

1 A bill to be entitled
2 An act relating to home medical equipment
3 providers; creating part X 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 licensees and personnel; providing
23 penalties; providing screening procedures;
24 providing for agency injunctions; prohibiting
25 patient referrals and rebates; providing for
26 application of the act to existing providers;
27 providing an appropriation; providing an
28 effective date.

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30 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Part X of chapter 400, Florida Statutes,
2 consisting of sections 400.92, 400.925, 400.93, 400.931,
3 400.932, 400.933, 400.934, 400.935, 400.94, 400.95, 400.953,
4 400.955, 400.96, and 400.965, is created to read:

5 400.92 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.

10 400.925 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 after the imposition of the moratorium. Services related to
7 equipment sold or rented prior to the moratorium must be
8 continued without interruption, unless deemed otherwise by the
9 agency.

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

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

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

22 400.93 Home medical equipment providers to be
23 licensed; expiration of license; exemptions; unlawful acts;
24 penalties.--

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

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

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

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

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

18 (a) Providers operated by the Federal Government.

19 (b) Nursing homes licensed under part II.

20 (c) Assisted living facilities licensed under part
21 III, when serving their residents.

22 (d) Home health agencies licensed under part IV.

23 (e) Hospices licensed under part VI.

24 (f) Intermediate care facilities, homes for special
25 services, and transitional living facilities licensed under
26 part VIII.

27 (g) Hospitals and ambulatory surgical centers licensed
28 under chapter 395.

29 (h) Manufacturers and wholesale distributors when not
30 selling directly to consumers.

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1 (i) Licensed health care practitioners who utilize
2 home medical equipment in the course of their practice, but do
3 not sell or rent home medical equipment to their patients.

4 (j) Pharmacies licensed under chapter 465.

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

13 (b) A person who violates paragraph (a) is subject to
14 an injunctive proceeding under s. 400.96. A violation of
15 paragraph (a) is a deceptive and unfair trade practice and
16 constitutes a violation of the Florida Deceptive and Unfair
17 Trade Practices Act.

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

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

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

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

3 3. For any licensee found to be concurrently operating
4 licensed and unlicensed provider premises, the agency may
5 impose a fine or moratorium, or revoke existing licenses of
6 any or all of the licensee's licensed provider locations until
7 such time as the unlicensed provider premises is licensed.

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

11 400.931 Application for license; fee; provisional
12 license; temporary permit.--

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

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

20 (a) A report, by category, of the equipment to be
21 provided, indicating those offered either directly by the
22 applicant or through contractual arrangements with existing
23 providers. Categories of equipment include:

24 1. Respiratory modalities.

25 2. Ambulation aids.

26 3. Mobility aids.

27 4. Sickroom setup.

28 5. Disposables.

29 (b) A report, by category, of the services to be
30 provided, indicating those offered either directly by the
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- 1 applicant or through contractual arrangements with existing
2 providers. Categories of services include:
- 3 1. Intake.
 - 4 2. Equipment selection.
 - 5 3. Delivery.
 - 6 4. Setup and installation.
 - 7 5. Patient training.
 - 8 6. Ongoing service and maintenance.
 - 9 7. Retrieval.
- 10 (c) A listing of those with whom the applicant
11 contracts, both the providers the applicant uses to provide
12 equipment or services to its consumers and the providers for
13 whom the applicant provides services or equipment.
- 14 (3) The applicant for initial licensure must
15 demonstrate financial ability to operate, which may be
16 accomplished by the submission of a \$50,000 surety bond to the
17 agency.
- 18 (4) An applicant for renewal who has demonstrated
19 financial inability to operate must demonstrate financial
20 ability to operate.
- 21 (5) Each applicant for licensure must comply with the
22 following requirements:
- 23 (a) Upon receipt of a completed, signed, and dated
24 application, the agency shall require background screening of
25 the applicant, in accordance with the level 2 standards for
26 screening set forth in chapter 435. As used in this
27 subsection, the term "applicant" means the general manager and
28 the financial officer or similarly titled individual who is
29 responsible for the financial operation of the licensed
30 facility.
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1 (b) The agency may require background screening for a
2 member of the board of directors of the licensee or an officer
3 or an individual owning 5 percent or more of the licensee if
4 the agency has probable cause to believe that such individual
5 has been convicted of an offense prohibited under the level 2
6 standards for screening set forth in chapter 435.

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

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

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

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

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

13 (g) The agency may deny or revoke licensure to any
14 potential licensee if any applicant:

15 1. Has falsely represented a material fact in the
16 application required by paragraphs (d) and (e), or has omitted
17 any material fact from the application required by paragraphs
18 (d) and (e); or

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

21 (h) Upon licensure renewal, each applicant must submit
22 to the agency, under penalty of perjury, an affidavit of
23 compliance with the background screening provisions of this
24 section.

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

1 the contractor have liability insurance not less than \$250,000
2 per claim.

3 (7) A provisional license shall be issued to an
4 approved applicant for initial licensure for a period of 90
5 days, during which time a survey must be conducted
6 demonstrating substantial compliance with this section. A
7 provisional license shall also be issued pending the results
8 of an applicant's Federal Bureau of Investigation report of
9 background screening confirming that all standards have been
10 met. If substantial compliance is demonstrated, a standard
11 license shall be issued to expire 2 years after the effective
12 date of the provisional license.

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

23 (9) When a change of ownership of a home medical
24 equipment provider occurs, the prospective owner must submit
25 an initial application for a license at least 15 days before
26 the effective date of the change of ownership. An application
27 for change of ownership of a license is required when
28 ownership, a majority of the ownership, or controlling
29 interest of a licensed home medical equipment provider is
30 transferred or assigned and when a licensee agrees to
31 undertake or provide services to the extent that legal

1 liability for operation of the home medical equipment provider
2 rests with the licensee. A provisional license shall be issued
3 to the new owner for a period of 90 days, during which time
4 all required documentation must be submitted and a survey must
5 be conducted demonstrating substantial compliance with this
6 section. If substantial compliance is demonstrated, a standard
7 license shall be issued to expire 2 years after the issuance
8 of the provisional license.

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

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

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1 (12) An applicant for initial licensure, renewal, or
2 change of ownership shall pay a license processing fee not to
3 exceed \$300, to be paid by all applicants, and an inspection
4 fee not to exceed \$400, to be paid by all applicants except
5 those not subject to licensure inspection by the agency as
6 described in s. 400.933(2).

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

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

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

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

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

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1 400.932 Administrative penalties; injunctions;
2 emergency orders; moratoriums.--

3 (1) The agency may deny, revoke, or suspend a license,
4 or impose an administrative fine not to exceed \$5,000 per
5 violation, per day, or initiate injunctive proceedings under
6 s. 400.96.

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

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

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

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

15 (a) Made a false representation or omission of any
16 material fact in making the application, including the
17 submission of an application that conceals the controlling or
18 ownership interest or any officer, director, agent, managing
19 employee, affiliated person, partner, or shareholder who may
20 not be eligible to participate;

21 (b) Has been previously found by any professional
22 licensing, certifying, or standards board or agency to have
23 violated the standards or conditions relating to licensure or
24 certification or the quality of services provided.

25 "Professional licensing, certifying, or standards board or
26 agency" shall include, but is not limited to, practitioners,
27 health care facilities, programs, or services, or residential
28 care, treatment programs, or other human services; or

29 (c) Has been or is currently excluded, suspended, or
30 terminated from, or has involuntarily withdrawn from,
31 participation in Florida's Medicaid program or any other

1 state's Medicaid program, or participation in the Medicare
2 program or any other governmental or private health care or
3 health insurance program.

4 (4) The agency may issue an emergency order
5 immediately suspending or revoking a license when it
6 determines that any condition within the responsibility of the
7 home medical equipment provider presents a clear and present
8 danger to public health and safety.

9 (5) The agency may impose an immediate moratorium on
10 any licensed home medical equipment provider when the agency
11 determines that any condition within the responsibility of the
12 home medical equipment provider presents a threat to public
13 health or safety.

14 400.933 Licensure inspections and investigations.--

15 (1) The agency shall make or cause to be made such
16 inspections and investigations as it considers necessary,
17 including:

18 (a) Licensure inspections.

19 (b) Inspections directed by the federal Health Care
20 Financing Administration.

21 (c) Licensure complaint investigations, including full
22 licensure investigations with a review of all licensure
23 standards as outlined in the administrative rules. Complaints
24 received by the agency from individuals, organizations, or
25 other sources are subject to review and investigation by the
26 agency.

27 (2) The agency shall accept, in lieu of its own
28 periodic inspections for licensure, submission of the
29 following:

30 (a) The survey or inspection of an accrediting
31 organization, provided the accreditation of the licensed home

1 medical equipment provider is not provisional and provided the
2 licensed home medical equipment provider authorizes release
3 of, and the agency receives the report of, the accrediting
4 organization; or

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

8 400.934 Minimum standards.--As a requirement of
9 licensure, home medical equipment providers shall:

10 (1) Offer and provide home medical equipment and
11 services, as necessary, to consumers who purchase or rent
12 equipment that requires such services.

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

15 (3) Respond to orders received for other equipment by
16 filling those orders from its own inventory or inventory from
17 other companies with which it has contracted to fill such
18 orders; or customizing or fitting items for sale from supplies
19 purchased under contract.

20 (4) Maintain trained personnel to coordinate order
21 fulfillment and schedule timely equipment and service
22 delivery.

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

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

3 (7) At the time of the initial delivery, set up an
4 appropriate followup home medical equipment service schedule
5 as needed for such times as, but not limited to, periodic
6 maintenance, supply delivery, and other related activities.

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

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

15 (10) Answer any questions or complaints a consumer has
16 about an item or the use of an item that the consumer
17 purchases or rents.

18 (11) Maintain and repair directly, or through a
19 service contract with another company, items rented to
20 consumers.

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

26 (13) Disclose consumer information to each consumer
27 who rents or purchases items, including all applicable
28 warranty information. This information consists of the
29 provider standards to which the item must conform.

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

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

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

11 (16) Establish procedures for maintaining a record of
12 the employment history, including background screening as
13 required by s. 400.953, of all home medical equipment provider
14 personnel. A home medical equipment provider must require its
15 personnel to submit an employment history to the home medical
16 equipment provider and must verify the employment history for
17 at least the previous 5 years, unless through diligent efforts
18 such verification is not possible. There is no monetary
19 liability on the part of, and no cause of action for damages
20 arising against a former employer, a prospective employee, or
21 a prospective independent contractor with a licensed home
22 medical equipment provider, who reasonably and in good faith
23 communicates his or her honest opinions about a former
24 employee's job performance. This subsection does not affect
25 the official immunity of an officer or employee of a public
26 corporation.

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

- 1 (18) Maintain safe premises.
- 2 (19) Comply with all other state and federal laws.
- 3 400.935 Rules establishing minimum standards.--The
4 agency shall adopt, publish, and enforce rules to implement
5 this part, which must provide reasonable and fair minimum
6 standards relating to:
- 7 (1) The qualifications and minimum training
8 requirements of all home medical equipment provider personnel.
- 9 (2) License application and renewal.
- 10 (3) License and inspection fees.
- 11 (4) Financial ability to operate.
- 12 (5) The administration of the home medical equipment
13 provider.
- 14 (6) Procedures for maintaining patient records.
- 15 (7) Ensuring that the home medical equipment and
16 services provided by a home medical equipment provider are in
17 accordance with the plan of treatment established for each
18 patient, when provided as a part of a plan of treatment.
- 19 (8) Contractual arrangements for the provision of home
20 medical equipment and services by providers not employed by
21 the home medical equipment provider providing for the
22 consumer's needs.
- 23 (9) Physical location and zoning requirements.
- 24 (10) Home medical equipment requiring home medical
25 equipment services.
- 26 400.94 Patient records.--
- 27 (1) The home medical equipment provider must maintain,
28 for each patient, a patient record that includes the home
29 medical equipment and services the home medical equipment
30 provider has provided. Such records must contain:
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1 (a) Any physician's order or certificate of medical
2 necessity, if the equipment was ordered by a physician.

3 (b) Signed and dated delivery slips verifying
4 delivery.

5 (c) Notes reflecting all services and maintenance
6 performed, and any equipment exchanges.

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

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

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

18 400.95 Notice of toll-free telephone number for
19 central abuse registry.--On or before the first day home
20 medical equipment is delivered to the patient's home, any home
21 medical equipment provider licensed under this part must
22 inform the consumer and his or her immediate family, if
23 appropriate, of the right to report abusive, neglectful, or
24 exploitative practices. The statewide toll-free telephone
25 number for the central abuse registry must be provided to
26 consumers in a manner that is clearly legible and must include
27 the words: "To report abuse, neglect, or exploitation, please
28 call toll-free 1-800-962-2873." Home medical equipment
29 providers shall establish appropriate policies and procedures
30 for providing such notice to consumers.

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1 400.953 Background screening of home medical equipment
2 provider personnel.--The agency shall require employment
3 screening as provided in chapter 435, using the level 1
4 standards for screening set forth in that chapter, for home
5 medical equipment provider personnel.

6 (1) The agency may grant exemptions from
7 disqualification from employment under this section as
8 provided in s. 435.07.

9 (2) The general manager of each home medical equipment
10 provider must sign an affidavit annually, under penalty of
11 perjury, stating that all home medical equipment provider
12 personnel hired on or after July 1, 1999, who enter the home
13 of a patient in the capacity of their employment have been
14 screened and that its remaining personnel have worked for the
15 home medical equipment provider continuously since before July
16 1, 1999.

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

1 the screening requirements of this section shall be provided,
2 upon request, to the person screened by the home medical
3 equipment provider.

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

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

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

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

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

31

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

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

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

17 400.955 Procedures for screening of home medical
18 equipment provider personnel.--

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

1 to show reasonable efforts to obtain such information will
2 result in automatic disqualification for employment.

3 (2) Home medical equipment provider personnel hired on
4 or after July 1, 1999, must be placed on probationary status
5 pending a determination of compliance with minimum standards
6 for good moral character.

7 (3) The home medical equipment provider must
8 automatically terminate the employment of any of its personnel
9 found to be in noncompliance with the minimum standards for
10 good moral character under this section, unless such person
11 has obtained an exemption under s. 400.953(1).

12 (4) The general manager of each home medical equipment
13 provider must sign an affidavit annually, under penalty of
14 perjury, stating that all personnel hired on or after July 1,
15 1999, have been screened and that its remaining personnel have
16 worked for the home medical equipment provider continuously
17 since before July 1, 1999.

18 400.96 Injunction proceedings.--The agency may
19 institute injunction proceedings in a court of competent
20 jurisdiction when violation of this part or of applicable
21 rules constitutes an emergency affecting the immediate health
22 and safety of a patient or consumer.

23 400.965 Prohibited acts.--Compliance with state and
24 federal laws regarding prohibited patient referrals and
25 rebates shall be a condition of licensure.

26 Section 2. Home medical equipment providers in
27 existence on the effective date of this act who are subject to
28 licensure under part X of chapter 400, Florida Statutes, as
29 created in this act, shall submit an application and
30 applicable fees for licensure by December 31, 1999. Those
31 existing providers that submit applications and fees prior to

1 December 31, 1999, shall be deemed to meet licensure
2 requirements until the agency acts to deny or grant the
3 initial licensure application. After December 31, 1999,
4 applicants for licensure may not operate until they are
5 approved and obtain a license.

6 Section 3. There is hereby appropriated from the
7 Health Care Trust Fund to the Agency for Health Care
8 Administration 13 full-time-equivalent staff positions and
9 \$701,370 to implement the provisions of this act.

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