

By Senator Saunders

37-691-04

1 A bill to be entitled
2 An act relating to health care; amending s.
3 400.461, F.S.; revising the purpose of part IV
4 of ch. 400, F.S., to include the licensure of
5 nurse registries and personal care
6 organizations; amending s. 400.462, F.S.;
7 revising definitions; defining the terms
8 "advanced registered nurse practitioner,"
9 "direct employee," "personal care
10 organization," and "physician assistant" for
11 purposes of part IV of ch. 400, F.S.; amending
12 s. 400.464, F.S., relating to licensure of home
13 health agencies; revising the licensure period;
14 deleting references to registration regulation;
15 revising and providing additional
16 administrative, civil, and criminal penalties,
17 sanctions, and fines; clarifying provisions
18 exempting from licensure requirements an
19 individual who acts alone; amending s. 400.471,
20 F.S.; revising requirements for license
21 application by a home health agency;
22 authorizing the Agency for Health Care
23 Administration to revoke a license under
24 certain circumstances; authorizing
25 administrative fines; requiring a license
26 processing fee; amending s. 400.487, F.S.;
27 revising requirements for home health agency
28 service agreements and treatment orders;
29 amending s. 400.491, F.S., relating to clinical
30 records; revising the ownership of patient
31 records generated by a home health agency;

1 changing the timeframe for a home health agency
2 to retain patient records; providing for the
3 disposition of patient records when a home
4 health agency ceases business; deleting a
5 requirement for a service provision plan
6 pertaining to nonskilled care; deleting
7 requirements for maintaining such records;
8 amending s. 400.494, F.S.; providing for the
9 continued confidentiality of patient
10 information in compliance with federal law;
11 providing for disclosure in accordance with
12 certain specified state laws; deleting a
13 requirement for written consent of the patient
14 or the patient's guardian for disclosure of
15 confidential patient information; deleting an
16 exemption provided for the Medicaid Fraud
17 Control Unit of the Department of Legal
18 Affairs; amending s. 400.495, F.S., relating to
19 the toll-free telephone number for the central
20 abuse hotline; adding references to personal
21 care organizations to conform to changes made
22 by the act; amending s. 400.497, F.S., relating
23 to rulemaking by the Agency for Health Care
24 Administration; authorizing certain rules
25 concerning personal care organizations;
26 deleting the authority of county health
27 departments to review and approve certain
28 comprehensive emergency management plans;
29 amending s. 400.506, F.S.; revising
30 requirements governing nurse registries;
31 increasing license fee; increasing the period

1 of licensure; authorizing administrative
2 penalties; revising criminal penalties and
3 sanctions; revising certain requirements
4 pertaining to health care professionals that
5 provide services on behalf of a nurse registry;
6 repealing s. 400.509, F.S., relating to the
7 regulation of certain providers of companion
8 services and homemaker services exempted from
9 licensure under ch. 400, F.S.; creating s.
10 400.5095, F.S.; providing licensure
11 requirements and penalties for personal care
12 organizations; providing screening requirements
13 for certain employees and officers of a
14 personal care organization; providing license
15 fees; authorizing the agency to impose
16 administrative fines; authorizing the agency to
17 institute injunctive proceedings; providing
18 penalties; providing requirements for employees
19 of a personal care organization; requiring
20 personal care organizations to prepare and
21 maintain an emergency management plan;
22 requiring the agency to adopt rules governing
23 emergency management plans and governing the
24 licensure of personal care organizations;
25 amending s. 400.512, F.S., relating to
26 employment screening; providing requirements
27 for the screening of employees of personal care
28 organizations; deleting references to companion
29 service personnel and homemaker service
30 personnel to conform to changes made by the
31 act; amending s. 400.515, F.S.; providing

1 additional circumstances under which the agency
2 may petition for an injunction; amending s.
3 381.0303, F.S., relating to emergency
4 management plans; conforming a cross-reference
5 to changes made by the act; providing an
6 effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Subsection (2) of section 400.461, Florida
11 Statutes, is amended to read:

12 400.461 Short title; purpose.--

13 (2) The purpose of this part is to provide for the
14 licensure of every home health agency, nurse registry, and
15 personal care organization and to provide for the development,
16 establishment, and enforcement of basic standards that will
17 ensure the safe and adequate care of persons receiving health
18 services in their own homes.

19 Section 2. Section 400.462, Florida Statutes, is
20 amended to read:

21 400.462 Definitions.--As used in this part, the term:

22 (1) "Administrator" means a direct employee, as
23 defined in subsection (8)~~of the home health agency or a~~
24 ~~related organization, or of a management company that has a~~
25 ~~contract to manage the home health agency, to whom the~~
26 ~~governing body has delegated the responsibility for day-to-day~~
27 ~~administration of the home health agency.~~ The administrator
28 must be a licensed physician, physician assistant, or
29 registered nurse licensed to practice in this state or an
30 individual having at least 1 year of supervisory or
31 administrative experience in home health care or in a facility

1 licensed under chapter 395 or under part II or part III of
2 this chapter. An administrator may manage a maximum of five
3 licensed home health agencies located within one agency
4 service district or within an immediately contiguous county.
5 If the home health agency is licensed under this chapter and
6 is part of a retirement community that provides multiple
7 levels of care, an employee of the retirement community may
8 administer the home health agency and up to a maximum of four
9 entities licensed under this chapter that are owned, operated,
10 or managed by the same corporate entity. An administrator
11 shall designate, in writing, for each licensed entity, a
12 qualified alternate administrator to serve during absences.

13 (2) "Advanced registered nurse practitioner" means a
14 person licensed in this state to practice professional nursing
15 and certified in advanced or specialized nursing practice, as
16 defined in s. 464.003.

17 (3)~~(2)~~ "Agency" means the Agency for Health Care
18 Administration.

19 (4)~~(3)~~ "Certified nursing assistant" means any person
20 who has been issued a certificate under part II of chapter
21 464. The licensed home health agency,~~or licensed nurse~~
22 registry, or personal care organization shall ensure that the
23 certified nursing assistant or home health aide employed by or
24 under contract with the home health agency,~~or licensed nurse~~
25 registry, or personal care organization is adequately trained
26 to perform the tasks of a home health aide in the home
27 setting.

28 (5)~~(4)~~ "Client" means an elderly, handicapped, or
29 convalescent individual who receives ~~personal care services,~~
30 ~~companion services, or homemaker services~~ in the individual's
31 home or place of residence.

1 (6)~~(5)~~ "Companion" or "sitter" means a person who
2 spends time with ~~cares for~~ an elderly, handicapped, or
3 convalescent individual and accompanies such individual on
4 trips and outings and may prepare and serve meals to such
5 individual. A companion may not provide hands-on personal care
6 to a client.

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

9 (8) "Direct employee" means an employee for whom one
10 of the following entities pays withholding taxes: a home
11 health agency; a management company that has a contract to
12 manage the home health agency on a day-to-day basis; or an
13 employee leasing company that has a contract with the home
14 health agency to handle the payroll and payroll taxes for the
15 home health agency.

16 (9)~~(7)~~ "Director of nursing" means a registered nurse
17 who is a ~~and~~ direct employee, as defined in subsection (8), of
18 the agency and ~~or related business entity~~ who is a graduate of
19 an approved school of nursing and is licensed in this state;
20 who has at least 1 year of supervisory experience as a
21 registered nurse in a licensed home health agency, a facility
22 licensed under chapter 395, or a facility licensed under part
23 II or part III of this chapter; and who is responsible for
24 overseeing the professional nursing and home health aid
25 delivery of services of the agency. A director of nursing ~~An~~
26 ~~employee~~ may be the director of nursing of a maximum of five
27 licensed home health agencies operated by a related business
28 entity and located within one agency service district or
29 within an immediately contiguous county. If the home health
30 agency is licensed under this chapter and is part of a
31 retirement community that provides multiple levels of care, an

1 employee of the retirement community may serve as the director
2 of nursing of the home health agency and of up to four
3 entities licensed under this chapter which are owned,
4 operated, or managed by the same corporate entity. ~~A director~~
5 ~~of nursing shall designate, in writing, for each licensed~~
6 ~~entity, a qualified alternate registered nurse to serve during~~
7 ~~the absence of the director of nursing.~~

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

10 (11)~~(9)~~ "Home health agency personnel" means persons
11 who are employed by or under contract with a home health
12 agency and enter the home or place of residence of patients at
13 any time in the course of their employment or contract.

14 (12)~~(10)~~ "Home health services" means health and
15 medical services and medical supplies furnished by an
16 organization to an individual in the individual's home or
17 place of residence. The term includes organizations that
18 provide one or more of the following:

19 (a) Nursing care.

20 (b) Physical, occupational, respiratory, or speech
21 therapy.

22 (c) Home health aide services.

23 (d) Dietetics and nutrition practice and nutrition
24 counseling.

25 (e) Medical supplies, restricted to drugs and
26 biologicals prescribed by a physician.

27 (13)~~(11)~~ "Home health aide" means a person who is
28 trained or qualified, as provided by rule, and who provides
29 hands-on personal care, performs simple procedures as an
30 extension of therapy or nursing services, assists in
31 ambulation or exercises, or assists in administering

1 medications as permitted in rule and for which the person has
2 received training established by the agency under s.
3 400.497(1).

4 (14)~~(12)~~ "Homemaker" means a person who performs
5 household chores that include housekeeping, meal planning and
6 preparation, shopping assistance, and routine household
7 activities for an elderly, handicapped, or convalescent
8 individual. A homemaker may not provide hands-on personal care
9 to a client.

10 (15)~~(13)~~ "Home infusion therapy provider" means an
11 organization that employs, contracts with, or refers a
12 licensed professional who has received advanced training and
13 experience in intravenous infusion therapy and who administers
14 infusion therapy to a patient in the patient's home or place
15 of residence.

16 (16)~~(14)~~ "Home infusion therapy" means the
17 administration of intravenous pharmacological or nutritional
18 products to a patient in his or her home.

19 (17)~~(15)~~ "Nurse registry" means any person that
20 procures, offers, promises, or attempts to secure
21 health-care-related contracts for registered nurses, licensed
22 practical nurses, certified nursing assistants, home health
23 aides, companions, or homemakers, who are compensated by fees
24 as independent contractors, including, but not limited to,
25 contracts for the provision of services to patients and
26 contracts to provide private duty or staffing services to
27 health care facilities licensed under chapter 395 or this
28 chapter or other business entities.

29 (18)~~(16)~~ "Organization" means a corporation,
30 government or governmental subdivision or agency, partnership
31 or association, or any other legal or commercial entity, any

1 of which involve more than one health care professional
2 discipline;~~or~~ a health care professional and a home health
3 aide or certified nursing assistant; more than one home health
4 aide; more than one certified nursing assistant; or a home
5 health aide and a certified nursing assistant. The term does
6 not include an entity that provides services using only
7 volunteers or only individuals related by blood or marriage to
8 the patient or client.

9 (19)~~(17)~~ "Patient" means any person who receives home
10 health services in his or her home or place of residence.

11 (20)~~(18)~~ "Personal care" means assistance to a patient
12 in the activities of daily living, such as dressing, bathing,
13 eating, or personal hygiene, and assistance in physical
14 transfer, ambulation, and in administering medications as
15 permitted by rule.

16 (21) "Personal care organization" means a business
17 that is licensed to provide personal care, homemaker, and
18 companion services by employed caregivers, but that does not
19 provide skilled care services.

20 (22)~~(19)~~ "Physician" means a person licensed under
21 chapter 458, chapter 459, chapter 460, or chapter 461.

22 (23) "Physician assistant" means a person who is a
23 graduate of an approved program or its equivalent, or meets
24 standards approved by the boards, and is licensed to perform
25 medical services delegated by the supervising physician, as
26 defined in s. 458.347 or s. 459.022.

27 (24)~~(20)~~ "Skilled care" means nursing services or
28 therapeutic services required by law to be delivered by a
29 health care professional who is licensed under part I of
30 chapter 464; part I, part III, or part V of chapter 468; or
31 chapter 486 and who is employed by or under contract with a

1 licensed home health agency or is referred by a licensed nurse
2 registry.

3 (25)~~(21)~~ "Staffing services" means services provided
4 to a health care facility or other business entity on a
5 temporary basis by licensed health care personnel, including
6 certified nursing assistants and home health aides who are
7 employed by, or work under the auspices of, a licensed home
8 health agency or who are registered with a licensed nurse
9 registry.

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

13 400.464 Home health agencies to be licensed;
14 expiration of license; exemptions; unlawful acts; penalties.--

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

19 (4)(a) An organization may not provide, offer, or
20 advertise home health services to the public unless the
21 organization has a valid license or is specifically exempted
22 under this part. An organization that offers or advertises to
23 the public any service for which licensure ~~or registration~~ is
24 required under this part must include in the advertisement the
25 license number ~~or regulation number~~ issued to the organization
26 by the agency. The agency shall assess a fine of not less
27 than \$100 to any licensee ~~or registrant~~ who fails to include
28 the license or registration number when submitting the
29 advertisement for publication, broadcast, or printing. The
30 fine for a second or subsequent offense is \$500. The holder
31 of a license issued under this part may not advertise or

1 indicate to the public that it holds a home health agency or
2 nurse registry license other than the one it has been issued.

3 (b) The operation or maintenance of an unlicensed home
4 health agency or the performance of any home health services
5 in violation of this part is declared a nuisance, inimical to
6 the public health, welfare, and safety. The agency, or any
7 state attorney may, in addition to other remedies provided in
8 this part, bring an action for an injunction to restrain such
9 violation, or to enjoin the future operation or maintenance of
10 the home health agency or the provision of home health
11 services in violation of this part, until compliance with this
12 part or the rules adopted under this part has been
13 demonstrated to the satisfaction of the agency.

14 (c)(b) A person who violates paragraph (a) is subject
15 to an injunctive proceeding under s. 400.515. A violation of
16 paragraph (a) is a deceptive and unfair trade practice and
17 constitutes a violation of the Florida Deceptive and Unfair
18 Trade Practices Act under part II of chapter 501.

19 (d)(c) A person who violates the provisions of
20 paragraph (a) commits a felony misdemeanor of the third second
21 degree, punishable as provided in s. 775.082, or s. 775.083,
22 or s. 775.084. Any person who commits a second or subsequent
23 violation commits a felony misdemeanor of the second first
24 degree, punishable as provided in s. 775.082, or s. 775.083,
25 or s. 775.084. Each day of continuing violation constitutes a
26 separate offense.

27 (e) Any person who owns, operates, or maintains an
28 unlicensed home health agency and who, within 10 working days
29 after receiving notification from the agency, fails to cease
30 operation and apply for a license under this part commits a
31 felony of the third degree, punishable as provided in s.

1 775.082, s. 775.083, or s. 775.084. Each day of continued
2 operation is a separate offense.

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

6 (5) The following are exempt from the licensure
7 requirements of this part:

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

10 1. The Department of Elderly Affairs.

11 2. The Department of Health, a community health
12 center, or a rural health network that furnishes home visits
13 for the purpose of providing environmental assessments, case
14 management, health education, personal care services, family
15 planning, or followup treatment, or for the purpose of
16 monitoring and tracking disease.

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

19 4. Companion and sitter organizations that were
20 registered under s. 400.509(1) on January 1, 1999, and were
21 authorized to provide personal services under s. 393.063(33)
22 under a developmental services provider certificate on January
23 1, 1999, may continue to provide such services to past,
24 present, and future clients of the organization who need such
25 services, notwithstanding the provisions of this act.

26 5. The Department of Children and Family Services.

27 (e) An individual who acts alone, in his or her
28 individual capacity, and who is not employed by or affiliated
29 with a licensed home health agency, ~~or registered with a~~
30 licensed nurse registry, or a personal organization. This
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1 exemption does not entitle an individual to perform home
2 health services without the required professional license.

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

5 400.471 Application for license; fee; provisional
6 license; temporary permit.--

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

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

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

20 ~~(b) The number and discipline of professional staff to~~
21 ~~be employed; and~~

22 (b)(c) Proof of financial ability to operate; and-

23 (c) Completion of questions concerning volume data on
24 the renewal application.

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

1 projected revenues meet or exceed projected liabilities and
2 expenses. All documents required under this subsection must
3 be prepared in accordance with generally accepted accounting
4 principles, and must be compiled ~~the financial statement must~~
5 ~~be signed~~ by a certified public accountant.

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

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

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

24 (c) Proof of compliance with the level 2 background
25 screening requirements of chapter 435 which has been submitted
26 within the previous 5 years in compliance with any other
27 health care or assisted living licensure requirements of this
28 state is acceptable in fulfillment of paragraph (a). Proof of
29 compliance with background screening which has been submitted
30 within the previous 5 years to fulfill the requirements of the
31 Financial Services Commission and the Office of Insurance

1 Regulation pursuant to chapter 651 as part of an application
2 for a certificate of authority to operate a continuing care
3 retirement community is acceptable in fulfillment of the
4 Department of Law Enforcement and Federal Bureau of
5 Investigation background check.

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

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

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

21 (g) A license may not be granted to an applicant if
22 the applicant, administrator, or financial officer has been
23 found guilty of, regardless of adjudication, or has entered a
24 plea of nolo contendere or guilty to, any offense prohibited
25 under the level 2 standards for screening set forth in chapter
26 435, unless an exemption from disqualification has been
27 granted by the agency as set forth in chapter 435.

28 (h) The agency may deny or revoke licensure if the
29 applicant+

30 ~~1. Has falsely represented a material fact in the~~
31 ~~application required by paragraph (e) or paragraph (f), or has~~

1 ~~omitted any material fact from the application required by~~
2 ~~paragraph (e) or paragraph (f); or~~

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

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

11 (5) The agency may deny or revoke licensure if the
12 applicant has falsely represented a material fact, or has
13 omitted any material fact, from the application required by
14 this section.

15 (6)~~(5)~~ The home health agency must also obtain and
16 maintain the following insurance coverage ~~coverages~~ in an
17 amount of not less than ~~\$500,000~~\$250,000 per claim, and the
18 home health agency must submit proof of coverage with an
19 initial application for licensure and with each annual
20 application for license renewal:

21 ~~(a) Malpractice insurance as defined in s.~~
22 ~~624.605(1)(k).~~

23 ~~(b) Liability insurance as defined in s.~~
24 ~~624.605(1)(b).~~

25 (7)~~(6)~~ Sixty ~~Ninety~~ days before the expiration date,
26 an application for renewal must be submitted to the agency
27 under oath on forms furnished by it, and a license must be
28 renewed if the applicant has met the requirements established
29 under this part and applicable rules. The agency shall send a
30 renewal notice, electronically or by United States mail, at
31 least 70 days before the expiration date.The home health

1 agency must file with the application satisfactory proof that
2 it is in compliance with this part and applicable rules. If
3 there is evidence of financial instability, the home health
4 agency must submit satisfactory proof of its financial ability
5 to comply with the requirements of this part. The agency shall
6 impose an administrative fine of \$50 per day for each day the
7 home health agency fails to file an application within the
8 timeframe specified in this subsection. Each day of continuing
9 violation is a separate violation; however, the aggregate of
10 such fines may not exceed \$500.

11 (8)(7) When transferring the ownership of a home
12 health agency, the transferee must submit an application for a
13 license at least 60 days before the effective date of the
14 transfer. If the application is filed late, an administrative
15 fine shall be imposed in the amount of \$50 per day. Each day
16 of continuing violation is a separate violation; however, the
17 aggregate of such fines may not exceed \$500. If the home
18 health agency is being leased, a copy of the lease agreement
19 must be filed with the application.

20 (9)(a) Each applicant for initial licensure, renewal,
21 or change of ownership must pay a license processing fee that
22 may not exceed \$1,000. An applicant must also pay a survey fee
23 that may not exceed \$400 per survey unless the applicant is
24 not subject to a licensure survey by the agency as provided in
25 paragraph (b). All fees paid under this paragraph shall be
26 deposited in the Health Care Trust Fund.

27 (b) The agency shall accept, in lieu of its own
28 periodic licensure survey, submission of the survey of an
29 accrediting organization if the accreditation of the licensed
30 home health agency is not provisional and if the licensed home
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1 health agency authorizes release of, and the agency receives
2 the report of, the accrediting organization.

3 (10)~~(8)~~ ~~The license fee and annual renewal fee~~
4 ~~required of a home health agency are nonrefundable.~~The agency
5 shall set the license processing fees in an amount that is
6 sufficient to cover its costs in carrying out its
7 responsibilities under this part, but not to exceed \$1,000.
8 ~~However, state, county, or municipal governments applying for~~
9 ~~licenses under this part are exempt from the payment of~~
10 ~~license fees. All fees collected under this part must be~~
11 ~~deposited in the Health Care Trust Fund for the administration~~
12 ~~of this part.~~

13 (11)~~(9)~~ The license must be displayed in a conspicuous
14 place in the administrative office of the home health agency
15 and is valid only while in the possession of the person to
16 which it is issued. The license may not be sold, assigned, or
17 otherwise transferred, voluntarily or involuntarily, and is
18 valid only for the home health agency and location for which
19 originally issued.

20 (12)~~(10)~~ A home health agency against whom a
21 revocation or suspension proceeding is pending at the time of
22 license renewal may be issued a provisional license effective
23 until final disposition by the agency of such proceedings. If
24 judicial relief is sought from the final disposition, the
25 court that has jurisdiction may issue a temporary permit for
26 the duration of the judicial proceeding.

27 (13)~~(11)~~ The agency may not issue a license designated
28 as certified to a home health agency that fails to satisfy the
29 requirements of a Medicare certification survey from the
30 agency.

31

1 ~~(14)(12)~~ The agency may not issue a license to a home
2 health agency that has any unpaid fines assessed under this
3 part.

4 Section 5. Section 400.487, Florida Statutes, is
5 amended to read:

6 400.487 Home health service agreements; physician's,
7 physician's assistant's, and advanced registered nurse
8 practitioner's treatment orders; patient assessment;
9 establishment and review of plan of care; provision of
10 services; orders not to resuscitate.--

11 (1) Services provided by a home health agency must be
12 covered by an agreement between the home health agency and the
13 patient or the patient's legal representative specifying the
14 home health services to be provided, the rates or charges for
15 services paid with private funds, and the sources method of
16 payment, which may include Medicare, Medicaid, private
17 insurance, personal funds, or a combination thereof. A home
18 health agency providing skilled care must make an assessment
19 of the patient's needs within 48 hours after the start of
20 services.

21 (2) When required by the provisions of chapter 464;
22 part I, part III, or part V of chapter 468; or chapter 486,
23 the attending physician, physician's assistant, or advanced
24 registered nurse practitioner, acting within his or her
25 respective scope of practice, shall ~~for a patient who is to~~
26 ~~receive skilled care must~~ establish treatment orders for a
27 patient who is to receive skilled care. The treatment orders
28 must be signed by the physician, physician's assistant, or
29 advanced registered nurse practitioner before a claim for
30 payment for the skilled services is submitted by the home
31 health agency. If the claim is submitted to a managed care

1 organization, the treatment orders must be signed in the time
2 allowed under the provider agreement. The treatment orders
3 shall within 30 days after the start of care and must be
4 reviewed, as frequently as the patient's illness requires, by
5 the physician, physician's assistant, or advanced registered
6 nurse practitioner in consultation with the home health agency
7 ~~personnel that provide services to the patient.~~

8 (3) A home health agency shall arrange for supervisory
9 visits by a registered nurse to the home of a patient
10 receiving home health aide services in accordance with the
11 patient's direction, ~~and approval,~~ and agreement to pay the
12 charge for the visits.

13 (4) Each patient has the right to be informed of and
14 to participate in the planning of his or her care. Each
15 patient must be provided, upon request, a copy of the plan of
16 care established and maintained for that patient by the home
17 health agency.

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

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31

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

4 (7) Home health agency personnel may withhold or
5 withdraw cardiopulmonary resuscitation if presented with an
6 order not to resuscitate executed pursuant to s. 401.45. The
7 agency shall adopt rules providing for the implementation of
8 such orders. Home health personnel and agencies shall not be
9 subject to criminal prosecution or civil liability, nor be
10 considered to have engaged in negligent or unprofessional
11 conduct, for withholding or withdrawing cardiopulmonary
12 resuscitation pursuant to such an order and rules adopted by
13 the agency.

14 Section 6. Section 400.491, Florida Statutes, is
15 amended to read:

16 400.491 Clinical records.--

17 (1) The home health agency must maintain for each
18 patient who receives skilled care a clinical record that
19 includes pertinent past and current medical, nursing, social
20 and other therapeutic information, the treatment orders, and
21 other such information as is necessary for the safe and
22 adequate care of the patient. When home health services are
23 terminated, the record must show the date and reason for
24 termination. Such records ~~are considered patient records~~
25 ~~under s. 456.057, and~~ must be maintained by the home health
26 agency for 6 5 years following termination of services. If a
27 patient transfers to another home health agency, a copy of his
28 or her record must be provided to the other home health agency
29 upon request.

30 (2) If a licensed home health agency ceases to remain
31 in business, it shall notify each patient, whose clinical

1 records it has in its possession, of the fact that it is
2 ceasing operations and give each patient 15 calendar days to
3 retrieve his or her clinical record at a specified location
4 within 2 hours' driving time of the patient's residence and,
5 at a minimum, between the hours of 10 a.m. and 3 p.m. Monday
6 through Friday.~~The home health agency must maintain for each~~
7 ~~client who receives nonskilled care a service provision plan.~~
8 ~~Such records must be maintained by the home health agency for~~
9 ~~1 year following termination of services.~~

10 Section 7. Section 400.494, Florida Statutes, is
11 amended to read:

12 400.494 Information about patients confidential.--

13 ~~(1)~~ Information about patients received by persons
14 employed by, or providing services to, a home health agency or
15 received by the licensing agency through reports or inspection
16 shall be confidential and exempt from the provisions of s.
17 119.07(1) and shall not be disclosed to a any person other
18 than the patient, only as permitted under the provisions of 45
19 C.F.R. ss. 160.102, 160.103, and 164, subpart A, commonly
20 referred to as the HIPAA Privacy Regulation; except that
21 clinical records described in ss. 381.004, 384.29, 385.202,
22 392.65, 394.4615, 395.404, 397.501, and 760.40 shall be
23 disclosed as authorized in those sections ~~without the written~~
24 ~~consent of that patient or the patient's guardian.~~

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

28 Section 8. Section 400.495, Florida Statutes, is
29 amended to read:

30 400.495 Notice of toll-free telephone number for
31 central abuse hotline.--On or before the first day home health

1 services are provided to a patient, any home health agency, ~~or~~
2 nurse registry, or personal care organization licensed under
3 this part must inform the patient and his or her immediate
4 family, if appropriate, of the right to report abusive,
5 neglectful, or exploitative practices. The statewide
6 toll-free telephone number for the central abuse hotline must
7 be provided to patients in a manner that is clearly legible
8 and must include the words: "To report abuse, neglect, or
9 exploitation, please call toll-free ...(phone number)...." The
10 Agency for Health Care Administration shall adopt rules that
11 provide for 90 days' advance notice of a change in the
12 toll-free telephone number and that outline due process
13 procedures, as provided under chapter 120, for home health
14 agency personnel, ~~and~~ nurse registry personnel, and personal
15 care organization personnel who are reported to the central
16 abuse hotline. Home health agencies, ~~and~~ nurse registries,
17 and personal care organizations shall establish appropriate
18 policies and procedures for providing such notice to patients.

19 Section 9. Section 400.497, Florida Statutes, are
20 amended to read:

21 400.497 Rules establishing minimum standards.--The
22 agency shall adopt, publish, and enforce rules to administer
23 ~~implement~~ this part, including, as applicable, ss. 400.506 and
24 400.5095 ~~400.509~~, which must provide reasonable and fair
25 minimum standards relating to:

26 (1) The home health aide competency test and home
27 health aide training. The agency shall create the home health
28 aide competency test and establish the curriculum and
29 instructor qualifications for home health aide training.
30 Licensed home health agencies may provide this training and
31 shall furnish documentation of such training to other licensed

1 home health agencies upon request. Successful passage of the
2 competency test by home health aides may be substituted for
3 the training required under this section and any rule adopted
4 pursuant thereto.

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

10 (3) The criteria for the frequency of onsite licensure
11 surveys.

12 (4) Licensure application and renewal.

13 (5) The requirements for onsite and electronic
14 accessibility of supervisory personnel of home health agencies
15 and personal care organizations.

16 (6) Information to be included in patients' records.

17 (7) Geographic service areas.

18 (8) Preparation of a comprehensive emergency
19 management plan pursuant to s. 400.492.

20 (a) The Agency for Health Care Administration shall
21 adopt rules establishing minimum criteria for the plan and
22 plan updates, with the concurrence of the Department of Health
23 and in consultation with the Department of Community Affairs.

24 (b) The rules must address the requirements in s.
25 400.492. In addition, the rules shall provide for the
26 maintenance of patient-specific medication lists that can
27 accompany patients who are transported from their homes.

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

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

7

8 ~~The county health department shall complete its review within~~

9 ~~60 days after receipt of the plan and shall either approve the~~

10 ~~plan or advise the home health agency of necessary revisions.~~

11 (c)~~(d)~~ For any home health agency that operates in

12 more than one county, the Department of Health shall review

13 the plan, after consulting with all of the county health

14 departments, the agency, and all the local chapters of the

15 American Red Cross or other lead sheltering agencies in the

16 areas of operation for that particular home health agency. The

17 Department of Health shall complete its review within 90 days

18 after receipt of the plan and shall either approve the plan or

19 advise the home health agency of necessary revisions. The

20 Department of Health shall make every effort to avoid imposing

21 differing requirements based on differences between counties

22 on the home health agency.

23 (d)~~(e)~~ The requirements in this subsection do not

24 apply to:

- 25 1. A facility that is certified under chapter 651 and
- 26 has a licensed home health agency used exclusively by
- 27 residents of the facility; or
- 28 2. A retirement community that consists of residential
- 29 units for independent living and either a licensed nursing
- 30 home or an assisted living facility, and has a licensed home
- 31 health agency used exclusively by the residents of the

1 retirement community, provided the comprehensive emergency
2 management plan for the facility or retirement community
3 provides for continuous care of all residents with special
4 needs during an emergency.

5 Section 10. Subsections (3), (5), (7), (8), (10),
6 (13), (14), and (17) of section 400.506, Florida Statutes, are
7 amended to read:

8 400.506 Licensure of nurse registries; requirements;
9 penalties.--

10 (3) Each applicant for initial licensure, license
11 renewal, or change of ownership shall pay a license processing
12 fee that may not exceed \$1,500. An applicant shall also pay a
13 survey fee that may not exceed \$400 for each survey conducted.
14 All fees paid under this subsection shall be deposited in the
15 Health Care Trust Fund.Application for license must be made
16 to the Agency for Health Care Administration on forms
17 furnished by it and must be accompanied by the appropriate
18 licensure fee, as established by rule and not to exceed the
19 cost of regulation under this part. ~~The licensure fee for~~
20 ~~nurse registries may not exceed \$1,000 and must be deposited~~
21 ~~in the Health Care Trust Fund.~~

22 (5) A license issued for the operation of a nurse
23 registry, unless sooner suspended or revoked, expires 2 years
24 ~~1 year~~ after its date of issuance. Sixty days before the
25 expiration date, an application for renewal must be submitted
26 to the Agency for Health Care Administration on forms
27 furnished by it. The Agency for Health Care Administration
28 shall renew the license if the applicant has met the
29 requirements of this section and applicable rules. A nurse
30 registry against which a revocation or suspension proceeding
31 is pending at the time of license renewal may be issued a

1 conditional license effective until final disposition by the
2 Agency for Health Care Administration of such proceedings. If
3 judicial relief is sought from the final disposition, the
4 court having jurisdiction may issue a conditional license for
5 the duration of the judicial proceeding.

6 (7) A person that provides, offers, or advertises to
7 the public ~~that it provides~~ any service for which licensure is
8 required under this section must include in such advertisement
9 the license number issued to it by the Agency for Health Care
10 Administration. The agency shall assess a fine of not less
11 than \$100 against any licensee who fails to include the
12 license number when submitting the advertisement for
13 publication, broadcast, or printing. The fine for a second or
14 subsequent offense is \$500.

15 (8)(a) It is unlawful for a person to offer or
16 advertise to the public services as defined by rule without
17 obtaining a valid license from the Agency for Health Care
18 Administration. It is unlawful for any holder of a license to
19 advertise or hold out to the public that he or she holds a
20 license for other than that for which he or she actually holds
21 a license. A person who violates this paragraph ~~subsection~~ is
22 subject to injunctive proceedings under s. 400.515.

23 (b) A person who violates paragraph (a) commits a
24 felony of the third degree, punishable as provided in s.
25 775.082, s. 775.083, or s. 775.084. Any person who commits a
26 second or subsequent violation commits a felony of the second
27 degree, punishable as provided in s. 775.082, s. 775.083, or
28 s. 775.084. Each day of continuing violation is a separate
29 offense.

30 (c) Any person who owns, operates, or maintains an
31 unlicensed nurse registry and who, within 10 working days

1 after receiving notification from the agency, fails to cease
2 operation and apply for a license under this part commits a
3 felony of the third degree, punishable as provided in s.
4 775.082, s. 775.083, or s. 775.084. Each day of continued
5 operation is a separate offense.

6 (d) If a nurse registry fails to cease operation after
7 agency notification, the agency may impose a fine of \$500 for
8 each day of noncompliance.

9 (10)(a) A nurse registry may refer for contract in
10 private residences registered nurses and licensed practical
11 nurses registered and licensed under part I of chapter 464,
12 certified nursing assistants certified under part II of
13 chapter 464, home health aides who present documented proof of
14 successful completion of the training required by rule of the
15 agency, and personal care organization personnel ~~companions or~~
16 ~~homemakers~~ for the purposes of providing those services
17 authorized under s. 400.5095 ~~s. 400.509(1)~~. Each person
18 referred by a nurse registry must provide current
19 documentation that he or she is free from communicable
20 diseases.

21 ~~(b) A certified nursing assistant or home health aide~~
22 ~~may be referred for a contract to provide care to a patient in~~
23 ~~his or her home only if that patient is under a physician's~~
24 ~~care.~~ A certified nursing assistant or home health aide
25 referred for contract in a private residence shall be limited
26 to assisting a patient with bathing, dressing, toileting,
27 grooming, eating, physical transfer, and those normal daily
28 routines the patient could perform for himself or herself were
29 he or she physically capable. A certified nursing assistant
30 or home health aide may not provide medical or other health
31 care services that require specialized training and that may

1 be performed only by licensed health care professionals. ~~The~~
2 ~~nurse registry shall obtain the name and address of the~~
3 ~~attending physician and send written notification to the~~
4 ~~physician within 48 hours after a contract is concluded that a~~
5 ~~certified nursing assistant or home health aide will be~~
6 ~~providing care for that patient.~~

7 (c) A nurse registry shall arrange for assessment
8 visits by a registered nurse to the home of a patient
9 receiving home health aide services in accordance with the
10 patient's direction, approval, and agreement to pay for the
11 visits. ~~A registered nurse shall make monthly visits to the~~
12 ~~patient's home to assess the patient's condition and quality~~
13 ~~of care being provided by the certified nursing assistant or~~
14 ~~home health aide.~~ Any condition that, which in the
15 professional judgment of the nurse, requires further medical
16 attention shall be reported to the patient attending physician
17 and the nurse registry. The assessment shall become a part of
18 the patient's file with the nurse registry and may be reviewed
19 by the agency during their survey procedure.

20 (13) Each nurse registry must comply with the
21 procedures set forth in s. 400.512 for maintaining records of
22 the work employment history of all persons referred for
23 contract and is subject to the standards and conditions set
24 forth in that section. However, an initial screening may not
25 be required for persons who have been continuously registered
26 with the nurse registry since October 1, 2000 ~~September 30,~~
27 ~~1990.~~

28 (14) The nurse registry must maintain the application
29 on file, and that file must be open to the inspection of the
30 Agency for Health Care Administration. The nurse registry
31 must maintain on file the name and address of the patient or

1 client to whom ~~the nurse or other~~ nurse registry personnel is
2 sent for contract and the amount of the fee received by the
3 nurse registry. A nurse registry must maintain the file that
4 includes the application and other applicable documentation
5 for 3 years after the date of the last file entry of
6 client-related information.

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

10 (a) When, in accordance with the privileges and
11 restrictions imposed upon a nurse under part I of chapter 464,
12 the delivery of care to a patient is under the direction or
13 supervision of a physician or when a physician is responsible
14 for the medical care of the patient, a medical plan of
15 treatment must be established for each patient receiving care
16 or treatment provided by a licensed nurse in the home. The
17 original medical plan of treatment must be timely signed by
18 the physician, physician's assistant, or advanced registered
19 nurse practitioner, acting within his or her respective scope
20 of practice, and reviewed by ~~him or her~~ in consultation with
21 the licensed nurse at least every 2 months. Any additional
22 order or change in orders must be obtained from the physician,
23 physician's assistant, or advanced registered nurse
24 practitioner and reduced to writing and timely signed by the
25 physician, physician's assistant, or advanced registered nurse
26 practitioner. The delivery of care under a medical plan of
27 treatment must be substantiated by the appropriate nursing
28 notes or documentation made by the nurse in compliance with
29 nursing practices established under part I of chapter 464.

30 (b) Whenever a medical plan of treatment is
31 established for a patient, the initial medical plan of

1 treatment, any amendment to the plan, additional order or
2 change in orders, and copy of nursing notes must be filed in
3 the office of the nurse registry.

4 Section 11. Section 400.509, Florida Statutes, is
5 repealed.

6 Section 12. Section 400.5095, Florida Statutes, is
7 created to read:

8 400.5095 Licensure of personal care organizations;
9 requirements; penalties.--

10 (1) An organization that provides personal care
11 services and does not provide a skilled home health service is
12 exempt from home health licensure under this part but must be
13 licensed as a personal care organization. Each operational
14 site of the personal care organization must be licensed,
15 unless there is more than one site within a county. If there
16 is more than one site within a county, only one license per
17 county is required. Each operational site must be listed on
18 the license.

19 (2) Each applicant for licensure must comply with the
20 following requirements:

21 (a) Upon receipt of a completed, signed, and dated
22 application, the agency shall require background screening, in
23 accordance with the level 2 standards for screening set forth
24 in chapter 435, of the managing employee, or other similarly
25 titled individual who is responsible for the daily operation
26 of the personal care organization, and of the financial
27 officer, or other similarly titled individual who is
28 responsible for the financial operation of the personal care
29 organization, including billings for patient care and
30 services. The applicant must comply with the procedures for
31 level 2 background screening as set forth in chapter 435.

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

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

12 (d) A provisional license may be granted to an
13 applicant when each individual required by this section to
14 undergo background screening has met the standards for the
15 background check of the Department of Law Enforcement and
16 before the agency receives background screening results from
17 the Federal Bureau of Investigation. A standard license may be
18 granted to the applicant upon the agency's receipt of a report
19 of the results of the background screening from the Federal
20 Bureau of Investigation 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 level
25 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 a disqualification exemption has not
30 been requested of and granted by the agency as set forth in
31 chapter 435.

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

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

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

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

3 (h) The agency may deny or revoke licensure if the
4 applicant has been or is currently excluded, suspended,
5 terminated, or has involuntarily withdrawn from participation
6 in this state's Medicaid program, the Medicaid program of any
7 other state, the Medicare program, or any other governmental
8 or private health care program or health insurance program.

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

11 (3) The agency may deny or revoke licensure if the
12 applicant has falsely represented a material fact, or has
13 omitted any material fact, from the application required by
14 this section.

15 (4) Application for licensure must be made to the
16 Agency for Health Care Administration on forms furnished by it
17 and must be accompanied by the appropriate licensure fee, as
18 established by rule, which may not exceed the cost of
19 regulation under this part. The licensure fee for personal
20 care organizations may not exceed \$650 and must be deposited
21 in the Health Care Trust Fund.

22 (5) The Agency for Health Care Administration may
23 deny, revoke, or suspend a license or impose an administrative
24 fine in the manner provided in chapter 120 against a personal
25 care organization that:

26 (a) Fails to comply with this section or applicable
27 rules.

28 (b) Commits an intentional, reckless, or negligent act
29 that materially affects the health or safety of a person
30 receiving services.

31

1 (6) A license issued for the operation of a personal
2 care organization, unless sooner suspended or revoked, expires
3 1 year after its date of issuance. Sixty days before the
4 expiration date, an application for renewal must be submitted
5 to the Agency for Health Care Administration on forms
6 furnished by it. The Agency for Health Care Administration
7 shall renew the license if the applicant has met the
8 requirements of this section and applicable rules. A personal
9 care organization against which a revocation or suspension
10 proceeding is pending at the time of license renewal may be
11 issued a conditional license that is effective until final
12 disposition of such proceeding by the Agency for Health Care
13 Administration. If judicial relief is sought from the final
14 disposition, the court having jurisdiction may issue a
15 conditional license for the duration of the judicial
16 proceeding.

17 (7) The Agency for Health Care Administration may
18 institute injunctive proceedings under s. 400.515.

19 (8)(a) A person may not provide, offer, or advertise
20 to the public personal care services without obtaining a valid
21 license from the Agency for Health Care Administration. A
22 person who holds a license may not advertise or hold out to
23 the public that he or she holds a license other than the
24 license that he or she actually holds. A person who violates
25 this subsection is subject to injunctive proceedings under s.
26 400.515.

27 (b) A personal care organization that offers or
28 advertises to the public services for which licensure is
29 required under this part must include in the advertisement the
30 license number issued to the organization by the agency. The
31 agency shall assess a fine of not less than \$100 to any

1 licensee who fails to include the license number when
2 submitting the advertisement for publication, broadcast, or
3 printing. The fine for a second or subsequent offense is \$500.
4 The holder of a license issued under this part may not
5 advertise or indicate to the public that it holds any license
6 other than the one it has been issued.

7 (c) The operation or maintenance of a unlicensed
8 personal care organization or the performance of any personal
9 care services in violation of this part is declared a
10 nuisance, inimical to the public health, welfare, and safety.
11 The agency or any state attorney may, in addition to other
12 remedies provided in this part, bring an action for an
13 injunction to restrain such violation, or to enjoin the future
14 operation or maintenance of any such personal care
15 organization personal care services in violation of this part,
16 until compliance with this part or the rules adopted under
17 this part has been demonstrated to the satisfaction of the
18 agency.

19 (d) A violation of paragraph (a) is a deceptive and
20 unfair trade practice and constitutes a violation of the
21 Florida Deceptive and Unfair Trade Practices Act under part II
22 of chapter 501.

23 (e) A person who violates paragraph (a) commits a
24 felony of the third degree, punishable as provided in s.
25 775.082, s. 775.083, or s. 775.084. Any person who commits a
26 second or subsequent violation commits a felony of the second
27 degree, punishable as provided in s. 775.082, s. 775.083, or
28 s. 775.084. Each day of continuing violation is a separate
29 offense.

30 (f) Any person who owns, operates, or maintains an
31 unlicensed personal care organization and who, within 10

1 working days after receiving notification from the agency,
2 fails to cease operation and apply for a license under this
3 part commits a felony of the third degree, punishable as
4 provided in s. 775.082, s. 775.083, or s. 775.084. Each day of
5 continued operation is a separate offense.

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

9 (9) Any duly authorized officer or employee of the
10 Agency for Health Care Administration may make such
11 inspections and investigations as are necessary to respond to
12 complaints or to determine the state of compliance with this
13 section and applicable rules.

14 (a) If, in responding to a complaint, an agent or
15 employee of the Agency for Health Care Administration has
16 reason to believe that a crime has been committed, he or she
17 shall notify the appropriate law enforcement agency.

18 (b) If, in responding to a complaint, an agent or
19 employee of the Agency for Health Care Administration has
20 reason to believe that abuse, neglect, or exploitation has
21 occurred according to the definitions in chapter 415, he or
22 she shall file a report under chapter 415.

23 (10)(a) A personal care organization may provide
24 personal care services in the patient's place of residence
25 through certified nursing assistants or home health aides who
26 present documented proof of successful completion of the
27 training required by rule of the agency. Each certified
28 nursing assistant, home health aide, homemaker, or companion
29 must provide current documentation that he or she is free from
30 communicable diseases.

31

1 (b) Certified nursing assistant or home health aide
2 services shall be limited to assisting a patient with bathing,
3 dressing, toileting, grooming, eating, physical transfer, and
4 those normal daily routines the patient could perform for
5 himself or herself were he or she physically capable. A
6 certified nursing assistant or home health aide may not
7 provide medical services or other health care services that
8 require specialized training and that may be performed only by
9 a licensed health care professional. Providing services beyond
10 the scope authorized under this subsection constitutes the
11 unauthorized practice of medicine or a violation of the Nurse
12 Practice Act and is punishable as provided under chapter 458,
13 chapter 459, or part I of chapter 464.

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

18 (11) Each personal care organization must require
19 every certified nursing assistant or home health aide to
20 complete an application form providing the following
21 information:

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

24 (b) The educational background and employment history
25 of the applicant.

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

28 (d) When appropriate, information concerning the
29 renewal of the applicable certification.

30 (12) Each personal care organization must comply with
31 the procedures set forth in s. 400.512 for maintaining records

1 of the employment history of all certified nursing assistants,
2 home health aides, homemakers, and companions that provide
3 services to the patients and clients of the personal care
4 organization. Each personal care organization is subject to
5 the standards and conditions set forth in s. 400.512.

6 (13) The personal care organization must maintain the
7 application on file and that file must be open to the
8 inspection of the Agency for Health Care Administration. The
9 personal care organization must maintain on file the name and
10 address of the patients or clients to whom the personal care
11 organization personnel provide services. A personal care
12 organization must maintain the file that includes the
13 application and other applicable documentation for 3 years
14 after the date of the last file entry of information
15 concerning a patient or client.

16 (14) A personal care organization must provide the
17 following staff training:

18 (a) Upon beginning employment with the personal care
19 organization, each employee must receive basic written
20 information about interacting with patients or clients who
21 have Alzheimer's disease or dementia-related disorders.

22 (b) In addition to the information provided under
23 paragraph (a), newly hired personal care organization
24 personnel who will be providing direct care to patients or
25 clients must complete 2 hours of training in Alzheimer's
26 disease and dementia-training in Alzheimer's disease and
27 dementia-related disorders within 9 months after beginning
28 employment with the personal care organization. This training
29 must include, but need not be limited to, an overview of
30 dementia, a demonstration of basic skills in communicating
31 with persons who have dementia, the management of problem

1 behaviors, information about promoting the client's
2 independence in activities of daily living, and instruction in
3 skills for working with families and caregivers.

4 (c) For certified nursing assistants, the required 2
5 hours of training shall be part of the total hours of training
6 required annually.

7 (d) The Department of Elderly Affairs, or its
8 designee, must approve the required training. The department
9 must consider for approval training offered in a variety of
10 formats. The department shall keep a list of current providers
11 who are approved to provide the 2-hour training. The
12 department shall adopt rules to establish standards for
13 employees who are subject to this training, for the trainers,
14 and for the training required in this subsection.

15 (e) Upon completing the training listed in this
16 section, the employee shall be issued a certificate that
17 states that the training mandated under this subsection has
18 been received. The certificate shall be dated and signed by
19 the training provider. The certificate is evidence of
20 completion of this training, and the employee is not required
21 to repeat this training if the employee changes employment to
22 a different personal care organization.

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

25 (g) A licensed personal care organization whose
26 unduplicated census during the most recent calendar year was
27 comprised of at least 90 percent of individuals aged 21 years
28 or younger at the date of admission is exempt from the
29 training requirements in this subsection.

30 (h) A personal care organization licensed under this
31 part which claims that it provides special care for persons

1 who have Alzheimer's disease or other related disorders must
2 disclose in its advertisements or in a separate document those
3 services that distinguish the care as being especially
4 applicable to, or suitable for, such persons. The personal
5 care organization must give a copy of all such advertisements
6 or a copy of the document to each person who requests
7 information about the personal care organization and must
8 maintain a copy of all such advertisements and documents in
9 its records. The Agency for Health Care Administration shall
10 examine all such advertisements and documents in the personal
11 care organization's records as part of the license renewal
12 procedure.

13 (15) Each personal care organization shall assist
14 persons who would need assistance and sheltering during an
15 evacuation because of physical, mental, or sensory
16 disabilities in registering with the appropriate local
17 emergency management agency pursuant to s. 252.355.

18 (16) Each personal care organization shall prepare and
19 maintain a comprehensive emergency management plan that is
20 consistent with the criteria in this subsection and with the
21 local special needs plan. The plan shall be updated annually.
22 The plan must specify how the personal care organization will
23 facilitate the provision of continuous care to its patients or
24 clients who are registered pursuant to s. 252.355 during an
25 emergency that interrupts the provision of care or services in
26 private residencies.

27 (a) A certified nursing assistant or home health aide
28 who cares for persons registered pursuant to s. 252.355 must
29 include in each patient record a description of how care will
30 be continued during a disaster or emergency that interrupts
31 the provision of care in the patient's home. It shall be the

1 responsibility of the personal care organization to ensure
2 that continuous care is provided.

3 (b) Each personal care organization shall maintain a
4 current prioritized list of patients in private residences who
5 are registered pursuant to s. 252.355 and who need continued
6 services during a disaster or emergency. This list must
7 indicate, for each patient, if the patient or client is to be
8 transported to a special needs shelter. The personal care
9 organizations shall make this list available to county health
10 departments and to local emergency management agencies upon
11 request.

12 (c) Each certified nursing assistant or home health
13 aide who is caring for a patient who is registered pursuant to
14 s. 252.355 shall provide a list of the patient's medication
15 and equipment needs to the personal care organization, which
16 shall make this information available to county health
17 departments and to local emergency management agencies upon
18 request.

19 (d) A certified nursing assistant or home health aide
20 is not required to continue to provide care to patients or
21 clients in emergency situations that are beyond the person's
22 control and that make it impossible to provide services, such
23 as when roads are impassable or when a patient or client does
24 not go to the location specified in his or her patient record.

25 (e) The Agency for Health Care Administration, with
26 the concurrence of the Department of Health and in
27 consultation with the Department of Community Affairs, shall
28 adopt rules establishing minimum criteria for the
29 comprehensive emergency management plan and the plan updates
30 required by this subsection.

31

1 (17) Each personal care organization must comply with
2 the notice requirements of s. 400.495, relating to the
3 reporting of abuse.

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

13 (19) The Agency for Health Care Administration shall
14 adopt rules to administer this section.

15 Section 13. Section 400.512, Florida Statutes, is
16 amended to read:

17 400.512 Screening of home health agency personnel;
18 nurse registry personnel; and personal care organization
19 personnel ~~companions and homemakers.~~--The agency shall require
20 employment or contractor screening as provided in chapter 435,
21 using the level 1 standards for screening set forth in that
22 chapter, for home health agency personnel; persons referred
23 for employment by nurse registries; and personal care
24 organization personnel ~~persons employed by companion or~~
25 ~~homemaker services registered under s. 400.509.~~

26 (1)(a) The Agency for Health Care Administration may,
27 upon request, grant exemptions from disqualification from
28 employment or contracting under this section as provided in s.
29 435.07, except for health care practitioners licensed by the
30 Department of Health or a regulatory board within that
31 department.

1 (b) The appropriate regulatory board within the
2 Department of Health, or that department itself when there is
3 no board, may, upon request of the licensed health care
4 practitioner, grant exemptions from disqualification from
5 employment or contracting under this section as provided in s.
6 435.07.

7 (2) The administrator of each home health agency, the
8 managing employee of each nurse registry, and the managing
9 employee of each personal care organization ~~companion or~~
10 ~~homemaker service registered under s. 400.509~~ must sign an
11 affidavit annually, under penalty of perjury, stating that all
12 personnel hired or ~~contracted with, or registered~~ on or after
13 October 1, 2002 ~~1994~~, who enter the home of a patient or
14 client in their service capacity have been screened and that
15 its remaining personnel have worked for the home health agency
16 or personal care organization ~~registrant~~ continuously since
17 ~~before~~ October 1, 2002 ~~1994~~.

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

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

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

25 (5) There is no monetary liability on the part of, and
26 no cause of action for damages arises against, a licensed home
27 health agency, licensed nurse registry, or personal care
28 organization ~~companion or homemaker service registered under~~
29 ~~s. 400.509~~, that, upon notice that the employee or contractor
30 has been found guilty of, regardless of adjudication, or
31 entered a plea of nolo contendere or guilty to, any offense

1 prohibited under s. 435.03 or under any similar statute of
2 another jurisdiction, terminates the employee or contractor,
3 whether or not the employee or contractor has filed for an
4 exemption with the agency in accordance with chapter 435 and
5 whether or not the time for filing has expired.

6 (6) The costs of processing the statewide
7 correspondence criminal records checks must be borne by the
8 home health agency, the nurse registry, or the personal care
9 organization ~~companion or homemaker service registered under~~
10 ~~s. 400.509~~, or by the person being screened, at the discretion
11 of the home health agency, nurse registry, or personal care
12 organization ~~s. 400.509 registrant~~.

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

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

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

25 3. Use information from the criminal records obtained
26 under this section for any purpose other than screening that
27 person for employment as specified in this section or release
28 such information to any other person for any purpose other
29 than screening for employment under this section.

30 (b) It is a felony of the third degree, punishable
31 under s. 775.082, s. 775.083, or s. 775.084, for any person

1 willfully, knowingly, or intentionally to use information from
2 the juvenile records of a person obtained under this section
3 for any purpose other than screening for employment under this
4 section.

5 Section 14. Section 400.515, Florida Statutes, is
6 amended to read:

7 400.515 Injunction proceedings.--In addition to the
8 other powers provided under this chapter, the Agency for
9 Health Care Administration may institute injunction
10 proceedings in a court of competent jurisdiction to restrain
11 or prevent the establishment or operation of a home health
12 agency, nurse registry, or personal care organization that
13 does not have a license or that is in violation of any
14 provision of this part or any rule adopted pursuant to this
15 part.The Agency for Health Care Administration may also
16 institute injunction proceedings in a court of competent
17 jurisdiction when violation of this part or of applicable
18 rules constitutes an emergency affecting the immediate health
19 and safety of a patient or client.

20 Section 15. Subsection (7) of section 381.0303,
21 Florida Statutes, is amended to read:

22 381.0303 Health practitioner recruitment for special
23 needs shelters.--

24 (7) REVIEW OF EMERGENCY MANAGEMENT PLANS.--The
25 submission of emergency management plans to county health
26 departments by home health agencies pursuant to s.
27 400.497(8)(c) ~~and (d)~~and by nurse registries pursuant to s.
28 400.506(16)(e) and by hospice programs pursuant to s.
29 400.610(1)(b) is conditional upon the receipt of an
30 appropriation by the department to establish medical services
31 disaster coordinator positions in county health departments

1 unless the secretary of the department and a local county
2 commission jointly determine to require such plans to be
3 submitted based on a determination that there is a special
4 need to protect public health in the local area during an
5 emergency.

6 Section 16. This act shall take effect July 1, 2004.

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9 SENATE SUMMARY

10 Revises part IV of ch. 400, F.S., to provide for the
11 regulation of personal care organizations by the Agency
12 for Health Care Administration. Revises certain
13 provisions governing the licensure of home health
14 agencies and licensed nurse registries. Provides
15 additional administrative, civil, and criminal penalties,
16 sanctions, and fines. Revises requirements for license
17 application. Revises requirements for home health agency
18 service agreements and treatment orders. Revises
19 requirements for maintaining patient and client records.
20 Requires the Agency for Health Care Administration to
21 adopt rules. (See bill for details.)
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