

By the Committee on Health, Aging, and Long-Term Care; and  
Senator Saunders

317-2204-04

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           "admission," "advanced registered nurse  
9           practitioner," "direct employee," "personal  
10          care organization," and "physician assistant"  
11          for purposes of part IV of ch. 400, F.S.;  
12          amending s. 400.464, F.S., relating to  
13          licensure of home health agencies; revising the  
14          licensure period; deleting references to  
15          registration regulation; revising and providing  
16          additional administrative, civil, and criminal  
17          penalties, sanctions, and fines; clarifying  
18          provisions exempting from licensure  
19          requirements an individual who acts alone;  
20          amending s. 400.471, F.S.; revising  
21          requirements for license application by a home  
22          health agency; authorizing the Agency for  
23          Health Care Administration to revoke a license  
24          under 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 amending s. 400.506, F.S.; revising  
27 requirements governing nurse registries;  
28 revising license fee; increasing the period of  
29 licensure; authorizing administrative  
30 penalties; revising criminal penalties and  
31 sanctions; revising certain requirements

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

1           may petition for an injunction; authorizing the  
2           agency to issue licenses for less than a  
3           biennial period until a certain date; providing  
4           an effective date.

5  
6 Be It Enacted by the Legislature of the State of Florida:

7  
8           Section 1. Subsection (2) of section 400.461, Florida  
9 Statutes, is amended to read:

10           400.461 Short title; purpose.--

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

17           Section 2. Section 400.462, Florida Statutes, is  
18 amended to read:

19           400.462 Definitions.--As used in this part, the term:

20           (1) "Administrator" means a direct employee, as  
21 defined in subsection (9), of the home health agency or a  
22 ~~related organization, or of a management company that has a~~  
23 ~~contract to manage the home health agency, to whom the~~  
24 ~~governing body has delegated the responsibility for day-to-day~~  
25 ~~administration of the home health agency.~~ The administrator  
26 must be a licensed physician, physician assistant, or  
27 registered nurse licensed to practice in this state or an  
28 individual having at least 1 year of supervisory or  
29 administrative experience in home health care or in a facility  
30 licensed under chapter 395 or under part II or part III of  
31 this chapter. An administrator may manage a maximum of five

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

11 (2) "Admission" means a decision by the home health  
12 agency during or after an evaluation visit to the patient's  
13 home that there is a reasonable expectation that the patient's  
14 medical, nursing, and social needs for skilled care can be  
15 adequately met by the agency or registry in the patient's  
16 place of residence. An admission of a client who does not  
17 require skilled care services may be done without an  
18 evaluation visit to the home.

19 (3) "Advanced registered nurse practitioner" means a  
20 person licensed in this state to practice professional nursing  
21 and certified in advanced or specialized nursing practice, as  
22 defined in s. 464.003.

23 (4)~~(2)~~ "Agency" means the Agency for Health Care  
24 Administration.

25 (5)~~(3)~~ "Certified nursing assistant" means any person  
26 who has been issued a certificate under part II of chapter  
27 464. The licensed home health agency,~~or licensed nurse~~  
28 registry, or personal care organization shall ensure that the  
29 certified nursing assistant or home health aide employed by or  
30 under contract with the home health agency,~~or licensed nurse~~  
31 registry, or personal care organization is adequately trained

1 to perform the tasks of a home health aide in the home  
2 setting.

3 (6)~~(4)~~ "Client" means an elderly, handicapped, or  
4 convalescent individual who receives ~~personal care services,~~  
5 companion services, or homemaker services in the individual's  
6 home or place of residence.

7 (7)~~(5)~~ "Companion" or "sitter" means a person who  
8 spends time with ~~cares for~~ an elderly, handicapped, or  
9 convalescent individual and accompanies such individual on  
10 trips and outings and may prepare and serve meals to such  
11 individual. A companion may not provide hands-on personal care  
12 to a client.

13 (8)~~(6)~~ "Department" means the Department of Children  
14 and Family Services.

15 (9) "Direct employee" means an employee for whom one  
16 of the following entities pays withholding taxes: a home  
17 health agency or personal care organization; a management  
18 company that has a contract to manage the home health agency  
19 or personal care organization on a day-to-day basis; or an  
20 employee leasing company that has a contract with the home  
21 health agency or personal care organization to handle the  
22 payroll and payroll taxes for the home health agency.

23 (10)~~(7)~~ "Director of nursing" means a registered nurse  
24 who is a ~~and~~ direct employee, as defined in subsection (9), of  
25 the agency ~~and or related business entity~~ who is a graduate of  
26 an approved school of nursing and is licensed in this state;  
27 who has at least 1 year of supervisory experience as a  
28 registered nurse in a licensed home health agency, a facility  
29 licensed under chapter 395, or a facility licensed under part  
30 II or part III of this chapter; and who is responsible for  
31 overseeing the professional nursing and home health aid

1 delivery of services of the agency. A director of nursing ~~An~~  
2 ~~employee~~ may be the director of nursing of a maximum of five  
3 licensed home health agencies operated by a related business  
4 entity and located within one agency service district or  
5 within an immediately contiguous county. If the home health  
6 agency is licensed under this chapter and is part of a  
7 retirement community that provides multiple levels of care, an  
8 employee of the retirement community may serve as the director  
9 of nursing of the home health agency and of up to four  
10 entities licensed under this chapter which are owned,  
11 operated, or managed by the same corporate entity. ~~A director~~  
12 ~~of nursing shall designate, in writing, for each licensed~~  
13 ~~entity, a qualified alternate registered nurse to serve during~~  
14 ~~the absence of the director of nursing.~~

15 (11)~~(8)~~ "Home health agency" means an organization  
16 that provides home health services and staffing services.

17 (12)~~(9)~~ "Home health agency personnel" means persons  
18 who are employed by or under contract with a home health  
19 agency and enter the home or place of residence of patients at  
20 any time in the course of their employment or contract.

21 (13)~~(10)~~ "Home health services" means health and  
22 medical services and medical supplies furnished by an  
23 organization to an individual in the individual's home or  
24 place of residence. The term includes organizations that  
25 provide one or more of the following:

- 26 (a) Nursing care.  
27 (b) Physical, occupational, respiratory, or speech  
28 therapy.  
29 (c) Home health aide services.  
30 (d) Dietetics and nutrition practice and nutrition  
31 counseling.

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

3 (14)~~(11)~~ "Home health aide" means a person who is  
4 trained or qualified, as provided by rule, and who provides  
5 hands-on personal care, performs simple procedures as an  
6 extension of therapy or nursing services, assists in  
7 ambulation or exercises, or assists in administering  
8 medications as permitted in rule and for which the person has  
9 received training established by the agency under s.  
10 400.497(1).

11 (15)~~(12)~~ "Homemaker" means a person who performs  
12 household chores that include housekeeping, meal planning and  
13 preparation, shopping assistance, and routine household  
14 activities for an elderly, handicapped, or convalescent  
15 individual. A homemaker may not provide hands-on personal care  
16 to a client.

17 (16)~~(13)~~ "Home infusion therapy provider" means an  
18 organization that employs, contracts with, or refers a  
19 licensed professional who has received advanced training and  
20 experience in intravenous infusion therapy and who administers  
21 infusion therapy to a patient in the patient's home or place  
22 of residence.

23 (17)~~(14)~~ "Home infusion therapy" means the  
24 administration of intravenous pharmacological or nutritional  
25 products to a patient in his or her home.

26 (18)~~(15)~~ "Nurse registry" means any person that  
27 procures, offers, promises, or attempts to secure  
28 health-care-related contracts for registered nurses, licensed  
29 practical nurses, certified nursing assistants, home health  
30 aides, companions, or homemakers, who are compensated by fees  
31 as independent contractors, including, but not limited to,



1 contracts for the provision of services to patients and  
2 contracts to provide private duty or staffing services to  
3 health care facilities licensed under chapter 395 or this  
4 chapter or other business entities.

5 (19)~~(16)~~ "Organization" means a corporation,  
6 government or governmental subdivision or agency, partnership  
7 or association, or any other legal or commercial entity, any  
8 of which involve more than one health care professional  
9 discipline;or a health care professional and a home health  
10 aide or certified nursing assistant; more than one home health  
11 aide; more than one certified nursing assistant; or a home  
12 health aide and a certified nursing assistant. The term does  
13 not include an entity that provides services using only  
14 volunteers or only individuals related by blood or marriage to  
15 the patient or client.

16 (20)~~(17)~~ "Patient" means any person who receives home  
17 health services in his or her home or place of residence.

18 (21)~~(18)~~ "Personal care" means assistance to a patient  
19 in the activities of daily living, such as dressing, bathing,  
20 eating, or personal hygiene, and assistance in physical  
21 transfer, ambulation, and in administering medications as  
22 permitted by rule.

23 (22) "Personal care organization" means a business  
24 that is licensed to provide personal care, homemaker, and  
25 companion services by employed caregivers, but that does not  
26 provide skilled care services.

27 (23)~~(19)~~ "Physician" means a person licensed under  
28 chapter 458, chapter 459, chapter 460, or chapter 461.

29 (24) "Physician assistant" means a person who is a  
30 graduate of an approved program or its equivalent, or meets  
31 standards approved by the boards, and is licensed to perform

1 medical services delegated by the supervising physician, as  
2 defined in s. 458.347 or s. 459.022.

3 (25)~~(20)~~ "Skilled care" means nursing services or  
4 therapeutic services required by law to be delivered by a  
5 health care professional who is licensed under part I of  
6 chapter 464; part I, part III, or part V of chapter 468; or  
7 chapter 486 and who is employed by or under contract with a  
8 licensed home health agency or is referred by a licensed nurse  
9 registry.

10 (26)~~(21)~~ "Staffing services" means services provided  
11 to a health care facility or other business entity on a  
12 temporary basis by licensed health care personnel, including  
13 certified nursing assistants and home health aides who are  
14 employed by, or work under the auspices of, a licensed home  
15 health agency or who are registered with a licensed nurse  
16 registry.

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

20 400.464 Home health agencies to be licensed;  
21 expiration of license; exemptions; unlawful acts; penalties.--

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

26 (4)(a) An organization may not provide, offer, or  
27 advertise home health services to the public unless the  
28 organization has a valid license or is specifically exempted  
29 under this part. An organization that offers or advertises to  
30 the public any service for which licensure ~~or registration~~ is  
31 required under this part must include in the advertisement the

1 license number ~~or regulation number~~ issued to the organization  
2 by the agency. The agency shall assess a fine of not less  
3 than \$100 to any licensee ~~or registrant~~ who fails to include  
4 the license or registration number when submitting the  
5 advertisement for publication, broadcast, or printing. The  
6 fine for a second or subsequent offense is \$500. The holder  
7 of a license issued under this part may not advertise or  
8 indicate to the public that it holds a home health agency or  
9 nurse registry license other than the one it has been issued.

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

21 (c)~~(b)~~ A person who violates paragraph (a) is subject  
22 to an injunctive proceeding under s. 400.515. A violation of  
23 paragraph (a) is a deceptive and unfair trade practice and  
24 constitutes a violation of the Florida Deceptive and Unfair  
25 Trade Practices Act under part II of chapter 501.

26 (d)~~(c)~~ A person who violates the provisions of  
27 paragraph (a) commits a felony misdemeanor of the third second  
28 degree, punishable as provided in s. 775.082, or s. 775.083,  
29 or s. 775.084. Any person who commits a second or subsequent  
30 violation commits a felony misdemeanor of the second first  
31 degree, punishable as provided in s. 775.082, or s. 775.083,

1 or s. 775.084. Each day of continuing violation constitutes a  
2 separate offense.

3 (e) Any person who owns, operates, or maintains an  
4 unlicensed home health agency and who, within 10 working days  
5 after receiving notification from the agency, fails to cease  
6 operation and apply for a license under this part commits a  
7 felony of the third degree, punishable as provided in s.  
8 775.082, s. 775.083, or s. 775.084. Each day of continued  
9 operation is a separate offense.

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

13 (5) The following are exempt from the licensure  
14 requirements of this part:

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

- 17 1. The Department of Elderly Affairs.
- 18 2. The Department of Health, a community health  
19 center, or a rural health network that furnishes home visits  
20 for the purpose of providing environmental assessments, case  
21 management, health education, personal care services, family  
22 planning, or followup treatment, or for the purpose of  
23 monitoring and tracking disease.
- 24 3. Services provided to persons who have developmental  
25 disabilities, as defined in s. 393.063(12).
- 26 4. Companion and sitter organizations that were  
27 registered under s. 400.509(1) on January 1, 1999, and were  
28 authorized to provide personal services under s. 393.063(33)  
29 under a developmental services provider certificate on January  
30 1, 1999, may continue to provide such services to past,  
31

1 present, and future clients of the organization who need such  
2 services, notwithstanding the provisions of this act.

3 5. The Department of Children and Family Services.

4 (e) An individual who acts alone, in his or her  
5 individual capacity, and who is not employed by or affiliated  
6 with a licensed home health agency, ~~or registered with a~~  
7 licensed nurse registry, or a personal care organization.

8 This exemption does not entitle an individual to perform home  
9 health services without the required professional license.

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

12 400.471 Application for license; fee; provisional  
13 license; temporary permit.--

14 (1) Application for an initial license or for renewal  
15 of an existing license must be made under oath to the agency  
16 on forms furnished by it and must be accompanied by the  
17 appropriate license fee as provided in subsection (8). The  
18 agency must take final action on an initial licensure  
19 application within 60 days after receipt of all required  
20 documentation.

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

24 (a) A listing of services to be provided, either  
25 directly by the applicant or through contractual arrangements  
26 with existing providers;

27 (b) The number and discipline of professional staff to  
28 be employed; and

29 (c) Proof of financial ability to operate.

30 (3) An applicant for initial licensure must  
31 demonstrate financial ability to operate by submitting a

1 balance sheet and income and expense statement for the first 2  
2 years of operation which provide evidence of having sufficient  
3 assets, credit, and projected revenues to cover liabilities  
4 and expenses. The applicant shall have demonstrated financial  
5 ability to operate if the applicant's assets, credit, and  
6 projected revenues meet or exceed projected liabilities and  
7 expenses. All documents required under this subsection must  
8 be prepared in accordance with generally accepted accounting  
9 principles, and must be compiled ~~the financial statement must~~  
10 ~~be signed~~ by a certified public accountant.

11 (4) Each applicant for licensure must comply with the  
12 following requirements:

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

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

29 (c) Proof of compliance with the level 2 background  
30 screening requirements of chapter 435 which has been submitted  
31 within the previous 5 years in compliance with any other

1 health care or assisted living licensure requirements of this  
2 state is acceptable in fulfillment of paragraph (a). Proof of  
3 compliance with background screening which has been submitted  
4 within the previous 5 years to fulfill the requirements of the  
5 Financial Services Commission and the Office of Insurance  
6 Regulation pursuant to chapter 651 as part of an application  
7 for a certificate of authority to operate a continuing care  
8 retirement community is acceptable in fulfillment of the  
9 Department of Law Enforcement and Federal Bureau of  
10 Investigation background check.

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

31

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 licensee or  
4 potential licensee from the Medicare or Medicaid programs.  
5 Proof of compliance with the requirements for disclosure of  
6 ownership and control interest under the Medicaid or Medicare  
7 programs may be 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 owning 5 percent or more of the  
13 applicant. This requirement does not apply to a director of a  
14 not-for-profit corporation or organization if the director  
15 serves solely in a voluntary capacity for the corporation or  
16 organization, does not regularly take part in the day-to-day  
17 operational decisions of the corporation or organization,  
18 receives no remuneration for his or her services on the  
19 corporation or organization's board of directors, and has no  
20 financial interest and has no family members with a financial  
21 interest in the corporation or organization, provided that the  
22 director and the not-for-profit corporation or organization  
23 include in the application a statement affirming that the  
24 director's relationship to the corporation satisfies the  
25 requirements of this paragraph.

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



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

3 (h) The agency may deny or revoke licensure if the  
4 applicant<sup>+</sup>

5 ~~1. Has falsely represented a material fact in the~~  
6 ~~application required by paragraph (e) or paragraph (f), or has~~  
7 ~~omitted any material fact from the application required by~~  
8 ~~paragraph (e) or paragraph (f); or~~

9 ~~2. has been or is currently excluded, suspended,~~  
10 ~~terminated from, or has involuntarily withdrawn from~~  
11 ~~participation in this state's Medicaid program, or the~~  
12 ~~Medicaid program of any other state, or from participation in~~  
13 ~~the Medicare program or any other governmental or private~~  
14 health care or health insurance program.

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

17 (5) The agency may deny or revoke licensure if the  
18 applicant has falsely represented a material fact, or has  
19 omitted any material fact, from the application required by  
20 this section.

21 (6)(5) The home health agency must also obtain and  
22 maintain the following insurance coverages in an amount of not  
23 less than \$250,000 per claim, and the home health agency must  
24 submit proof of coverage with an initial application for  
25 licensure and with each ~~annual~~ application for license  
26 renewal:

27 (a) Malpractice insurance as defined in s.  
28 624.605(1)(k);

29 (b) Liability insurance as defined in s.  
30 624.605(1)(b).

31

1           ~~(7)(6)~~ Sixty ~~Ninety~~ days before the expiration date,  
2 an application for renewal must be submitted to the agency  
3 under oath on forms furnished by it, and a license must be  
4 renewed if the applicant has met the requirements established  
5 under this part and applicable rules. If a renewal application  
6 is not received by the agency 60 days in advance of the  
7 license expiration date, the agency shall notify the licensee  
8 of the administrative fine for a late application under this  
9 subsection within 10 days after the date the renewal  
10 application was due.The home health agency must file with the  
11 application satisfactory proof that it is in compliance with  
12 this part and applicable rules. If there is evidence of  
13 financial instability, the home health agency must submit  
14 satisfactory proof of its financial ability to comply with the  
15 requirements of this part. The agency shall impose an  
16 administrative fine of \$50 per day for each day the home  
17 health agency fails to file an application within the  
18 timeframe specified in this subsection. Each day of continuing  
19 violation is a separate violation; however, the aggregate of  
20 such fines may not exceed \$500. If a renewal application is  
21 not received by the agency 60 days in advance of the license  
22 expiration date, the agency shall notify the licensee of this  
23 late fee within 10 days after the date the renewal application  
24 was due.

25           ~~(8)(7)~~ When transferring the ownership of a home  
26 health agency, the transferee must submit an application for a  
27 license at least 60 days before the effective date of the  
28 transfer. If the application is filed late, an administrative  
29 fine shall be imposed in the amount of \$50 per day. Each day  
30 of continuing violation is a separate violation; however, the  
31 aggregate of such fines may not exceed \$500. If the home

1 health agency is being leased, a copy of the lease agreement  
2 must be filed with the application.

3 (9)(a) Each applicant for initial licensure, renewal,  
4 or change of ownership must pay a license processing fee that  
5 may not exceed \$2,000. All fees paid under this paragraph  
6 shall be deposited in the Health Care Trust Fund.

7 (b) The agency shall accept, in lieu of its own  
8 periodic licensure survey, submission of the survey of an  
9 accrediting organization if the accreditation of the licensed  
10 home health agency is not provisional and if the licensed home  
11 health agency authorizes release of, and the agency receives  
12 the report of, the accrediting organization.

13 ~~(10)(8) The license fee and annual renewal fee~~  
14 ~~required of a home health agency are nonrefundable. The agency~~  
15 ~~shall set the license processing fees in an amount that is~~  
16 ~~sufficient to cover its costs in carrying out its~~  
17 ~~responsibilities under this part, but not to exceed \$1,000.~~  
18 ~~However, state, county, or municipal governments applying for~~  
19 ~~licenses under this part are exempt from the payment of~~  
20 ~~license fees. All fees collected under this part must be~~  
21 ~~deposited in the Health Care Trust Fund for the administration~~  
22 ~~of this part.~~

23 ~~(11)(9)~~ The license must be displayed in a conspicuous  
24 place in the administrative office of the home health agency  
25 and is valid only while in the possession of the person to  
26 which it is issued. The license may not be sold, assigned, or  
27 otherwise transferred, voluntarily or involuntarily, and is  
28 valid only for the home health agency and location for which  
29 originally issued.

30 ~~(12)(10)~~ A home health agency against whom a  
31 revocation or suspension proceeding is pending at the time of

1 license renewal may be issued a provisional license effective  
2 until final disposition by the agency of such proceedings. If  
3 judicial relief is sought from the final disposition, the  
4 court that has jurisdiction may issue a temporary permit for  
5 the duration of the judicial proceeding.

6 ~~(13)~~~~(11)~~ The agency may not issue a license designated  
7 as certified to a home health agency that fails to satisfy the  
8 requirements of a Medicare certification survey from the  
9 agency.

10 ~~(14)~~~~(12)~~ The agency may not issue a license to a home  
11 health agency that has any unpaid fines assessed under this  
12 part.

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

15 400.487 Home health service agreements; physician's,  
16 physician's assistant's, and advanced registered nurse  
17 practitioner's treatment orders; patient assessment;  
18 establishment and review of plan of care; provision of  
19 services; orders not to resuscitate.--

20 (1) Services provided by a home health agency must be  
21 covered by an agreement between the home health agency and the  
22 patient or the patient's legal representative specifying the  
23 home health services to be provided, the rates or charges for  
24 services paid with private funds, and the sources ~~method~~ of  
25 payment, which may include Medicare, Medicaid, private  
26 insurance, personal funds, or a combination thereof. A home  
27 health agency providing skilled care must make an assessment  
28 of the patient's needs within 48 hours after the start of  
29 services.

30 (2) When required by the provisions of chapter 464;  
31 part I, part III, or part V of chapter 468; or chapter 486,

1 | the attending physician, physician's assistant, or advanced  
2 | registered nurse practitioner, acting within his or her  
3 | respective scope of practice, shall ~~for a patient who is to~~  
4 | ~~receive skilled care must~~ establish treatment orders for a  
5 | patient who is to receive skilled care. The treatment orders  
6 | must be signed by the physician, physician's assistant, or  
7 | advanced registered nurse practitioner before a claim for  
8 | payment for the skilled services is submitted by the home  
9 | health agency. If the claim is submitted to a managed care  
10 | organization, the treatment orders must be signed in the time  
11 | allowed under the provider agreement. The treatment orders  
12 | shall ~~within 30 days after the start of care and must~~ be  
13 | reviewed, as frequently as the patient's illness requires, by  
14 | the physician, physician's assistant, or advanced registered  
15 | nurse practitioner in consultation with the home health agency  
16 | ~~personnel that provide services to the patient.~~

17 |         (3) A home health agency shall arrange for supervisory  
18 | visits by a registered nurse to the home of a patient  
19 | receiving home health aide services in accordance with the  
20 | patient's direction, and approval, and agreement to pay the  
21 | charge for the visits.

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

27 |         (5) When nursing services are ordered, the home health  
28 | agency to which a patient has been admitted for care must  
29 | provide the initial admission visit, all service evaluation  
30 | visits, and the discharge visit by qualified personnel who are  
31 | on the payroll of, and to whom an IRS payroll form W-2 will be

1 issued by, the home health agency. Services provided by others  
2 under contractual arrangements to a home health agency must be  
3 monitored and managed by the admitting home health agency. The  
4 admitting home health agency is fully responsible for ensuring  
5 that all care provided through its employees or contract staff  
6 is delivered in accordance with this part and applicable  
7 rules.

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

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

21 Section 6. Section 400.491, Florida Statutes, is  
22 amended to read:

23 400.491 Clinical records.--

24 (1) The home health agency must maintain for each  
25 patient who receives skilled care a clinical record that  
26 includes pertinent past and current medical, nursing, social  
27 and other therapeutic information, the treatment orders, and  
28 other such information as is necessary for the safe and  
29 adequate care of the patient. When home health services are  
30 terminated, the record must show the date and reason for  
31 termination. Such records ~~are considered patient records~~

1 ~~under s. 456.057, and~~ must be maintained by the home health  
2 agency for 6 5 years following termination of services. If a  
3 patient transfers to another home health agency, a copy of his  
4 or her record must be provided to the other home health agency  
5 upon request.

6 (2) If a licensed home health agency ceases to remain  
7 in business, it shall notify each patient, whose clinical  
8 records it has in its possession, of the fact that it is  
9 ceasing operations and give each patient 15 calendar days to  
10 retrieve his or her clinical record at a specified location  
11 within 2 hours' driving time of the patient's residence and,  
12 at a minimum, between the hours of 10 a.m. and 3 p.m. Monday  
13 through Friday.~~The home health agency must maintain for each~~  
14 ~~client who receives nonskilled care a service provision plan.~~  
15 ~~Such records must be maintained by the home health agency for~~  
16 ~~1 year following termination of services.~~

17 Section 7. Section 400.494, Florida Statutes, is  
18 amended to read:

19 400.494 Information about patients confidential.--  
20 (1) Information about patients received by persons  
21 employed by, or providing services to, a home health agency or  
22 received by the licensing agency through reports or inspection  
23 shall be confidential and exempt from the provisions of s.  
24 119.07(1) and shall ~~not~~ be disclosed to a any person, other  
25 than the patient, only as permitted under the provisions of 45  
26 C.F.R. ss. 160.102, 160.103, and 164, subpart A, commonly  
27 referred to as the HIPAA Privacy Regulation; except that  
28 clinical records described in ss. 381.004, 384.29, 385.202,  
29 392.65, 394.4615, 395.404, 397.501, and 760.40 shall be  
30 disclosed as authorized in those sections ~~without the written~~  
31 ~~consent of that patient or the patient's guardian.~~

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

4           Section 8. Section 400.495, Florida Statutes, is  
5 amended to read:

6           400.495 Notice of toll-free telephone number for  
7 central abuse hotline.--On or before the first day home health  
8 services are provided to a patient, any home health agency, or  
9 nurse registry, or personal care organization licensed under  
10 this part must inform the patient and his or her immediate  
11 family, if appropriate, of the right to report abusive,  
12 neglectful, or exploitative practices. The statewide  
13 toll-free telephone number for the central abuse hotline must  
14 be provided to patients in a manner that is clearly legible  
15 and must include the words: "To report abuse, neglect, or  
16 exploitation, please call toll-free ...(phone number)...." The  
17 Agency for Health Care Administration shall adopt rules that  
18 provide for 90 days' advance notice of a change in the  
19 toll-free telephone number and that outline due process  
20 procedures, as provided under chapter 120, for home health  
21 agency personnel, and nurse registry personnel, and personal  
22 care organization personnel who are reported to the central  
23 abuse hotline. Home health agencies, and nurse registries,  
24 and personal care organizations shall establish appropriate  
25 policies and procedures for providing such notice to patients.

26           Section 9. Section 400.497, Florida Statutes, are  
27 amended to read:

28           400.497 Rules establishing minimum standards.--The  
29 agency shall adopt, publish, and enforce rules to administer  
30 ~~implement~~ this part, including, as applicable, ss. 400.506 and  
31



1 400.5095 ~~400.509~~, which must provide reasonable and fair  
2 minimum standards relating to:  
3       (1) The home health aide competency test and home  
4 health aide training. The agency shall create the home health  
5 aide competency test and establish the curriculum and  
6 instructor qualifications for home health aide training.  
7 Licensed home health agencies may provide this training and  
8 shall furnish documentation of such training to other licensed  
9 home health agencies upon request. Successful passage of the  
10 competency test by home health aides may be substituted for  
11 the training required under this section and any rule adopted  
12 pursuant thereto.  
13       (2) Shared staffing. The agency shall allow shared  
14 staffing if the home health agency is part of a retirement  
15 community that provides multiple levels of care, is located on  
16 one campus, is licensed under this chapter, and otherwise  
17 meets the requirements of law and rule.  
18       (3) The criteria for the frequency of onsite licensure  
19 surveys.  
20       (4) Licensure application and renewal.  
21       (5) The requirements for onsite and electronic  
22 accessibility of supervisory personnel of home health agencies  
23 and personal care organizations.  
24       (6) Information to be included in patients' records.  
25       (7) Geographic service areas.  
26       (8) Preparation of a comprehensive emergency  
27 management plan pursuant to s. 400.492.  
28       (a) The Agency for Health Care Administration shall  
29 adopt rules establishing minimum criteria for the plan and  
30 plan updates, with the concurrence of the Department of Health  
31 and in consultation with the Department of Community Affairs.

1           (b) The rules must address the requirements in s.  
2 400.492. In addition, the rules shall provide for the  
3 maintenance of patient-specific medication lists that can  
4 accompany patients who are transported from their homes.

5           (c) The plan is subject to review and approval by the  
6 county health department. During its review, the county health  
7 department shall ensure that the following agencies, at a  
8 minimum, are given the opportunity to review the plan:

9           1. The local emergency management agency.

10           2. The Agency for Health Care Administration.

11           3. The local chapter of the American Red Cross or  
12 other lead sheltering agency.

13           4. The district office of the Department of Children  
14 and Family Services.

15

16 The county health department shall complete its review within  
17 60 days after receipt of the plan and shall either approve the  
18 plan or advise the home health agency of necessary revisions.

19           (d) For any home health agency that operates in more  
20 than one county, the Department of Health shall review the  
21 plan, after consulting with all of the county health  
22 departments, the agency, and all the local chapters of the  
23 American Red Cross or other lead sheltering agencies in the  
24 areas of operation for that particular home health agency. The  
25 Department of Health shall complete its review within 90 days  
26 after receipt of the plan and shall either approve the plan or  
27 advise the home health agency of necessary revisions. The  
28 Department of Health shall make every effort to avoid imposing  
29 differing requirements based on differences between counties  
30 on the home health agency.

31

1 (e) The requirements in this subsection do not apply  
2 to:

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

6 2. A retirement community that consists of residential  
7 units for independent living and either a licensed nursing  
8 home or an assisted living facility, and has a licensed home  
9 health agency used exclusively by the residents of the  
10 retirement community, provided the comprehensive emergency  
11 management plan for the facility or retirement community  
12 provides for continuous care of all residents with special  
13 needs during an emergency.

14 Section 10. Subsections (3), (5), (7), (8), (10),  
15 (13), (14), and (17) of section 400.506, Florida Statutes, are  
16 amended to read:

17 400.506 Licensure of nurse registries; requirements;  
18 penalties.--

19 (3) Each applicant for initial licensure, license  
20 renewal, or change of ownership shall pay a license processing  
21 fee that may not exceed \$2,000. All fees paid under this  
22 subsection shall be deposited in the Health Care Trust Fund.

23 Application for license must be made to the Agency for Health  
24 Care Administration on forms furnished by it and must be  
25 accompanied by the appropriate licensure fee, as established  
26 by rule and not to exceed the cost of regulation under this  
27 part. ~~The licensure fee for nurse registries may not exceed~~  
28 ~~\$1,000 and must be deposited in the Health Care Trust Fund.~~

29 (5) A license issued for the operation of a nurse  
30 registry, unless sooner suspended or revoked, expires 2 years  
31 ~~1 year~~ after its date of issuance. Sixty days before the

1 expiration date, an application for renewal must be submitted  
2 to the Agency for Health Care Administration on forms  
3 furnished by it. The Agency for Health Care Administration  
4 shall renew the license if the applicant has met the  
5 requirements of this section and applicable rules. A nurse  
6 registry against which a revocation or suspension proceeding  
7 is pending at the time of license renewal may be issued a  
8 conditional license effective until final disposition by the  
9 Agency for Health Care Administration of such proceedings. If  
10 judicial relief is sought from the final disposition, the  
11 court having jurisdiction may issue a conditional license for  
12 the duration of the judicial proceeding.

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

22 (8)(a) It is unlawful for a person to offer or  
23 advertise to the public services as defined by rule without  
24 obtaining a valid license from the Agency for Health Care  
25 Administration. It is unlawful for any holder of a license to  
26 advertise or hold out to the public that he or she holds a  
27 license for other than that for which he or she actually holds  
28 a license. A person who violates this paragraph subsection is  
29 subject to injunctive proceedings under s. 400.515.

30 (b) A person who violates paragraph (a) commits a  
31 felony of the third degree, punishable as provided in s.

1 775.082, s. 775.083, or s. 775.084. Any person who commits a  
2 second or subsequent violation commits a felony of the second  
3 degree, punishable as provided in s. 775.082, s. 775.083, or  
4 s. 775.084. Each day of continuing violation is a separate  
5 offense.

6 (c) Any person who owns, operates, or maintains an  
7 unlicensed nurse registry and who, within 10 working days  
8 after receiving notification from the agency, fails to cease  
9 operation and apply for a license under this part commits a  
10 felony of the third degree, punishable as provided in s.  
11 775.082, s. 775.083, or s. 775.084. Each day of continued  
12 operation is a separate offense.

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

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

27 ~~(b) A certified nursing assistant or home health aide~~  
28 ~~may be referred for a contract to provide care to a patient in~~  
29 ~~his or her home only if that patient is under a physician's~~  
30 ~~care. A certified nursing assistant or home health aide~~  
31 referred for contract in a private residence shall be limited

1 to assisting a patient with bathing, dressing, toileting,  
2 grooming, eating, physical transfer, and those normal daily  
3 routines the patient could perform for himself or herself were  
4 he or she physically capable. A certified nursing assistant  
5 or home health aide may not provide medical or other health  
6 care services that require specialized training and that may  
7 be performed only by licensed health care professionals. ~~The~~  
8 ~~nurse registry shall obtain the name and address of the~~  
9 ~~attending physician and send written notification to the~~  
10 ~~physician within 48 hours after a contract is concluded that a~~  
11 ~~certified nursing assistant or home health aide will be~~  
12 ~~providing care for that patient.~~

13       ~~(c) A registered nurse shall make monthly visits to~~  
14 ~~the patient's home to assess the patient's condition and~~  
15 ~~quality of care being provided by the certified nursing~~  
16 ~~assistant or home health aide. Any condition which in the~~  
17 ~~professional judgment of the nurse requires further medical~~  
18 ~~attention shall be reported to the attending physician and the~~  
19 ~~nurse registry. The assessment shall become a part of the~~  
20 ~~patient's file with the nurse registry and may be reviewed by~~  
21 ~~the agency during their survey procedure.~~

22       (13) Each nurse registry must comply with the  
23 procedures set forth in s. 400.512 for maintaining records of  
24 the work ~~employment~~ history of all persons referred for  
25 contract and is subject to the standards and conditions set  
26 forth in that section. However, an initial screening may not  
27 be required for persons who have been continuously registered  
28 with the nurse registry since October 1, 2000 ~~September 30,~~  
29 ~~1990.~~

30       (14) The nurse registry must maintain the application  
31 on file, and that file must be open to the inspection of the

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

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

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

1 (b) Whenever a medical plan of treatment is  
2 established for a patient, the initial medical plan of  
3 treatment, any amendment to the plan, additional order or  
4 change in orders, and copy of nursing notes must be filed in  
5 the office of the nurse registry.

6 Section 11. Effective July 1, 2005, section 400.509,  
7 Florida Statutes, is repealed.

8 Section 12. Effective July 1, 2005, section 400.5095,  
9 Florida Statutes, is created to read:

10 400.5095 Licensure of personal care organizations;  
11 requirements; penalties.--

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

21 (2) Each applicant for licensure must comply with the  
22 following requirements:

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



1 services. The applicant must comply with the procedures for  
2 level 2 background screening as set forth in chapter 435.

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

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

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

1 been requested of and granted by the agency as set forth in  
2 chapter 435.

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

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

29 (g) A license may not be granted to an applicant if  
30 the applicant or managing employee has been found guilty of,  
31 regardless of adjudication, or has entered a plea of nolo

1 contendere or guilty to, any offense prohibited under the  
2 level 2 standards for screening set forth in chapter 435,  
3 unless an exemption from disqualification has been granted by  
4 the agency as set forth in chapter 435.

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

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

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

17 (4) Application for licensure must be made to the  
18 Agency for Health Care Administration on forms furnished by it  
19 and must be accompanied by the appropriate licensure fee, as  
20 established by rule, which may not exceed the cost of  
21 regulation under this part. The licensure fee for personal  
22 care organizations may not exceed \$1,800 and must be deposited  
23 in the Health Care Trust Fund.

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

28 (a) Fails to comply with this section or applicable  
29 rules.

30  
31

1           (b) Commits an intentional, reckless, or negligent act  
2 that materially affects the health or safety of a person  
3 receiving services.

4           (6) A license issued for the operation of a personal  
5 care organization, unless sooner suspended or revoked, expires  
6 2 years after its date of issuance. Sixty days before the  
7 expiration date, an application for renewal must be submitted  
8 to the Agency for Health Care Administration on forms  
9 furnished by it. The agency shall impose a late fee of \$50 per  
10 day for each day the personal care organization fails to file  
11 an application within the timeframe specified in this  
12 subsection. Each day of continuing violation is a separate  
13 violation; however, the aggregate of such fees may not exceed  
14 \$500. If a renewal application is not received by the agency  
15 60 days in advance of the license expiration date, the agency  
16 shall notify the licensee of this late fee within 10 days  
17 after the date the renewal application was due. The Agency for  
18 Health Care Administration shall renew the license if the  
19 applicant has met the requirements of this section and  
20 applicable rules. A personal care organization against which a  
21 revocation or suspension proceeding is pending at the time of  
22 license renewal may be issued a conditional license that is  
23 effective until final disposition of such proceeding by the  
24 Agency for Health Care Administration. If judicial relief is  
25 sought from the final disposition, the court having  
26 jurisdiction may issue a conditional license for the duration  
27 of the judicial proceeding.

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

30           (8)(a) A person may not provide, offer, or advertise  
31 to the public personal care services without obtaining a valid

1 license from the Agency for Health Care Administration. A  
2 person who holds a license may not advertise or hold out to  
3 the public that he or she holds a license other than the  
4 license that he or she actually holds. A person who violates  
5 this subsection is subject to injunctive proceedings under s.  
6 400.515.

7 (b) A personal care organization that offers or  
8 advertises to the public services for which licensure is  
9 required under this part must include in the advertisement the  
10 license number issued to the organization by the agency. The  
11 agency shall assess a fine of \$100 to any licensee who fails  
12 to include the license number when submitting the  
13 advertisement for publication, broadcast, or printing. The  
14 fine for a second or subsequent offense is \$500. The holder of  
15 a license issued under this part may not advertise or indicate  
16 to the public that it holds any license other than the one it  
17 has been issued.

18 (c) The operation or maintenance of a unlicensed  
19 personal care organization or the performance of any personal  
20 care services in violation of this part is declared a  
21 nuisance, inimical to the public health, welfare, and safety.  
22 The agency or any state attorney may, in addition to other  
23 remedies provided in this part, bring an action for an  
24 injunction to restrain such violation, or to enjoin the future  
25 operation or maintenance of any such personal care  
26 organization personal care services in violation of this part,  
27 until compliance with this part or the rules adopted under  
28 this part has been demonstrated to the satisfaction of the  
29 agency.

30 (d) A violation of paragraph (a) is a deceptive and  
31 unfair trade practice and constitutes a violation of the

1 Florida Deceptive and Unfair Trade Practices Act under part II  
2 of chapter 501.

3 (e) A person who violates paragraph (a) commits a  
4 felony of the third degree, punishable as provided in s.  
5 775.082, s. 775.083, or s. 775.084. Any person who commits a  
6 second or subsequent violation commits a felony of the second  
7 degree, punishable as provided in s. 775.082, s. 775.083, or  
8 s. 775.084. Each day of continuing violation is a separate  
9 offense.

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

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

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

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

29 (b) If, in responding to a complaint, an agent or  
30 employee of the Agency for Health Care Administration has  
31 reason to believe that abuse, neglect, or exploitation has

1 occurred according to the definitions in chapter 415, he or  
2 she shall file a report under chapter 415.

3 (10)(a) A personal care organization may provide  
4 personal care services in the patient's place of residence or  
5 location through certified nursing assistants or home health  
6 aides who present documented proof of successful completion of  
7 the training required by rule of the agency. Each certified  
8 nursing assistant, home health aide, homemaker, or companion  
9 must provide current documentation that he or she is free from  
10 communicable diseases.

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

24 (c) Personal case organization services must be  
25 covered by an agreement between the personal care organization  
26 and the patient or the patient's legal representative  
27 specifying the services to be provided, the rates or charges  
28 for services paid with private funds, and the sources of  
29 payment, such as Medicaid, commercial insurance, personal  
30 funds, or a combination thereof. A personal care organization  
31 shall arrange for supervisory visits by a registered nurse to

1 the home of a patient receiving personal care services in  
2 accordance with the patient's direction, approval, and  
3 agreement to pay the charge for the visits.

4 (11) Each personal care organization must require  
5 every certified nursing assistant or home health aide to  
6 complete an application form providing the following  
7 information:

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

10 (b) The educational background and employment history  
11 of the applicant.

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

14 (d) When appropriate, information concerning the  
15 renewal of the applicable certification.

16 (12) Each personal care organization must comply with  
17 the procedures set forth in s. 400.512 for maintaining records  
18 of the employment history of all certified nursing assistants,  
19 home health aides, homemakers, and companions that provide  
20 services to the patients and clients of the personal care  
21 organization. Each personal care organization is subject to  
22 the standards and conditions set forth in s. 400.512.

23 (13) The personal care organization must maintain the  
24 application on file and that file must be open to the  
25 inspection of the Agency for Health Care Administration. The  
26 personal care organization must maintain on file the name and  
27 address of the patients or clients to whom the personal care  
28 organization personnel provide services. A personal care  
29 organization must maintain the file that includes the  
30 application and other applicable documentation for 3 years  
31



1 after the date of the last file entry of information  
2 concerning a patient or client.

3 (14) A personal care organization must provide the  
4 following staff training:

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

9 (b) In addition to the information provided under  
10 paragraph (a), newly hired personal care organization  
11 personnel who will be providing direct care to patients or  
12 clients must complete 2 hours of training in Alzheimer's  
13 disease and dementia-training in Alzheimer's disease and  
14 dementia-related disorders within 9 months after beginning  
15 employment with the personal care organization. This training  
16 must include, but need not be limited to, an overview of  
17 dementia, a demonstration of basic skills in communicating  
18 with persons who have dementia, the management of problem  
19 behaviors, information about promoting the client's  
20 independence in activities of daily living, and instruction in  
21 skills for working with families and caregivers.

22 (c) For certified nursing assistants, the required 2  
23 hours of training shall be part of the total hours of training  
24 required annually.

25 (d) The Department of Elderly Affairs, or its  
26 designee, must approve the required training. The department  
27 must consider for approval training offered in a variety of  
28 formats. The department shall keep a list of current providers  
29 who are approved to provide the 2-hour training. The  
30 department shall adopt rules to establish standards for

31

1 employees who are subject to this training, for the trainers,  
2 and for the training required in this subsection.

3 (e) Upon completing the training listed in this  
4 section, the employee shall be issued a certificate that  
5 states that the training mandated under this subsection has  
6 been received. The certificate shall be dated and signed by  
7 the training provider. The certificate is evidence of  
8 completion of this training, and the employee is not required  
9 to repeat this training if the employee changes employment to  
10 a different personal care organization.

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

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

18 (h) A personal care organization licensed under this  
19 part which claims that it provides special care for persons  
20 who have Alzheimer's disease or other related disorders must  
21 disclose in its advertisements or in a separate document those  
22 services that distinguish the care as being especially  
23 applicable to, or suitable for, such persons. The personal  
24 care organization must give a copy of all such advertisements  
25 or a copy of the document to each person who requests  
26 information about the personal care organization and must  
27 maintain a copy of all such advertisements and documents in  
28 its records. The Agency for Health Care Administration shall  
29 examine all such advertisements and documents in the personal  
30 care organization's records as part of the license renewal  
31 procedure.

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

6           (16) Each personal care organization shall prepare and  
7 maintain a comprehensive emergency management plan that is  
8 consistent with the criteria in this subsection and with the  
9 local special needs plan. The plan shall be updated annually.  
10 The plan must specify how the personal care organization will  
11 facilitate the provision of continuous care to its patients  
12 who are registered pursuant to s. 252.355 during an emergency  
13 that interrupts the provision of care or services in private  
14 residencies.

15           (a) A certified nursing assistant or home health aide  
16 who cares for persons registered pursuant to s. 252.355 must  
17 include in each patient record a description of how care will  
18 be continued during a disaster or emergency that interrupts  
19 the provision of care in the patient's home. It shall be the  
20 responsibility of the personal care organization to ensure  
21 that continuous care is provided.

22           (b) Each personal care organization shall maintain a  
23 current prioritized list of patients in private residences who  
24 are registered pursuant to s. 252.355 and who need continued  
25 services during a disaster or emergency. This list must  
26 indicate, for each patient, if the patient or client is to be  
27 transported to a special needs shelter. The personal care  
28 organizations shall make this list available to county health  
29 departments and to local emergency management agencies upon  
30 request.

31

1           (c) Each certified nursing assistant or home health  
2 aide who is caring for a patient who is registered pursuant to  
3 s. 252.355 shall provide a list of the patient's medication  
4 and equipment needs to the personal care organization, which  
5 shall make this information available to county health  
6 departments and to local emergency management agencies upon  
7 request.

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

14           (e) The Agency for Health Care Administration, with  
15 the concurrence of the Department of Health and in  
16 consultation with the Department of Community Affairs, shall  
17 adopt rules establishing minimum criteria for the  
18 comprehensive emergency management plan and the plan updates  
19 required by this subsection.

20           (17) Each personal care organization must comply with  
21 the notice requirements of s. 400.495, relating to the  
22 reporting of abuse.

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

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

3           (20) The agency shall classify deficiencies and impose  
4 penalties for various classes of deficiencies in accordance  
5 with the following schedule:

6           (a) A class I deficiency is any act, omission, or  
7 practice that results in a patient's death, disablement, or  
8 permanent injury, or places a patient at imminent risk of  
9 death, disablement, or permanent injury. Upon finding a class  
10 I deficiency, the agency may impose an administrative fine in  
11 the amount of \$5,000 for each occurrence and each day that the  
12 deficiency exists. In addition, the agency may immediately  
13 revoke the license, or impose a moratorium on the admission of  
14 new patients, until the factors causing the deficiency have  
15 been corrected.

16           (b) A class II deficiency is any act, omission, or  
17 practice that has a direct adverse effect on the health,  
18 safety, or security of a patient. Upon finding a class II  
19 deficiency, the agency may impose an administrative fine in  
20 the amount of \$1,000 for each occurrence and each day that the  
21 deficiency exists. In addition, the agency may suspend the  
22 license, or impose a moratorium on the admission of new  
23 patients, until the deficiency has been corrected.

24           (c) A class III deficiency is any act, omission, or  
25 practice that has an indirect, adverse effect on the health,  
26 safety, or security of a patient. Upon finding an uncorrected  
27 or repeated class III deficiency, the agency may impose an  
28 administrative fine not to exceed \$500 for each occurrence and  
29 each day that the uncorrected or repeated deficiency exists.

30           (d) A class IV deficiency is any act, omission, or  
31 practice related to required reports, forms, or documents

1 which does not have the potential of negatively affecting  
2 patients. These violations are of a type that the agency  
3 determines do not threaten the health, safety, or security of  
4 patients. Upon finding an uncorrected or repeated class IV  
5 deficiency, the agency may impose an administrative fine not  
6 to exceed \$200 for each occurrence and each day that the  
7 uncorrected or repeated deficiency exists.

8 (21) Applicants that submit an application before  
9 January 1, 2006, which meets all requirements for initial  
10 licensure as specified in this section shall receive a  
11 temporary license until the completion of the initial survey  
12 verifying that the applicant meets all requirements in rules  
13 as authorized in ss. 400.5095 and 400.497.

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

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

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

31

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, 2000 ~~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, 2000 ~~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. Between July 1, 2005, and June 30, 2006,  
21 the Agency for Health Care Administration may issue a license  
22 to a personal care organization, nurse registry, or home  
23 health agency for less than a 2-year period by charging a  
24 prorated licensure fee and specifying a different renewal date  
25 than the date that would otherwise be required for biennial  
26 licensure.

27 Section 16. Except as otherwise expressly provided in  
28 this act, this act shall take effect July 1, 2004.

29  
30  
31

1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2                   COMMITTEE SUBSTITUTE FOR  
3                   Senate Bill 664

4 The committee substitute differs from SB 664 in the following  
5 ways:

6 "Admission" is defined.

7 The licensure fee for nurse registries is increased to \$2,000  
8 and the \$400 inspection fee is deleted.

9 The requirement for a registered nurse to visit the home of a  
10 home health agency's patient is made contingent upon the  
11 patient's agreement to pay for the visit.

12 The repeal of s. 400.509, F.S., is effective July 1, 2005.

13 The creation of s. 400.5095, F.S., is effective July 1, 2005.

14 Applicants for home health agency licensure will not have to  
15 complete a questionnaire concerning volume data but will  
16 provide information about services and staff as required in  
17 current law.

18 AHCA will not send a renewal notice before a home health  
19 agency or personal care organization license expires but will  
20 send a notice of a late fee 10 days after the renewal  
21 application was due.

22 The licensure fee for a personal care organization may not  
23 exceed \$1,800.

24 Four categories of deficiencies are established for personal  
25 care organizations to provide a system under which AHCA could  
26 assess fines for deficiencies in care.

27 The maximum fine of \$100 for operating a personal care  
28 organization without a license is changed to an absolute \$100  
29 fine.

30 To be exempt from background screening requirements, an  
31 employee must have been employed continuously since 2000  
rather than since 2002.

The effective date is July 1, 2004 except as otherwise  
provided in the bill.