

By Senator Brown-Waite

10-512-99

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

29
30 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Part IX of chapter 400, Florida Statutes,
2 consisting of sections 400.81, 400.815, 400.82, 400.821,
3 400.822, 400.823, 400.824, 400.825, 400.83, 400.84, 400.843,
4 400.845, 400.85, and 400.86, is created to read:

5 400.81 Legislative intent.--It is the intent of the
6 Legislature to provide for the licensure of home medical
7 equipment providers and to provide for the development,
8 establishment, and enforcement of basic standards that will
9 ensure quality home medical equipment, products, and services.

10 400.815 Definitions.--As used in this part, the term:

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

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

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

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

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

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1 (6) "Department" means the Department of Children and
2 Family Services.

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

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

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

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

21 (b) Home medical equipment that requires any home
22 medical equipment services.

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

26 (11) "Home medical equipment services" means equipment
27 management and consumer instruction, including selection,
28 delivery, setup, and maintenance of equipment, and other
29 related services for the use of home medical equipment in the
30 consumer's regular or temporary place of residence.

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

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

9 (14) "Person" means any individual, firm, partnership,
10 corporation, or association.

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

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

21 400.82 Home medical equipment providers to be
22 licensed; expiration of license; exemptions; unlawful acts;
23 penalties.--

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

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

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

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

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

16 (a) Providers operated by the Federal Government.

17 (b) Nursing homes licensed under part II.

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

19 (d) Hospices licensed under part VI.

20 (e) Intermediate care facilities, homes for special
21 services, and transitional living facilities licensed under
22 part VIII.

23 (f) Hospitals and ambulatory surgical centers licensed
24 under chapter 395.

25 (g) Manufacturers and wholesale distributors when not
26 selling directly to consumers.

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

30 (i) Pharmacies licensed under chapter 465.

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

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

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

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

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

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

29 3. For any licensee found to be concurrently operating
30 licensed and unlicensed provider premises, the agency may
31 impose a fine or moratorium, or revoke existing licenses of

1 any or all of the licensee's licensed provider locations until
2 such time as the unlicensed provider premises is licensed.

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

6 400.821 Application for license; fee; provisional
7 license; temporary permit.--

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

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

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

- 19 1. Respiratory modalities.
- 20 2. Ambulation aids.
- 21 3. Mobility aids.
- 22 4. Sickroom setup.
- 23 5. Disposables.

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

- 28 1. Intake.
- 29 2. Equipment selection.
- 30 3. Delivery.
- 31 4. Setup and installation.

1 5. Patient training.

2 6. Ongoing service and maintenance.

3 7. Retrieval.

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

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

12 (4) An applicant for renewal who has demonstrated
13 financial inability to operate must demonstrate financial
14 ability to operate.

15 (5) 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 general manager and
22 the financial officer or similarly titled individual who is
23 responsible for the financial operation of the licensed
24 facility.

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

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1 (c) Proof of compliance with the level 2 background
2 screening requirements of chapter 435 which has been submitted
3 within the previous 5 years in compliance with any other
4 health care licensure requirements of this state is acceptable
5 in fulfillment of paragraph (a).

6 (d) Each applicant must submit to the agency, with its
7 application, a description and explanation of any exclusions,
8 permanent suspensions, or terminations of the applicant from
9 the Medicare or Medicaid programs. Proof of compliance with
10 disclosure of ownership and control interest requirements of
11 the Medicaid or Medicare programs shall be accepted in lieu of
12 this submission.

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

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

8 (g) The agency may deny licensure to or revoke
9 licensure of any potential licensee if any applicant:

10 1. Has falsely represented a material fact in the
11 application required by paragraphs (d) and (e), or has omitted
12 any material fact from the application required by paragraphs
13 (d) and (e); or

14 2. Has had prior Medicaid or Medicare action taken
15 against the applicant as set forth in paragraph (d).

16 (h) Upon licensure renewal, each applicant must submit
17 to the agency, under penalty of perjury, an affidavit of
18 compliance with the background screening provisions of this
19 section.

20 (6) The home medical equipment provider must also
21 obtain and maintain professional and commercial liability
22 insurance. Proof of liability insurance, as defined in s.
23 624.605, must be submitted with the application. The agency
24 shall set the required amounts of liability insurance by rule,
25 but the required amount must not be less than \$250,000 per
26 claim. In the case of contracted services, it is required that
27 the contractor have liability insurance of not less than
28 \$250,000 per claim.

29 (7) A provisional license shall be issued to an
30 approved applicant for initial licensure for a period of 90
31 days, during which time a survey must be conducted

1 demonstrating substantial compliance with this section. A
2 provisional license shall also be issued pending the results
3 of an applicant's Federal Bureau of Investigation report of
4 background screening confirming that all standards have been
5 met. If substantial compliance is demonstrated, a standard
6 license shall be issued to expire 2 years after the effective
7 date of the provisional license.

8 (8) Ninety days before the expiration date, an
9 application for license renewal must be submitted to the
10 agency under oath on forms furnished by the agency, and a
11 license shall be renewed if the applicant has met the
12 requirements established under this part and applicable rules.
13 The home medical equipment provider must file with the
14 application satisfactory proof that it is in compliance with
15 this part and applicable rules. The home medical equipment
16 provider must submit satisfactory proof of its financial
17 ability to comply with the requirements of this part.

18 (9) When a change of ownership of a home medical
19 equipment provider occurs, the prospective owner must submit
20 an initial application for a license at least 15 days before
21 the effective date of the change of ownership. An application
22 for change of ownership of a license is required when
23 ownership, a majority of the ownership, or controlling
24 interest of a licensed home medical equipment provider is
25 transferred or assigned and when a licensee agrees to
26 undertake or provide services to the extent that legal
27 liability for operation of the home medical equipment provider
28 rests with the licensee. A provisional license shall be issued
29 to the new owner for a period of 90 days, during which time
30 all required documentation must be submitted and a survey must
31 be conducted demonstrating substantial compliance with this

1 section. If substantial compliance is demonstrated, a standard
2 license shall be issued, to expire 2 years after the issuance
3 of the provisional license.

4 (10) When a change of the general manager of a home
5 medical equipment provider occurs, the licensee must notify
6 the agency of the change within 45 days thereof and must
7 provide evidence of compliance with the background screening
8 requirements in subsection (5); except that a general manager
9 who has met the standards for the abuse registry background
10 check and the Department of Law Enforcement background check,
11 but for whom background screening results from the Federal
12 Bureau of Investigation have not yet been received, may be
13 employed pending receipt of the Federal Bureau of
14 Investigation background screening report. An individual may
15 not continue to serve as general manager if the Federal Bureau
16 of Investigation background screening report indicates any
17 violation of background screening standards.

18 (11) All licensure fees required of a home medical
19 equipment provider are nonrefundable. The agency shall set the
20 fees in an amount that is sufficient to cover its costs in
21 carrying out its responsibilities under this part. However,
22 state, county, or municipal governments applying for licenses
23 under this part are exempt from the payment of license fees.
24 All fees collected under this part must be deposited in the
25 Health Care Trust Fund for the administration of this part.

26 (12) An applicant for initial licensure, renewal, or
27 change of ownership shall pay a license processing fee not to
28 exceed \$300, to be paid by all applicants, and an inspection
29 fee not to exceed \$400, to be paid by all applicants except
30 those not subject to licensure inspection by the agency as
31 described in s. 400.823(2).

1 (13) When a change is reported which requires issuance
2 of a license, a fee must be assessed. The fee must be based on
3 the actual cost of processing and issuing the license.

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

7 (15) When applications are mailed out upon request, a
8 fee must be assessed, not to exceed the cost of the printing,
9 preparation, and mailing.

10 (16) The license must be displayed in a conspicuous
11 place in the administrative office of the home medical
12 equipment provider and is valid only while in the possession
13 of the person or entity to which it is issued. The license may
14 not be sold, assigned, or otherwise transferred, voluntarily
15 or involuntarily, and is valid only for the home medical
16 equipment provider and location for which originally issued.

17 (17) A home medical equipment provider against whom a
18 proceeding for revocation or suspension, or for denial of a
19 renewal application, is pending at the time of license renewal
20 may be issued a provisional license effective until final
21 disposition by the agency of such proceedings. If judicial
22 relief is sought from the final disposition, the court that
23 has jurisdiction may issue a temporary permit for the duration
24 of the judicial proceeding.

25 400.822 Administrative penalties; injunctions;
26 emergency orders; moratoriums.--

27 (1) The agency may deny, revoke, or suspend a license,
28 or impose an administrative fine not to exceed \$5,000 per
29 violation, per day, or initiate injunctive proceedings under
30 s. 400.85.

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1 (2) Any of the following actions by a home medical
2 equipment provider or any of its employees is grounds for
3 administrative action or penalties by the agency:

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

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

7 (3) The agency may deny or revoke the license of any
8 applicant that:

9 (a) Made a false representation or omission of any
10 material fact in making the application, including the
11 submission of an application that conceals the controlling or
12 ownership interest or any officer, director, agent, managing
13 employee, affiliated person, partner, or shareholder who may
14 not be eligible to participate;

15 (b) Has been previously found by any professional
16 licensing, certifying, or standards board or agency to have
17 violated the standards or conditions relating to licensure or
18 certification or the quality of services provided.

19 "Professional licensing, certifying, or standards board or
20 agency" shall include, but is not limited to, practitioners,
21 health care facilities, programs, or services, or residential
22 care, treatment programs, or other human services; or

23 (c) Has been or is currently excluded, suspended, or
24 terminated from, or has involuntarily withdrawn from,
25 participation in Florida's Medicaid program or any other
26 state's Medicaid program, or participation in the Medicare
27 program or any other governmental or private health care or
28 health insurance program.

29 (4) The agency may issue an emergency order
30 immediately suspending or revoking a license when it
31 determines that any condition within the responsibility of the

1 home medical equipment provider presents a clear and present
2 danger to public health and safety.

3 (5) The agency may impose an immediate moratorium on
4 any licensed home medical equipment provider when the agency
5 determines that any condition within the responsibility of the
6 home medical equipment provider presents a threat to public
7 health or safety.

8 400.823 Licensure inspections and investigations.--

9 (1) The agency shall make or cause to be made such
10 inspections and investigations as it considers necessary,
11 including:

12 (a) Licensure inspections.

13 (b) Inspections directed by the federal Health Care
14 Financing Administration.

15 (c) Licensure complaint investigations, including full
16 licensure investigations with a review of all licensure
17 standards as outlined in the administrative rules. Complaints
18 received by the agency from individuals, organizations, or
19 other sources are subject to review and investigation by the
20 agency.

21 (2) The agency shall accept, in lieu of its own
22 periodic inspections for licensure, submission of the
23 following:

24 (a) The survey or inspection of an accrediting
25 organization, provided the accreditation of the licensed home
26 medical equipment provider is not provisional and provided the
27 licensed home medical equipment provider authorizes release
28 of, and the agency receives the report of, the accrediting
29 organization; or

1 (b) A copy of a valid medical oxygen retail
2 establishment permit issued by the Department of Health,
3 pursuant to chapter 499.

4 400.824 Minimum standards.--As a requirement of
5 licensure, home medical equipment providers shall:

6 (1) Offer and provide home medical equipment and
7 services, as necessary, to consumers who purchase or rent
8 equipment that requires such services.

9 (2) Provide at least one category of equipment
10 directly, filling orders from its own inventory.

11 (3) Respond to orders received for other equipment by
12 filling those orders from its own inventory or the inventory
13 of other companies with which it has contracted to fill such
14 orders; or customizing or fitting items for sale from supplies
15 purchased under contract.

16 (4) Maintain trained personnel to coordinate order
17 fulfillment and schedule timely equipment and service
18 delivery.

19 (5) As necessary in relation to the sophistication of
20 the equipment and services being provided, ensure that
21 delivery personnel are appropriately trained to conduct an
22 environment and equipment compatibility assessment;
23 appropriately and safely set up the equipment; instruct
24 patients and caregivers in the safe operation and client
25 maintenance of the equipment; and recognize when additional
26 education or followup patient compliance monitoring is
27 appropriate.

28 (6) Ensure that patients are made aware of service
29 hours and emergency service procedures.

30 (7) At the time of the initial delivery, set up an
31 appropriate followup home medical equipment service schedule

1 as needed for such times as, but not limited to, periodic
2 maintenance, supply delivery, and other related activities.

3 (8) Arrange for emergency service after normal
4 business hours; provide refresher and review training for
5 appropriate personnel; establish a system for resolution of
6 complaints and service problems; and provide for timely
7 replacement or delivery of disposable or consumable equipment
8 supplies.

9 (9) Honor all warranties expressed and implied under
10 applicable state law.

11 (10) Answer any questions or complaints a consumer has
12 about an item or the use of an item that the consumer
13 purchases or rents.

14 (11) Maintain and repair directly, or through a
15 service contract with another company, items rented to
16 consumers.

17 (12) Accept returns of substandard or unsuitable items
18 from consumers. As used in this subsection, the term
19 "substandard" means less than full quality for the particular
20 item and the term "unsuitable" means inappropriate for the
21 consumer at the time it was fitted or sold.

22 (13) Disclose consumer information to each consumer
23 who rents or purchases items, including all applicable
24 warranty information. This information consists of the
25 provider standards to which the item must conform.

26 (14) Maintain patient payment and service records in
27 accordance with the requirements of this part.

28 (15)(a) Designate appropriate staff as intake
29 coordinators, and ensure that order intake personnel are
30 appropriately trained in the types of equipment and products,
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1 commonly occurring medical conditions, service procedures,
2 third-party billing, and insurance requirements and coverage.

3 (b) Train intake coordinators in a basic understanding
4 of the following areas: dealing with patient and caregiver
5 needs and with other, nonhome medical equipment provider
6 services as they relate to home medical equipment services and
7 home care patient crisis management.

8 (16) Establish procedures for maintaining a record of
9 the employment history, including background screening as
10 required by s. 400.843, of all home medical equipment provider
11 personnel. A home medical equipment provider must require its
12 personnel to submit an employment history to the home medical
13 equipment provider and must verify the employment history for
14 at least the previous 5 years, unless through diligent efforts
15 such verification is not possible. There is no monetary
16 liability on the part of, and no cause of action for damages
17 arising against a former employer, a prospective employee, or
18 a prospective independent contractor with a licensed home
19 medical equipment provider, who reasonably and in good faith
20 communicates his or her honest opinions about a former
21 employee's job performance. This subsection does not affect
22 the official immunity of an officer or employee of a public
23 corporation.

24 (17) Upon request by the consumer or as otherwise
25 required by state or federal laws, rules, and regulations,
26 assist consumers with meeting the necessary filing
27 requirements to obtain third-party payment to which a consumer
28 may be entitled.

29 (18) Maintain safe premises.

30 (19) Comply with all other state and federal laws.

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1 400.825 Rules establishing minimum standards.--The
2 agency shall adopt, publish, and enforce rules to implement
3 this part, which must provide reasonable and fair minimum
4 standards relating to:

5 (1) The qualifications and minimum training
6 requirements of all home medical equipment provider personnel.

7 (2) License application and renewal.

8 (3) License and inspection fees.

9 (4) Financial ability to operate.

10 (5) The administration of the home medical equipment
11 provider.

12 (6) Procedures for maintaining patient records.

13 (7) Ensuring that the home medical equipment and
14 services provided by a home medical equipment provider are in
15 accordance with the plan of treatment established for each
16 patient, when provided as a part of a plan of treatment.

17 (8) Contractual arrangements for the provision of home
18 medical equipment and services by providers not employed by
19 the home medical equipment provider providing for the
20 consumer's needs.

21 (9) Physical location and zoning requirements.

22 (10) Home medical equipment requiring home medical
23 equipment services.

24 400.83 Patient records.--

25 (1) The home medical equipment provider must maintain,
26 for each patient, a patient record that includes the home
27 medical equipment and services the home medical equipment
28 provider has provided. Such records must contain:

29 (a) Any physician's order or certificate of medical
30 necessity, if the equipment was ordered by a physician.

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1 (b) Signed and dated delivery slips verifying
2 delivery.

3 (c) Notes reflecting all services and maintenance
4 performed, and any equipment exchanges.

5 (d) The date on which rental equipment was retrieved.

6 (e) Such other information as is appropriate to
7 specific patients in light of the particular equipment
8 provided to them.

9 (2) Such records are considered patient records under
10 s. 455.667, and must be maintained by the home medical
11 equipment provider for 5 years following termination of
12 services. If a patient transfers to another home medical
13 equipment provider a copy of his or her record must be
14 provided to the other home medical equipment provider upon
15 request.

16 400.84 Notice of toll-free telephone number for
17 central abuse registry.--On or before the first day home
18 medical equipment is delivered to the patient's home, any home
19 medical equipment provider licensed under this part must
20 inform the consumer and his or her immediate family, if
21 appropriate, of the right to report abusive, neglectful, or
22 exploitative practices. The statewide toll-free telephone
23 number for the central abuse registry must be provided to
24 consumers in a manner that is clearly legible and must include
25 the words: "To report abuse, neglect, or exploitation, please
26 call toll-free 1-800-962-2873." Home medical equipment
27 providers shall establish appropriate policies and procedures
28 for providing such notice to consumers.

29 400.843 Background screening of home medical equipment
30 provider personnel.--The agency shall require employment
31 screening as provided in chapter 435, using the level 1

1 standards for screening set forth in that chapter, for home
2 medical equipment provider personnel.

3 (1) The agency may grant exemptions from
4 disqualification from employment under this section as
5 provided in s. 435.07.

6 (2) The general manager of each home medical equipment
7 provider must sign an affidavit annually, under penalty of
8 perjury, stating that all home medical equipment provider
9 personnel hired on or after July 1, 1999, who enter the home
10 of a patient in the capacity of their employment have been
11 screened and that its remaining personnel have worked for the
12 home medical equipment provider continuously since before July
13 1, 1999.

14 (3) Proof of compliance with the screening
15 requirements of s. 110.1127, s. 393.0655, s. 394.4572, s.
16 397.451, s. 402.305, s. 402.313, s. 409.175, s. 464.008, or s.
17 985.407 or this part must be accepted in lieu of the
18 requirements of this section if the person has been
19 continuously employed in the same type of occupation for which
20 he or she is seeking employment without a breach in service
21 that exceeds 180 days, the proof of compliance is not more
22 than 2 years old, and the person has been screened through the
23 central abuse registry and tracking system of the department
24 and by the Department of Law Enforcement. An employer or
25 contractor shall directly provide proof of compliance to
26 another employer or contractor, and a potential employer or
27 contractor may not accept any proof of compliance directly
28 from the person requiring screening. Proof of compliance with
29 the screening requirements of this section shall be provided,
30 upon request, to the person screened by the home medical
31 equipment provider.

1 (4) There is no monetary liability on the part of, and
2 no cause of action for damages arising against, a licensed
3 home medical equipment provider that, upon notice of a
4 confirmed report of adult abuse, neglect, or exploitation
5 under chapter 415, terminates the employee against whom the
6 report was issued, whether or not the employee has filed for
7 an exemption with the agency and whether or not the time for
8 filing has expired.

9 (5) The costs of processing the statewide
10 correspondence criminal records checks and the search of the
11 department's central abuse registry must be borne by the home
12 medical equipment provider or by the person being screened, at
13 the discretion of the home medical equipment provider.

14 (6) Neither the agency nor the home medical equipment
15 provider may use the criminal records, juvenile records, or
16 central abuse registry information of a person for any purpose
17 other than determining whether that person meets minimum
18 standards of good moral character for home medical equipment
19 provider personnel.

20 (7)(a) It is a misdemeanor of the first degree,
21 punishable as provided in s. 775.082 or s. 775.083, for any
22 person willfully, knowingly, or intentionally to:

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

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

1 3. Use information from the criminal records or
2 central abuse registry obtained under this section for any
3 purpose other than screening that person for employment as
4 specified in this section, or release such information to any
5 other person for any purpose other than screening for
6 employment under this section.

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

13 400.845 Procedures for screening of home medical
14 equipment provider personnel.--

15 (1) A person employed by a home medical equipment
16 provider shall, within 5 working days after starting to work,
17 submit to the home medical equipment provider a complete set
18 of information necessary to conduct a screening under this
19 section. The person must sign an affidavit stating whether the
20 person meets the minimum standards for good moral character
21 under this section. The home medical equipment provider shall
22 submit the information to the Department of Law Enforcement
23 and to the department's central abuse registry and tracking
24 system for processing. If disposition information is missing
25 on a criminal record, it is the responsibility of the person
26 being screened to obtain and supply the missing information
27 within 30 days. Failure to supply the missing information or
28 to show reasonable efforts to obtain such information will
29 result in automatic disqualification for employment.

30 (2) Home medical equipment provider personnel hired on
31 or after July 1, 1999, must be placed on probationary status

1 pending a determination of compliance with minimum standards
2 for good moral character.

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

8 (4) The general manager of each home medical equipment
9 provider must sign an affidavit annually, under penalty of
10 perjury, stating that all personnel hired on or after July 1,
11 1999, have been screened and that its remaining personnel have
12 worked for the home medical equipment provider continuously
13 since before July 1, 1999.

14 400.85 Injunction proceedings.--The agency may
15 institute injunction proceedings in a court of competent
16 jurisdiction when violation of this part or of applicable
17 rules constitutes an emergency affecting the immediate health
18 and safety of a patient or consumer.

19 400.86 Prohibited acts.--Compliance with state and
20 federal laws regarding prohibited patient referrals and
21 rebates shall be a condition of licensure.

22 Section 2. Home medical equipment providers in
23 existence on the effective date of this act who are subject to
24 licensure under part IX of chapter 400, Florida Statutes, as
25 created in this act, shall submit an application and
26 applicable fees for licensure by December 31, 1999. Those
27 existing providers that submit applications and fees prior to
28 December 31, 1999, shall be deemed to meet licensure
29 requirements until the agency acts to deny or grant the
30 initial licensure application. After December 31, 1999,
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1 applicants for licensure may not operate until they are
2 approved and obtain a license.

3 Section 3. There is appropriated from the Health Care
4 Trust Fund to the Agency for Health Care Administration 13
5 full-time-equivalent staff positions and \$701,370 to implement
6 the provisions of this act.

7 Section 4. This act shall take effect July 1, 1999.

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SENATE SUMMARY

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Creates part IX of ch. 400, F.S., to provide for the licensure and regulation of home medical equipment providers by the Agency for Health Care Administration. Provides for certain health care providers and facilities to be exempt from regulation. Provides penalties for operating home medical equipment and services without a valid license. Provides for application and license fees. Provides requirements for background screening of license applicants. Authorizes the agency to impose administrative fines and issue injunctions. (See bill for details.)