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1 A bill to be entitled
2 An act relating to regulation of health care entities;
3 revising the administrative and enforcement powers,
4 duties, and authority of the Agency for Health Care
5 Administration; amending s. 400.461, F.S.; providing for
6 licensure of nurse registries and personal care
7 organizations; amending s. 400.462, F.S.; revising
8 definitions; amending s. 400.464, F.S.; revising the
9 licensure period; deleting references to registrations;
10 imposing a fine for certain offenses; providing a
11 declaration of nuisance under certain circumstances;
12 providing for injunctions against certain activities;
13 increasing certain criminal penalties; providing criminal
14 penalties; imposing a fine for noncompliance; revising a
15 licensure exemption provision to conform; amending s.
16 400.471, F.S.; revising licensure application
17 requirements; revising licensure denial or revocation
18 provisions; increasing a malpractice insurance coverage
19 amount requirement; deleting a liability insurance
20 requirement; requiring certain notice of expiration;
21 providing for administrative fines; imposing certain
22 additional fees; requiring acceptance of certain surveys;
23 deleting certain licensing fee restrictions; amending s.
24 400.487, F.S.; including physician assistants and advanced
25 nurse practitioners under home health agreement
26 provisions; revising home health agreement requirements;
27 amending s. 400.491, F.S.; increasing the time a home
28 health agency is required to keep patient records
29 following termination of services; requiring certain

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30 licensed home health agencies to notify certain patients
31 of ceasing operations; requiring such agencies to allow
32 such patients to retrieve certain records; deleting a
33 recordkeeping requirement; amending s. 400.494, F.S.;
34 providing for disclosure of certain patient information
35 otherwise confidential; deleting a nonapplication
36 provision; amending s. 400.495, F.S., relating to notice
37 of toll-free telephone number for central abuse hotline,
38 to conform; amending s. 400.497, F.S.; deleting a plan
39 review and approval requirement by county health
40 departments; amending s. 400.506, F.S.; revising
41 provisions providing for licensure of nurse registries;
42 increasing a licensure fee; imposing a survey fee;
43 revising a licensure period; authorizing imposition of
44 additional fines; providing criminal penalties; revising
45 requirements; creating s. 400.5095, F.S.; providing
46 licensure requirements for personal care organizations,
47 including background screening; providing for a fee;
48 providing for denial, revocation, or suspension of
49 licenses under certain circumstances; providing for
50 renewal and expiration of licenses; authorizing the
51 institution of injunctive proceedings; prohibiting
52 operation without a license; authorizing the agency to
53 impose administrative fines under certain circumstances;
54 providing a declaration of nuisance; providing for
55 injunctive relief; specifying certain deceptive and unfair
56 trade practices; providing for additional administrative
57 fines; authorizing inspections and investigations;
58 providing criminal penalties; specifying personal care

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59 service provision requirements and limitations; specifying
 60 certain application requirements for certified nursing
 61 assistants or home health aides; specifying recordkeeping
 62 requirements; specifying certain staff training
 63 requirements; specifying certain procedural requirements
 64 under emergency circumstances; requiring the agency to
 65 adopt certain rules; requiring certain abuse reporting
 66 requirements; authorizing the agency to assess certain
 67 costs under certain circumstances; amending s. 400.512,
 68 F.S., relating to screening of personnel, to conform;
 69 amending s. 400.515, F.S.; expanding the circumstances
 70 under which the agency may institute injunction
 71 proceedings; amending s. 381.0303, F.S.; correcting a
 72 cross-reference; repealing s. 400.509, F.S., relating to
 73 the regulation of companion services; providing an
 74 effective date.

75
 76 Be It Enacted by the Legislature of the State of Florida:

77
 78 Section 1. Subsection (2) of section 400.461, Florida
 79 Statutes, is amended to read:

80 400.461 Short title; purpose.--

81 (2) The purpose of this part is to provide for the
 82 licensure of every home health agency, nurse registry, and
 83 personal care organization and to provide for the development,
 84 establishment, and enforcement of basic standards that will
 85 ensure the safe and adequate care of persons receiving health
 86 services in their own homes.

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87 Section 2. Section 400.462, Florida Statutes, is amended
 88 to read:

89 400.462 Definitions.--As used in this part, the term:

90 (1) "Administrator" means a direct employee ~~of the home~~
 91 ~~health agency or a related organization, or of a management~~
 92 ~~company that has a contract to manage the home health agency,~~ to
 93 whom the governing body has delegated the responsibility for
 94 day-to-day administration ~~of the home health agency.~~ The
 95 administrator must be a licensed physician, physician assistant,
 96 or registered nurse licensed to practice in this state or an
 97 individual having at least 1 year of supervisory or
 98 administrative experience in home health care or in a facility
 99 licensed under chapter 395 or under part II or part III of this
 100 chapter. An administrator may manage a maximum of five licensed
 101 home health agencies located within one agency service district
 102 or within an immediately contiguous county. If the home health
 103 agency is licensed under this chapter and is part of a
 104 retirement community that provides multiple levels of care, an
 105 employee of the retirement community may administer the home
 106 health agency and up to a maximum of four entities licensed
 107 under this chapter that are owned, operated, or managed by the
 108 same corporate entity. An administrator shall designate, in
 109 writing, for each licensed entity, a qualified alternate
 110 administrator to serve during absences.

111 (2) "Advanced registered nurse practitioner" has the same
 112 meaning as that provided in s. 464.003.

113 (3)~~(2)~~ "Agency" means the Agency for Health Care
 114 Administration.

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115 (4)~~(3)~~ "Certified nursing assistant" means any person who
 116 has been issued a certificate under part II of chapter 464. The
 117 licensed home health agency, ~~or licensed nurse registry, or~~
 118 personal care organization shall ensure that the certified
 119 nursing assistant or home health aide, employed by or under
 120 contract with the home health agency, ~~or licensed nurse~~
 121 registry, or personal care organization is adequately trained to
 122 perform the tasks of a home health aide in the home setting.

123 (5)~~(4)~~ "Client" means an elderly, handicapped, or
 124 convalescent individual who receives ~~personal care services,~~
 125 companion services, or homemaker services in the individual's
 126 home or place of residence.

127 (6)~~(5)~~ "Companion" or "sitter" means a person who spends
 128 time with ~~cares for~~ an elderly, handicapped, or convalescent
 129 individual and accompanies such individual on trips and outings
 130 and may prepare and serve meals to such individual. A companion
 131 may not provide hands-on personal care to a client.

132 (7)~~(6)~~ "Department" means the Department of Children and
 133 Family Services.

134 (8) "Direct employee" means an employee whose withholding
 135 taxes are paid by a home health agency, a management company
 136 that has a contract to manage a home health agency on a day-to-
 137 day basis, or an employee leasing company which has a contract
 138 with a home health agency to handle the payroll and payroll
 139 taxes for such home health agency.

140 (9)~~(7)~~ "Director of nursing" means a registered nurse ~~and~~
 141 who is a direct employee of the agency and ~~or related business~~
 142 ~~entity~~ who is a graduate of an approved school of nursing and is
 143 licensed in this state; who has at least 1 year of supervisory

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144 experience as a registered nurse in a licensed home health
 145 agency, a facility licensed under chapter 395, or a facility
 146 licensed under part II or part III of this chapter; and who is
 147 responsible for overseeing the professional nursing and home
 148 health aid delivery of services of the agency. A director of
 149 nursing ~~An employee~~ may be the director of nursing of a maximum
 150 of five licensed home health agencies operated by a related
 151 business entity and located within one agency service district
 152 or within an immediately contiguous county. If the home health
 153 agency is licensed under this chapter and is part of a
 154 retirement community that provides multiple levels of care, an
 155 employee of the retirement community may serve as the director
 156 of nursing of the home health agency and of up to four entities
 157 licensed under this chapter which are owned, operated, or
 158 managed by the same corporate entity. ~~A director of nursing~~
 159 ~~shall designate, in writing, for each licensed entity, a~~
 160 ~~qualified alternate registered nurse to serve during the absence~~
 161 ~~of the director of nursing.~~

162 (10)~~(8)~~ "Home health agency" means an organization that
 163 provides home health services and staffing services.

164 (11)~~(9)~~ "Home health agency personnel" means persons who
 165 are employed by or under contract with a home health agency and
 166 enter the home or place of residence of patients at any time in
 167 the course of their employment or contract.

168 (12)~~(10)~~ "Home health services" means health and medical
 169 services and medical supplies furnished by an organization to an
 170 individual in the individual's home or place of residence. The
 171 term includes organizations that provide one or more of the
 172 following:

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- 173 (a) Nursing care.
- 174 (b) Physical, occupational, respiratory, or speech
175 therapy.
- 176 (c) Home health aide services.
- 177 (d) Dietetics and nutrition practice and nutrition
178 counseling.
- 179 (e) Medical supplies, restricted to drugs and biologicals
180 prescribed by a physician.
- 181 (13)~~(11)~~ "Home health aide" means a person who is trained
182 or qualified, as determined by the agency, and who provides
183 hands-on personal care, performs simple procedures as an
184 extension of therapy or nursing services, assists in ambulation
185 or exercises, or assists in administering medications as
186 permitted in rule and for which the person has received training
187 established by the agency under s. 400.497(1).
- 188 (14)~~(12)~~ "Homemaker" means a person who performs household
189 chores that include housekeeping, meal planning and preparation,
190 shopping assistance, and routine household activities for an
191 elderly, handicapped, or convalescent individual. A homemaker
192 may not provide hands-on personal care to a client.
- 193 (15)~~(13)~~ "Home infusion therapy provider" means an
194 organization that employs, contracts with, or refers a licensed
195 professional who has received advanced training and experience
196 in intravenous infusion therapy and who administers infusion
197 therapy to a patient in the patient's home or place of
198 residence.
- 199 (16)~~(14)~~ "Home infusion therapy" means the administration
200 of intravenous pharmacological or nutritional products to a
201 patient in his or her home.

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202 (17)~~(15)~~ "Nurse registry" means any person that procures,
 203 offers, promises, or attempts to secure health-care-related
 204 contracts for registered nurses, licensed practical nurses,
 205 certified nursing assistants, home health aides, companions, or
 206 homemakers, who are compensated by fees as independent
 207 contractors, including, but not limited to, contracts for the
 208 provision of services to patients and contracts to provide
 209 private duty or staffing services to health care facilities
 210 licensed under chapter 395 or this chapter or other business
 211 entities.

212 (18)~~(16)~~ "Organization" means a corporation, government or
 213 governmental subdivision or agency, partnership or association,
 214 or any other legal or commercial entity, any of which involve
 215 more than one health care professional discipline, or a health
 216 care professional and a home health aide, or certified nursing
 217 assistant, or more than one home health aide or certified
 218 nursing assistant, or a home health aide and a certified nursing
 219 assistant. The term does not include an entity that provides
 220 services using only volunteers or only individuals related by
 221 blood or marriage to the patient or client.

222 (19)~~(17)~~ "Patient" means any person who receives home
 223 health services in his or her home or place of residence.

224 (20)~~(18)~~ "Personal care" means assistance to a patient in
 225 the activities of daily living, such as dressing, bathing,
 226 eating, or personal hygiene, and assistance in physical
 227 transfer, ambulation, and in administering medications as
 228 permitted by rule.

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229 (21) "Personal care organization" means a business
 230 licensed to provide personal care and homemaker and companion
 231 services by employed caregivers, but no skilled care services.

232 ~~(22)(19)~~ "Physician" means a person licensed under chapter
 233 458, chapter 459, chapter 460, or chapter 461.

234 (23) "Physician assistant" has the same meaning as that
 235 provided in s. 458.347.

236 ~~(24)(20)~~ "Skilled care" means nursing services or
 237 therapeutic services required by law to be delivered by a health
 238 care professional who is licensed under part I of chapter 464;
 239 part I, part III, or part V of chapter 468; or chapter 486 and
 240 who is employed by or under contract with a licensed home health
 241 agency or is referred by a licensed nurse registry.

242 ~~(25)(21)~~ "Staffing services" means services provided to a
 243 health care facility or other business entity on a temporary
 244 basis by licensed health care personnel, including certified
 245 nursing assistants and home health aides who are employed by, or
 246 work under the auspices of, a licensed home health agency or who
 247 are registered with a licensed nurse registry.

248 Section 3. Subsections (1) and (4) and paragraphs (b) and
 249 (e) of subsection (5) of section 400.464, Florida Statutes, are
 250 amended to read:

251 400.464 Home health agencies to be licensed; expiration of
 252 license; exemptions; unlawful acts; penalties.--

253 (1) Any home health agency must be licensed by the agency
 254 to operate in this state. A license issued to a home health
 255 agency, unless sooner suspended or revoked, expires 2 years ±
 256 ~~year~~ after its date of issuance.

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257 (4)(a) An organization may not provide, offer, or
 258 advertise home health services to the public unless the
 259 organization has a valid license or is specifically exempted
 260 under this part. An organization that offers or advertises to
 261 the public any service for which licensure ~~or registration~~ is
 262 required under this part must include in the advertisement the
 263 license number ~~or regulation number~~ issued to the organization
 264 by the agency. The agency shall assess a fine of not less than
 265 \$100 to any licensee ~~or registrant~~ who fails to include the
 266 license ~~or registration~~ number when submitting the advertisement
 267 for publication, broadcast, or printing. The fine for a second
 268 or subsequent offense shall be \$500. The holder of a license
 269 issued under this part may not advertise or indicate to the
 270 public that it holds a home health agency or nurse registry
 271 license other than the one it has been issued.

272 (b) The operation or maintenance of an unlicensed home
 273 health agency or the performance of any home health services in
 274 violation of this part is declared a nuisance, inimical to the
 275 public health, welfare, and safety. The agency, or any state
 276 attorney in the name of the people of the state, may, in
 277 addition to other remedies provided in this part, bring an
 278 action for an injunction to restrain such violation, or to
 279 enjoin the future operation or maintenance of any such home
 280 health agency or the provision of home health services in
 281 violation of this part, until compliance with this part or the
 282 rules adopted under this part has been demonstrated to the
 283 satisfaction of the agency.

284 (c)~~(b)~~ A person who violates paragraph (a) is subject to
 285 an injunctive proceeding under s. 400.515. A violation of

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286 paragraph (a) is a deceptive and unfair trade practice and
 287 constitutes a violation of the Florida Deceptive and Unfair
 288 Trade Practices Act under part II of chapter 501.

289 (d)(e) A person who violates the provisions of paragraph
 290 (a) commits a felony misdemeanor of the third ~~second~~ degree,
 291 punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s.
 292 775.084. Any person who commits a second or subsequent violation
 293 commits a felony misdemeanor of the second ~~first~~ degree,
 294 punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s.
 295 775.084. Each day of continuing violation constitutes a separate
 296 offense.

297 (e) Any person who owns, operates, or maintains an
 298 unlicensed home health agency and who, within 10 working days
 299 after receiving notification from the agency, fails to cease
 300 operation and apply for a license under this part commits a
 301 felony of the third degree, punishable as provided in s.
 302 775.082, s. 775.083, or s. 775.084. Each day of continued
 303 operation is a separate offense.

304 (f) Any home health agency that fails to cease operation
 305 after agency notification may be fined \$500 for each day of
 306 noncompliance.

307 (5) The following are exempt from the licensure
 308 requirements of this part:

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

- 311 1. The Department of Elderly Affairs.
- 312 2. The Department of Health, a community health center, or
- 313 a rural health network that furnishes home visits for the
- 314 purpose of providing environmental assessments, case management,

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315 health education, personal care services, family planning, or
 316 followup treatment, or for the purpose of monitoring and
 317 tracking disease.

318 3. Services provided to persons who have developmental
 319 disabilities, as defined in s. 393.063(12).

320 4. Companion and sitter organizations that were registered
 321 under former s. 400.509(1) on January 1, 1999, and were
 322 authorized to provide personal services under s. 393.063(33)
 323 under a developmental services provider certificate on January
 324 1, 1999, may continue to provide such services to past, present,
 325 and future clients of the organization who need such services,
 326 notwithstanding the provisions of this act.

327 5. The Department of Children and Family Services.

328 (e) An individual who acts alone, in his or her individual
 329 capacity, and who is not employed by or affiliated with a
 330 licensed home health agency, ~~or registered with~~ a licensed nurse
 331 registry, or a personal care organization. This exemption does
 332 not entitle an individual to perform home health services
 333 without the required professional license.

334 Section 4. Section 400.471, Florida Statutes, is amended
 335 to read:

336 400.471 Application for license; fee; provisional license;
 337 temporary permit.--

338 (1) Application for an initial license or for renewal of
 339 an existing license must be made under oath to the agency on
 340 forms furnished by it and must be accompanied by the appropriate
 341 license fee as provided in subsection (8). The agency must take
 342 final action on an initial licensure application within 60 days
 343 after receipt of all required documentation.

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

347 (a) A listing of services to be provided, ~~either directly~~
 348 ~~by the applicant or through contractual arrangements with~~
 349 ~~existing providers;~~

350 ~~(b) The number and discipline of professional staff to be~~
 351 ~~employed; and~~

352 (b)(e) Proof of financial ability to operate.

353 (c) Completion of volume data questions on renewal
 354 application.

355 (3) An applicant for initial licensure must demonstrate
 356 financial ability to operate by submitting a balance sheet and
 357 income and expense statement for the first 2 years of operation
 358 which provide evidence of having sufficient assets, credit, and
 359 projected revenues to cover liabilities and expenses. The
 360 applicant shall have demonstrated financial ability to operate
 361 if the applicant's assets, credit, and projected revenues meet
 362 or exceed projected liabilities and expenses. All documents
 363 required under this subsection must be prepared in accordance
 364 with generally accepted accounting principles, and shall be
 365 compiled ~~the financial statement must be signed~~ by a certified
 366 public accountant.

367 (4) Each applicant for licensure must comply with the
 368 following requirements:

369 (a) Upon receipt of a completed, signed, and dated
 370 application, the agency shall require background screening of
 371 the applicant, in accordance with the level 2 standards for
 372 screening set forth in chapter 435. As used in this subsection,

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373 the term "applicant" means the administrator, or a similarly
 374 titled person who is responsible for the day-to-day operation of
 375 the licensed home health agency, and the financial officer, or
 376 similarly titled individual who is responsible for the financial
 377 operation of the licensed home health agency.

378 (b) The agency may require background screening for a
 379 member of the board of directors of the licensee or an officer
 380 or an individual owning 5 percent or more of the licensee if the
 381 agency reasonably suspects that such individual has been
 382 convicted of an offense prohibited under the level 2 standards
 383 for screening set forth in chapter 435.

384 (c) Proof of compliance with the level 2 background
 385 screening requirements of chapter 435 which has been submitted
 386 within the previous 5 years in compliance with any other health
 387 care or assisted living licensure requirements of this state is
 388 acceptable in fulfillment of paragraph (a). Proof of compliance
 389 with background screening which has been submitted within the
 390 previous 5 years to fulfill the requirements of the Financial
 391 Services Commission and the Office of Insurance Regulation
 392 pursuant to chapter 651 as part of an application for a
 393 certificate of authority to operate a continuing care retirement
 394 community is acceptable in fulfillment of the Department of Law
 395 Enforcement and Federal Bureau of Investigation background
 396 check.

397 (d) A provisional license may be granted to an applicant
 398 when each individual required by this section to undergo
 399 background screening has met the standards for the Department of
 400 Law Enforcement background check, but the agency has not yet
 401 received background screening results from the Federal Bureau of

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402 Investigation. A standard license may be granted to the licensee
 403 upon the agency's receipt of a report of the results of the
 404 Federal Bureau of Investigation background screening for each
 405 individual required by this section to undergo background
 406 screening which confirms that all standards have been met, or
 407 upon the granting of a disqualification exemption by the agency
 408 as set forth in chapter 435. Any other person who is required to
 409 undergo level 2 background screening may serve in his or her
 410 capacity pending the agency's receipt of the report from the
 411 Federal Bureau of Investigation. However, the person may not
 412 continue to serve if the report indicates any violation of
 413 background screening standards and a disqualification exemption
 414 has not been requested of and granted by the agency as set forth
 415 in chapter 435.

416 (e) Each applicant must submit to the agency, with its
 417 application, a description and explanation of any exclusions,
 418 permanent suspensions, or terminations of the licensee or
 419 potential licensee from the Medicare or Medicaid programs. Proof
 420 of compliance with the requirements for disclosure of ownership
 421 and control interest under the Medicaid or Medicare programs may
 422 be accepted in lieu of this submission.

423 (f) Each applicant must submit to the agency a description
 424 and explanation of any conviction of an offense prohibited under
 425 the level 2 standards of chapter 435 by a member of the board of
 426 directors of the applicant, its officers, or any individual
 427 owning 5 percent or more of the applicant. This requirement does
 428 not apply to a director of a not-for-profit corporation or
 429 organization if the director serves solely in a voluntary
 430 capacity for the corporation or organization, does not regularly

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431 take part in the day-to-day operational decisions of the
432 corporation or organization, receives no remuneration for his or
433 her services on the corporation or organization's board of
434 directors, and has no financial interest and has no family
435 members with a financial interest in the corporation or
436 organization, provided that the director and the not-for-profit
437 corporation or organization include in the application a
438 statement affirming that the director's relationship to the
439 corporation satisfies the requirements of this paragraph.

440 (g) A license may not be granted to an applicant if the
441 applicant, administrator, or financial officer has been found
442 guilty of, regardless of adjudication, or has entered a plea of
443 nolo contendere or guilty to, any offense prohibited under the
444 level 2 standards for screening set forth in chapter 435, unless
445 an exemption from disqualification has been granted by the
446 agency as set forth in chapter 435.

447 (h) The agency may deny or revoke licensure if the
448 applicant:

449 ~~1. Has falsely represented a material fact in the~~
450 ~~application required by paragraph (e) or paragraph (f), or has~~
451 ~~omitted any material fact from the application required by~~
452 ~~paragraph (e) or paragraph (f); or~~

453 ~~2. has been or is currently excluded, suspended, or~~
454 ~~terminated from, or has involuntarily withdrawn from,~~
455 ~~participation in this state's Medicaid program, or the Medicaid~~
456 ~~program of any other state, or from participation in the~~
457 ~~Medicare program or any other governmental or private health~~
458 ~~care or health insurance program.~~

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

461 (5) The agency may deny or revoke licensure if the
 462 applicant has falsely represented a material fact in, or has
 463 omitted any material fact from, the application required by this
 464 section.

465 (6)~~(5)~~ The home health agency must also obtain and
 466 maintain malpractice insurance as defined in s. 624.605(1)(k)
 467 ~~the following insurance coverages~~ in an amount of not less than
 468 \$500,000 ~~\$250,000~~ per claim, and the home health agency must
 469 submit proof of coverage with an initial application for
 470 licensure and with each annual application for license renewal:

471 ~~(a) Malpractice insurance as defined in s. 624.605(1)(k);~~

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

473 (7)~~(6)~~ Sixty ~~Ninety~~ days before the expiration date, an
 474 application for renewal must be submitted to the agency under
 475 oath on forms furnished by it, and a license must be renewed if
 476 the applicant has met the requirements established under this
 477 part and applicable rules. The agency shall send a renewal
 478 notice, electronically or by United States mail, at least 70
 479 days before the expiration date. The home health agency must
 480 file with the application satisfactory proof that it is in
 481 compliance with this part and applicable rules. If there is
 482 evidence of financial instability, the home health agency must
 483 submit satisfactory proof of its financial ability to comply
 484 with the requirements of this part. Failure to file an
 485 application within the timeframe specified herein shall result
 486 in an administrative fine in the amount of \$50 per day, each day

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487 constituting a separate violation. In no event shall such fines
 488 aggregate more than \$500.

489 (8)(7) When transferring the ownership of a home health
 490 agency, the transferee must submit an application for a license
 491 at least 60 days before the effective date of the transfer. A
 492 late application filing shall incur an administrative fine in
 493 the amount of \$50 per day, each day constituting a separate
 494 violation. In no event shall such fines aggregate more than
 495 \$500. If the home health agency is being leased, a copy of the
 496 lease agreement must be filed with the application.

497 (9)(a) Each applicant for initial licensure, renewal, or
 498 change of ownership shall pay a license processing fee not to
 499 exceed \$1,000. An applicant shall also pay a survey fee not to
 500 exceed \$400 per survey unless the applicant is not subject to a
 501 licensure survey by the agency as provided in paragraph (b). All
 502 funds paid shall be deposited in the Health Care Trust Fund.

503 (b) The agency shall accept, in lieu of its own periodic
 504 licensure surveys, submission of the survey of an accrediting
 505 organization, provided the accreditation of the licensed home
 506 health agency is not provisional and provided the licensed home
 507 health agency authorizes release of, and the agency receives the
 508 report of, the accrediting organization.

509 (10)(8) ~~The license fee and annual renewal fee required of~~
 510 ~~a home health agency are nonrefundable.~~ The agency shall set the
 511 license processing fees in an amount that is sufficient to cover
 512 its costs in carrying out its responsibilities under this part,
 513 but not to exceed \$1,000. ~~However, state, county, or municipal~~
 514 ~~governments applying for licenses under this part are exempt~~
 515 ~~from the payment of license fees. All fees collected under this~~

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516 ~~part must be deposited in the Health Care Trust Fund for the~~
 517 ~~administration of this part.~~

518 (11)~~(9)~~ The license must be displayed in a conspicuous
 519 place in the administrative office of the home health agency and
 520 is valid only while in the possession of the person to which it
 521 is issued. The license may not be sold, assigned, or otherwise
 522 transferred, voluntarily or involuntarily, and is valid only for
 523 the home health agency and location for which originally issued.

524 (12)~~(10)~~ A home health agency against whom a revocation or
 525 suspension proceeding is pending at the time of license renewal
 526 may be issued a provisional license effective until final
 527 disposition by the agency of such proceedings. If judicial
 528 relief is sought from the final disposition, the court that has
 529 jurisdiction may issue a temporary permit for the duration of
 530 the judicial proceeding.

531 (13)~~(11)~~ The agency may not issue a license designated as
 532 certified to a home health agency that fails to satisfy the
 533 requirements of a Medicare certification survey from the agency.

534 (14)~~(12)~~ The agency may not issue a license to a home
 535 health agency that has any unpaid fines assessed under this
 536 part.

537 Section 5. Subsections (1), (2), and (3) of section
 538 400.487, Florida Statutes, are amended to read:

539 400.487 Home health service agreements; physician's,
 540 physician assistant's, and advanced registered nurse
 541 practitioner's treatment orders; patient assessment;
 542 establishment and review of plan of care; provision of services;
 543 orders not to resuscitate.--

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544 (1) Services provided by a home health agency must be
 545 covered by an agreement between the home health agency and the
 546 patient or the patient's legal representative specifying the
 547 home health services to be provided, the rates or charges for
 548 services paid with private funds, and the sources ~~method~~ of
 549 payment, including, but not limited to, Medicare, Medicaid,
 550 private insurance, personal funds, or a combination of such
 551 sources. A home health agency providing skilled care must make
 552 an assessment of the patient's needs within 48 hours after the
 553 start of services.

554 (2) When required by the provisions of chapter 464; part
 555 I, part III, or part V of chapter 468; or chapter 486, the
 556 attending physician, physician assistant, or advanced registered
 557 nurse practitioner, acting within his or her respective scope of
 558 practice, shall ~~for a patient who is to receive skilled care~~
 559 ~~must~~ establish treatment orders for a patient who is to receive
 560 skilled care. The treatment orders must be signed by the
 561 physician, physician assistant, or advanced registered nurse
 562 practitioner before a claim for payment for the skilled services
 563 is submitted by the home health agency. If the claim is
 564 submitted to a managed care organization, the treatment orders
 565 shall be signed in the time allowed under the provider
 566 agreement. The treatment orders shall ~~within 30 days after the~~
 567 ~~start of care and must~~ be reviewed, as frequently as the
 568 patient's illness requires, by the physician, physician
 569 assistant, or advanced registered nurse practitioner in
 570 consultation with the home health agency ~~personnel that provide~~
 571 ~~services to the patient.~~

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572 (3) A home health agency shall arrange for supervisory
 573 visits by a registered nurse to the home of a patient receiving
 574 home health aide services in accordance with the patient's
 575 direction, ~~and approval,~~ and agreement to pay the charge for the
 576 visits.

577 Section 6. Section 400.491, Florida Statutes, is amended
 578 to read:

579 400.491 Clinical records.--

580 (1) The home health agency must maintain for each patient
 581 who receives skilled care a clinical record that includes
 582 pertinent past and current medical, nursing, social and other
 583 therapeutic information, the treatment orders, and other such
 584 information as is necessary for the safe and adequate care of
 585 the patient. When home health services are terminated, the
 586 record must show the date and reason for termination. Such
 587 ~~records are considered patient records under s. 456.057, and~~
 588 must be maintained by the home health agency for 6 ~~5~~ years
 589 following termination of services. If a patient transfers to
 590 another home health agency, a copy of his or her record must be
 591 provided to the other home health agency upon request.

592 (2) If a licensed home health agency ceases to remain in
 593 business, it shall notify each patient whose clinical records it
 594 has in its possession that it is ceasing operations and shall
 595 give each patient 15 calendar days within which to retrieve his
 596 or her clinical record at a specified location within 2 hours'
 597 driving time of the patient's residence and, at a minimum,
 598 between the hours of 10 a.m. and 3 p.m. each day except
 599 Saturdays, Sundays, and legal holidays ~~The home health agency~~
 600 ~~must maintain for each client who receives nonskilled care a~~

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601 ~~service provision plan. Such records must be maintained by the~~
 602 ~~home health agency for 1 year following termination of services.~~

603 Section 7. Section 400.494, Florida Statutes, is amended
 604 to read:

605 400.494 Information about patients confidential.--

606 ~~(1)~~ Information about patients received by persons
 607 employed by, or providing services to, a home health agency or
 608 received by the licensing agency through reports or inspection
 609 shall be confidential and exempt from the provisions of s.
 610 119.07(1) and shall only ~~not~~ be disclosed to a any person, other
 611 than the patient, as permitted under the provisions of 45 C.F.R.
 612 ss. 160.102, 160.103, and 164, commonly referred to as HIPAA,
 613 except that clinical records described in ss. 381.004, 384.29,
 614 385.202, 392.65, 394.4615, 395.404, 397.501, and 760.40 shall be
 615 disclosed as authorized in those sections ~~without the written~~
 616 ~~consent of that patient or the patient's guardian.~~

617 ~~(2) This section does not apply to information lawfully~~
 618 ~~requested by the Medicaid Fraud Control Unit of the Department~~
 619 ~~of Legal Affairs.~~

620 Section 8. Section 400.495, Florida Statutes, is amended
 621 to read:

622 400.495 Notice of toll-free telephone number for central
 623 abuse hotline.--On or before the first day home health services
 624 are provided to a patient, any home health agency, ~~or~~ nurse
 625 registry, or personal care organization licensed under this part
 626 must inform the patient and his or her immediate family, if
 627 appropriate, of the right to report abusive, neglectful, or
 628 exploitative practices. The statewide toll-free telephone number
 629 for the central abuse hotline must be provided to patients in a

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630 manner that is clearly legible and must include the words: "To
 631 report abuse, neglect, or exploitation, please call toll-free
 632 ... (phone number) ." The Agency for Health Care
 633 Administration shall adopt rules that provide for 90 days'
 634 advance notice of a change in the toll-free telephone number and
 635 that outline due process procedures, as provided under chapter
 636 120, for home health agency personnel, ~~and~~ nurse registry
 637 personnel, and personal care organization personnel who are
 638 reported to the central abuse hotline. Home health agencies, ~~and~~
 639 nurse registries, and personal care organizations shall
 640 establish appropriate policies and procedures for providing such
 641 notice to patients.

642 Section 9. Subsections (5) and (8) of section 400.497,
 643 Florida Statutes, are amended to read:

644 400.497 Rules establishing minimum standards.--The agency
 645 shall adopt, publish, and enforce rules to implement this part,
 646 including, as applicable, ss. 400.506 and 400.5095 ~~400.509~~,
 647 which must provide reasonable and fair minimum standards
 648 relating to:

649 (5) The requirements for onsite and electronic
 650 accessibility of supervisory personnel of home health agencies
 651 and personal care organizations.

652 (8) Preparation of a comprehensive emergency management
 653 plan pursuant to s. 400.492.

654 (a) The Agency for Health Care Administration shall adopt
 655 rules establishing minimum criteria for the plan and plan
 656 updates, with the concurrence of the Department of Health and in
 657 consultation with the Department of Community Affairs.

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658 (b) The rules must address the requirements in s. 400.492.
 659 In addition, the rules shall provide for the maintenance of
 660 patient-specific medication lists that can accompany patients
 661 who are transported from their homes.

662 ~~(c) The plan is subject to review and approval by the~~
 663 ~~county health department. During its review, the county health~~
 664 ~~department shall ensure that the following agencies, at a~~
 665 ~~minimum, are given the opportunity to review the plan:~~

- 666 1. ~~The local emergency management agency.~~
- 667 2. ~~The Agency for Health Care Administration.~~
- 668 3. ~~The local chapter of the American Red Cross or other~~
 669 ~~lead sheltering agency.~~
- 670 4. ~~The district office of the Department of Children and~~
 671 ~~Family Services.~~

672
 673 ~~The county health department shall complete its review within 60~~
 674 ~~days after receipt of the plan and shall either approve the plan~~
 675 ~~or advise the home health agency of necessary revisions.~~

676 (c)~~(d)~~ For any home health agency that operates in more
 677 than one county, the Department of Health shall review the plan,
 678 after consulting with all of the county health departments, the
 679 agency, and all the local chapters of the American Red Cross or
 680 other lead sheltering agencies in the areas of operation for
 681 that particular home health agency. The Department of Health
 682 shall complete its review within 90 days after receipt of the
 683 plan and shall either approve the plan or advise the home health
 684 agency of necessary revisions. The Department of Health shall
 685 make every effort to avoid imposing differing requirements based
 686 on differences between counties on the home health agency.

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687 (d)~~(e)~~ The requirements in this subsection do not apply
 688 to:

689 1. A facility that is certified under chapter 651 and has
 690 a licensed home health agency used exclusively by residents of
 691 the facility; or

692 2. A retirement community that consists of residential
 693 units for independent living and either a licensed nursing home
 694 or an assisted living facility, and has a licensed home health
 695 agency used exclusively by the residents of the retirement
 696 community, provided the comprehensive emergency management plan
 697 for the facility or retirement community provides for continuous
 698 care of all residents with special needs during an emergency.

699 Section 10. Subsections (3), (5), (7), (8), (10), (13),
 700 (14), and (17) of section 400.506, Florida Statutes, are amended
 701 to read:

702 400.506 Licensure of nurse registries; requirements;
 703 penalties.--

704 (3) Each applicant for initial licensure, renewal, or
 705 change of ownership shall pay a license processing fee not to
 706 exceed \$1,500. An applicant shall also pay a survey fee not to
 707 exceed \$400 for each survey conducted. All funds paid shall be
 708 deposited in the Health Care Trust Fund. Application for license
 709 must be made to the Agency for Health Care Administration on
 710 forms furnished by it and must be accompanied by the appropriate
 711 licensure fee, as established by rule and not to exceed the cost
 712 of regulation under this part. ~~The licensure fee for nurse~~
 713 ~~registries may not exceed \$1,000 and must be deposited in the~~
 714 ~~Health Care Trust Fund.~~

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715 (5) A license issued for the operation of a nurse
 716 registry, unless sooner suspended or revoked, expires 2 years ±
 717 ~~year~~ after its date of issuance. Sixty days before the
 718 expiration date, an application for renewal must be submitted to
 719 the Agency for Health Care Administration on forms furnished by
 720 it. The Agency for Health Care Administration shall renew the
 721 license if the applicant has met the requirements of this
 722 section and applicable rules. A nurse registry against which a
 723 revocation or suspension proceeding is pending at the time of
 724 license renewal may be issued a conditional license effective
 725 until final disposition by the Agency for Health Care
 726 Administration of such proceedings. If judicial relief is sought
 727 from the final disposition, the court having jurisdiction may
 728 issue a conditional license for the duration of the judicial
 729 proceeding.

730 (7) A person that provides, offers, or advertises to the
 731 public ~~that it provides~~ any service for which licensure is
 732 required under this section must include in such advertisement
 733 the license number issued to it by the Agency for Health Care
 734 Administration. The agency shall assess a fine of not less than
 735 \$100 to any licensee who fails to include the license number
 736 when submitting the advertisement for publication, broadcast, or
 737 printing. The fine for a second offense is \$500.

738 (8)(a) It is unlawful for a person to provide, offer, or
 739 advertise to the public services as defined by rule without
 740 obtaining a valid license from the Agency for Health Care
 741 Administration. It is unlawful for any holder of a license to
 742 advertise or hold out to the public that he or she holds a
 743 license for other than that for which he or she actually holds a

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744 license. A person who violates this subsection is subject to
 745 injunctive proceedings under s. 400.515.

746 (b) A person who violates the provisions of paragraph (a)
 747 commits a felony of the third degree, punishable as provided in
 748 s. 775.082, s. 775.083, or s. 775.084. Any person who commits a
 749 second or subsequent violation commits a felony of the second
 750 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 751 775.084. Each day of continuing violation constitutes a separate
 752 offense.

753 (c) Any person who owns, operates, or maintains an
 754 unlicensed nurse registry and who, within 10 working days after
 755 receiving notification from the agency, fails to cease operation
 756 and apply for a license under this part commits a felony of the
 757 third degree, punishable as provided in s. 775.082, s. 775.083,
 758 or s. 775.084. Each day of continued operation is a separate
 759 offense.

760 (d) Any nurse registry that fails to cease operation after
 761 agency notification may be fined \$500 for each day of
 762 noncompliance.

763 (10)(a) A nurse registry may refer for contract in private
 764 residences registered nurses and licensed practical nurses
 765 registered and licensed under part I of chapter 464, certified
 766 nursing assistants certified under part II of chapter 464, home
 767 health aides who present documented proof of successful
 768 completion of the training required by rule of the agency, and
 769 companions or homemakers for the purposes of providing those
 770 services authorized under s. 400.5095 ~~400.509(1)~~. Each person
 771 referred by a nurse registry must provide current documentation
 772 that he or she is free from communicable diseases.

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773 (b) ~~A certified nursing assistant or home health aide may~~
774 ~~be referred for a contract to provide care to a patient in his~~
775 ~~or her home only if that patient is under a physician's care. A~~
776 certified nursing assistant or home health aide referred for
777 contract in a private residence shall be limited to assisting a
778 patient with bathing, dressing, toileting, grooming, eating,
779 physical transfer, and those normal daily routines the patient
780 could perform for himself or herself were he or she physically
781 capable. A certified nursing assistant or home health aide may
782 not provide medical or other health care services that require
783 specialized training and that may be performed only by licensed
784 health care professionals. ~~The nurse registry shall obtain the~~
785 ~~name and address of the attending physician and send written~~
786 ~~notification to the physician within 48 hours after a contract~~
787 ~~is concluded that a certified nursing assistant or home health~~
788 ~~aide will be providing care for that patient.~~

789 (c) A nurse registry shall arrange for assessment visits
790 by a registered nurse to the home of a patient receiving home
791 health aide services in accordance with the patient's direction,
792 approval, and agreement to pay for the visits ~~A registered nurse~~
793 ~~shall make monthly visits to the patient's home to assess the~~
794 ~~patient's condition and quality of care being provided by the~~
795 ~~certified nursing assistant or home health aide. Any condition~~
796 ~~which, in the professional judgment of the nurse, requires~~
797 ~~further medical attention shall be reported to the patient~~
798 ~~attending physician and the nurse registry. The assessment shall~~
799 ~~become a part of the patient's file with the nurse registry and~~
800 ~~may be reviewed by the agency during their survey procedure.~~

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801 (13) Each nurse registry must comply with the procedures
 802 set forth in s. 400.512 for maintaining records of the work
 803 ~~employment~~ history of all persons referred for contract and is
 804 subject to the standards and conditions set forth in that
 805 section. However, an initial screening may not be required for
 806 persons who have been continuously registered with the nurse
 807 registry since October 1, 2000 ~~September 30, 1990~~.

808 (14) The nurse registry must maintain the application on
 809 file, and that file must be open to the inspection of the Agency
 810 for Health Care Administration. The nurse registry must maintain
 811 on file the name and address of the patient or client to whom
 812 ~~the nurse or other~~ nurse registry personnel is sent for contract
 813 and the amount of the fee received by the nurse registry. A
 814 nurse registry must maintain the file that includes the
 815 application and other applicable documentation for 3 years after
 816 the date of the last file entry of client-related information.

817 (17) All persons referred for contract in private
 818 residences by a nurse registry must comply with the following
 819 requirements for a plan of treatment:

820 (a) When, in accordance with the privileges and
 821 restrictions imposed upon a nurse under part I of chapter 464,
 822 the delivery of care to a patient is under the direction or
 823 supervision of a physician or when a physician is responsible
 824 for the medical care of the patient, a medical plan of treatment
 825 must be established for each patient receiving care or treatment
 826 provided by a licensed nurse in the home. The original medical
 827 plan of treatment must be timely signed by the physician,
 828 physician assistant, or advanced registered nurse practitioner
 829 acting within his or her respective scope of practice and

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830 reviewed ~~by him or her~~ in consultation with the licensed nurse
 831 at least every 2 months. Any additional order or change in
 832 orders must be obtained from the physician, physician assistant,
 833 or advanced registered nurse practitioner and reduced to writing
 834 and timely signed by the physician, physician assistant, or
 835 advanced registered nurse practitioner. The delivery of care
 836 under a medical plan of treatment must be substantiated by the
 837 appropriate nursing notes or documentation made by the nurse in
 838 compliance with nursing practices established under part I of
 839 chapter 464.

840 (b) Whenever a medical plan of treatment is established
 841 for a patient, the initial medical plan of treatment, any
 842 amendment to the plan, additional order or change in orders, and
 843 copy of nursing notes must be filed in the office of the nurse
 844 registry.

845 Section 11. Section 400.5095, Florida Statutes, is created
 846 to read:

847 400.5095 Licensure of personal care organizations;
 848 requirements; penalties.--

849 (1) An organization that provides personal care services
 850 and does not provide a skilled home health service must be
 851 licensed as a personal care organization. Each operational site
 852 of the personal care organization must be licensed, unless there
 853 is more than one site within a county. If there is more than one
 854 site within a county, only one license is required in that
 855 county. Each operational site must be listed on the license.

856 (2) Each applicant for licensure must comply with the
 857 following requirements:

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858 (a) Upon receipt of a completed, signed, and dated
859 application, the agency shall require background screening, in
860 accordance with the level 2 screening standards set forth in
861 chapter 435, of the managing employee or other similarly titled
862 individual who is responsible for the daily operation of the
863 personal care organization and of the financial officer or other
864 similarly titled individual who is responsible for the financial
865 operation of the personal care organization, including billings
866 for patient care and services. The applicant shall comply with
867 the procedures for level 2 screening provided in chapter 435.

868 (b) The agency may require background screening of any
869 other individual who is an applicant if the agency has probable
870 cause to believe that he or she has been convicted of a crime or
871 has committed any other offense prohibited under the level 2
872 standards set forth in chapter 435.

873 (c) Proof of compliance with the level 2 screening
874 standards of chapter 435 for any application that has been
875 submitted within the previous 5 years in compliance with any
876 other health care or assisted living licensure requirements of
877 this state is acceptable in fulfillment of the requirements of
878 paragraph (a).

879 (d) A provisional license may be granted to an applicant
880 after each individual subject to background screening as
881 required by this section has met the screening standards of the
882 Department of Law Enforcement but before the agency has received
883 the results of the background check by the Federal Bureau of
884 Investigation. A standard license may be granted to the
885 applicant after the agency receives a report from the Federal
886 Bureau of Investigation background confirming that each

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887 individual subject to the requirements of this section has met
888 all standards, or upon the granting of a disqualification
889 exemption by the agency pursuant to s. 435.07. Any other person
890 who is required to undergo level 2 screening may serve in his or
891 her capacity pending the agency's receipt of the report from the
892 Federal Bureau of Investigation. However, such person may not
893 continue to serve if the report indicates any violation of
894 background screening standards and a disqualification exemption
895 has not been requested of and granted by the agency as set forth
896 in chapter 435.

897 (e) Each applicant shall submit to the agency with its
898 application a description and explanation of any exclusions,
899 permanent suspensions, or terminations of the applicant from the
900 Medicare or Medicaid programs. Proof of compliance with the
901 requirements for disclosure of ownership and control interests
902 under the Medicaid or Medicare programs may be accepted in lieu
903 of this requirement.

904 (f) Each applicant shall submit to the agency a
905 description and explanation of any conviction of an offense
906 prohibited under the level 2 screening standards of chapter 435
907 by a member of the applicant's board of directors, by its
908 officers, or by any individual that owns 5 percent or more of
909 the applicant. This requirement does not apply to a director of
910 a not-for-profit corporation or organization if the director
911 serves solely in a voluntary capacity, does not regularly take
912 part in the day-to-day operational decisions of the corporation
913 or organization, receives no remuneration for his or her
914 services, and has no financial interest or any family members
915 with a financial interest in the corporation or organization,

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916 provided the director and the not-for-profit corporation or
 917 organization include in the application a statement affirming
 918 that the director's relationship to the corporation or
 919 organization satisfies the requirements of this paragraph.

920 (g) A license may not be granted to an applicant if the
 921 applicant or managing employee has been found guilty of,
 922 regardless of adjudication, or has entered a plea of nolo
 923 contendere or guilty to, any offense prohibited under the level
 924 2 screening standards in chapter 435, unless an exemption from
 925 disqualification has been granted by the agency as provided in
 926 s. 435.07.

927 (h) The agency may deny or revoke licensure if the
 928 applicant has been or is currently excluded, suspended, or
 929 terminated from, or has involuntarily withdrawn from,
 930 participation in this state's Medicaid program, the Medicaid
 931 program of any other state, the Medicare program, or any other
 932 governmental or private health care or health insurance program.

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

935 (3) The agency may deny or revoke licensure if the
 936 applicant has falsely represented a material fact, or has
 937 omitted any material fact, from the application required by this
 938 section.

939 (4) Application for a license must be made to the agency
 940 on forms furnished by the agency and must be accompanied by the
 941 appropriate licensure fee, as established by agency rule, not to
 942 exceed the cost of regulation under this part. The licensure fee
 943 may not exceed \$650 and must be deposited in the Health Care
 944 Trust Fund.

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945 (5) The agency may deny, revoke, or suspend a license or
 946 impose an administrative fine in the manner provided in chapter
 947 120 against a personal care organization that:

948 (a) Fails to comply with this section or applicable rules;
 949 or

950 (b) Commits an intentional, reckless, or negligent act
 951 that materially affects the health or safety of a person
 952 receiving services.

953 (6) A license issued for the operation of a personal care
 954 organization expires 1 year after its date of issuance, unless
 955 sooner suspended or revoked. Sixty days before the expiration
 956 date, an application for renewal shall be submitted to the
 957 agency on forms furnished by the agency. The agency shall renew
 958 the license if the applicant has met the requirements of this
 959 section and applicable rules. A personal care organization
 960 against which a revocation or suspension proceeding is pending
 961 at the time of license renewal may be issued a conditional
 962 license effective until final disposition by the agency of such
 963 proceedings. If judicial relief is sought from the final
 964 disposition, the court having jurisdiction may issue a
 965 conditional license for the duration of the judicial proceeding.

966 (7) The agency may institute injunctive proceedings under
 967 s. 400.515.

968 (8)(a) It is unlawful for a person to provide, offer, or
 969 advertise to the public personal care services without obtaining
 970 a valid license from the agency. It is unlawful for any holder
 971 of a license to advertise or hold out to the public that he or
 972 she holds a license for any purpose other than that for which he

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973 or she actually holds a license. A person who violates this
974 paragraph is subject to injunctive proceedings under s. 400.515

975 (b) A personal care organization that offers or advertises
976 to the public services for which licensure is required under
977 this part shall include in the advertisement the license number
978 issued to the organization by the agency. The agency shall
979 assess a fine of not less than \$100 to any licensee that fails
980 to include the license number when submitting the advertisement
981 for publication, broadcast, or printing. The fine for a second
982 or subsequent offense shall be \$500. The holder of a license
983 issued under this part may not advertise or indicate to the
984 public that the holder holds any license other than the one it
985 has been issued.

986 (c) The operation or maintenance of an unlicensed personal
987 care organization or the performance of any personal care
988 services in violation of this part is declared a nuisance,
989 inimical to the public health, welfare, and safety. The agency,
990 or any state attorney in the name of the people of the state,
991 may, in addition to other remedies provided in this part, bring
992 an action for an injunction to restrain such violation or to
993 enjoin the future operation or maintenance of any such personal
994 care organization's personal care services in violation of this
995 part until compliance with this part or the rules adopted under
996 this part has been demonstrated to the satisfaction of the
997 agency.

998 (d) A violation of paragraph (a) is a deceptive and unfair
999 trade practice and constitutes a violation of the Florida
1000 Deceptive and Unfair Trade Practices Act under part II of
1001 chapter 501.

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1002 (e) A person who violates the provisions of paragraph (a)
 1003 commits a felony of the third degree, punishable as provided in
 1004 s. 775.082, s. 775.083, or s. 775.084. Any person who commits a
 1005 second or subsequent violation commits a felony of the second
 1006 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 1007 775.084. Each day of continuing violation constitutes a separate
 1008 offense.

1009 (f) Any person who owns, operates, or maintains an
 1010 unlicensed personal care organization and who, within 10 working
 1011 days after receiving notification from the agency, fails to
 1012 cease operation and apply for a license under this part commits
 1013 a felony of the third degree, punishable as provided in s.
 1014 775.082, s. 775.083, or s. 775.084. Each day of continued
 1015 operation is a separate offense.

1016 (g) Any personal care organization that fails to cease
 1017 operation after agency notification may be fined \$500 for each
 1018 day of noncompliance.

1019 (9) Any duly authorized officer or employee of the agency
 1020 may make any inspections and investigations necessary to respond
 1021 to complaints or to determine the state of compliance with this
 1022 section and applicable rules.

1023 (a) If, in responding to a complaint, an agent or employee
 1024 of the agency has reason to believe that a crime has been
 1025 committed, he or she shall notify the appropriate law
 1026 enforcement agency.

1027 (b) If, in responding to a complaint, an agent or employee
 1028 of the agency has reason to believe that abuse, neglect, or
 1029 exploitation has occurred, according to the definitions in
 1030 chapter 415, he or she shall file a report under said chapter.

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1031 (10)(a) A personal care organization may provide personal
 1032 care services in the patient's place of residence through
 1033 certified nursing assistants or home health aides who present
 1034 documented proof of successful completion of the training
 1035 required by rule of the agency. Each certified nursing
 1036 assistant, home health aide, homemaker, or companion shall
 1037 provide current documentation that he or she is free from
 1038 communicable diseases.

1039 (b) Certified nursing assistant or home health aide
 1040 services shall be limited to assisting a patient with bathing,
 1041 dressing, toileting, grooming, eating, physical transfer, and
 1042 those normal daily routines the patient could perform for
 1043 himself or herself were he or she physically capable. A
 1044 certified nursing assistant or home health aide may not provide
 1045 medical or other health care services that require specialized
 1046 training and that may be performed only by a licensed health
 1047 care professional. Providing services beyond the scope
 1048 authorized under this paragraph constitutes the unauthorized
 1049 practice of medicine or a violation of the Nurse Practice Act
 1050 and is punishable as provided under chapter 458, chapter 459, or
 1051 part I of chapter 464.

1052 (c) A personal care organization shall arrange for
 1053 supervisory visits by a registered nurse to the home of a
 1054 patient receiving personal care services in accordance with the
 1055 patient's direction and approval.

1056 (11) Each personal care organization shall require every
 1057 certified nursing assistant or home health aide to complete an
 1058 application form providing:

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1059 (a) The name, address, date of birth, and social security
 1060 number of the applicant.

1061 (b) The educational background and employment history of
 1062 the applicant.

1063 (c) The number and date of an applicable certification.

1064 (d) When appropriate, information concerning the renewal
 1065 of the applicable certification.

1066 (12) Each personal care organization shall comply with the
 1067 procedures set forth in s. 400.512 for maintaining records of
 1068 the employment history of all certified nursing assistants and
 1069 home health aides that provide services to its patients and
 1070 clients. Each personal care organization is subject to the
 1071 standards and conditions set forth in said section.

1072 (13) The personal care organization shall maintain
 1073 applications on file, which file must be open to inspection by
 1074 the agency. The personal care organization shall maintain on
 1075 file the name and address of the patients or clients to whom its
 1076 personnel provide services and shall maintain for 3 years after
 1077 the date of the last entry of patient or client-related
 1078 information the file that includes the application and any other
 1079 applicable documentation.

1080 (14) A personal care organization must provide the
 1081 following staff training:

1082 (a) Upon beginning employment with the personal care
 1083 organization, each employee must receive basic written
 1084 information about interacting with participants who have
 1085 Alzheimer's disease or dementia-related disorders.

1086 (b) In addition to the information provided under
 1087 paragraph (a), newly hired personal care organization personnel

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1088 who will be providing direct care to patients must complete 2
 1089 hours of training in Alzheimer's disease and dementia-related
 1090 disorders within 9 months after beginning employment with the
 1091 personal care organization. This training shall include, but is
 1092 not limited to, an overview of dementia, a demonstration of
 1093 basic skills in communicating with persons who have dementia,
 1094 the management of problem behaviors, information about promoting
 1095 the client's independence in activities of daily living, and
 1096 instruction in skills for working with families and caregivers.

1097 (c) For certified nursing assistants, the required 2 hours
 1098 of training shall be part of the total hours of training
 1099 required annually.

1100 (d) The Department of Elderly Affairs, or its designee,
 1101 shall approve the required training. The department shall
 1102 consider for approval training offered in a variety of formats
 1103 and shall keep a list of current providers who are approved to
 1104 provide the 2-hour training. The department shall adopt rules to
 1105 establish standards for the employees who are subject to this
 1106 training, for the trainers, and for the training required in
 1107 this section.

1108 (e) Upon completing the training required under this
 1109 subsection, the employee shall be issued a certificate that
 1110 states that the training required under this section has been
 1111 received. The certificate shall be dated and signed by the
 1112 training provider. The certificate is evidence of completion of
 1113 the training and the employee is not required to repeat the
 1114 training if the employee changes employment to a different
 1115 personal care organization.

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1116 (f) An employee who is hired on or after July 1, 2005,
1117 must complete the training required by this section.

1118 (g) A licensed personal care organization whose
1119 unduplicated census during the most recent calendar year was
1120 comprised of at least 90 percent of individuals aged 21 years or
1121 younger at the date of admission is exempt from the training
1122 requirements in this section.

1123 (h) A personal care organization licensed under this part
1124 which claims that it provides special care for persons who have
1125 Alzheimer's disease or other related disorders must disclose in
1126 its advertisements or in a separate document those services that
1127 distinguish the care as being especially applicable to, or
1128 suitable for, such persons. The personal care organization must
1129 give a copy of all such advertisements or a copy of the document
1130 to each person who requests information about the personal care
1131 organization and must maintain a copy of all such advertisements
1132 and documents in its records. The agency shall examine all such
1133 advertisements and documents in the personal care organization's
1134 records as part of the license renewal procedure.

1135 (15) Personal care organizations shall assist persons who
1136 would need assistance and sheltering during evacuations because
1137 of physical, mental, or sensory disabilities in registering with
1138 the appropriate local emergency management agency pursuant to s.
1139 252.355.

1140 (16) Each personal care organization shall prepare and
1141 maintain a comprehensive emergency management plan that is
1142 consistent with the criteria in this subsection and with the
1143 local special needs plan. The plan shall be updated annually.
1144 The plan shall specify how the personal care organization shall

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1145 facilitate the provision of continuous care to its patients who
 1146 are registered pursuant to s. 252.355 during an emergency that
 1147 interrupts the provision of care or services in private
 1148 residencies.

1149 (a) Certified nursing assistants and home health aides who
 1150 care for persons registered pursuant to s. 252.355 must include
 1151 in the patient record a description of how care will be
 1152 continued during a disaster or emergency that interrupts the
 1153 provision of care in the patient's home. The personal care
 1154 organization shall ensure that continuous care is provided.

1155 (b) Each personal care organization shall maintain a
 1156 current prioritized list of patients in private residences who
 1157 are registered pursuant to s. 252.355 and who need continued
 1158 services during an emergency. This list shall indicate, for each
 1159 patient, whether or not the patient or client is to be
 1160 transported to a special needs shelter. Personal care
 1161 organizations shall make this list available to county health
 1162 departments and to local emergency management agencies upon
 1163 request.

1164 (c) Each certified nursing assistant or home health aide
 1165 who is caring for a patient who is registered pursuant to s.
 1166 252.355 shall provide a list of the patient's medication and
 1167 equipment needs to the personal care organization, which shall
 1168 make this information available to county health departments and
 1169 to local emergency management agencies upon request.

1170 (d) Certified nursing assistants and home health aides
 1171 shall not be required to continue to provide care to patients in
 1172 emergency situations that are beyond the person's control and
 1173 that make it impossible to provide services, such as when roads

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1174 are impassable or when patients do not go to the location
 1175 specified in their patient records.

1176 (e) The agency shall adopt rules establishing minimum
 1177 criteria for the comprehensive emergency management plan and
 1178 plan updates required by this subsection, with the concurrence
 1179 of the Department of Health and in consultation with the
 1180 Department of Community Affairs.

1181 (17) A personal care organization shall comply with the
 1182 notice requirements of s. 400.495, relating to abuse reporting.

1183 (18) In addition to any other penalties imposed pursuant
 1184 to this part, the agency may assess costs related to an
 1185 investigation that results in a successful prosecution,
 1186 excluding costs associated with an attorney's time. If the
 1187 agency imposes such an assessment and the assessment is not paid
 1188 and, if challenged, is not the subject of a pending appeal,
 1189 prior to the renewal of the license, the license shall not be
 1190 issued until the assessment is paid or arrangements for payment
 1191 of the assessment are made.

1192 (19) The agency shall adopt rules to implement this
 1193 section.

1194 Section 12. Section 400.512, Florida Statutes, is amended
 1195 to read:

1196 400.512 Screening of home health agency personnel; nurse
 1197 registry personnel; and personal care organization personnel
 1198 ~~companions and homemakers.~~--The agency shall require employment
 1199 or contractor screening as provided in chapter 435, using the
 1200 level 1 standards for screening set forth in that chapter, for
 1201 home health agency personnel; persons referred for employment by
 1202 nurse registries; and personal care organization personnel

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1203 ~~persons employed by companion or homemaker services registered~~
 1204 ~~under s. 400.509.~~

1205 (1)(a) The Agency for Health Care Administration may, upon
 1206 request, grant exemptions from disqualification from employment
 1207 or contracting under this section as provided in s. 435.07,
 1208 except for health care practitioners licensed by the Department
 1209 of Health or a regulatory board within that department.

1210 (b) The appropriate regulatory board within the Department
 1211 of Health, or that department itself when there is no board,
 1212 may, upon request of the licensed health care practitioner,
 1213 grant exemptions from disqualification from employment or
 1214 contracting under this section as provided in s. 435.07.

1215 (2) The administrator of each home health agency, the
 1216 managing employee of each nurse registry, and the managing
 1217 employee of each personal care organization ~~companion or~~
 1218 ~~homemaker service registered under s. 400.509~~ must sign an
 1219 affidavit annually, under penalty of perjury, stating that all
 1220 personnel hired or, ~~contracted with, or registered~~ on or after
 1221 October 1, 2000 ~~October 1, 1994~~, who enter the home of a patient
 1222 or client in their service capacity have been screened and that
 1223 its remaining personnel have worked for the home health agency
 1224 or personal care organization ~~registrant~~ continuously since
 1225 before October 1, 2000 ~~October 1, 1994~~.

1226 (3) As a prerequisite to operating as a home health
 1227 agency, nurse registry, or personal care organization ~~companion~~
 1228 ~~or homemaker service under s. 400.509~~, the administrator or
 1229 managing employee, respectively, must submit to the agency his
 1230 or her name and any other information necessary to conduct a
 1231 complete screening according to this section. The agency shall

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1232 submit the information to the Department of Law Enforcement for
 1233 state processing. The agency shall review the record of the
 1234 administrator or manager with respect to the offenses specified
 1235 in this section and shall notify the owner of its findings. If
 1236 disposition information is missing on a criminal record, the
 1237 administrator or manager, upon request of the agency, must
 1238 obtain and supply within 30 days the missing disposition
 1239 information to the agency. Failure to supply missing information
 1240 within 30 days or to show reasonable efforts to obtain such
 1241 information will result in automatic disqualification.

1242 (4) Proof of compliance with the screening requirements of
 1243 chapter 435 shall be accepted in lieu of the requirements of
 1244 this section if the person has been continuously employed or
 1245 contracted with ~~registered~~ without a breach in service that
 1246 exceeds 180 days, the proof of compliance is not more than 2
 1247 years old, and the person has been screened by the Department of
 1248 Law Enforcement. A home health agency, nurse registry, or
 1249 personal care organization ~~companion or homemaker service~~
 1250 ~~registered under s. 400.509~~ shall directly provide proof of
 1251 compliance to another home health agency, nurse registry, or
 1252 personal care organization ~~companion or homemaker service~~
 1253 ~~registered under s. 400.509~~. The recipient home health agency,
 1254 nurse registry, or personal care organization ~~companion or~~
 1255 ~~homemaker service registered under s. 400.509~~ may not accept any
 1256 proof of compliance directly from the person who requires
 1257 screening. Proof of compliance with the screening requirements
 1258 of this section shall be provided upon request to the person
 1259 screened by the home health agencies, + nurse registries, + or

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1260 personal care organizations ~~companion or homemaker services~~
 1261 ~~registered under s. 400.509.~~

1262 (5) There is no monetary liability on the part of, and no
 1263 cause of action for damages arises against, a licensed home
 1264 health agency, licensed nurse registry, or personal care
 1265 organization ~~companion or homemaker service registered under s.~~
 1266 ~~400.509,~~ that, upon notice that the employee or contractor has
 1267 been found guilty of, regardless of adjudication, or entered a
 1268 plea of nolo contendere or guilty to, any offense prohibited
 1269 under s. 435.03 or under any similar statute of another
 1270 jurisdiction, terminates the employee or contractor, whether or
 1271 not the employee or contractor has filed for an exemption with
 1272 the agency in accordance with chapter 435 and whether or not the
 1273 time for filing has expired.

1274 (6) The costs of processing the statewide correspondence
 1275 criminal records checks must be borne by the home health
 1276 agency, the nurse registry, or the personal care organization
 1277 ~~companion or homemaker service registered under s. 400.509,~~ or
 1278 by the person being screened, at the discretion of the home
 1279 health agency, nurse registry, or personal care organization ~~s.~~
 1280 ~~400.509~~ registrant.

1281 (7)(a) It is a misdemeanor of the first degree, punishable
 1282 under s. 775.082 or s. 775.083, for any person willfully,
 1283 knowingly, or intentionally to:

- 1284 1. Fail, by false statement, misrepresentation,
 1285 impersonation, or other fraudulent means, to disclose in any
 1286 application for voluntary or paid employment a material fact
 1287 used in making a determination as to such person's
 1288 qualifications to be an employee under this section;

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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1289 2. Operate or attempt to operate an entity licensed or
 1290 registered under this part with persons who do not meet the
 1291 minimum standards for good moral character as contained in this
 1292 section; or

1293 3. Use information from the criminal records obtained
 1294 under this section for any purpose other than screening that
 1295 person for employment as specified in this section or release
 1296 such information to any other person for any purpose other than
 1297 screening for employment under this section.

1298 (b) It is a felony of the third degree, punishable under
 1299 s. 775.082, s. 775.083, or s. 775.084, for any person willfully,
 1300 knowingly, or intentionally to use information from the juvenile
 1301 records of a person obtained under this section for any purpose
 1302 other than screening for employment under this section.

1303 Section 13. Section 400.515, Florida Statutes, is amended
 1304 to read:

1305 400.515 Injunction proceedings.--In addition to the other
 1306 powers provided under this chapter, the Agency for Health Care
 1307 Administration may institute injunction proceedings in a court
 1308 of competent jurisdiction to restrain or prevent the
 1309 establishment or operation of a home health agency, nurse
 1310 registry, or personal care organization that does not have a
 1311 license or is in violation of any provision of this part or of
 1312 any rules adopted pursuant to this part. The agency may also
 1313 institute injunction proceedings in a court of competent
 1314 jurisdiction when violation of this part or of applicable rules
 1315 constitutes an emergency affecting the immediate health and
 1316 safety of a patient or client.

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1317 Section 14. Subsection (7) of section 381.0303, Florida
 1318 Statutes, is amended to read:

1319 381.0303 Health practitioner recruitment for special needs
 1320 shelters.--

1321 (7) REVIEW OF EMERGENCY MANAGEMENT PLANS.--The submission
 1322 of emergency management plans to county health departments by
 1323 home health agencies pursuant to s. 400.497(8)(c) ~~and (d)~~ and by
 1324 nurse registries pursuant to s. 400.506(16)(e) and by hospice
 1325 programs pursuant to s. 400.610(1)(b) is conditional upon the
 1326 receipt of an appropriation by the department to establish
 1327 medical services disaster coordinator positions in county health
 1328 departments unless the secretary of the department and a local
 1329 county commission jointly determine to require such plans to be
 1330 submitted based on a determination that there is a special need
 1331 to protect public health in the local area during an emergency.

1332 Section 15. Section 400.509, Florida Statutes, is
 1333 repealed.

1334 Section 16. This act shall take effect October 1, 2004.