

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

.
.
.



1 Representative(s) Grimsley offered the following:

2

3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

5 Section 1. Subsection (2) of section 400.461, Florida
6 Statutes, is amended to read:

7 400.461 Short title; purpose.--

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

13 Section 2. Section 400.462, Florida Statutes, is amended
14 to read:

15 400.462 Definitions.--As used in this part, the term:

141867

Amendment No. (for drafter's use only)

16 (1) "Administrator" means a direct employee, as defined in
17 subsection (9) of the home health agency or a related
18 organization, or of a management company that has a contract to
19 manage the home health agency, to whom the governing body has
20 delegated the responsibility for day-to-day administration of
21 the home health agency. The administrator must be a licensed
22 physician, physician assistant, or registered nurse licensed to
23 practice in this state or an individual having at least 1 year
24 of supervisory or administrative experience in home health care
25 or in a facility licensed under chapter 395 or under part II or
26 part III of this chapter. An administrator may manage a maximum
27 of five licensed home health agencies located within one agency
28 service district or within an immediately contiguous county. If
29 the home health agency is licensed under this chapter and is
30 part of a retirement community that provides multiple levels of
31 care, an employee of the retirement community may administer the
32 home health agency and up to a maximum of four entities licensed
33 under this chapter that are owned, operated, or managed by the
34 same corporate entity. An administrator shall designate, in
35 writing, for each licensed entity, a qualified alternate
36 administrator to serve during absences.

37 (2) "Admission" means a decision by the home health
38 agency, during or after an evaluation visit to the patient's
39 home, that there is reasonable expectation that the patient's
40 medical, nursing, and social needs for skilled care can be
41 adequately met by the agency in the patient's place of
42 residence. Admission includes completion of an agreement with

141867

5/2/2005 8:21:30 AM

Amendment No. (for drafter's use only)

43 the patient or the patient's legal representative to provide
44 home health services as required in s. 400.487(1).

45 (3) "Advanced registered nurse practitioner" means a
46 person licensed in this state to practice professional nursing
47 and certified in advanced or specialized nursing practice, as
48 defined in s. 464.003.

49 (4)(2) "Agency" means the Agency for Health Care
50 Administration.

51 (5)(3) "Certified nursing assistant" means any person who
52 has been issued a certificate under part II of chapter 464. The
53 licensed home health agency or licensed nurse registry shall
54 ensure that the certified nursing assistant employed by or under
55 contract with the home health agency or licensed nurse registry
56 is adequately trained to perform the tasks of a home health aide
57 in the home setting.

58 (6)(4) "Client" means an elderly, handicapped, or
59 convalescent individual who receives ~~personal care services,~~
60 ~~companion services,~~ or homemaker services in the individual's
61 home or place of residence.

62 (7)(5) "Companion" or "sitter" means a person who spends
63 time with or cares for an elderly, handicapped, or convalescent
64 individual and accompanies such individual on trips and outings
65 and may prepare and serve meals to such individual. A companion
66 may not provide hands-on personal care to a client.

67 (8)(6) "Department" means the Department of Children and
68 Family Services.

141867

5/2/2005 8:21:30 AM

Amendment No. (for drafter's use only)

69 (9) "Direct employee" means an employee for whom one of
70 the following entities pays withholding taxes: a home health
71 agency; a management company that has a contract to manage the
72 home health agency on a day-to-day basis; or an employee leasing
73 company that has a contract with the home health agency to
74 handle the payroll and payroll taxes for the home health agency.

75 ~~(10)(7)~~ "Director of nursing" means a registered nurse who
76 is a and direct employee, as defined in subsection (9), of the
77 agency and or related business entity who is a graduate of an
78 approved school of nursing and is licensed in this state; who
79 has at least 1 year of supervisory experience as a registered
80 nurse ~~in a licensed home health agency, a facility licensed~~
81 ~~under chapter 395, or a facility licensed under part II or part~~
82 ~~III of this chapter;~~ and who is responsible for overseeing the
83 professional nursing and home health aid delivery of services of
84 the agency. A director of nursing ~~An employee~~ may be the
85 director ~~of nursing~~ of a maximum of five licensed home health
86 agencies operated by a related business entity and located
87 within one agency service district or within an immediately
88 contiguous county. If the home health agency is licensed under
89 this chapter and is part of a retirement community that provides
90 multiple levels of care, an employee of the retirement community
91 may serve as the director of nursing of the home health agency
92 and of up to four entities licensed under this chapter which are
93 owned, operated, or managed by the same corporate entity. ~~A~~
94 ~~director of nursing shall designate, in writing, for each~~

141867

5/2/2005 8:21:30 AM

Amendment No. (for drafter's use only)

95 ~~licensed entity, a qualified alternate registered nurse to serve~~
96 ~~during the absence of the director of nursing.~~

97 ~~(11)(8)~~ "Home health agency" means an organization that
98 provides home health services and staffing services.

99 ~~(12)(9)~~ "Home health agency personnel" means persons who
100 are employed by or under contract with a home health agency and
101 enter the home or place of residence of patients at any time in
102 the course of their employment or contract.

103 ~~(13)(10)~~ "Home health services" means health and medical
104 services and medical supplies furnished by an organization to an
105 individual in the individual's home or place of residence. The
106 term includes organizations that provide one or more of the
107 following:

108 (a) Nursing care.

109 (b) Physical, occupational, respiratory, or speech
110 therapy.

111 (c) Home health aide services.

112 (d) Dietetics and nutrition practice and nutrition
113 counseling.

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

116 ~~(14)(11)~~ "Home health aide" means a person who is trained
117 or qualified, as provided by rule, and who provides hands-on
118 personal care, performs simple procedures as an extension of
119 therapy or nursing services, assists in ambulation or exercises,
120 or assists in administering medications as permitted in rule and
121 for which the person has received training established by the

141867

5/2/2005 8:21:30 AM

Amendment No. (for drafter's use only)

122 agency under s. 400.497(1). The licensed home health agency or
123 licensed nurse registry shall ensure that the home health aide
124 employed by or under contract with the home health agency or
125 licensed nurse registry is adequately trained to perform the
126 tasks of a home health aide in the home setting.

127 ~~(15)~~(12) "Homemaker" means a person who performs household
128 chores that include housekeeping, meal planning and preparation,
129 shopping assistance, and routine household activities for an
130 elderly, handicapped, or convalescent individual. A homemaker
131 may not provide hands-on personal care to a client.

132 ~~(16)~~(13) "Home infusion therapy provider" means an
133 organization that employs, contracts with, or refers a licensed
134 professional who has received advanced training and experience
135 in intravenous infusion therapy and who administers infusion
136 therapy to a patient in the patient's home or place of
137 residence.

138 ~~(17)~~(14) "Home infusion therapy" means the administration
139 of intravenous pharmacological or nutritional products to a
140 patient in his or her home.

141 ~~(18)~~(15) "Nurse registry" means any person that procures,
142 offers, promises, or attempts to secure health-care-related
143 contracts for registered nurses, licensed practical nurses,
144 certified nursing assistants, home health aides, companions, or
145 homemakers, who are compensated by fees as independent
146 contractors, including, but not limited to, contracts for the
147 provision of services to patients and contracts to provide
148 private duty or staffing services to health care facilities

141867

5/2/2005 8:21:30 AM

Amendment No. (for drafter's use only)

149 licensed under chapter 395 or this chapter or other business
150 entities.

151 (19)~~(16)~~ "Organization" means a corporation, government or
152 governmental subdivision or agency, partnership or association,
153 or any other legal or commercial entity, any of which involve
154 more than one health care professional discipline; ~~or~~ a health
155 care professional and a home health aide or certified nursing
156 assistant; more than one home health aide; more than one
157 certified nursing assistant; or a home health aide and a
158 certified nursing assistant. The term does not include an entity
159 that provides services using only volunteers or only individuals
160 related by blood or marriage to the patient or client.

161 (20)~~(17)~~ "Patient" means any person who receives home
162 health services in his or her home or place of residence.

163 (21)~~(18)~~ "Personal care" means assistance to a patient in
164 the activities of daily living, such as dressing, bathing,
165 eating, or personal hygiene, and assistance in physical
166 transfer, ambulation, and in administering medications as
167 permitted by rule.

168 (22)~~(19)~~ "Physician" means a person licensed under chapter
169 458, chapter 459, chapter 460, or chapter 461.

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

141867

5/2/2005 8:21:30 AM

Amendment No. (for drafter's use only)

175 ~~(24)~~(20) "Skilled care" means nursing services or
176 therapeutic services required by law to be delivered by a health
177 care professional who is licensed under part I of chapter 464;
178 part I, part III, or part V of chapter 468; or chapter 486 and
179 who is employed by or under contract with a licensed home health
180 agency or is referred by a licensed nurse registry.

181 ~~(25)~~(21) "Staffing services" means services provided to a
182 health care facility or other business entity on a temporary
183 basis by licensed health care personnel and by,~~including~~
184 certified nursing assistants and home health aides who are
185 employed by, or work under the auspices of, a licensed home
186 health agency or who are registered with a licensed nurse
187 registry. Staffing services may be provided anywhere within the
188 state.

189 Section 3. Subsections (1) and (4) of section 400.464,
190 Florida Statutes, are amended to read:

191 400.464 Home health agencies to be licensed; expiration of
192 license; exemptions; unlawful acts; penalties.--

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

197 (4)(a) An organization may not provide, offer, or
198 advertise home health services to the public unless the
199 organization has a valid license or is specifically exempted
200 under this part. An organization that offers or advertises to
201 the public any service for which licensure or registration is

141867

5/2/2005 8:21:30 AM

Amendment No. (for drafter's use only)

202 required under this part must include in the advertisement the
203 license number or registration ~~regulation~~ number issued to the
204 organization by the agency. The agency shall assess a fine of
205 not less than \$100 to any licensee or registrant who fails to
206 include the license or registration number when submitting the
207 advertisement for publication, broadcast, or printing. The fine
208 for a second or subsequent offense is \$500. The holder of a
209 license issued under this part may not advertise or indicate to
210 the public that it holds a home health agency or nurse registry
211 license other than the one it has been issued.

212 (b) The operation or maintenance of an unlicensed home
213 health agency or the performance of any home health services in
214 violation of this part is declared a nuisance, inimical to the
215 public health, welfare, and safety. The agency or any state
216 attorney may, in addition to other remedies provided in this
217 part, bring an action for an injunction to restrain such
218 violation, or to enjoin the future operation or maintenance of
219 the home health agency or the provision of home health services
220 in violation of this part, until compliance with this part or
221 the rules adopted under this part has been demonstrated to the
222 satisfaction of the agency.

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

141867

5/2/2005 8:21:30 AM

Amendment No. (for drafter's use only)

228 ~~(d)(e)~~ A person who violates the provisions of paragraph
229 (a) commits a misdemeanor of the second degree, punishable as
230 provided in s. 775.082 or s. 775.083. Any person who commits a
231 second or subsequent violation commits a misdemeanor of the
232 first degree, punishable as provided in s. 775.082 or s.
233 775.083. Each day of continuing violation constitutes a separate
234 offense.

235 (e) Any person who owns, operates, or maintains an
236 unlicensed home health agency and who, within 10 working days
237 after receiving notification from the agency, fails to cease
238 operation and apply for a license under this part commits a
239 misdemeanor of the second degree, punishable as provided in s.
240 775.082 or s. 775.083. Each day of continued operation is a
241 separate offense.

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

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

247 400.471 Application for license; fee; provisional license;
248 temporary permit.--

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

141867

5/2/2005 8:21:30 AM

Amendment No. (for drafter's use only)

255 (2) The initial applicant must file with the application
256 satisfactory proof that the home health agency is in compliance
257 with this part and applicable rules, including:

258 (a) A listing of services to be provided, either directly
259 by the applicant or through contractual arrangements with
260 existing providers.†

261 (b) The number and discipline of professional staff to be
262 employed.†~~and~~

263 (c) Proof of financial ability to operate.

264 (d) Completion of questions concerning volume data on the
265 renewal application as determined by rule.

266 (3) An applicant for initial licensure must demonstrate
267 financial ability to operate by submitting a balance sheet and
268 income and expense statement for the first 2 years of operation
269 which provide evidence of having sufficient assets, credit, and
270 projected revenues to cover liabilities and expenses. The
271 applicant shall have demonstrated financial ability to operate
272 if the applicant's assets, credit, and projected revenues meet
273 or exceed projected liabilities and expenses. All documents
274 required under this subsection must be prepared in accordance
275 with generally accepted accounting principles, and must be
276 compiled ~~the financial statement must be signed~~ by a certified
277 public accountant.

278 (4) Each applicant for licensure must comply with the
279 following requirements:

280 (a) Upon receipt of a completed, signed, and dated
281 application, the agency shall require background screening of

141867

5/2/2005 8:21:30 AM

Amendment No. (for drafter's use only)

282 the applicant, in accordance with the level 2 standards for
283 screening set forth in chapter 435. As used in this subsection,
284 the term "applicant" means the administrator, or a similarly
285 titled person who is responsible for the day-to-day operation of
286 the licensed home health agency, and the financial officer, or
287 similarly titled individual who is responsible for the financial
288 operation of the licensed home health agency.

289 (b) The agency may require background screening for a
290 member of the board of directors of the licensee or an officer
291 or an individual owning 5 percent or more of the licensee if the
292 agency reasonably suspects that such individual has been
293 convicted of an offense prohibited under the level 2 standards
294 for screening set forth in chapter 435.

295 (c) Proof of compliance with the level 2 background
296 screening requirements of chapter 435 which has been submitted
297 within the previous 5 years in compliance with any other health
298 care or assisted living licensure requirements of this state is
299 acceptable in fulfillment of paragraph (a). Proof of compliance
300 with background screening which has been submitted within the
301 previous 5 years to fulfill the requirements of the Financial
302 Services Commission and the Office of Insurance Regulation
303 pursuant to chapter 651 as part of an application for a
304 certificate of authority to operate a continuing care retirement
305 community is acceptable in fulfillment of the Department of Law
306 Enforcement and Federal Bureau of Investigation background
307 check.

141867

5/2/2005 8:21:30 AM

Amendment No. (for drafter's use only)

308 (d) A provisional license may be granted to an applicant
309 when each individual required by this section to undergo
310 background screening has met the standards for the Department of
311 Law Enforcement background check, but the agency has not yet
312 received background screening results from the Federal Bureau of
313 Investigation. A standard license may be granted to the licensee
314 upon the agency's receipt of a report of the results of the
315 Federal Bureau of Investigation background screening for each
316 individual required by this section to undergo background
317 screening which confirms that all standards have been met, or
318 upon the granting of a disqualification exemption by the agency
319 as set forth in chapter 435. Any other person who is required to
320 undergo level 2 background screening may serve in his or her
321 capacity pending the agency's receipt of the report from the
322 Federal Bureau of Investigation. However, the person may not
323 continue to serve if the report indicates any violation of
324 background screening standards and a disqualification exemption
325 has not been requested of and granted by the agency as set forth
326 in chapter 435.

327 (e) Each applicant must submit to the agency, with its
328 application, a description and explanation of any exclusions,
329 permanent suspensions, or terminations of the licensee or
330 potential licensee from the Medicare or Medicaid programs. Proof
331 of compliance with the requirements for disclosure of ownership
332 and control interest under the Medicaid or Medicare programs may
333 be accepted in lieu of this submission.

141867

5/2/2005 8:21:30 AM

Amendment No. (for drafter's use only)

334 (f) Each applicant must submit to the agency a description
335 and explanation of any conviction of an offense prohibited under
336 the level 2 standards of chapter 435 by a member of the board of
337 directors of the applicant, its officers, or any individual
338 owning 5 percent or more of the applicant. This requirement does
339 not apply to a director of a not-for-profit corporation or
340 organization if the director serves solely in a voluntary
341 capacity for the corporation or organization, does not regularly
342 take part in the day-to-day operational decisions of the
343 corporation or organization, receives no remuneration for his or
344 her services on the corporation or organization's board of
345 directors, and has no financial interest and has no family
346 members with a financial interest in the corporation or
347 organization, provided that the director and the not-for-profit
348 corporation or organization include in the application a
349 statement affirming that the director's relationship to the
350 corporation satisfies the requirements of this paragraph.

351 (g) A license may not be granted to an applicant if the
352 applicant, administrator, or financial officer has been found
353 guilty of, regardless of adjudication, or has entered a plea of
354 nolo contendere or guilty to, any offense prohibited under the
355 level 2 standards for screening set forth in chapter 435, unless
356 an exemption from disqualification has been granted by the
357 agency as set forth in chapter 435.

358 (h) The agency may deny or revoke licensure if the
359 applicant-

141867

5/2/2005 8:21:30 AM

Amendment No. (for drafter's use only)

360 ~~1. Has falsely represented a material fact in the~~
361 ~~application required by paragraph (e) or paragraph (f), or has~~
362 ~~omitted any material fact from the application required by~~
363 ~~paragraph (e) or paragraph (f); or~~

364 ~~2. has been or is currently excluded, suspended,~~
365 ~~terminated from, or has involuntarily withdrawn from~~
366 ~~participation in this state's Medicaid program, or the Medicaid~~
367 ~~program of any other state, or from participation in the~~
368 ~~Medicare program or any other governmental or private health~~
369 ~~care or health insurance program.~~

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

372 (5) The agency may deny or revoke licensure if the
373 applicant has falsely represented a material fact, or has
374 omitted any material fact, from the application required by this
375 section.

376 ~~(6)(5)~~ The home health agency must also obtain and
377 maintain the following insurance coverage ~~coverages~~ in an amount
378 of not less than \$250,000 per claim, and the home health agency
379 must submit proof of coverage with an initial application for
380 licensure and with each ~~annual~~ application for license renewal:

381 (a) Malpractice insurance as defined in s. 624.605(1)(k). ~~+~~

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

383 ~~(7)(6)~~ Sixty ~~Ninety~~ days before the expiration date, an
384 application for renewal must be submitted to the agency under
385 oath on forms furnished by it, and a license must be renewed if
386 the applicant has met the requirements established under this

141867

5/2/2005 8:21:30 AM

Amendment No. (for drafter's use only)

387 part and applicable rules. The home health agency must file with
388 the application satisfactory proof that it is in compliance with
389 this part and applicable rules. If there is evidence of
390 financial instability, the home health agency must submit
391 satisfactory proof of its financial ability to comply with the
392 requirements of this part. The agency shall impose an
393 administrative fine of \$50 per day for each day the home health
394 agency fails to file an application within the timeframe
395 specified in this subsection. Each day of continuing violation
396 is a separate violation; however, the aggregate of such fines
397 may not exceed \$500.

398 ~~(8)(7)~~ When transferring the ownership of a home health
399 agency, the transferee must submit an application for a license
400 at least 60 days before the effective date of the transfer. If
401 the application is filed late, an administrative fine shall be
402 imposed in the amount of \$50 per day. Each day of continuing
403 violation is a separate violation; however, the aggregate of
404 such fines may not exceed \$500. If the home health agency is
405 being leased, a copy of the lease agreement must be filed with
406 the application.

407 (9) The agency shall accept, in lieu of its own periodic
408 licensure survey, submission of the survey of an accrediting
409 organization that is recognized by the agency if the
410 accreditation of the licensed home health agency is not
411 provisional and if the licensed home health agency authorizes
412 release of, and the agency receives the report of, the
413 accrediting organization.

141867

5/2/2005 8:21:30 AM

Amendment No. (for drafter's use only)

414 (10)~~(8)~~ The license fee and ~~annual~~ renewal fee required of
415 a home health agency are nonrefundable. The agency shall set the
416 license fees in an amount that is sufficient to cover its costs
417 in carrying out its responsibilities under this part, but not to
418 exceed \$2,000 ~~\$1,000~~. However, state, county, or municipal
419 governments applying for licenses under this part are exempt
420 from the payment of license fees. All fees collected under this
421 part must be deposited in the Health Care Trust Fund for the
422 administration of this part.

423 (11)~~(9)~~ The license must be displayed in a conspicuous
424 place in the administrative office of the home health agency and
425 is valid only while in the possession of the person to which it
426 is issued. The license may not be sold, assigned, or otherwise
427 transferred, voluntarily or involuntarily, and is valid only for
428 the home health agency and location for which originally issued.

429 (12)~~(10)~~ A home health agency against whom a revocation or
430 suspension proceeding is pending at the time of license renewal
431 may be issued a provisional license effective until final
432 disposition by the agency of such proceedings. If judicial
433 relief is sought from the final disposition, the court that has
434 jurisdiction may issue a temporary permit for the duration of
435 the judicial proceeding.

436 (13)~~(11)~~ The agency may not issue a license designated as
437 certified to a home health agency that fails to satisfy the
438 requirements of a Medicare certification survey from the agency.

141867

5/2/2005 8:21:30 AM

Amendment No. (for drafter's use only)

439 ~~(14)~~(12) The agency may not issue a license to a home
440 health agency that has any unpaid fines assessed under this
441 part.

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

444 400.487 Home health service agreements; physician's,
445 physician assistant's, and advanced registered nurse
446 practitioner's treatment orders; patient assessment;
447 establishment and review of plan of care; provision of services;
448 orders not to resuscitate.--

449 (1) Services provided by a home health agency must be
450 covered by an agreement between the home health agency and the
451 patient or the patient's legal representative specifying the
452 home health services to be provided, the rates or charges for
453 services paid with private funds, and the sources method of
454 payment, which may include Medicare, Medicaid, private
455 insurance, personal funds, or a combination thereof. A home
456 health agency providing skilled care must make an assessment of
457 the patient's needs within 48 hours after the start of services.

458 (2) When required by the provisions of chapter 464; part
459 I, part III, or part V of chapter 468; or chapter 486, the
460 attending physician, physician assistant, or advanced registered
461 nurse practitioner, acting within his or her respective scope of
462 practice, shall for a patient who is to receive skilled care
463 ~~must~~ establish treatment orders for a patient who is to receive
464 skilled care. The treatment orders must be signed by the
465 physician, physician assistant, or advanced registered nurse

141867

5/2/2005 8:21:30 AM

Amendment No. (for drafter's use only)

466 practitioner before a claim for payment for the skilled services
467 is submitted by the home health agency. If the claim is
468 submitted to a managed care organization, the treatment orders
469 must be signed within the time allowed under the provider
470 agreement. The treatment orders shall ~~within 30 days after the~~
471 ~~start of care and must~~ be reviewed, as frequently as the
472 patient's illness requires, by the physician, physician
473 assistant, or advanced registered nurse practitioner in
474 consultation with the home health agency ~~personnel that provide~~
475 ~~services to the patient.~~

476 (3) A home health agency shall arrange for supervisory
477 visits by a registered nurse to the home of a patient receiving
478 home health aide services in accordance with the patient's
479 direction, ~~and approval,~~ and agreement to pay the charge for the
480 visits.

481 (4) Each patient has the right to be informed of and to
482 participate in the planning of his or her care. Each patient
483 must be provided, upon request, a copy of the plan of care
484 established and maintained for that patient by the home health
485 agency.

486 (5) When nursing services are ordered, the home health
487 agency to which a patient has been admitted for care must
488 provide the initial admission visit, all service evaluation
489 visits, and the discharge visit by a direct employee ~~qualified~~
490 ~~personnel who are on the payroll of,~~ and to whom an IRS payroll
491 ~~form W-2 will be issued by,~~ the home health agency. Services
492 provided by others under contractual arrangements to a home

141867

5/2/2005 8:21:30 AM

Amendment No. (for drafter's use only)

493 health agency must be monitored and managed by the admitting
494 home health agency. The admitting home health agency is fully
495 responsible for ensuring that all care provided through its
496 employees or contract staff is delivered in accordance with this
497 part and applicable rules.

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

501 (7) Home health agency personnel may withhold or withdraw
502 cardiopulmonary resuscitation if presented with an order not to
503 resuscitate executed pursuant to s. 401.45. The agency shall
504 adopt rules providing for the implementation of such orders.
505 Home health personnel and agencies shall not be subject to
506 criminal prosecution or civil liability, nor be considered to
507 have engaged in negligent or unprofessional conduct, for
508 withholding or withdrawing cardiopulmonary resuscitation
509 pursuant to such an order and rules adopted by the agency.

510 Section 6. Subsection (1) of section 400.491, Florida
511 Statutes, is amended to read:

512 400.491 Clinical records.--

513 (1) The home health agency must maintain for each patient
514 who receives skilled care a clinical record that includes
515 pertinent past and current medical, nursing, social and other
516 therapeutic information, the treatment orders, and other such
517 information as is necessary for the safe and adequate care of
518 the patient. When home health services are terminated, the
519 record must show the date and reason for termination. Such

141867

5/2/2005 8:21:30 AM

Amendment No. (for drafter's use only)

520 records are considered patient records under s. 400.494 ~~s.~~
521 ~~456.057~~, and must be maintained by the home health agency for 6
522 ~~5~~ years following termination of services. If a patient
523 transfers to another home health agency, a copy of his or her
524 record must be provided to the other home health agency upon
525 request.

526 Section 7. Section 400.494, Florida Statutes, is amended
527 to read:

528 400.494 Information about patients confidential.--

529 ~~(1)~~ Information about patients received by persons
530 employed by, or providing services to, a home health agency or
531 received by the licensing agency through reports or inspection
532 shall be confidential and exempt from the provisions of s.
533 119.07(1) and shall only not be disclosed to any person, other
534 than the patient, as permitted under the provisions of 45 C.F.R.
535 ss. 160.102, 160.103, and 164, subpart A, commonly referred to
536 as the HIPAA Privacy Regulation; except that clinical records
537 described in ss. 381.004, 384.29, 385.202, 392.65, 394.4615,
538 395.404, 397.501, and 760.40 shall be disclosed as authorized in
539 those sections without the written consent of that patient or
540 the patient's guardian.

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

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

141867

5/2/2005 8:21:30 AM

Amendment No. (for drafter's use only)

547 400.506 Licensure of nurse registries; requirements;
548 penalties.--

549 (3) Application for license must be made to the Agency for
550 Health Care Administration on forms furnished by it and must be
551 accompanied by the appropriate licensure fee, as established by
552 rule and not to exceed the cost of regulation under this part.
553 The licensure fee for nurse registries may not exceed \$2,000
554 ~~\$1,000~~ and must be deposited in the Health Care Trust Fund.

555 (5) A license issued for the operation of a nurse
556 registry, unless sooner suspended or revoked, expires 2 years ±
557 ~~year~~ after its date of issuance. Sixty days before the
558 expiration date, an application for renewal must be submitted to
559 the Agency for Health Care Administration on forms furnished by
560 it. The Agency for Health Care Administration shall renew the
561 license if the applicant has met the requirements of this
562 section and applicable rules. A nurse registry against which a
563 revocation or suspension proceeding is pending at the time of
564 license renewal may be issued a conditional license effective
565 until final disposition by the Agency for Health Care
566 Administration of such proceedings. If judicial relief is sought
567 from the final disposition, the court having jurisdiction may
568 issue a conditional license for the duration of the judicial
569 proceeding.

570 (7) A person that provides, offers, or advertises to the
571 public ~~that it provides~~ any service for which licensure is
572 required under this section must include in such advertisement
573 the license number issued to it by the Agency for Health Care

141867

5/2/2005 8:21:30 AM

Amendment No. (for drafter's use only)

574 Administration. The agency shall assess a fine of not less than
575 \$100 against any licensee who fails to include the license
576 number when submitting the advertisement for publication,
577 broadcast, or printing. The fine for a second or subsequent
578 offense is \$500.

579 (8)(a) It is unlawful for a person to provide, offer, or
580 advertise to the public services as defined by rule without
581 obtaining a valid license from the Agency for Health Care
582 Administration. It is unlawful for any holder of a license to
583 advertise or hold out to the public that he or she holds a
584 license for other than that for which he or she actually holds a
585 license. A person who violates this subsection is subject to
586 injunctive proceedings under s. 400.515.

587 (b) A person who violates the provisions of paragraph (a)
588 commits a misdemeanor of the second degree, punishable as
589 provided in s. 775.082 or s. 775.083. Each day of continuing
590 violation is a separate offense.

591 (c) Any person who owns, operates, or maintains an
592 unlicensed nurse registry and who, within 10 working days after
593 receiving notification from the agency, fails to cease operation
594 and apply for a license under this part commits a misdemeanor of
595 the second degree, punishable as provided in s. 775.082 or s.
596 775.083. Each day of continued operation is a separate offense.

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

141867

5/2/2005 8:21:30 AM

Amendment No. (for drafter's use only)

600 (10)(a) A nurse registry may refer for contract in private
601 residences registered nurses and licensed practical nurses
602 registered and licensed under part I of chapter 464, certified
603 nursing assistants certified under part II of chapter 464, home
604 health aides who present documented proof of successful
605 completion of the training required by rule of the agency, and
606 companions or homemakers for the purposes of providing those
607 services authorized under s. 400.509(1). Each person referred by
608 a nurse registry must provide current documentation that he or
609 she is free from communicable diseases.

610 (b) A certified nursing assistant or home health aide may
611 be referred for a contract to provide care to a patient in his
612 or her home only if that patient is under a physician's care. A
613 certified nursing assistant or home health aide referred for
614 contract in a private residence shall be limited to assisting a
615 patient with bathing, dressing, toileting, grooming, eating,
616 physical transfer, and those normal daily routines the patient
617 could perform for himself or herself were he or she physically
618 capable. A certified nursing assistant or home health aide may
619 not provide medical or other health care services that require
620 specialized training and that may be performed only by licensed
621 health care professionals. The nurse registry shall obtain the
622 name and address of the attending physician and send written
623 notification to the physician within 48 hours after a contract
624 is concluded that a certified nursing assistant or home health
625 aide will be providing care for that patient.

141867

5/2/2005 8:21:30 AM

Amendment No. (for drafter's use only)

626 (c) When a certified nursing assistant or home health aide
627 is referred to a patient's home by a nurse registry, the nurse
628 registry shall advise the patient, the patient's family, or any
629 other person acting on behalf of the patient at the time the
630 contract for services is made that registered nurses are
631 available to make visits to the patient's home for an additional
632 cost. A registered nurse shall make monthly visits to the
633 patient's home to assess the patient's condition and quality of
634 care being provided by the certified nursing assistant or home
635 health aide. Any condition which, in the professional judgment
636 of the nurse, requires further medical attention shall be
637 reported to the attending physician and the nurse registry. A
638 record of the nurse's visit ~~The assessment~~ shall become a part
639 of the patient's file with the nurse registry and may be
640 reviewed by the agency during their survey procedure.

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

648 (14) The nurse registry must maintain the application on
649 file, and that file must be open to the inspection of the Agency
650 for Health Care Administration. The nurse registry must maintain
651 on file the name and address of the patient or client to whom
652 ~~the nurse or other~~ nurse registry personnel are referred ~~is sent~~

141867

5/2/2005 8:21:30 AM

Amendment No. (for drafter's use only)

653 | for contract and the amount of the fee received by the nurse
654 | registry. A nurse registry must maintain the file that includes
655 | the application and other applicable documentation for 3 years
656 | after the date of the last file entry of patient-related or
657 | client-related information.

658 | (17) All persons referred for contract in private
659 | residences by a nurse registry must comply with the following
660 | requirements for a plan of treatment:

661 | (a) When, in accordance with the privileges and
662 | restrictions imposed upon a nurse under part I of chapter 464,
663 | the delivery of care to a patient is under the direction or
664 | supervision of a physician or when a physician is responsible
665 | for the medical care of the patient, a medical plan of treatment
666 | must be established for each patient receiving care or treatment
667 | provided by a licensed nurse in the home. The original medical
668 | plan of treatment must be timely signed by the physician,
669 | physician assistant, or advanced registered nurse practitioner,
670 | acting within his or her respective scope of practice, and
671 | reviewed by him or her in consultation with the licensed nurse
672 | at least every 2 months. Any additional order or change in
673 | orders must be obtained from the physician, physician assistant,
674 | or advanced registered nurse practitioner and reduced to writing
675 | and timely signed by the physician, physician assistant, or
676 | advanced registered nurse practitioner. The delivery of care
677 | under a medical plan of treatment must be substantiated by the
678 | appropriate nursing notes or documentation made by the nurse in

141867

5/2/2005 8:21:30 AM

Amendment No. (for drafter's use only)

679 compliance with nursing practices established under part I of
680 chapter 464.

681 (b) Whenever a medical plan of treatment is established
682 for a patient, the initial medical plan of treatment, any
683 amendment to the plan, additional order or change in orders, and
684 copy of nursing notes must be filed in the office of the nurse
685 registry.

686 Section 9. Subsection (2) of section 400.512, Florida
687 Statutes, is amended to read:

688 400.512 Screening of home health agency personnel; nurse
689 registry personnel; and companions and homemakers.--The agency
690 shall require employment or contractor screening as provided in
691 chapter 435, using the level 1 standards for screening set forth
692 in that chapter, for home health agency personnel; persons
693 referred for employment by nurse registries; and persons
694 employed by companion or homemaker services registered under s.
695 400.509.

696 (2) The administrator of each home health agency, the
697 managing employee of each nurse registry, and the managing
698 employee of each companion or homemaker service registered under
699 s. 400.509 must sign an affidavit annually, under penalty of
700 perjury, stating that all personnel hired or, contracted with,
701 or registered on or after October 1, 2000 ~~October 1, 1994~~, who
702 enter the home of a patient or client in their service capacity
703 have been screened ~~and that its remaining personnel have worked~~
704 ~~for the home health agency or registrant continuously since~~
705 ~~before October 1, 1994.~~

141867

5/2/2005 8:21:30 AM

Amendment No. (for drafter's use only)

706 Section 10. Section 400.515, Florida Statutes, is amended
707 to read:

708 400.515 Injunction proceedings.--In addition to the other
709 powers provided under this chapter, the agency may institute
710 injunction proceedings in a court of competent jurisdiction to
711 restrain or prevent the establishment or operation of a home
712 health agency or nurse registry that does not have a license or
713 that is in violation of any provision of this part or any rule
714 adopted pursuant to this part. The agency ~~for Health Care~~
715 ~~Administration~~ may also institute injunction proceedings in a
716 court of competent jurisdiction when violation of this part or
717 of applicable rules constitutes an emergency affecting the
718 immediate health and safety of a patient or client.

719 Section 11. This act shall take effect July 1, 2005.

720

721

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

723 Remove the entire title and insert:

724 A bill to be entitled
725 An act relating to health care; amending s. 400.461, F.S.;
726 revising the purpose of part IV of ch. 400, F.S., to
727 include the licensure of nurse registries; amending s.
728 400.462, F.S.; revising definitions; defining the terms
729 "admission," "advanced registered nurse practitioner,"
730 "direct employee," and "physician assistant" for purposes
731 of part IV of ch. 400, F.S.; amending s. 400.464, F.S.,
732 relating to licensure of home health agencies; revising

141867

5/2/2005 8:21:30 AM

Amendment No. (for drafter's use only)

733 the licensure period; revising and providing additional
734 administrative, civil, and criminal penalties, sanctions,
735 and fines; amending s. 400.471, F.S.; revising
736 requirements for license application by a home health
737 agency; authorizing the Agency for Health Care
738 Administration to revoke a license under certain
739 circumstances; authorizing administrative fines; amending
740 s. 400.487, F.S.; revising requirements for home health
741 agency service agreements and treatment orders; amending
742 s. 400.491, F.S., relating to clinical records; changing
743 the timeframe for a home health agency to retain patient
744 records; changing a reference; amending s. 400.494, F.S.;
745 providing for the continued confidentiality of patient
746 information in compliance with federal law; providing for
747 disclosure in accordance with certain specified state
748 laws; deleting a requirement for written consent of the
749 patient or the patient's guardian for disclosure of
750 confidential patient information; deleting an exemption
751 provided for the Medicaid Fraud Control Unit of the
752 Department of Legal Affairs; amending s. 400.506, F.S.;
753 revising requirements governing nurse registries;
754 increasing license fee; increasing the period of
755 licensure; authorizing administrative penalties; revising
756 criminal penalties and sanctions; revising certain
757 requirements pertaining to health care professionals that
758 provide services on behalf of a nurse registry; amending
759 s. 400.512, F.S., relating to employment screening;

141867

5/2/2005 8:21:30 AM

HOUSE AMENDMENT

Bill No. CS/SB 484

Amendment No. (for drafter's use only)

760 | revising the date on which an annual affidavit must be
761 | signed which verifies that certain personnel of a home
762 | health agency, a nurse registry, or homemaker service have
763 | been screened; amending s. 400.515, F.S.; providing
764 | additional circumstances under which the agency may
765 | petition for an injunction; providing an effective date.

141867

5/2/2005 8:21:30 AM