

590-155AXA-21

Bill No. CS/CS/HB 567

Amendment No. \_\_\_\_ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

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11 The Committee on Health & Human Services Appropriations  
12 offered the following:

13

14 **Amendment (with title amendment)**

15 On page 81, between lines 15 and 16, of the bill

16

17 insert:

18 Section 77. Subsection (20) of section 400.462,  
19 Florida Statutes, is repealed.

20 Section 78. Paragraph (d) of subsection (4) of section  
21 400.471, Florida Statutes, is amended to read:

22 400.471 Application for license; fee; provisional  
23 license; temporary permit.--

24 (4) Each applicant for licensure must comply with the  
25 following requirements:

26 (d) A provisional license may be granted to an  
27 applicant when each individual required by this section to  
28 undergo background screening has met the standards for the  
29 abuse registry background check through the agency and the  
30 Department of Law Enforcement background check, but the agency  
31 has not yet received background screening results from the

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1 Federal Bureau of Investigation. A standard license may be  
2 granted to the licensee upon the agency's receipt of a report  
3 of the results of the Federal Bureau of Investigation  
4 background screening for each individual required by this  
5 section to undergo background screening which confirms that  
6 all standards have been met, or upon the granting of a  
7 disqualification exemption by the agency as set forth in  
8 chapter 435. Any other person who is required to undergo level  
9 2 background screening may serve in his or her capacity  
10 pending the agency's receipt of the report from the Federal  
11 Bureau of Investigation. However, the person may not continue  
12 to serve if the report indicates any violation of background  
13 screening standards and a disqualification exemption has not  
14 been requested of and granted by the agency as set forth in  
15 chapter 435.

16 Section 79. Subsection (3) is added to section  
17 400.484, Florida Statutes, to read:

18 400.484 Right of inspection; deficiencies; fines.--

19 (3) In addition to any other penalties imposed  
20 pursuant to this section or part, the agency may assess costs  
21 related to an investigation that results in a successful  
22 prosecution, excluding costs associated with an attorney's  
23 time.

24 Section 80. Section 400.487, Florida Statutes, is  
25 amended to read:

26 400.487 Home health service agreements; physician's  
27 treatment orders; patient assessment; establishment and review  
28 of plan of care; provision of services; orders not to  
29 resuscitate.--

30 (1) Services provided by a home health agency must be  
31 covered by an agreement between the home health agency and the

1 patient or the patient's legal representative specifying the  
2 home health services to be provided, the rates or charges for  
3 services paid with private funds, and the method of payment. A  
4 ~~The~~ home health agency providing skilled care must make an  
5 assessment of the patient's needs within 48 hours after the  
6 start of services.

7 (2) When required by the provisions of chapter 464,  
8 part I, part III, or part V of chapter 468, or chapter 486,  
9 the attending physician for a patient who is to receive  
10 skilled care must establish treatment orders. The treatment  
11 orders must be signed by the physician within 30 ~~24~~ days after  
12 the start of care and must be reviewed, as ~~at least every 62~~  
13 ~~days or more~~ frequently as if the patient's illness requires,  
14 by the physician in consultation with home health agency  
15 personnel that provide services to the patient.

16 (3) A home health agency shall arrange for supervisory  
17 visits by a registered nurse to the home of a patient  
18 receiving home health aide services in accordance with the  
19 patient's direction and approval. ~~If a client is accepted for~~  
20 ~~home health aide services or homemaker or companion services~~  
21 ~~and such services do not require a physician's order, the home~~  
22 ~~health agency shall establish a service provision plan and~~  
23 ~~maintain a record of the services provided.~~

24 (4) Each patient ~~or client~~ has the right to be  
25 informed of and to participate in the planning of his or her  
26 care. Each patient must be provided, upon request, a copy of  
27 the plan of care ~~or service provision plan~~ established and  
28 maintained for that patient ~~or client~~ by the home health  
29 agency.

30 (5) When nursing services are ordered, the home health  
31 agency to which a patient has been admitted for care must

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

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

14 (7) Home health agency personnel may withhold or  
15 withdraw cardiopulmonary resuscitation if presented with an  
16 order not to resuscitate executed pursuant to s. 401.45. The  
17 agency shall adopt rules providing for the implementation of  
18 such orders. Home health personnel and agencies shall not be  
19 subject to criminal prosecution or civil liability, nor be  
20 considered to have engaged in negligent or unprofessional  
21 conduct, for withholding or withdrawing cardiopulmonary  
22 resuscitation pursuant to such an order and rules adopted by  
23 the agency.

24 Section 81. Section 400.497, Florida Statutes, is  
25 amended to read:

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

31 (1) The home health aide competency test and home

1 ~~health aide training.~~The qualifications, minimum training  
2 ~~requirements, and supervision requirements of all home health~~  
3 ~~agency personnel.~~The agency shall create the home health aide  
4 competency test and establish the curriculum and instructor  
5 qualifications for home health aide training. Licensed home  
6 health agencies may provide this training and shall furnish  
7 documentation of such training to other licensed home health  
8 agencies upon request. Successful passage of the competency  
9 test by home health aides may be substituted for the training  
10 required under this section and any rule adopted pursuant  
11 thereto.

12       (2) Shared staffing.The agency shall allow shared  
13 staffing if the home health agency is part of a retirement  
14 community that provides multiple levels of care, is located on  
15 one campus, is licensed under this chapter, and otherwise  
16 meets the requirements of law and rule.

17       ~~(2) Requirements for prospective employees. A home~~  
18 ~~health agency must require prospective employees and~~  
19 ~~contractors to submit an employment or contractual history,~~  
20 ~~and it must verify the employment or contractual history~~  
21 ~~unless through diligent efforts such verification is not~~  
22 ~~possible. The agency shall prescribe by rule the minimum~~  
23 ~~requirements for establishing that diligent efforts have been~~  
24 ~~made. There is no monetary liability on the part of, and no~~  
25 ~~cause of action for damages arising against, a former employer~~  
26 ~~of a prospective employee of or prospective independent~~  
27 ~~contractor with a licensed home health agency who reasonably~~  
28 ~~and in good faith communicates his or her honest opinions~~  
29 ~~about the former employee's job performance. This subsection~~  
30 ~~does not affect the official immunity of an officer or~~  
31 ~~employee of a public corporation.~~

1           (3) The criteria for the frequency of onsite licensure  
2 surveys.

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

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

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

9           (6) Information to be included in Procedures for  
10 maintaining patients' records.

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

14           ~~(7)(8) Geographic service areas.~~

15           ~~(9) Standards for contractual arrangements for the~~  
16 ~~provision of home health services by providers not employed by~~  
17 ~~the home health agency to whom the patient has been admitted.~~

18           Section 82. Paragraph (d) of subsection (2) and  
19 subsection (13) of section 400.506, Florida Statutes, are  
20 amended, subsection (17) is renumbered as subsection (18), and  
21 a new subsection (17) is added to said section, to read:

22           400.506 Licensure of nurse registries; requirements;  
23 penalties.--

24           (2) Each applicant for licensure must comply with the  
25 following requirements:

26           (d) A provisional license may be granted to an  
27 applicant when each individual required by this section to  
28 undergo background screening has met the standards for the  
29 abuse registry background check through the agency and the  
30 Department of Law Enforcement background check, but the agency  
31 has not yet received background screening results from the

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1 Federal Bureau of Investigation. A standard license may be  
2 granted to the applicant upon the agency's receipt of a report  
3 of the results of the Federal Bureau of Investigation  
4 background screening for each individual required by this  
5 section to undergo background screening which confirms that  
6 all standards have been met, or upon the granting of a  
7 disqualification exemption by the agency as set forth in  
8 chapter 435. Any other person who is required to undergo level  
9 2 background screening may serve in his or her capacity  
10 pending the agency's receipt of the report from the Federal  
11 Bureau of Investigation. However, the person may not continue  
12 to serve if the report indicates any violation of background  
13 screening standards and a disqualification exemption has not  
14 been requested of and granted by the agency as set forth in  
15 chapter 435.

16 (13) Each nurse registry must comply with the  
17 procedures set forth in s. 400.512 ~~400.497(3)~~ for maintaining  
18 records of the employment history of all persons referred for  
19 contract and is subject to the standards and conditions set  
20 forth in that section ~~s. 400.512~~. However, an initial  
21 screening may not be required for persons who have been  
22 continuously registered with the nurse registry since  
23 September 30, 1990.

24 (17) In addition to any other penalties imposed  
25 pursuant to this section or part, the agency may assess costs  
26 related to an investigation that results in a successful  
27 prosecution, excluding costs associated with an attorney's  
28 time. If the agency imposes such an assessment and the  
29 assessment is not paid, and if challenged is not the subject  
30 of a pending appeal, prior to the renewal of the license, the  
31 license shall not be issued until the assessment is paid or

1 arrangements for payment of the assessment are made.

2 Section 83. Paragraph (d) of subsection (4) of section  
3 400.509, Florida Statutes, is amended, subsection (14) is  
4 renumbered as subsection (15), and a new subsection (14) is  
5 added to said section, to read:

6 400.509 Registration of particular service providers  
7 exempt from licensure; certificate of registration; regulation  
8 of registrants.--

9 (4) Each applicant for registration must comply with  
10 the following requirements:

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



1           (14) In addition to any other penalties imposed  
 2 pursuant to this section or part, the agency may assess costs  
 3 related to an investigation that results in a successful  
 4 prosecution, excluding costs associated with an attorney's  
 5 time. If the agency imposes such an assessment and the  
 6 assessment is not paid, and if challenged is not the subject  
 7 of a pending appeal, prior to the renewal of the registration,  
 8 the registration shall not be issued until the assessment is  
 9 paid or arrangements for payment of the assessment are made.

10           Section 84. Section 400.512, Florida Statutes, is  
 11 amended to read:

12           400.512 Screening of home health agency personnel;  
 13 nurse registry personnel; and companions and homemakers.--The  
 14 agency shall require employment or contractor screening as  
 15 provided in chapter 435, using the level 1 standards for  
 16 screening set forth in that chapter, for home health agency  
 17 personnel; persons referred for employment by nurse  
 18 registries; and persons employed by companion or homemaker  
 19 services registered under s. 400.509.

20           (1) The agency may grant exemptions from  
 21 disqualification from employment or contracting under this  
 22 section as provided in s. 435.07.

23           (2) The administrator of each home health agency, the  
 24 managing employee of each nurse registry, and the managing  
 25 employee of each companion or homemaker service registered  
 26 under s. 400.509 must sign an affidavit annually, under  
 27 penalty of perjury, stating that all personnel hired,  
 28 contracted with, or registered on or after October 1, 1994,  
 29 who enter the home of a patient or client in their service  
 30 capacity have been screened and that its remaining personnel  
 31 have worked for the home health agency or registrant

1 continuously since before October 1, 1994.

2 (3) As a prerequisite to operating as a home health  
3 agency, nurse registry, or companion or homemaker service  
4 under s. 400.509, the administrator or managing employee,  
5 respectively, must submit to the agency his or her name and  
6 any other information necessary to conduct a complete  
7 screening according to this section. The agency shall submit  
8 the information to the Department of Law Enforcement and shall  
9 conduct a search for any report of confirmed abuse the  
10 ~~department's abuse hotline for state processing.~~ The agency  
11 shall review the record of the administrator or manager with  
12 respect to the offenses specified in this section and shall  
13 notify the owner of its findings. If disposition information  
14 is missing on a criminal record, the administrator or manager,  
15 upon request of the agency, must obtain and supply within 30  
16 days the missing disposition information to the agency.  
17 Failure to supply missing information within 30 days or to  
18 show reasonable efforts to obtain such information will result  
19 in automatic disqualification.

20 (4) Proof of compliance with the screening  
21 requirements of chapter 435 shall be accepted in lieu of the  
22 requirements of this section if the person has been  
23 continuously employed or registered without a breach in  
24 service that exceeds 180 days, the proof of compliance is not  
25 more than 2 years old, and the person has been screened  
26 through the agency for any reports of confirmed abuse central  
27 ~~abuse registry and tracking system of the department and for~~  
28 any criminal record from ~~by~~ the Department of Law Enforcement.  
29 A home health agency, nurse registry, or companion or  
30 homemaker service registered under s. 400.509 shall directly  
31 provide proof of compliance to another home health agency,

1 nurse registry, or companion or homemaker service registered  
2 under s. 400.509. The recipient home health agency, nurse  
3 registry, or companion or homemaker service registered under  
4 s. 400.509 may not accept any proof of compliance directly  
5 from the person who requires screening. Proof of compliance  
6 with the screening requirements of this section shall be  
7 provided upon request to the person screened by the home  
8 health agencies; nurse registries; or companion or homemaker  
9 services registered under s. 400.509.

10 (5)(a) There is no monetary liability on the part of,  
11 and no cause of action for damages arises against, a licensed  
12 home health agency, licensed nurse registry, or companion or  
13 homemaker service registered under s. 400.509, that, upon  
14 notice of a confirmed report of adult abuse, neglect, or  
15 exploitation through the agency, terminates the employee or  
16 contractor against whom the report was issued, whether or not  
17 the employee or contractor has filed for an exemption with the  
18 agency in accordance with chapter 435 and whether or not the  
19 time for filing has expired.

20 (b) If a home health agency is asked about a person  
21 who was employed by or contracted with that agency, there is  
22 no monetary liability on the part of, and no cause of action  
23 for damages arising against, a former employer of the person  
24 for that agency, who reasonably and in good faith communicates  
25 his or her honest opinions about the former caregiver's job  
26 performance. This paragraph does not affect the official  
27 immunity of an officer or employee of a public corporation.

28 (6) The costs of processing the statewide  
29 correspondence criminal records checks ~~and the search of the~~  
30 ~~department's central abuse hotline~~ must be borne by the home  
31 health agency; the nurse registry; or the companion or

1 homemaker service registered under s. 400.509, or by the  
2 person being screened, at the discretion of the home health  
3 agency, nurse registry, or s. 400.509 registrant.

4 (7)(a) It is a misdemeanor of the first degree,  
5 punishable under s. 775.082 or s. 775.083, for any person  
6 willfully, knowingly, or intentionally to:

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

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

16 3. Use information from the criminal records or the  
17 agency's reports of confirmed abuse ~~central abuse hotline~~  
18 obtained under this section for any purpose other than  
19 screening that person for employment as specified in this  
20 section or release such information to any other person for  
21 any purpose other than screening for employment under this  
22 section.

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

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1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 On page 2, line 23, after the semicolon,

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5 insert:

6 repealing s. 400.462(20), F.S., to delete the  
7 definition of "screening" under the Home Health  
8 Services Act; amending s. 400.471, F.S.;

9 providing for an abuse registry background  
10 check through the Agency for Health Care  
11 Administration; amending s. 400.484, F.S.;

12 providing for assessment of certain costs of an  
13 investigation that results in a successful  
14 prosecution; amending s. 400.487, F.S.;

15 requiring home health service agreements;  
16 revising requirements for physician's treatment  
17 orders; providing for supervisory visits by a  
18 registered nurse under certain circumstances;

19 deleting provisions relating to service  
20 provision plans; amending s. 400.497, F.S.;

21 providing for a home health aide competency  
22 test, criteria for the frequency of onsite  
23 licensure surveys, and information to be  
24 included in patients' records; amending s.  
25 400.506, F.S.; providing for an abuse registry  
26 background check through the Agency for Health  
27 Care Administration; authorizing assessment of  
28 certain costs of an investigation that results  
29 in a successful prosecution; revising a cross  
30 reference; making renewal of license contingent  
31 on payment or arrangement for payment of any

1           unpaid assessment; amending s. 400.509, F.S.;

2           providing for an abuse registry background

3           check through the Agency for Health Care

4           Administration; authorizing assessment of

5           certain costs of an investigation that results

6           in a successful prosecution; making renewal of

7           registration contingent on payment or

8           arrangement for payment of any unpaid

9           assessment; amending s. 400.512, F.S.; revising

10          provisions relating to the screening of home

11          health agency, nurse registry, and companion

12          and homemaker service personnel; requiring the

13          Agency for Health Care Administration to

14          conduct the search for reports of confirmed

15          abuse; providing an exemption from liability

16          under certain conditions for providing opinions

17          on the job performance of former employees and

18          contract workers; providing conforming changes;

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