

By the Committee on Health, Aging and Long-Term Care; and  
Senator Thomas

317-1966-99

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.  
31

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

2

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.

31

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, or any other legal or commercial entity, any of  
6 which involve more than one health care professional  
7 discipline or a health care professional and a home health  
8 aide or certified nursing assistant. The term does not  
9 include an entity that provides services using only volunteers  
10 or only individuals related by blood or marriage to the  
11 patient or client.

12 (17)(9) "Patient" means any person who receives home  
13 health services in his or her home or place of residence.

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

19 (19) "Physician" means a person licensed under chapter  
20 458, chapter 459, chapter 460, or chapter 461.

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

29 (21) "Skilled care" means nursing services or  
30 therapeutic services delivered by a health care professional  
31 who is licensed under chapter 464; part I, part III, or part V

1 of chapter 468; or chapter 486 and who is employed by or under  
2 contract with a licensed home health agency or is referred by  
3 a licensed nurse registry.

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

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

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

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

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

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

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

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

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

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

28 ~~(c) A person who violates paragraph (a) commits a~~  
29 ~~misdemeanor of the second degree, punishable as provided in s.~~  
30 ~~775.082 or s. 775.083. Any person who commits a second or~~  
31



1 ~~subsequent violation commits a misdemeanor of the first~~  
2 ~~degree, punishable as provided in s. 775.082 or s. 775.083.~~

3  
4 ~~Each day of continuing violation constitutes a separate~~  
5 ~~offense.~~

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

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

1           (b) A person who violates paragraph (a) is subject to  
2 an injunctive proceeding under s. 400.515. A violation of  
3 paragraph (a) is a deceptive and unfair trade practice and  
4 constitutes a violation of the Florida Unfair and Deceptive  
5 Trade Practices Act.

6           (c) A person who violates the provisions of paragraph  
7 (a) commits a misdemeanor of the second degree, punishable as  
8 provided in s. 775.082 or s. 775.083. Any person who commits  
9 a second or subsequent violation commits a misdemeanor of the  
10 first degree, punishable as provided in s. 775.082 or s.  
11 775.083. Each day of continuing violation constitutes a  
12 separate offense.

13           (6) The following are exempt from the licensure  
14 requirements of this part:

15           (a) A home health agency operated by the Federal  
16 Government.

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

19           1. The Department of Elderly Affairs.

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

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

28           (c) A health care professional, whether or not  
29 incorporated, who is licensed under chapter 458, chapter 459,  
30 chapter 464, part I, part III, part V, or part X of chapter  
31 468, chapter 480, chapter 486, chapter 490, or chapter 491,

1 and who is acting alone within the scope of his or her  
2 professional license to provide care to patients in their  
3 homes.

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

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

14 (f) The delivery of instructional services in home  
15 dialysis and home dialysis supplies and equipment.

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

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

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

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

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

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

1           (m) Certified rehabilitation agencies and  
2 comprehensive outpatient rehabilitation facilities that are  
3 certified under Title 18 of the Social Security Act.

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

7           Section 3. Section 400.471, Florida Statutes, 1998  
8 Supplement, is amended to read:

9           400.471 Application for license; fee; provisional  
10 license; temporary permit.--

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

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

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

24           (b) The number and discipline of professional staff to  
25 be employed; and

26           (c) Proof of financial ability to operate.

27  
28 If the applicant has applied for a certificate of need under  
29 ss. 408.0331-408.045 within the preceding 12 months, the  
30 applicant may submit the proof required during the  
31 certificate-of-need process along with an attestation that

1 there has been no substantial change in the facts and  
2 circumstances underlying the original submission.

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

15 (4) Each applicant for licensure must comply with the  
16 following requirements:

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

27 (b) The agency may require background screening for a  
28 member of the board of directors of the licensee or an officer  
29 or an individual owning 5 percent or more of the licensee if  
30 the agency reasonably suspects that such individual has been  
31

1 convicted of an offense prohibited under the level 2 standards  
2 for screening set forth in chapter 435.

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

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

1 any violation of background screening standards and a  
2 disqualification exemption has not been requested of and  
3 granted by the agency as set forth in chapter 435.

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

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

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

1 plea of nolo contendere or guilty to, any offense prohibited  
2 under the level 2 standards for screening set forth in chapter  
3 435, unless an exemption from disqualification has been  
4 granted by the agency as set forth in chapter 435.

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

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

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

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

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

29 (a) Malpractice insurance as defined in s.  
30 624.605(1)(k);

31



1           (b) Liability insurance as defined in s.  
2 624.605(1)(b).

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

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

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

29           (9) The license must be displayed in a conspicuous  
30 place in the administrative office of the home health agency  
31 and is valid only while in the possession of the person to

1 which it is issued. The license may not be sold, assigned, or  
2 otherwise transferred, voluntarily or involuntarily, and is  
3 valid only for the home health agency and location for which  
4 originally issued.

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

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

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

21 Section 4. Section 400.474, Florida Statutes, 1998  
22 Supplement, is amended to read:

23 400.474 Denial, suspension, revocation of license;  
24 injunction; grounds; penalties.--

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

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

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

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

4 (c) Knowingly providing home health services in an  
5 unlicensed assisted living facility or unlicensed adult  
6 family-care home, unless the home health agency or employee  
7 reports the unlicensed facility or home to the agency within  
8 72 hours after providing the services.

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

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

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

30 (c) If any home health agency meets the criteria in  
31 paragraph (a) or paragraph (b) and that home health agency has

1 received any government reimbursement for services provided by  
2 an unlicensed home health agency, the agency shall make a  
3 fraud referral to the appropriate government reimbursement  
4 program.

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

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

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

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

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

26 2. Has been or is currently excluded, suspended,  
27 terminated from, or has involuntarily withdrawn from,  
28 participation in the Medicaid program of this state or any  
29 other state, the Medicare program, or any other governmental  
30 health care or health insurance program.

31

1           Section 5. Section 400.484, Florida Statutes, is  
2 amended to read:

3           400.484 Right of inspection; deficiencies; fines.--

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

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

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

30           (b) A class II deficiency is any act, omission, or  
31 practice that has a direct adverse effect on the health,

1 safety, or security of a patient. Upon finding a class II  
2 deficiency, the agency may impose an administrative fine in  
3 the amount of \$1,000 for each occurrence and each day that the  
4 deficiency exists. In addition, the agency may suspend the  
5 license, or impose a moratorium on the admission of new  
6 patients, until the deficiency has been corrected.

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

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

22 Section 6. Section 400.487, Florida Statutes, is  
23 amended to read:

24 400.487 Patient assessment; establishment and review  
25 of plan of care; provision of services.--

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

29 (2) The attending physician for a patient who is to  
30 receive skilled ~~receiving care or treatment provided by a~~  
31 ~~licensed nurse or by a physical, occupational, or speech~~

1 ~~therapist~~ must establish treatment orders ~~a plan of care for~~  
2 ~~the patient on behalf of the home health agency that provides~~  
3 ~~services to the patient.~~ The original plan of treatment  
4 orders must be signed by the physician within 24 days after  
5 the start of care and must be reviewed, at least every 62 days  
6 or more frequently if the patient's illness requires, by the  
7 physician in consultation with home health agency personnel  
8 that provide services to the patient.

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

14 ~~(4)~~(3) Each patient or client has the right to be  
15 informed of and to participate in the planning of his or her  
16 care. Each patient must be provided, upon request, a copy of  
17 the plan of care or service provision plan established and  
18 maintained for that patient or client by the home health  
19 agency.

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

26 (5) When nursing services are ordered, the home health  
27 agency to which a patient has been admitted for care must  
28 provide the initial admission visit, all service evaluation  
29 visits, and the discharge visit by qualified personnel who are  
30 on the payroll of, and to whom an IRS payroll form W-2 will be  
31 issued by, the home health agency. ~~A home health agency must~~

1 ~~provide at least one home health service to patients for whom~~  
2 ~~it has agreed to provide care.~~ Services provided by others  
3 under contractual arrangements to a home health agency  
4 ~~agency's patients~~ must be monitored and managed ~~controlled~~ by  
5 the admitting home health agency. The admitting home health  
6 agency is fully responsible for ensuring that all care  
7 provided through its employees or contract staff is delivered  
8 in accordance with this part and applicable rules.

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

12 Section 7. Section 400.488, Florida Statutes, is  
13 created to read:

14 400.488 Assistance with self-administration of  
15 medication.--

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

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

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

26 (2) Patients who are capable of self-administering  
27 their own medications without assistance shall be encouraged  
28 and allowed to do so. However, an unlicensed person may,  
29 consistent with a dispensed prescription's label or the  
30 package directions of an over-the-counter medication, assist a  
31 patient whose condition is medically stable with the



1 self-administration of routine, regularly scheduled  
2 medications that are intended to be self-administered.  
3 Assistance with self-medication by an unlicensed person may  
4 occur only upon a documented request by, and the written  
5 informed consent of, a patient or the patient's surrogate,  
6 guardian, or attorney in fact. For purposes of this section,  
7 self-administered medications include both legend and  
8 over-the-counter oral dosage forms, topical dosage forms, and  
9 topical ophthalmic, otic, and nasal dosage forms, including  
10 solutions, suspensions, sprays, and inhalers.  
11 (3) Assistance with self-administration of medication  
12 includes:  
13 (a) Taking the medication, in its previously  
14 dispensed, properly labeled container, from where it is stored  
15 and bringing it to the patient.  
16 (b) In the presence of the patient, reading the label,  
17 opening the container, removing a prescribed amount of  
18 medication from the container, and closing the container.  
19 (c) Placing an oral dosage in the patient's hand or  
20 placing the dosage in another container and helping the  
21 patient by lifting the container to his or her mouth.  
22 (d) Applying topical medications.  
23 (e) Returning the medication container to proper  
24 storage.  
25 (f) Keeping a record of when a patient receives  
26 assistance with self-administration under this section.  
27 (4) Assistance with self-administration does not  
28 include:  
29 (a) Mixing, compounding, converting, or calculating  
30 medication doses, except for measuring a prescribed amount of  
31

1 liquid medication or breaking a scored tablet or crushing a  
2 tablet as prescribed.

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

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

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

9 (e) Administration of parenteral preparations.

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

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

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

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

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

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

28 Section 8. Section 400.491, Florida Statutes, 1998  
29 Supplement, is amended to read:

30 400.491 Clinical records.--

31

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

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

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

24           400.497 Rules establishing minimum standards.--The  
25 ~~agency for Health Care Administration~~ shall adopt, publish,  
26 and enforce rules to implement this part, including, as  
27 applicable, ss. 400.506 and 400.509, which must provide  
28 reasonable and fair minimum standards relating to:

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

30           (1)(2) The qualifications, ~~and~~ minimum training  
31 requirements, and supervision requirements of all home health

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

10 (2)(3) Requirements for prospective employees  
11 ~~procedures for maintaining a record of the employment history~~  
12 ~~of all home health agency personnel. A home health agency~~  
13 ~~must require prospective employees and contractors its~~  
14 ~~personnel to submit an employment or contractual history to~~  
15 ~~the home health agency, and it must verify the employment or~~  
16 ~~contractual history unless through diligent efforts such~~  
17 ~~verification is not possible. The agency for Health Care~~  
18 ~~Administration shall prescribe by rule the minimum~~  
19 ~~requirements for establishing that diligent efforts have been~~  
20 ~~made. The administrator of a home health agency must review~~  
21 ~~the employment history and references of home health agency~~  
22 ~~personnel and applicants for employment. The Agency for~~  
23 ~~Health Care Administration must review the employment history~~  
24 ~~and references of each administrator of a home health agency.~~  
25 ~~There is no monetary liability on the part of, and no cause of~~  
26 ~~action for damages arising arises against, a former employer~~  
27 ~~of a prospective employee of or prospective independent~~  
28 ~~contractor with a licensed home health agency who reasonably~~  
29 ~~and in good faith communicates his or her honest opinions~~  
30 ~~about the former employee's job performance. This subsection~~  
31

1 does not affect the official immunity of an officer or  
2 employee of a public corporation.

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

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

7 ~~(5)(6)~~ Procedures for administering drugs and  
8 biologicals.

9 ~~(6)(7)~~ Procedures for maintaining ~~patients'~~patient  
10 records.

11 ~~(7)(8)~~ Ensuring that ~~the~~ home health services ~~provided~~  
12 ~~by a home health agency~~ are provided in accordance with the  
13 ~~plan of treatment~~ orders established for each patient for whom  
14 physician orders are required.

15 ~~(8)(9)~~ Geographic service areas.

16 ~~(9)(10)~~ Standards for contractual arrangements for the  
17 provision of home health services by providers not employed by  
18 the home health agency to whom the patient has been admitted  
19 ~~providing for the patient's care and treatment.~~

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

23 400.506 Licensure of nurse registries; requirements;  
24 penalties.--

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

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

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

28           (c) A registered nurse shall make monthly visits to  
29 the patient's home to assess the patient's condition and  
30 quality of care being provided by the certified nursing  
31 assistant or home health aide. Any condition which in the

1 professional judgment of the nurse requires further medical  
2 attention shall be reported to the attending physician and the  
3 nurse registry. The assessment shall become a part of the  
4 patient's file with the nurse registry and may be reviewed by  
5 the agency for ~~Health Care Administration~~ during their survey  
6 procedure.

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

17 Section 11. Subsections (1), (2), and (3) of section  
18 400.509, Florida Statutes, are amended, present subsections  
19 (4), (5), and (6) of that section are amended and renumbered  
20 as subsections (5), (6), and (7), respectively, present  
21 subsections (7), (8), (9), (10), (11), (12), and (13) of that  
22 section are renumbered as subsections (8), (9), (10), (11),  
23 (12), (13), and (14), respectively, and a new subsection (4)  
24 is added to that section, to read:

25 400.509 Registration of particular service providers  
26 exempt from licensure; certificate of registration; regulation  
27 of registrants.--

28 (1) Any organization ~~person~~ that provides ~~domestic~~  
29 ~~maid services, sitter services, companion services, or~~  
30 homemaker services and does not provide a home health service  
31 to a person is exempt from licensure under this part. However,

1 any organization ~~person~~ that provides ~~sitter services for~~  
2 ~~adults,~~ companion services, or homemaker services must  
3 register with the agency for ~~Health Care Administration~~.

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

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

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

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

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

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

25 (4) Each applicant for registration must comply with  
26 the following requirements:

27 (a) Upon receipt of a completed, signed, and dated  
28 application, the agency shall require background screening, in  
29 accordance with the level 1 standards for screening set forth  
30 in chapter 435, of every individual who will have contact with  
31 the client. The agency shall require background screening of



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

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

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

19 (d) A provisional registration may be granted to an  
20 applicant when each individual required by this section to  
21 undergo background screening has met the standards for the  
22 abuse-registry background check and the Department of Law  
23 Enforcement background check but the agency has not yet  
24 received background screening results from the Federal Bureau  
25 of Investigation. A standard registration may be granted to  
26 the applicant upon the agency's receipt of a report of the  
27 results of the Federal Bureau of Investigation background  
28 screening for each individual required by this section to  
29 undergo background screening which confirms that all standards  
30 have been met, or upon the granting of a disqualification  
31 exemption by the agency as set forth in chapter 435. Any

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

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

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

1 relationship to the corporation satisfies the requirements of  
2 this paragraph.

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

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

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

16 2. Has had prior action taken against the applicant  
17 under the Medicaid or Medicare program as set forth in  
18 paragraph (e).

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

21 (5)(4) Each registrant must ~~obtain~~ establish the  
22 employment ~~or contract~~ history of persons who are employed by  
23 or under contract with the organization and who will have  
24 ~~having~~ contact at any time with patients or clients in their  
25 homes by:

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

29 (b) Verifying the employment or contractual history,  
30 unless through diligent efforts such verification is not  
31 possible. The agency ~~for Health Care Administration~~ shall

1 prescribe by rule the minimum requirements for establishing  
2 that diligent efforts have been made.

3  
4 There is no monetary liability on the part of, and no cause of  
5 action for damages arises against, a former employer of a  
6 prospective employee of or prospective independent contractor  
7 with a registrant who reasonably and in good faith  
8 communicates his or her honest opinions about the former  
9 employee's or contractor's job performance. This subsection  
10 does not affect the official immunity of an officer or  
11 employee of a public corporation.

12 (6)~~(5)~~ On or before the first day on which services  
13 are provided to a patient or client, any registrant under this  
14 part must inform the patient or client and his or her  
15 immediate family, if appropriate, of the right to report  
16 abusive, neglectful, or exploitative practices. The statewide  
17 toll-free telephone number for the central abuse registry must  
18 be provided to patients or clients in a manner that is clearly  
19 legible and must include the words: "To report abuse, neglect,  
20 or exploitation, please call toll-free ...(phone number)...."  
21 Registrants must establish appropriate policies and procedures  
22 for providing such notice to patients or clients.

23 (7)~~(6)~~ The provisions of s. 400.512 regarding  
24 screening apply to any person or business entity registered  
25 under this section on or after October 1, 1994 ~~1989~~.

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

28 400.512 Screening of home health agency personnel;  
29 nurse registry personnel; and ~~sitters, companions, and~~  
30 homemakers.--The agency for Health Care Administration shall  
31 require employment or contractor screening as provided in

1 chapter 435, using the level 1 standards for screening set  
2 forth in that chapter, for home health agency personnel;  
3 persons referred for employment by nurse registries; and  
4 persons employed by ~~sitter, companion, or homemaker~~ services  
5 registered under s. 400.509.

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

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

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

1 notify the owner of its findings. If disposition information  
2 is missing on a criminal record, the administrator or manager,  
3 upon request of the agency ~~for Health Care Administration~~,  
4 must obtain and supply within 30 days the missing disposition  
5 information to the agency ~~for Health Care Administration~~.  
6 Failure to supply missing information within 30 days or to  
7 show reasonable efforts to obtain such information will result  
8 in automatic disqualification.

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

29 (5) There is no monetary liability on the part of, and  
30 no cause of action for damages arises against, a licensed home  
31 health agency, licensed nurse registry, or ~~sitter, companion,~~

1 or homemaker service registered under s. 400.509, that, upon  
2 notice of a confirmed report of adult abuse, neglect, or  
3 exploitation ~~under paragraph (2)(b)~~, terminates the employee  
4 or contractor against whom the report was issued, whether or  
5 not the employee or contractor has filed for an exemption with  
6 the agency in accordance with chapter 435 for Health Care  
7 ~~Administration under subparagraph (3)(a)5~~ and whether or not  
8 the time for filing has expired.

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

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

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31

1           ~~(7)(8)~~(a) It is a misdemeanor of the first degree,  
2 punishable under s. 775.082 or s. 775.083, for any person  
3 willfully, knowingly, or intentionally to:

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

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

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

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

25           Section 13. Task Force on Home Health Services  
26 Licensure Provisions.--There is created a task force composed  
27 of representatives of the Agency for Health Care  
28 Administration, the Department of Elderly Affairs, the  
29 Department of Health, and Associated Home Health Industries to  
30 review the provisions of part IV of chapter 400, Florida  
31 Statutes, and recommend additional legislative revisions. The



1 review must address, at a minimum, the following issues:  
2 whether Adult Abuse Registry screening should continue to be  
3 mandated; whether individuals who provide home health services  
4 should be exempted from all state regulatory oversight; and  
5 whether mandatory registration for organizations that provide  
6 companion and homemaker services should continue. A report  
7 must be submitted to the appropriate legislative committees by  
8 December 31, 1999.

9           Section 14. This act shall take effect October 1,  
10 1999.

11  
12                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
13                   COMMITTEE SUBSTITUTE FOR  
14                   SB 2360

15 Revises the definition of "organization" that is created in  
16 the bill; limits application of home health licensure, with  
17 respect to infusion therapy providers, to home infusion  
18 therapy providers, as that term is defined in the bill; and  
19 requires persons or business entities that register as  
20 providers of companion or homemaker services, as provided in  
21 the bill, to screen their personnel in accordance with  
22 statutory employment screening laws.  
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