

1
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; amending
30 ss. 400.23, 400.441, F.S.; requiring that rules
31 adopted by the Agency for Health Care

1 Administration and the Department of Elderly
2 Affairs include provisions governing the
3 cooling of facilities; amending s. 458.3115,
4 F.S.; revising requirements with respect to
5 eligibility of certain foreign-licensed
6 physicians to take and pass standardized
7 examinations; amending s. 458.3124, F.S.;
8 changing the date by which application for a
9 restricted license must be submitted; amending
10 s. 301, ch. 98-166, Laws of Florida;
11 prescribing fees for foreign-licensed
12 physicians taking a certain examination;
13 providing an effective date.

14

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

16

17 Section 1. Section 400.462, Florida Statutes, is
18 amended to read:

19 400.462 Definitions.--As used in this part, the term:

20 (1) "Administrator" means a direct employee of the
21 home health agency or a related organization, or of a
22 management company that has a contract to manage the home
23 health agency, to whom the governing body has delegated the
24 responsibility for day-to-day administration of the home
25 health agency. The administrator must be a licensed
26 physician, physician assistant, or registered nurse licensed
27 to practice in this state or an individual having at least 1
28 year of supervisory or administrative experience in home
29 health care or in a facility licensed under chapter 395 or
30 under part II or part III of chapter 400. An administrator
31 may manage a maximum of five licensed home health agencies

1 located within one agency service district or within an
2 immediately contiguous county. If the home health agency is
3 licensed under this chapter and is part of a retirement
4 community that provides multiple levels of care, an employee
5 of the retirement community may administer the home health
6 agency and up to a maximum of four entities licensed under
7 chapter 400 that are owned, operated, or managed by the same
8 corporate entity. An administrator shall designate, in
9 writing, for each licensed entity, a qualified alternate
10 administrator to serve during absences.

11 (2) "Agency" means the Agency for Health Care
12 Administration.

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

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

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

30 (6)(3) "Department" means the Department of Children
31 and Family Health and Rehabilitative Services.

1 (7) "Director of nursing" means a registered nurse and
2 direct employee of the agency or related business entity who
3 is a graduate of an approved school of nursing and is licensed
4 in this state; who has at least 1 year of supervisory
5 experience as a registered nurse in a licensed home health
6 agency, a facility licensed under chapter 395, or a facility
7 licensed under part II or part III of chapter 400; and who is
8 responsible for overseeing the professional nursing and home
9 health aid delivery of services of the agency. An employee
10 may be the director of nursing of a maximum of five licensed
11 home health agencies operated by a related business entity and
12 located within one agency service district or within an
13 immediately contiguous county. If the home health agency is
14 licensed under this chapter and is part of a retirement
15 community that provides multiple levels of care, an employee
16 of the retirement community may serve as the director of
17 nursing of the home health agency and of up to four entities
18 licensed under chapter 400 which are owned, operated, or
19 managed by the same corporate entity. A director of nursing
20 shall designate, in writing, for each licensed entity, a
21 qualified alternate registered nurse to serve during the
22 absence of the director of nursing.

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

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

30 ~~(10)(6)~~ "Home health services" means health and
31 medical services and medical supplies furnished by an

1 organization to an individual ~~by home health agency personnel~~
2 ~~or by others under arrangements with the agency, on a visiting~~
3 ~~basis,~~ in the individual's home or place of residence. The
4 term includes organizations that provide one or more of, ~~but~~
5 ~~is not limited to,~~ the following:

- 6 (a) Nursing care.
7 (b) Physical, occupational, respiratory, or speech
8 therapy.
9 (c) Home health aide services.
10 (d) Dietetics and nutrition practice and nutrition
11 counseling ~~Nutritional guidance.~~
12 (e) Medical supplies, restricted to drugs and
13 biologicals prescribed by a physician.

14 (11) "Home health aide" means a person who provides
15 hands-on personal care, performs simple procedures as an
16 extension of therapy or nursing services, assists in
17 ambulation or exercises, or assists in administering
18 medications as permitted in rule and for which the person has
19 received training established by the agency under s.
20 400.497(1).

21 (12)(7) "Homemaker" means a person who performs
22 household chores that include housekeeping, meal planning and
23 preparation, shopping assistance, and routine household
24 activities for an elderly, handicapped, or convalescent
25 individual. A homemaker may not provide hands-on personal care
26 to a client.

27 (13) "Home infusion therapy provider" means an
28 organization that employs, contracts with, or refers a
29 licensed professional, who has received advanced training and
30 experience in intravenous infusion therapy and who administers
31

1 infusion therapy to a patient in the patient's home or place
2 of residence.

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

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

16 (16) "Organization" means a corporation, government or
17 governmental subdivision or agency, partnership or
18 association, or any other legal or commercial entity, any of
19 which involve more than one health care professional
20 discipline or a health care professional and a home health
21 aide or certified nursing assistant. The term does not
22 include an entity that provides services using only volunteers
23 or only individuals related by blood or marriage to the
24 patient or client.

25 (17)~~(9)~~ "Patient" means any person who receives home
26 health services in his or her home or place of residence.

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

1 (19) "Physician" means a person licensed under chapter
2 458, chapter 459, chapter 460, or chapter 461.

3 (20)(10) "Screening" means the assessment of the
4 background of home health agency personnel, nurse registry
5 personnel, and persons registered under s. 400.509 and
6 includes employment or contractual history checks, records
7 checks of the department's central abuse hotline under chapter
8 415 relating to vulnerable adults, and statewide criminal
9 records correspondence checks through the Department of Law
10 Enforcement.

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

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

24 Section 2. Section 400.464, Florida Statutes, is
25 amended to read:

26 400.464 Home health agencies to be licensed;
27 expiration of license; exemptions; unlawful acts; penalties.--

28 (1) Any home health agency must be licensed by the
29 agency ~~for Health Care Administration~~ to operate in this
30 state. A license issued to a home health agency, unless
31 sooner suspended or revoked, expires 1 year after its date of

1 issuance. ~~However, any home health agency that is operated by~~
2 ~~the Federal Government is exempt from this part.~~

3 (2) If the licensed home health agency operates
4 related offices, each related office outside the county where
5 the main office is located must be separately licensed. The
6 counties where the related offices are operating must be
7 specified on the license in the main office.

8 (3) An entity receiving a certificate-of-need
9 exemption under s. 408.0366 may request one home health agency
10 license to provide Medicare and non-Medicare home health
11 services to residents of the facility and non-Medicare home
12 health services to persons in one or more counties within the
13 agency service district where the main office of the home
14 health agency is located.

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

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

29 ~~(5)(a) It is unlawful for any person to offer or~~
30 ~~advertise home health services to the public unless he or she~~
31 ~~has a valid license under this part. It is unlawful for any~~

1 ~~holder of a license issued under this part to advertise or~~
2 ~~indicate to the public that it holds a home health agency~~
3 ~~license other than the one it has been issued.~~

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

9 ~~(c) A person who violates paragraph (a) commits a~~
10 ~~misdemeanor of the second degree, punishable as provided in s.~~
11 ~~775.082 or s. 775.083. Any person who commits a second or~~
12 ~~subsequent violation commits a misdemeanor of the first~~
13 ~~degree, punishable as provided in s. 775.082 or s. 775.083.~~

14
15 ~~Each day of continuing violation constitutes a separate~~
16 ~~offense.~~

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

28 (5)(a) An organization may not provide, offer, or
29 advertise home health services to the public unless the
30 organization has a valid license or is specifically exempted
31 under this part. An organization that offers or advertises to

1 the public any service for which licensure or registration is
2 required under this part must include in the advertisement the
3 license number or regulation number issued to the organization
4 by the agency. The agency shall assess a fine of not less
5 than \$100 to any licensee or registrant who fails to include
6 the license or registration number when submitting the
7 advertisement for publication, broadcast or printing. The
8 holder of a license issued under this part may not advertise
9 or indicate to the public that it holds a home health agency
10 or nurse registry license other than the one it has been
11 issued.

12 (b) A person who violates paragraph (a) is subject to
13 an injunctive proceeding under s. 400.515. A violation of
14 paragraph (a) is a deceptive and unfair trade practice and
15 constitutes a violation of the Florida Unfair and Deceptive
16 Trade Practices Act.

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

24 (6) The following are exempt from the licensure
25 requirements of this part:

26 (a) A home health agency operated by the Federal
27 Government.

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

30 1. The Department of Elderly Affairs.

31

1 2. The Department of Health, a community health
2 center, or a rural health network that furnishes home visits
3 for the purpose of providing environmental assessments, case
4 management, health education, personal-care services, family
5 planning, or follow-up treatment, or for the purpose of
6 monitoring and tracking disease.

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

9 4. Companion and sitter organizations that were
10 registered under s. 440.509(1) on January 1, 1999, and were
11 authorized to provide personal services under s. 393.063(35)
12 under a developmental services provider certificate on January
13 1, 1999, may continue to provide such services to past,
14 present, and future clients of the organization who need such
15 services, notwithstanding the provisions of this act.

16 5. The Department of Children and Family Services.

17 (c) A health care professional, whether or not
18 incorporated, who is licensed under chapter 457, chapter 458,
19 chapter 459, chapter 464, chapter 467, part I, part III, part
20 V, or part X of chapter 468, chapter 480, chapter 486, chapter
21 490, or chapter 491, and who is acting alone within the scope
22 of his or her professional license to provide care to patients
23 in their homes.

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

28 (e) An individual who acts alone, in his or her
29 individual capacity, and who is not employed by or affiliated
30 with a licensed home health agency or registered with a
31 licensed nurse registry. This exemption does not entitle an

1 individual to perform home health services without the
2 required professional license.

3 (f) The delivery of instructional services in home
4 dialysis and home dialysis supplies and equipment.

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

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

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

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

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

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

21 (m) Certified rehabilitation agencies and
22 comprehensive outpatient rehabilitation facilities that are
23 certified under Title 18 of the Social Security Act.

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

27 Section 3. Section 400.471, Florida Statutes, 1998
28 Supplement, is amended to read:

29 400.471 Application for license; fee; provisional
30 license; temporary permit.--

31

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

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

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

14 (b) The number and discipline of professional staff to
15 be employed; and

16 (c) Proof of financial ability to operate.

17
18 If the applicant has applied for a certificate of need under
19 ss. 408.0331-408.045 within the preceding 12 months, the
20 applicant may submit the proof required during the
21 certificate-of-need process along with an attestation that
22 there has been no substantial change in the facts and
23 circumstances underlying the original submission.

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

1 expenses. All documents required under this subsection must
2 be prepared in accordance with generally accepted accounting
3 principles, and the financial statement must be signed by a
4 certified public accountant.

5 (4) Each applicant for licensure must comply with the
6 following requirements:

7 (a) Upon receipt of a completed, signed, and dated
8 application, the agency shall require background screening of
9 the applicant, in accordance with the level 2 standards for
10 screening set forth in chapter 435. As used in this
11 subsection, the term "applicant" means the administrator, or a
12 similarly titled person who is responsible for the day-to-day
13 operation of the licensed home health agency, and the
14 financial officer, or similarly titled individual who is
15 responsible for the financial operation of the licensed home
16 health agency.

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

23 (c) Proof of compliance with the level 2 background
24 screening requirements of chapter 435 which has been submitted
25 within the previous 5 years in compliance with any other
26 health care or assisted living licensure requirements of this
27 state is acceptable in fulfillment of paragraph (a). Proof of
28 compliance with background screening which has been submitted
29 within the previous 5 years to fulfill the requirements of the
30 Department of Insurance pursuant to chapter 651 as part of an
31 application for a certificate of authority to operate a

1 continuing care retirement community is acceptable in
2 fulfillment of the Department of Law Enforcement and Federal
3 Bureau of Investigation background check.

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

24 (e) Each applicant must submit to the agency, with its
25 application, a description and explanation of any exclusions,
26 permanent suspensions, or terminations of the licensee or
27 potential licensee from the Medicare or Medicaid programs.
28 Proof of compliance with the requirements for disclosure of
29 ownership and control interest under the Medicaid or Medicare
30 programs may be accepted in lieu of this submission.

31

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

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

26 (h) The agency may deny or revoke licensure if the
27 applicant:

28 1. Has falsely represented a material fact in the
29 application required by paragraph (e) or paragraph (f), or has
30 omitted any material fact from the application required by
31 paragraph (e) or paragraph (f); or

1 2. Has been or is currently excluded, suspended,
2 terminated from, or has involuntarily withdrawn from
3 participation in this state's Medicaid program, or the
4 Medicaid program of any other state, or from participation in
5 the Medicare program or any other governmental or private
6 health care or health insurance program.

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

9 (5) The home health agency must also obtain and
10 maintain the following liability insurance coverages in an
11 ~~Proof of liability insurance, as defined in s. 624.605, must~~
12 ~~be submitted with the application. The Agency for Health Care~~
13 ~~Administration shall set the required amounts of liability~~
14 ~~insurance by rule, but the required amount of~~ must not be less
15 than \$250,000 per claim, and the home health agency must
16 submit proof of coverage with an initial application for
17 licensure and with each annual application for license
18 renewal:

19 (a) Malpractice insurance as defined in s.
20 624.605(1)(k);

21 (b) Liability insurance as defined in s.
22 624.605(1)(b).

23 (6) Ninety ~~Sixty~~ days before the expiration date, an
24 application for renewal must be submitted to the agency ~~for~~
25 ~~Health Care Administration~~ under oath on forms furnished by
26 it, and a license must be renewed if the applicant has met the
27 requirements established under this part and applicable rules.
28 The home health agency must file with the application
29 satisfactory proof that it is in compliance with this part and
30 applicable rules. If there is evidence of financial
31 instability, the home health agency must submit satisfactory

1 proof of its financial ability to comply with the requirements
2 of this part.

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

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

18 (9) The license must be displayed in a conspicuous
19 place in the administrative office of the home health agency
20 and is valid only while in the possession of the person to
21 which it is issued. The license may not be sold, assigned, or
22 otherwise transferred, voluntarily or involuntarily, and is
23 valid only for the home health agency and location for which
24 originally issued.

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

1 (11) The agency may ~~department shall~~ not issue a
2 license designated as certified to a home health agency that
3 ~~which~~ fails to receive a certificate of need under the
4 ~~provisions of ss. 408.031-408.045 or that fails to satisfy the~~
5 requirements of a Medicare certification survey from the
6 agency.

7 (12) The agency may not issue a license to a home
8 health agency that has any unpaid fines assessed under this
9 part.

10 Section 4. Section 400.474, Florida Statutes, 1998
11 Supplement, is amended to read:

12 400.474 Denial, suspension, revocation of license;
13 injunction; grounds; penalties.--

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

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

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

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

24 (c) Knowingly providing home health services in an
25 unlicensed assisted living facility or unlicensed adult
26 family-care home, unless the home health agency or employee
27 reports the unlicensed facility or home to the agency within
28 72 hours after providing the services.

29 (3) The agency may impose the following penalties for
30 operating without a license upon an applicant or owner who has
31

1 in the past operated, or who currently operates, a licensed
2 home health agency.

3 (a) If a home health agency that is found to be
4 operating without a license wishes to apply for a license, the
5 home health agency may submit an application only after the
6 agency has verified that the home health agency no longer
7 operates an unlicensed home health agency.

8 (b) Any person, partnership, or corporation that
9 violates paragraph (a) and that previously operated a licensed
10 home health agency or concurrently operates both a licensed
11 home health agency and an unlicensed home health agency
12 commits a felony of the third degree punishable as provided in
13 s. 775.082, s. 775.083, or s. 775.084. If an owner has an
14 interest in more than one home health agency and fails to
15 license any one of those home health agencies, the agency must
16 issue a cease and desist order for the activities of the
17 unlicensed home health agency and impose a moratorium on any
18 or all of the licensed related home health agencies until the
19 unlicensed home health agency is licensed.

20 (c) If any home health agency meets the criteria in
21 paragraph (a) or paragraph (b) and that home health agency has
22 received any government reimbursement for services provided by
23 an unlicensed home health agency, the agency shall make a
24 fraud referral to the appropriate government reimbursement
25 program.

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

30
31

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

4 (b) An applicant or a licensed home health agency has
5 falsely represented a material fact in the application, or has
6 omitted from the application any material fact, including, but
7 not limited to, the fact that the controlling or ownership
8 interest is held by any officer, director, agent, manager,
9 employee, affiliated person, partner, or shareholder who is
10 not eligible to participate.

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

13 1. Has been previously found by any licensing,
14 certifying, or professional standards board or agency to have
15 violated the standards or conditions that relate to home
16 health-related licensure or certification, or to the quality
17 of home health-related services provided; or

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

23 Section 5. Section 400.484, Florida Statutes, is
24 amended to read:

25 400.484 Right of inspection; deficiencies; fines.--

26 (1) Any duly authorized officer or employee of the
27 agency ~~for Health Care Administration~~ may make such
28 inspections and investigations as are necessary in order to
29 determine the state of compliance with this part and with
30 applicable rules. The right of inspection extends to any
31 business that the agency ~~for Health Care Administration~~ has

1 reason to believe is being operated as a home health agency
2 without a license, but such inspection of any such business
3 may not be made without the permission of the owner or person
4 in charge unless a warrant is first obtained from a circuit
5 court. Any application for a license issued under this part or
6 for license renewal constitutes permission for an appropriate
7 inspection to verify the information submitted on or in
8 connection with the application.

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

11 (a) A class I deficiency is any act, omission, or
12 practice that results in a patient's death, disablement, or
13 permanent injury, or places a patient at imminent risk of
14 death, disablement, or permanent injury. Upon finding a class
15 I deficiency, the agency may impose an administrative fine in
16 the amount of \$5,000 for each occurrence and each day that the
17 deficiency exists. In addition, the agency may immediately
18 revoke the license, or impose a moratorium on the admission of
19 new patients, until the factors causing the deficiency have
20 been corrected.

21 (b) A class II deficiency is any act, omission, or
22 practice that has a direct adverse effect on the health,
23 safety, or security of a patient. Upon finding a class II
24 deficiency, the agency may impose an administrative fine in
25 the amount of \$1,000 for each occurrence and each day that the
26 deficiency exists. In addition, the agency may suspend the
27 license, or impose a moratorium on the admission of new
28 patients, until the deficiency has been corrected.

29 (c) A class III deficiency is any act, omission, or
30 practice that has an indirect, adverse effect on the health,
31 safety, or security of a patient. Upon finding an uncorrected

1 or repeated class III deficiency, the agency may impose an
2 administrative fine not to exceed \$500 for each occurrence and
3 each day that the uncorrected or repeated deficiency exists.

4 (d) A class IV deficiency is any act, omission, or
5 practice related to required reports, forms, or documents
6 which does not have the potential of negatively affecting
7 patients. These violations are of a type that the agency
8 determines do not threaten the health, safety, or security of
9 patients. Upon finding an uncorrected or repeated class IV
10 deficiency, the agency may impose an administrative fine not
11 to exceed \$200 for each occurrence and each day that the
12 uncorrected or repeated deficiency exists.

13 Section 6. Section 400.487, Florida Statutes, is
14 amended to read:

15 400.487 Patient assessment; establishment and review
16 of plan of care; provision of services.--

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

20 (2) The attending physician for a patient who is to
21 receive skilled ~~receiving care or treatment provided by a~~
22 ~~licensed nurse or by a physical, occupational, or speech~~
23 ~~therapist~~ must establish treatment orders ~~a plan of care for~~
24 ~~the patient on behalf of the home health agency that provides~~
25 ~~services to the patient. The original plan of treatment~~
26 orders must be signed by the physician within 24 days after
27 the start of care and must be reviewed, at least every 62 days
28 or more frequently if the patient's illness requires, by the
29 physician in consultation with home health agency personnel
30 that provide services to the patient.

31

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

6 ~~(4)(3)~~ Each patient or client has the right to be
7 informed of and to participate in the planning of his or her
8 care. Each patient must be provided, upon request, a copy of
9 the plan of care or service provision plan established and
10 maintained for that patient or client by the home health
11 agency.

12 ~~(4)~~ ~~Home health services that are provided to a~~
13 ~~patient must be evaluated in the patient's home by a physician~~
14 ~~licensed under chapter 458, chapter 459, chapter 460, or~~
15 ~~chapter 461 or by a registered nurse licensed under chapter~~
16 ~~464 as frequently as necessary to assure safe and adequate~~
17 ~~care, but not less frequently than once every 62 days.~~

18 (5) When nursing services are ordered, the home health
19 agency to which a patient has been admitted for care must
20 provide the initial admission visit, all service evaluation
21 visits, and the discharge visit by qualified personnel who are
22 on the payroll of, and to whom an IRS payroll form W-2 will be
23 issued by, the home health agency.~~A home health agency must~~
24 ~~provide at least one home health service to patients for whom~~
25 ~~it has agreed to provide care.~~~~Services provided by others~~
26 ~~under contractual arrangements to a home health agency~~
27 ~~agency's patients must be monitored and managed controlled by~~
28 ~~the admitting home health agency. The admitting home health~~
29 ~~agency is fully responsible for ensuring that all care~~
30 ~~provided through its employees or contract staff is delivered~~
31 ~~in accordance with this part and applicable rules.~~

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

4 Section 7. Section 400.488, Florida Statutes, is
5 created to read:

6 400.488 Assistance with self-administration of
7 medication.--

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

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

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

18 (2) Patients who are capable of self-administering
19 their own medications without assistance shall be encouraged
20 and allowed to do so. However, an unlicensed person may,
21 consistent with a dispensed prescription's label or the
22 package directions of an over-the-counter medication, assist a
23 patient whose condition is medically stable with the
24 self-administration of routine, regularly scheduled
25 medications that are intended to be self-administered.

26 Assistance with self-medication by an unlicensed person may
27 occur only upon a documented request by, and the written
28 informed consent of, a patient or the patient's surrogate,
29 guardian, or attorney in fact. For purposes of this section,
30 self-administered medications include both legend and
31 over-the-counter oral dosage forms, topical dosage forms, and

- 1 topical ophthalmic, otic, and nasal dosage forms, including
2 solutions, suspensions, sprays, and inhalers.
- 3 (3) Assistance with self-administration of medication
4 includes:
- 5 (a) Taking the medication, in its previously
6 dispensed, properly labeled container, from where it is stored
7 and bringing it to the patient.
- 8 (b) In the presence of the patient, reading the label,
9 opening the container, removing a prescribed amount of
10 medication from the container, and closing the container.
- 11 (c) Placing an oral dosage in the patient's hand or
12 placing the dosage in another container and helping the
13 patient by lifting the container to his or her mouth.
- 14 (d) Applying topical medications.
- 15 (e) Returning the medication container to proper
16 storage.
- 17 (f) Keeping a record of when a patient receives
18 assistance with self-administration under this section.
- 19 (4) Assistance with self-administration does not
20 include:
- 21 (a) Mixing, compounding, converting, or calculating
22 medication doses, except for measuring a prescribed amount of
23 liquid medication or breaking a scored tablet or crushing a
24 tablet as prescribed.
- 25 (b) The preparation of syringes for injection or the
26 administration of medications by any injectable route.
- 27 (c) Administration of medications through intermittent
28 positive pressure breathing machines or a nebulizer.
- 29 (d) Administration of medications by way of a tube
30 inserted in a cavity of the body.
- 31 (e) Administration of parenteral preparations.

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

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

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

9 (i) Medications for which the time of administration,
10 the amount, the strength of dosage, the method of
11 administration, or the reason for administration requires
12 judgment or discretion on the part of the unlicensed person.

13 (5) Assistance with the self-administration of
14 medication by an unlicensed person as described in this
15 section does not constitute administration as defined in s.
16 465.003.

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

19 Section 8. Section 400.491, Florida Statutes, 1998
20 Supplement, is amended to read:

21 400.491 Clinical records.--

22 (1) The home health agency must maintain for each
23 patient who receives skilled care a clinical record that
24 includes the services the home health agency provides directly
25 and those provided through arrangement with another health
26 care provider, except for those services provided by persons
27 referred under s. 400.509. Such records must contain
28 pertinent past and current medical, nursing, social and other
29 therapeutic information, the ~~plan of treatment~~ orders, and
30 other such information as is necessary for the safe and
31 adequate care of the patient. When home health services are

1 terminated, the record must show the date and reason for
2 termination. Such records are considered patient records
3 under s. 455.241 ~~s. 455.667~~, and must be maintained by the
4 home health agency for 5 years following termination of
5 services. If a patient transfers to another home health
6 agency, a copy of his or her record must be provided to the
7 other home health agency upon request.

8 (2) The home health agency must maintain for each
9 client who receives nonskilled care a service-provision plan.
10 Such records must be maintained by the home health agency for
11 1 year following termination of services.

12 Section 9. Section 400.497, Florida Statutes, is
13 amended to read:

14 400.497 Rules establishing minimum standards.--The
15 agency ~~for Health Care Administration~~ shall adopt, publish,
16 and enforce rules to implement this part, including, as
17 applicable, ss. 400.506 and 400.509, which must provide
18 reasonable and fair minimum standards relating to:

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

20 (1)(2) The qualifications, and minimum training
21 requirements, and supervision requirements of all home health
22 agency personnel. The agency shall establish the curriculum
23 and instructor qualifications for home health aide training.
24 Licensed home health agencies may provide this training and
25 shall furnish documentation of such training to other licensed
26 home health agencies upon request. The agency shall allow
27 shared staffing if the home health agency is part of a
28 retirement community that provides multiple levels of care, is
29 located on one campus, is licensed under this chapter, and
30 otherwise meets the requirements of law and rule.

31

1 (2)(3) Requirements for prospective employees
2 ~~procedures for maintaining a record of the employment history~~
3 ~~of all home health agency personnel.~~ A home health agency
4 must require prospective employees and contractors ~~its~~
5 ~~personnel~~ to submit an employment or contractual ~~to~~
6 ~~the home health agency,~~ and it must verify the employment or
7 contractual history unless through diligent efforts such
8 verification is not possible. The agency ~~for Health Care~~
9 ~~Administration~~ shall prescribe by rule the minimum
10 requirements for establishing that diligent efforts have been
11 made. ~~The administrator of a home health agency must review~~
12 ~~the employment history and references of home health agency~~
13 ~~personnel and applicants for employment.~~ The Agency for
14 ~~Health Care Administration must review the employment history~~
15 ~~and references of each administrator of a home health agency.~~
16 There is no monetary liability on the part of, and no cause of
17 action for damages arising ~~arises~~ against, a former employer
18 of a prospective employee of or prospective independent
19 contractor with a licensed home health agency who reasonably
20 and in good faith communicates his or her honest opinions
21 about the former employee's job performance. This subsection
22 does not affect the official immunity of an officer or
23 employee of a public corporation.

24 (3)(4) Licensure application and renewal.

25 (4)(5) The administration of the home health agency,
26 including requirements for onsite and electronic accessibility
27 of supervisory personnel.

28 (5)(6) Procedures for administering drugs and
29 biologicals.

30 (6)(7) Procedures for maintaining patients' ~~patient~~
31 records.

1 ~~(7)(8)~~ Ensuring that ~~the~~ home health services ~~provided~~
2 ~~by a home health agency~~ are provided in accordance with the
3 ~~plan of treatment orders~~ established for each patient for whom
4 physician orders are required.

5 ~~(8)(9)~~ Geographic service areas.

6 ~~(9)(10)~~ Standards for contractual arrangements for the
7 provision of home health services by providers not employed by
8 the home health agency to whom the patient has been admitted
9 ~~providing for the patient's care and treatment~~.

10 Section 10. Subsections (1) and (10) of section
11 400.506, Florida Statutes, 1998 Supplement, are amended to
12 read:

13 400.506 Licensure of nurse registries; requirements;
14 penalties.--

15 (1) A nurse registry is exempt from the licensing
16 requirements of a home health agency, but must be licensed as
17 a nurse registry. Each operational site of the nurse registry
18 must be licensed, unless there is more than one site within a
19 county. If there is more than one site within a county only
20 one license per county is required. Each operational site
21 must be listed on the license.

22 (10)(a) A nurse registry may refer for contract in
23 private residences registered nurses and licensed practical
24 nurses registered and licensed under chapter 464, certified
25 nursing assistants certified under s. 400.211, home health
26 aides who present documented proof of successful completion of
27 the training required by rule of the agency, and sitters,
28 companions, or homemakers for the purposes of providing those
29 services authorized under s. 400.509(1). Each person referred
30 by a nurse registry must provide current documentation that he
31 or she is free from communicable diseases.

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

18 (c) A registered nurse shall make monthly visits to
19 the patient's home to assess the patient's condition and
20 quality of care being provided by the certified nursing
21 assistant or home health aide. Any condition which in the
22 professional judgment of the nurse requires further medical
23 attention shall be reported to the attending physician and the
24 nurse registry. The assessment shall become a part of the
25 patient's file with the nurse registry and may be reviewed by
26 the agency ~~for Health Care Administration~~ during their survey
27 procedure.

28 ~~(d) In order to refer for contract in private~~
29 ~~residences a certified nursing assistant or any person~~
30 ~~specified in s. 400.509(1), the nurse registry and such person~~
31 ~~registered with the nurse registry must also be registered~~

1 ~~under s. 400.509. Any person registered as an independent~~
2 ~~contractor with a nurse registry for the purpose of providing~~
3 ~~services authorized under s. 400.509(1) on or before October~~
4 ~~1, 1990, is exempt from registration under s. 400.509 so long~~
5 ~~as such person remains continuously registered with that nurse~~
6 ~~registry.~~

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

15 400.509 Registration of particular service providers
16 exempt from licensure; certificate of registration; regulation
17 of registrants.--

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

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

28 (a) ~~The name, address, date of birth, and social~~
29 ~~security number of the individual, or the name and address of~~
30 ~~the person, providing the service.~~

31

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

4 ~~(b)(c)~~ If the registrant is a corporation or
5 association, its name and address, the name, address, date of
6 birth, and social security number of each of its directors and
7 officers, and the name and address of each person having at
8 least a 5-percent ~~10-percent~~ interest in the corporation or
9 association.

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

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

16 (4) Each applicant for registration must comply with
17 the following requirements:

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

30 (b) The agency may require background screening of any
31 other individual who is affiliated with the applicant if the

1 agency has a reasonable basis for believing that he or she has
2 been convicted of a crime or has committed any other offense
3 prohibited under the level 2 standards for screening set forth
4 in chapter 435.

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

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

31

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

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

26 (g) A registration may not be granted to an applicant
27 if the applicant or managing employee has been found guilty
28 of, regardless of adjudication, or has entered a plea of nolo
29 contendere or guilty to, any offense prohibited under the
30 level 2 standards for screening set forth in chapter 435,
31

1 unless an exemption from disqualification has been granted by
2 the agency as set forth in chapter 435.

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

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

9 2. Has had prior action taken against the applicant
10 under the Medicaid or Medicare program as set forth in
11 paragraph (e).

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

14 (5)(4) Each registrant must ~~obtain~~ ~~establish~~ the
15 employment ~~or contract~~ history of persons ~~who are~~ employed by
16 or under contract ~~with the organization and who will have~~
17 ~~having~~ contact at any time with patients ~~or clients~~ in their
18 homes by:

19 (a) Requiring ~~such~~ persons ~~employed or under contract~~
20 to submit an employment ~~or contractual~~ history to the
21 registrant; and

22 (b) Verifying the employment ~~or contractual~~ history,
23 unless through diligent efforts such verification is not
24 possible. The agency ~~for Health Care Administration~~ shall
25 prescribe by rule the minimum requirements for establishing
26 that diligent efforts have been made.

27
28 There is no monetary liability on the part of, and no cause of
29 action for damages arises against, a former employer of a
30 prospective employee of or prospective independent contractor
31 with a registrant who reasonably and in good faith

1 communicates his or her honest opinions about the former
2 employee's or contractor's job performance. This subsection
3 does not affect the official immunity of an officer or
4 employee of a public corporation.

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

16 ~~(7)(6)~~ The provisions of s. 400.512 regarding
17 screening apply to any person or business entity registered
18 under this section on or after October 1, 1994 ~~1989~~.

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

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

30
31

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

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

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

1 Failure to supply missing information within 30 days or to
2 show reasonable efforts to obtain such information will result
3 in automatic disqualification.

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

24 (5) There is no monetary liability on the part of, and
25 no cause of action for damages arises against, a licensed home
26 health agency, licensed nurse registry, or ~~sitter, companion,~~
27 or homemaker service registered under s. 400.509, that, upon
28 notice of a confirmed report of adult abuse, neglect, or
29 exploitation ~~under paragraph (2)(b),~~ terminates the employee
30 or contractor against whom the report was issued, whether or
31 not the employee or contractor has filed for an exemption with

1 the agency in accordance with chapter 435 ~~for Health Care~~
2 ~~Administration under subparagraph (3)(a)5~~ and whether or not
3 the time for filing has expired.

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

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

25 (7)(8)(a) It is a misdemeanor of the first degree,
26 punishable under s. 775.082 or s. 775.083, for any person
27 willfully, knowingly, or intentionally to:

28 1. Fail, by false statement, misrepresentation,
29 impersonation, or other fraudulent means, to disclose in any
30 application for voluntary or paid employment a material fact
31

1 used in making a determination as to such person's
2 qualifications to be an employee under this section;

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

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

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

19 Section 13. Task Force on Home Health Services
20 Licensure Provisions.--There is created a task force composed
21 of representatives of the Agency for Health Care
22 Administration, the Department of Elderly Affairs, the
23 Department of Health, Private Care Association of Florida, and
24 Associated Home Health Industries and a representative of the
25 homemaker companion services industry to review the provisions
26 of part IV of chapter 400, Florida Statutes, and recommend
27 additional legislative revisions to that part. The review must
28 encompass, at a minimum, the following issues: adult abuse
29 registry screening; exemptions for individuals who provide
30 home health services; registration for organizations that
31 provide companion and homemaker services; and adjustments in

1 the fee schedule for Medicaid home health services. The task
2 force shall submit a report must be submitted to the
3 appropriate legislative committees by December 31, 1999.

4 Section 14. Paragraph (a) of subsection (2) of section
5 400.23, Florida Statutes, 1998 Supplement, is amended to read:

6 400.23 Rules; criteria; Nursing Home Advisory
7 Committee; evaluation and rating system; fee for review of
8 plans.--

9 (2) Pursuant to the intention of the Legislature, the
10 agency, in consultation with the Department of Health and
11 Rehabilitative Services and the Department of Elderly Affairs,
12 shall adopt and enforce rules to implement this part, which
13 shall include reasonable and fair criteria in relation to:

14 (a) The location and construction of the facility;
15 including fire and life safety, plumbing, heating, cooling,
16 lighting, ventilation, and other housing conditions which will
17 ensure the health, safety, and comfort of residents, including
18 an adequate call system. The agency shall establish standards
19 for facilities and equipment to increase the extent to which
20 new facilities and a new wing or floor added to an existing
21 facility after July 1, 1999, are structurally capable of
22 serving as shelters only for residents, staff, and families of
23 residents and staff, and equipped to be self-supporting during
24 and immediately following disasters. The Agency for Health
25 Care Administration shall work with facilities licensed under
26 this part and report to the Governor and Legislature by April
27 1, 1999, its recommendations for cost-effective renovation
28 standards to be applied to existing facilities. In making such
29 rules, the agency shall be guided by criteria recommended by
30 nationally recognized reputable professional groups and
31 associations with knowledge of such subject matters. The

1 agency shall update or revise such criteria as the need
2 arises. All nursing homes must comply with those lifesafety
3 code requirements and building code standards applicable at
4 the time of approval of their construction plans. The agency
5 may require alterations to a building if it determines that an
6 existing condition constitutes a distinct hazard to life,
7 health, or safety. The agency shall adopt fair and reasonable
8 rules setting forth conditions under which existing facilities
9 undergoing additions, alterations, conversions, renovations,
10 or repairs shall be required to comply with the most recent
11 updated or revised standards.

12 Section 15. Paragraph (a) of subsection (1) of section
13 400.441, Florida Statutes, 1998 Supplement, is amended to
14 read:

15 400.441 Rules establishing standards.--

16 (1) It is the intent of the Legislature that rules
17 published and enforced pursuant to this section shall include
18 criteria by which a reasonable and consistent quality of
19 resident care and quality of life may be ensured and the
20 results of such resident care may be demonstrated. Such rules
21 shall also ensure a safe and sanitary environment that is
22 residential and noninstitutional in design or nature. It is
23 further intended that reasonable efforts be made to
24 accommodate the needs and preferences of residents to enhance
25 the quality of life in a facility. In order to provide safe
26 and sanitary facilities and the highest quality of resident
27 care accommodating the needs and preferences of residents, the
28 department, in consultation with the agency, the Department of
29 Children and Family Services, and the Department of Health,
30 shall adopt rules, policies, and procedures to administer this
31

1 part, which must include reasonable and fair minimum standards
2 in relation to:

3 (a) The requirements for and maintenance of
4 facilities, not in conflict with the provisions of chapter
5 553, relating to plumbing, heating, cooling, lighting,
6 ventilation, living space, and other housing conditions, which
7 will ensure the health, safety, and comfort of residents and
8 protection from fire hazard, including adequate provisions for
9 fire alarm and other fire protection suitable to the size of
10 the structure. Uniform firesafety standards shall be
11 established and enforced by the State Fire Marshal in
12 cooperation with the agency, the department, and the
13 Department of Health.

14 1. Evacuation capability determination.--

15 a. The provisions of the National Fire Protection
16 Association, NFPA 101A, Chapter 5, 1995 edition, shall be used
17 for determining the ability of the residents, with or without
18 staff assistance, to relocate from or within a licensed
19 facility to a point of safety as provided in the fire codes
20 adopted herein. An evacuation capability evaluation for
21 initial licensure shall be conducted within 6 months after the
22 date of licensure. For existing licensed facilities that are
23 not equipped with an automatic fire sprinkler system, the
24 administrator shall evaluate the evacuation capability of
25 residents at least annually. The evacuation capability
26 evaluation for each facility not equipped with an automatic
27 fire sprinkler system shall be validated, without liability,
28 by the State Fire Marshal, by the local fire marshal, or by
29 the local authority having jurisdiction over firesafety,
30 before the license renewal date. If the State Fire Marshal,
31 local fire marshal, or local authority having jurisdiction

1 over firesafety has reason to believe that the evacuation
2 capability of a facility as reported by the administrator may
3 have changed, it may, with assistance from the facility
4 administrator, reevaluate the evacuation capability through
5 timed exiting drills. Translation of timed fire exiting drills
6 to evacuation capability may be determined:

7 (I) Three minutes or less: prompt.

8 (II) More than 3 minutes, but not more than 13
9 minutes: slow.

10 (III) More than 13 minutes: impractical.

11 b. The Office of the State Fire Marshal shall provide
12 or cause the provision of training and education on the proper
13 application of Chapter 5, NFPA 101A, 1995 edition, to its
14 employees, to staff of the Agency for Health Care
15 Administration who are responsible for regulating facilities
16 under this part, and to local governmental inspectors. The
17 Office of the State Fire Marshal shall provide or cause the
18 provision of this training within its existing budget, but may
19 charge a fee for this training to offset its costs. The
20 initial training must be delivered within 6 months after July
21 1, 1995, and as needed thereafter.

22 c. The Office of the State Fire Marshal, in
23 cooperation with provider associations, shall provide or cause
24 the provision of a training program designed to inform
25 facility operators on how to properly review bid documents
26 relating to the installation of automatic fire sprinklers.
27 The Office of the State Fire Marshal shall provide or cause
28 the provision of this training within its existing budget, but
29 may charge a fee for this training to offset its costs. The
30 initial training must be delivered within 6 months after July
31 1, 1995, and as needed thereafter.

1 d. The administrator of a licensed facility shall sign
2 an affidavit verifying the number of residents occupying the
3 facility at the time of the evacuation capability evaluation.

4 2. Firesafety requirements.--

5 a. Except for the special applications provided
6 herein, effective January 1, 1996, the provisions of the
7 National Fire Protection Association, Life Safety Code, NFPA
8 101, 1994 edition, Chapter 22 for new facilities and Chapter
9 23 for existing facilities shall be the uniform fire code
10 applied by the State Fire Marshal for assisted living
11 facilities, pursuant to s. 633.022.

12 b. Any new facility, regardless of size, that applies
13 for a license on or after January 1, 1996, must be equipped
14 with an automatic fire sprinkler system. The exceptions as
15 provided in section 22-2.3.5.1, NFPA 101, 1994 edition, as
16 adopted herein, apply to any new facility housing eight or
17 fewer residents. On July 1, 1995, local governmental entities
18 responsible for the issuance of permits for construction shall
19 inform, without liability, any facility whose permit for
20 construction is obtained prior to January 1, 1996, of this
21 automatic fire sprinkler requirement. As used in this part,
22 the term "a new facility" does not mean an existing facility
23 that has undergone change of ownership.

24 c. Notwithstanding any provision of s. 633.022 or of
25 the National Fire Protection Association, NFPA 101A, Chapter
26 5, 1995 edition, to the contrary, any existing facility
27 housing eight or fewer residents is not required to install an
28 automatic fire sprinkler system, nor to comply with any other
29 requirement in Chapter 23 of NFPA 101, 1994 edition, that
30 exceeds the firesafety requirements of NFPA 101, 1988 edition,
31 that applies to this size facility, unless the facility has

1 | been classified as impractical to evacuate. Any existing
2 | facility housing eight or fewer residents that is classified
3 | as impractical to evacuate must install an automatic fire
4 | sprinkler system within the timeframes granted in this
5 | section.

6 | d. Any existing facility that is required to install
7 | an automatic fire sprinkler system under this paragraph need
8 | not meet other firesafety requirements of Chapter 23, NFPA
9 | 101, 1994 edition, which exceed the provisions of NFPA 101,
10 | 1988 edition. The mandate contained in this paragraph which
11 | requires certain facilities to install an automatic fire
12 | sprinkler system supersedes any other requirement.

13 | e. This paragraph does not supersede the exceptions
14 | granted in NFPA 101, 1988 edition or 1994 edition.

15 | f. This paragraph does not exempt facilities from
16 | other firesafety provisions adopted under s. 633.022 and local
17 | building code requirements in effect before July 1, 1995.

18 | g. A local government may charge fees only in an
19 | amount not to exceed the actual expenses incurred by local
20 | government relating to the installation and maintenance of an
21 | automatic fire sprinkler system in an existing and properly
22 | licensed assisted living facility structure as of January 1,
23 | 1996.

24 | h. If a licensed facility undergoes major
25 | reconstruction or addition to an existing building on or after
26 | January 1, 1996, the entire building must be equipped with an
27 | automatic fire sprinkler system. Major reconstruction of a
28 | building means repair or restoration that costs in excess of
29 | 50 percent of the value of the building as reported on the tax
30 | rolls, excluding land, before reconstruction. Multiple
31 | reconstruction projects within a 5-year period the total costs

1 of which exceed 50 percent of the initial value of the
2 building at the time the first reconstruction project was
3 permitted are to be considered as major reconstruction.
4 Application for a permit for an automatic fire sprinkler
5 system is required upon application for a permit for a
6 reconstruction project that creates costs that go over the
7 50-percent threshold.

8 i. Any facility licensed before January 1, 1996, that
9 is required to install an automatic fire sprinkler system
10 shall ensure that the installation is completed within the
11 following timeframes based upon evacuation capability of the
12 facility as determined under subparagraph 1.:

13 (I) Impractical evacuation capability, 24 months.

14 (II) Slow evacuation capability, 48 months.

15 (III) Prompt evacuation capability, 60 months.

16

17 The beginning date from which the deadline for the automatic
18 fire sprinkler installation requirement must be calculated is
19 upon receipt of written notice from the local fire official
20 that an automatic fire sprinkler system must be installed. The
21 local fire official shall send a copy of the document
22 indicating the requirement of a fire sprinkler system to the
23 Agency for Health Care Administration.

24 j. It is recognized that the installation of an
25 automatic fire sprinkler system may create financial hardship
26 for some facilities. The appropriate local fire official
27 shall, without liability, grant two 1-year extensions to the
28 timeframes for installation established herein, if an
29 automatic fire sprinkler installation cost estimate and proof
30 of denial from two financial institutions for a construction
31 loan to install the automatic fire sprinkler system are

1 submitted. However, for any facility with a class I or class
2 II, or a history of uncorrected class III, firesafety
3 deficiencies, an extension must not be granted. The local
4 fire official shall send a copy of the document granting the
5 time extension to the Agency for Health Care Administration.

6 k. A facility owner whose facility is required to be
7 equipped with an automatic fire sprinkler system under Chapter
8 23, NFPA 101, 1994 edition, as adopted herein, must disclose
9 to any potential buyer of the facility that an installation of
10 an automatic fire sprinkler requirement exists. The sale of
11 the facility does not alter the timeframe for the installation
12 of the automatic fire sprinkler system.

13 l. Existing facilities required to install an
14 automatic fire sprinkler system as a result of
15 construction-type restrictions in Chapter 23, NFPA 101, 1994
16 edition, as adopted herein, or evacuation capability
17 requirements shall be notified by the local fire official in
18 writing of the automatic fire sprinkler requirement, as well
19 as the appropriate date for final compliance as provided in
20 this subparagraph. The local fire official shall send a copy
21 of the document to the Agency for Health Care Administration.

22 m. Except in cases of life-threatening fire hazards,
23 if an existing facility experiences a change in the evacuation
24 capability, or if the local authority having jurisdiction
25 identifies a construction-type restriction, such that an
26 automatic fire sprinkler system is required, it shall be
27 afforded time for installation as provided in this
28 subparagraph.

29
30 Facilities that are fully sprinkled and in compliance with
31 other firesafety standards are not required to conduct more

1 than one of the required fire drills between the hours of 11
2 p.m. and 7 a.m., per year. In lieu of the remaining drills,
3 staff responsible for residents during such hours may be
4 required to participate in a mock drill that includes a review
5 of evacuation procedures. Such standards must be included or
6 referenced in the rules adopted by the State Fire Marshal.
7 Pursuant to s. 633.022(1)(b), the State Fire Marshal is the
8 final administrative authority for firesafety standards
9 established and enforced pursuant to this section. All
10 licensed facilities must have an annual fire inspection
11 conducted by the local fire marshal or authority having
12 jurisdiction.

13 Section 16. Paragraphs (b) and (c) of subsection (1)
14 of section 458.3115, Florida Statutes, 1998 Supplement, are
15 amended to read:

16 458.3115 Restricted license; certain foreign-licensed
17 physicians; United States Medical Licensing Examination
18 (USMLE) or agency-developed examination; restrictions on
19 practice; full licensure.--

20 (1)

21 (b) A person who is eligible to take and elects to
22 take the USMLE who has previously passed part 1 or part 2 of
23 the previously administered FLEX shall not be required to
24 retake or pass the equivalent parts of the USMLE up to the
25 year 2002 ~~2000~~.

26 (c) A person shall be eligible to take such
27 examination for restricted licensure if the person:

28 1. Has taken, upon approval by the board, and
29 completed, in November 1990 or November 1992, one of the
30 special preparatory medical update courses authorized by the
31 board and the University of Miami Medical School and

1 subsequently passed the final course examination; upon
2 approval by the board to take the course completed in 1990 or
3 in 1992, has a certificate of successful completion of that
4 course from the University of Miami or the Stanley H. Kaplan
5 course; or can document to the department that he or she was
6 one of the persons who took and successfully completed the
7 Stanley H. Kaplan course that was approved by the Board of
8 Medicine and supervised by the University of Miami. At a
9 minimum, the documentation must include class attendance
10 records and the test score on the final course examination;

11 2. Applies to the agency and submits an application
12 fee that is nonrefundable and equivalent to the fee required
13 for full licensure;

14 3. Documents no less than 2 years of the active
15 practice of medicine in any ~~another~~ jurisdiction;

16 4. Submits an examination fee that is nonrefundable
17 and equivalent to the fee required for full licensure plus the
18 actual per-applicant cost to the agency to provide either
19 examination described in this section;

20 5. Has not committed any act or offense in this or any
21 other jurisdiction that would constitute a substantial basis
22 for disciplining a physician under this chapter or part II of
23 chapter 455; and

24 6. Is not under discipline, investigation, or
25 prosecution in this or any other jurisdiction for an act that
26 would constitute a violation of this chapter or part II of
27 chapter 455 and that substantially threatened or threatens the
28 public health, safety, or welfare.

29 Section 17. Subsection (2) of section 458.3124,
30 Florida Statutes, 1998 Supplement, is amended to read:

31

1 458.3124 Restricted license; certain experienced
2 foreign-trained physicians.--

3 (2) A person applying for licensure under this section
4 must submit to the Department of Health on or before December
5 31, 2000 ~~1998~~:

6 (a) A completed application and documentation required
7 by the Board of Medicine to prove compliance with subsection
8 (1); and

9 (b) A nonrefundable application fee not to exceed \$500
10 and a nonrefundable examination fee not to exceed \$300 plus
11 the actual cost to purchase and administer the examination.

12 Section 18. Effective upon this act becoming a law,
13 section 301 of chapter 98-166, Laws of Florida, is amended to
14 read:

15 Section 301. The sum of \$1.2 million from the
16 unallocated balance in the Medical Quality Assurance Trust
17 Fund is appropriated to the Department of Health to allow the
18 department to develop the examination required for foreign
19 licensed physicians in section 458.3115(1)(a), Florida
20 Statutes, through a contract with the University of South
21 Florida. The department shall charge examinees a fee not to
22 exceed 25 percent of the cost of the actual costs of the first
23 examination administered pursuant to section 458.3115, Florida
24 Statutes, 1998 Supplement, and a fee not to exceed 75 percent
25 of the actual costs for any subsequent examination
26 administered pursuant to that section.

27 Section 19. This act shall take effect October 1,
28 1999.

29
30
31