing
27 requirements of a home health agency, but must be licensed as
28 a nurse registry. Each operational site of the nurse registry
29 must be licensed, unless there is more than one site within a
30 county. If there is more than one site within a county only
31

1 one license per county is required. Each operational site
2 must be listed on the license.

3 (10)(a) A nurse registry may refer for contract in
4 private residences registered nurses and licensed practical
5 nurses registered and licensed under chapter 464, certified
6 nursing assistants certified under s. 400.211, home health
7 aides who present documented proof of successful completion of
8 the training required by rule of the agency, and ~~sitters,~~
9 companions, or homemakers for the purposes of providing those
10 services authorized under s. 400.509(1). Each person referred
11 by a nurse registry must provide current documentation that he
12 or she is free from communicable diseases.

13 (b) A certified nursing assistant or home health aide
14 may be referred for a contract to provide care to a patient in
15 his or her home only if that patient is under a physician's
16 care. A certified nursing assistant or home health aide
17 referred for contract in a private residence shall be limited
18 to assisting a patient with bathing, dressing, toileting,
19 grooming, eating, physical transfer, and those normal daily
20 routines the patient could perform for himself or herself were
21 he or she physically capable. A certified nursing assistant
22 or home health aide may not provide medical or other health
23 care services that require specialized training and that may
24 be performed only by licensed health care professionals. The
25 nurse registry shall obtain the name and address of the
26 attending physician and send written notification to the
27 physician within 48 hours after a contract is concluded that a
28 certified nursing assistant or home health aide will be
29 providing care for that patient.

30 (c) A registered nurse shall make monthly visits to
31 the patient's home to assess the patient's condition and

1 quality of care being provided by the certified nursing
2 assistant or home health aide. Any condition which in the
3 professional judgment of the nurse requires further medical
4 attention shall be reported to the attending physician and the
5 nurse registry. The assessment shall become a part of the
6 patient's file with the nurse registry and may be reviewed by
7 the agency ~~for Health Care Administration~~ during their survey
8 procedure.

9 ~~(d) In order to refer for contract in private~~
10 ~~residences a certified nursing assistant or any person~~
11 ~~specified in s. 400.509(1), the nurse registry and such person~~
12 ~~registered with the nurse registry must also be registered~~
13 ~~under s. 400.509. Any person registered as an independent~~
14 ~~contractor with a nurse registry for the purpose of providing~~
15 ~~services authorized under s. 400.509(1) on or before October~~
16 ~~1, 1990, is exempt from registration under s. 400.509 so long~~
17 ~~as such person remains continuously registered with that nurse~~
18 ~~registry.~~

19 Section 11. Subsections (1), (2), and (3) of section
20 400.509, Florida Statutes, are amended, present subsections
21 (4) and (5) of that section are amended and renumbered as
22 subsections (5) and (6), respectively, present subsections
23 (6), (7), (8), (9), (10), (11), (12), and (13) of that section
24 are renumbered as subsections (7), (8), (9), (10), (11), (12),
25 (13), and (14), respectively, and a new subsection (4) is
26 added to that section, to read:

27 400.509 Registration of particular service providers
28 exempt from licensure; certificate of registration; regulation
29 of registrants.--

30 (1) Any organization ~~person~~ that provides ~~domestic~~
31 ~~maid services, sitter services, companion services, or~~

1 homemaker services and does not provide a home health service
2 to a person is exempt from licensure under this part. However,
3 any organization ~~person~~ that provides ~~sitter services for~~
4 ~~adults,~~ companion services, or homemaker services must
5 register with the agency ~~for Health Care Administration~~.

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

9 ~~(a) The name, address, date of birth, and social~~
10 ~~security number of the individual, or the name and address of~~
11 ~~the person, providing the service.~~

12 ~~(a)(b)~~ If the registrant is a firm or partnership, the
13 name, address, date of birth, and social security number of
14 every member.

15 ~~(b)(c)~~ If the registrant is a corporation or
16 association, its name and address, the name, address, date of
17 birth, and social security number of each of its directors and
18 officers, and the name and address of each person having at
19 least a 5-percent ~~10-percent~~ interest in the corporation or
20 association.

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

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

27 (4) Each applicant for registration must comply with
28 the following requirements:

29 (a) Upon receipt of a completed, signed, and dated
30 application, the agency shall require background screening, in
31 accordance with the level 1 standards for screening set forth

1 in chapter 435, of every individual who will have contact with
2 the client. The agency shall require background screening of
3 the managing employee or other similarly titled individual who
4 is responsible for the operation of the entity, and of the
5 financial officer or other similarly titled individual who is
6 responsible for the financial operation of the entity,
7 including billings for client services in accordance with the
8 level 2 standards for background screening as set forth in
9 chapter 435.

10 (b) The agency may require background screening of any
11 other individual who is affiliated with the applicant if the
12 agency has a reasonable basis for believing that he or she has
13 been convicted of a crime or has committed any other offense
14 prohibited under the level 2 standards for screening set forth
15 in chapter 435.

16 (c) Proof of compliance with the level 2 background
17 screening requirements of chapter 435 which has been submitted
18 within the previous 5 years in compliance with any other
19 healthcare or assisted living licensure requirements of this
20 state is acceptable in fulfillment of paragraph (a).

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

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

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 applicant from
14 the Medicare or Medicaid programs. Proof of compliance with
15 the requirements for disclosure of ownership and control
16 interests under the Medicaid or Medicare programs may be
17 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 which
21 was committed by a member of the board of directors of the
22 applicant, its officers, or any individual owning 5 percent or
23 more of the applicant. This requirement does not apply to a
24 director of a not-for-profit corporation or organization who
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's or organization's board of directors, and has no
30 financial interest and no family members having a financial
31 interest in the corporation or organization, if the director

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

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

12 (h) The agency may deny or revoke the registration of
13 any applicant who:

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 the subject of prior action under the
19 Medicaid or Medicare program as set forth in paragraph (e).

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

22 (5)(4) Each registrant must ~~obtain~~ ~~establish~~ the
23 employment ~~or contract~~ history of persons ~~who are~~ employed by
24 or under contract ~~with the organization and who will have~~
25 ~~having~~ contact at any time with patients ~~or clients~~ in their
26 homes by:

27 (a) Requiring ~~such~~ persons ~~employed or under contract~~
28 to submit an employment ~~or contractual~~ history to the
29 registrant; and

30 (b) Verifying the employment ~~or contractual~~ history,
31 unless through diligent efforts such verification is not

1 possible. The agency ~~for Health Care Administration~~ shall
2 prescribe by rule the minimum requirements for establishing
3 that diligent efforts have been made.

4
5 There is no monetary liability on the part of, and no cause of
6 action for damages arises against, a former employer of a
7 prospective employee of or prospective independent contractor
8 with a registrant who reasonably and in good faith
9 communicates his or her honest opinions about the former
10 employee's or contractor's job performance. This subsection
11 does not affect the official immunity of an officer or
12 employee of a public corporation.

13 ~~(6)(5)~~ On or before the first day on which services
14 are provided to a patient or client, any registrant under this
15 part must inform the patient or client and his or her
16 immediate family, if appropriate, of the right to report
17 abusive, neglectful, or exploitative practices. The statewide
18 toll-free telephone number for the central abuse registry must
19 be provided to patients or clients in a manner that is clearly
20 legible and must include the words: "To report abuse, neglect,
21 or exploitation, please call toll-free ...(phone number)...."
22 Registrants must establish appropriate policies and procedures
23 for providing such notice to patients or clients.

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

26 400.512 Screening of home health agency personnel;
27 nurse registry personnel; and ~~sitters, companions, and~~
28 homemakers.--The agency ~~for Health Care Administration~~ shall
29 require employment or contract or screening as provided in
30 chapter 435, using the level 1 standards for screening set
31 forth in that chapter, for home health agency personnel;

1 persons referred for employment by nurse registries; and
2 persons employed by ~~sitter, companion, or homemaker~~ services
3 registered under s. 400.509.

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

7 (2) The administrator of each home health agency, the
8 managing employee of each nurse registry, and the managing
9 employee of each ~~or sitter, companion, or homemaker~~ service
10 registered under s. 400.509 must sign an affidavit annually,
11 under penalty of perjury, stating that all personnel hired,
12 contracted with, or registered on or after October 1, 1994
13 ~~1989~~, who enter the home of a patient or client in the
14 capacity of their service capacity ~~employment~~ have been
15 screened and that its remaining personnel have worked for the
16 home health agency or registrant continuously since before
17 October 1, 1994 ~~1989~~.

18 (3) As a prerequisite to operating as a home health
19 agency, nurse registry, or ~~sitter, companion, or homemaker~~
20 service under s. 400.509, the administrator or managing
21 employee, respectively, must submit to the agency his or her
22 ~~for Health Care Administration~~ their name and any other
23 information necessary to conduct a complete screening
24 according to this section. The agency ~~for Health Care~~
25 ~~Administration~~ shall submit the information to the Department
26 of Law Enforcement and the department's abuse hotline for
27 state processing. The agency ~~for Health Care Administration~~
28 shall review the record of the administrator or manager with
29 respect to the offenses specified in this section and shall
30 notify the owner of its findings. If disposition information
31 is missing on a criminal record, the administrator or manager,

1 upon request of the agency ~~for Health Care Administration,~~
2 must obtain and supply within 30 days the missing disposition
3 information to the agency ~~for Health Care Administration.~~
4 Failure to supply missing information within 30 days or to
5 show reasonable efforts to obtain such information will result
6 in automatic disqualification.

7 (4) Proof of compliance with the screening
8 requirements of chapter 435 shall be accepted in lieu of the
9 requirements of this section if the ~~provided that such~~ person
10 has been continuously employed or registered without a breach
11 in service that exceeds 180 days, the proof of compliance is
12 not more than 2 years old, and the person has been screened
13 through the central abuse registry and tracking system of the
14 department and by the Department of Law Enforcement. An
15 employer, nurse registry, or companion or homemaker service
16 registered under s. 400.509 shall directly provide proof of
17 compliance to another home health agency, nurse registry, or
18 companion or homemaker service registered under s. 400.509.
19 The recipient home health agency, nurse registry, or companion
20 or homemaker service registered under s. 400.509 may not
21 accept any proof of compliance directly from the person who
22 requires screening. Proof of compliance with the screening
23 requirements of this section shall be provided upon request to
24 the person screened by the home health agencies; nurse
25 registries; or ~~sitter,~~ companion, or homemaker services
26 registered under s. 400.509.

27 (5) There is no monetary liability on the part of, and
28 no cause of action for damages arises against, a licensed home
29 health agency, licensed nurse registry, or ~~sitter,~~ companion,
30 or homemaker service registered under s. 400.509, that, upon
31 notice of a confirmed report of adult abuse, neglect, or

1 exploitation ~~under paragraph (2)(b)~~, terminates the employee
2 or contractor against whom the report was issued, whether or
3 not the employee or contractor has filed for an exemption with
4 the agency in accordance with chapter 435 for Health Care
5 ~~Administration under subparagraph (3)(a)5~~ and whether or not
6 the time for filing has expired.

7 (6) The costs of processing the statewide
8 correspondence criminal records checks and the search of the
9 department's central abuse hotline must be borne by the home
10 health agency; the nurse registry; or the ~~sitter, companion,~~
11 ~~or homemaker service registered under s. 400.509, or by the~~
12 ~~person being screened, at the discretion of the home health~~
13 ~~agency, nurse registry, or s. 400.509 registrant.~~

14 ~~(7) The Agency for Health Care Administration; the~~
15 ~~home health agency; nurse registry; or sitter, companion, or~~
16 ~~homemaker service registered under s. 400.509 may not use the~~
17 ~~criminal records, juvenile records, or central abuse hotline~~
18 ~~information of a person for any purpose other than determining~~
19 ~~whether that person meets minimum standards of good moral~~
20 ~~character for home health agency personnel. The criminal~~
21 ~~records, juvenile records, or central abuse hotline~~
22 ~~information obtained by the Agency for Health Care~~
23 ~~Administration; home health agency; nurse registry; or sitter,~~
24 ~~companion, or homemaker service for determining the moral~~
25 ~~character of such personnel are confidential and exempt from~~
26 ~~the provisions of s. 119.07(1) and s. 24(a), Art. I of the~~
27 ~~State Constitution.~~

28 (7)(8)(a) It is a misdemeanor of the first degree,
29 punishable under s. 775.082 or s. 775.083, for any person
30 willfully, knowingly, or intentionally to:

31

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

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

10 3. Use information from the criminal records or
11 central abuse hotline obtained under this section for any
12 purpose other than screening that person for employment as
13 specified in this section or release such information to any
14 other person for any purpose other than screening for
15 employment under this section.

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

22 Section 13. Task Force on Home Health Services
23 Licensure Provisions.--There is created a task force composed
24 of representatives of the Agency for Health Care
25 Administration, the Department of Elderly Affairs, the
26 Department of Health, and Associated Home Health Industries to
27 review the provisions of part IV of chapter 400, Florida
28 Statutes, and recommend additional legislative revisions. The
29 review must address, at a minimum, the following issues:
30 whether Adult Abuse Registry screening should continue to be
31 mandated; whether individuals who provide home health services

1 should be exempted from all state regulatory oversight; and
2 whether mandatory registration for organizations that provide
3 companion and homemaker services should continue. A report
4 must be submitted to the appropriate legislative committees by
5 December 31, 1999.

6 Section 14. This act shall take effect October 1,
7 1999.

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10 SENATE SUMMARY

11 Revises licensing, screening, recordkeeping, liability
12 insurance, and administrative fine requirements for home
13 health agencies. Creates the Task Force on Home Health
14 Services Licensure Provisions to review the regulatory
15 requirements of part IV of chapter 400, F.S., and report
16 recommendations to the Legislature.
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