

By Senator Peadar

2-437A-05

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; amending s. 400.462, F.S.;

6 revising definitions; defining the terms

7 "admission," "advanced registered nurse

8 practitioner," "direct employee," and

9 "physician assistant" for purposes of part IV

10 of ch. 400, F.S.; amending s. 400.464, F.S.,

11 relating to licensure of home health agencies;

12 revising the licensure period; revising and

13 providing additional administrative, civil, and

14 criminal penalties, sanctions, and fines;

15 amending s. 400.471, F.S.; revising

16 requirements for license application by a home

17 health agency; authorizing the Agency for

18 Health Care Administration to revoke a license

19 under certain circumstances; authorizing

20 administrative fines; amending s. 400.487,

21 F.S.; revising requirements for home health

22 agency service agreements and treatment orders;

23 amending s. 400.491, F.S., relating to clinical

24 records; revising the ownership of patient

25 records generated by a home health agency;

26 changing the timeframe for a home health agency

27 to retain patient records; providing for the

28 disposition of patient records when a home

29 health agency ceases business; deleting a

30 requirement for a service provision plan

31 pertaining to nonskilled care; deleting

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

1 requirements for maintaining such records;
2 amending s. 400.494, F.S.; providing for the
3 continued confidentiality of patient
4 information in compliance with federal law;
5 providing for disclosure in accordance with
6 certain specified state laws; deleting a
7 requirement for written consent of the patient
8 or the patient's guardian for disclosure of
9 confidential patient information; deleting an
10 exemption provided for the Medicaid Fraud
11 Control Unit of the Department of Legal
12 Affairs; amending s. 400.506, F.S.; revising
13 requirements governing nurse registries;
14 increasing license fee; increasing the period
15 of licensure; authorizing administrative
16 penalties; revising criminal penalties and
17 sanctions; revising certain requirements
18 pertaining to health care professionals that
19 provide services on behalf of a nurse registry;
20 amending s. 400.512, F.S., relating to
21 employment screening; revising the date in
22 which an annual affidavit must be signed which
23 verifies that certain personnel of a home
24 health agency, a nurse registry, or homemaker
25 service have been screened; amending s.
26 400.515, F.S.; providing additional
27 circumstances under which the agency may
28 petition for an injunction; providing an
29 effective date.

30
31 Be It Enacted by the Legislature of the State of Florida:

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

3 400.461 Short title; purpose.--

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

9 Section 2. Section 400.462, Florida Statutes, is
10 amended to read:

11 400.462 Definitions.--As used in this part, the term:

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

1 shall designate, in writing, for each licensed entity, a
2 qualified alternate administrator to serve during absences.

3 (2) "Admission" means a decision by the home health
4 agency, during or after an evaluation visit to the patient's
5 home, that there is reasonable expectation that the patient's
6 medical, nursing, and social needs for skilled care can be
7 adequately met by the agency in the patient's place of
8 residence.

9 (3) "Advanced registered nurse practitioner" means a
10 person licensed in this state to practice professional nursing
11 and certified in advanced or specialized nursing practice, as
12 defined in s. 464.003.

13 ~~(4)(2)~~ "Agency" means the Agency for Health Care
14 Administration.

15 ~~(5)(3)~~ "Certified nursing assistant" means any person
16 who has been issued a certificate under part II of chapter
17 464. The licensed home health agency or licensed nurse
18 registry shall ensure that the certified nursing assistant or
19 home health aide employed by or under contract with the home
20 health agency or licensed nurse registry is adequately trained
21 to perform the tasks of a home health aide in the home
22 setting.

23 ~~(6)(4)~~ "Client" means an elderly, handicapped, or
24 convalescent individual who receives ~~personal care services,~~
25 ~~companion services,~~ or homemaker services in the individual's
26 home or place of residence.

27 ~~(7)(5)~~ "Companion" or "sitter" means a person who
28 spends time with ~~cares for~~ an elderly, handicapped, or
29 convalescent individual and accompanies such individual on
30 trips and outings and may prepare and serve meals to such
31

1 individual. A companion may not provide hands-on personal care
2 to a client.

3 ~~(8)(6)~~ "Department" means the Department of Children
4 and Family Services.

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

12 ~~(10)(7)~~ "Director of nursing" means a registered nurse
13 who is a ~~and~~ direct employee, as defined in subsection (9), of
14 the agency ~~and or related business entity~~ who is a graduate of
15 an approved school of nursing and is licensed in this state;
16 who has at least 1 year of supervisory experience as a
17 registered nurse ~~in a licensed home health agency, a facility~~
18 ~~licensed under chapter 395, or a facility licensed under part~~
19 ~~II or part III of this chapter;~~ and who is responsible for
20 overseeing the professional nursing and home health aid
21 delivery of services of the agency. A director of nursing ~~An~~
22 ~~employee~~ may be the director ~~of nursing~~ of a maximum of five
23 licensed home health agencies operated by a related business
24 entity and located within one agency service district or
25 within an immediately contiguous county. If the home health
26 agency is licensed under this chapter and is part of a
27 retirement community that provides multiple levels of care, an
28 employee of the retirement community may serve as the director
29 of nursing of the home health agency and of up to four
30 entities licensed under this chapter which are owned,
31 operated, or managed by the same corporate entity. ~~A director~~

1 ~~of nursing shall designate, in writing, for each licensed~~
2 ~~entity, a qualified alternate registered nurse to serve during~~
3 ~~the absence of the director of nursing.~~

4 ~~(11)(8)~~ "Home health agency" means an organization
5 that provides home health services and staffing services.

6 ~~(12)(9)~~ "Home health agency personnel" means persons
7 who are employed by or under contract with a home health
8 agency and enter the home or place of residence of patients at
9 any time in the course of their employment or contract.

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

- 15 (a) Nursing care.
16 (b) Physical, occupational, respiratory, or speech
17 therapy.
18 (c) Home health aide services.
19 (d) Dietetics and nutrition practice and nutrition
20 counseling.
21 (e) Medical supplies, restricted to drugs and
22 biologicals prescribed by a physician.

23 ~~(14)(11)~~ "Home health aide" means a person who is
24 trained or qualified, as provided by rule, and who provides
25 hands-on personal care, performs simple procedures as an
26 extension of therapy or nursing services, assists in
27 ambulation or exercises, or assists in administering
28 medications as permitted in rule and for which the person has
29 received training established by the agency under s.
30 400.497(1).
31

1 ~~(15)~~~~(12)~~ "Homemaker" means a person who performs
2 household chores that include housekeeping, meal planning and
3 preparation, shopping assistance, and routine household
4 activities for an elderly, handicapped, or convalescent
5 individual. A homemaker may not provide hands-on personal care
6 to a client.

7 ~~(16)~~~~(13)~~ "Home infusion therapy provider" means an
8 organization that employs, contracts with, or refers a
9 licensed professional who has received advanced training and
10 experience in intravenous infusion therapy and who administers
11 infusion therapy to a patient in the patient's home or place
12 of residence.

13 ~~(17)~~~~(14)~~ "Home infusion therapy" means the
14 administration of intravenous pharmacological or nutritional
15 products to a patient in his or her home.

16 ~~(18)~~~~(15)~~ "Nurse registry" means any person that
17 procures, offers, promises, or attempts to secure
18 health-care-related contracts for registered nurses, licensed
19 practical nurses, certified nursing assistants, home health
20 aides, companions, or homemakers, who are compensated by fees
21 as independent contractors, including, but not limited to,
22 contracts for the provision of services to patients and
23 contracts to provide private duty or staffing services to
24 health care facilities licensed under chapter 395 or this
25 chapter or other business entities.

26 ~~(19)~~~~(16)~~ "Organization" means a corporation,
27 government or governmental subdivision or agency, partnership
28 or association, or any other legal or commercial entity, any
29 of which involve more than one health care professional
30 discipline; ~~or~~ a health care professional and a home health
31 aide or certified nursing assistant; more than one home health

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

6 ~~(20)(17)~~ "Patient" means any person who receives home
7 health services in his or her home or place of residence.

8 ~~(21)(18)~~ "Personal care" means assistance to a patient
9 in the activities of daily living, such as dressing, bathing,
10 eating, or personal hygiene, and assistance in physical
11 transfer, ambulation, and in administering medications as
12 permitted by rule.

13 ~~(22)(19)~~ "Physician" means a person licensed under
14 chapter 458, chapter 459, chapter 460, or chapter 461.

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

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

27 ~~(25)(21)~~ "Staffing services" means services provided
28 to a health care facility or other business entity on a
29 temporary basis by licensed health care personnel and by
30 ~~including~~ certified nursing assistants and home health aides
31 who are employed by, or work under the auspices of, a licensed

1 home health agency or who are registered with a licensed nurse
2 registry. Staffing services may be provided anywhere within
3 the state.

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

6 400.464 Home health agencies to be licensed;
7 expiration of license; exemptions; unlawful acts; penalties.--

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

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

27 (b) The operation or maintenance of an unlicensed home
28 health agency or the performance of any home health services
29 in violation of this part is declared a nuisance, inimical to
30 the public health, welfare, and safety. The agency, or any
31 state attorney may, in addition to other remedies provided in

1 this part, bring an action for an injunction to restrain such
2 violation, or to enjoin the future operation or maintenance of
3 the home health agency or the provision of home health
4 services in violation of this part, until compliance with this
5 part or the rules adopted under this part has been
6 demonstrated to the satisfaction of the agency.

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

12 ~~(d)(e)~~ A person who violates the provisions of
13 paragraph (a) commits a felony ~~misdemeanor~~ of the third ~~second~~
14 degree, punishable as provided in s. 775.082, ~~or~~ s. 775.083,
15 ~~or s. 775.084. Any person who commits a second or subsequent~~
16 ~~violation commits a misdemeanor of the first degree,~~
17 ~~punishable as provided in s. 775.082 or s. 775.083.~~ Each day
18 of continuing violation constitutes a separate offense.

19 (e) Any person who owns, operates, or maintains an
20 unlicensed home health agency and who, within 10 working days
21 after receiving notification from the agency, fails to cease
22 operation and apply for a license under this part commits a
23 felony of the third degree, punishable as provided in s.
24 775.082, s. 775.083, or s. 775.084. Each day of continued
25 operation is a separate offense.

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

29 Section 4. Section 400.471, Florida Statutes, is
30 amended to read:
31

1 400.471 Application for license; fee; provisional
2 license; temporary permit.--

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

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

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

16 (b) The number and discipline of professional staff to
17 be employed; ~~and~~

18 (c) Proof of financial ability to operate; ~~and-~~

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

21 (3) An applicant for initial licensure must
22 demonstrate financial ability to operate by submitting a
23 balance sheet and income and expense statement for the first 2
24 years of operation which provide evidence of having sufficient
25 assets, credit, and projected revenues to cover liabilities
26 and expenses. The applicant shall have demonstrated financial
27 ability to operate if the applicant's assets, credit, and
28 projected revenues meet or exceed projected liabilities and
29 expenses. All documents required under this subsection must
30 be prepared in accordance with generally accepted accounting
31

1 principles, and must be compiled ~~the financial statement must~~
2 ~~be signed~~ by a certified public accountant.

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

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

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

21 (c) Proof of compliance with the level 2 background
22 screening requirements of chapter 435 which has been submitted
23 within the previous 5 years in compliance with any other
24 health care or assisted living licensure requirements of this
25 state is acceptable in fulfillment of paragraph (a). Proof of
26 compliance with background screening which has been submitted
27 within the previous 5 years to fulfill the requirements of the
28 Financial Services Commission and the Office of Insurance
29 Regulation pursuant to chapter 651 as part of an application
30 for a certificate of authority to operate a continuing care
31 retirement community is acceptable in fulfillment of the

1 Department of Law Enforcement and Federal Bureau of
2 Investigation background check.

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

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

30 (f) Each applicant must submit to the agency a
31 description and explanation of any conviction of an offense

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

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

24 (h) The agency may deny or revoke licensure if the
25 applicant+

26 ~~1. Has falsely represented a material fact in the~~
27 ~~application required by paragraph (c) or paragraph (f), or has~~
28 ~~omitted any material fact from the application required by~~
29 ~~paragraph (c) or paragraph (f); or~~

30 ~~2.~~ has been or is currently excluded, suspended,
31 terminated from, or has involuntarily withdrawn from

1 participation in ~~this state's Medicaid program, or the~~
2 ~~Medicaid program of any other state, or from participation in~~
3 ~~the Medicare program or any other governmental or private~~
4 health care or health insurance program.

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

7 (5) The agency may deny or revoke licensure if the
8 applicant has falsely represented a material fact, or has
9 omitted any material fact, from the application required by
10 this section.

11 ~~(6)(5)~~ The home health agency must also obtain and
12 maintain the following insurance coverage ~~coverages~~ in an
13 amount of not less than \$250,000 per claim, and the home
14 health agency must submit proof of coverage with an initial
15 application for licensure and with each annual application for
16 license renewal:

17 (a) Malpractice insurance as defined in s.
18 624.605(1)(k); and

19 (b) Liability insurance as defined in s.
20 624.605(1)(b).

21 ~~(7)(6)~~ Sixty ~~Ninety~~ days before the expiration date,
22 an application for renewal must be submitted to the agency
23 under oath on forms furnished by it, and a license must be
24 renewed if the applicant has met the requirements established
25 under this part and applicable rules. The home health agency
26 must file with the application satisfactory proof that it is
27 in compliance with this part and applicable rules. If there
28 is evidence of financial instability, the home health agency
29 must submit satisfactory proof of its financial ability to
30 comply with the requirements of this part. The agency shall
31 impose an administrative fine of \$50 per day for each day the

1 home health agency fails to file an application within the
2 timeframe specified in this subsection. Each day of continuing
3 violation is a separate violation; however, the aggregate of
4 such fines may not exceed \$500.

5 (8)(7) When transferring the ownership of a home
6 health agency, the transferee must submit an application for a
7 license at least 60 days before the effective date of the
8 transfer. If the application is filed late, an administrative
9 fine shall be imposed in the amount of \$50 per day. Each day
10 of continuing violation is a separate violation; however, the
11 aggregate of such fines may not exceed \$500. If the home
12 health agency is being leased, a copy of the lease agreement
13 must be filed with the application.

14 (9) The agency shall accept, in lieu of its own
15 periodic licensure survey, submission of the survey of an
16 accrediting organization that is recognized by the agency if
17 the accreditation of the licensed home health agency is not
18 provisional and if the licensed home health agency authorizes
19 release of, and the agency receives the report of, the
20 accrediting organization.

21 (10)(8) The license fee and ~~annual~~ renewal fee
22 required of a home health agency are nonrefundable. The agency
23 shall set the license fees in an amount that is sufficient to
24 cover its costs in carrying out its responsibilities under
25 this part, but not to exceed ~~\$2000~~ \$1,000. However, state,
26 county, or municipal governments applying for licenses under
27 this part are exempt from the payment of license fees. All
28 fees collected under this part must be deposited in the Health
29 Care Trust Fund for the administration of this part.

30 (11)(9) The license must be displayed in a conspicuous
31 place in the administrative office of the home health agency

1 and is valid only while in the possession of the person to
2 which it is issued. The license may not be sold, assigned, or
3 otherwise transferred, voluntarily or involuntarily, and is
4 valid only for the home health agency and location for which
5 originally issued.

6 ~~(12)~~~~(10)~~ A home health agency against whom a
7 revocation or suspension proceeding is pending at the time of
8 license renewal may be issued a provisional license effective
9 until final disposition by the agency of such proceedings. If
10 judicial relief is sought from the final disposition, the
11 court that has jurisdiction may issue a temporary permit for
12 the duration of the judicial proceeding.

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

17 ~~(14)~~~~(12)~~ The agency may not issue a license to a home
18 health agency that has any unpaid fines assessed under this
19 part.

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

22 400.487 Home health service agreements; physician's,
23 physician's assistant's, and advanced registered nurse
24 practitioner's treatment orders; patient assessment;
25 establishment and review of plan of care; provision of
26 services; orders not to resuscitate.--

27 (1) Services provided by a home health agency must be
28 covered by an agreement between the home health agency and the
29 patient or the patient's legal representative specifying the
30 home health services to be provided, the rates or charges for
31 services paid with private funds, and the sources ~~method~~ of

1 payment, which may include Medicare, Medicaid, private
2 insurance, personal funds, or a combination thereof. A home
3 health agency providing skilled care must make an assessment
4 of the patient's needs within 48 hours after the start of
5 services.

6 (2) When required by the provisions of chapter 464;
7 part I, part III, or part V of chapter 468; or chapter 486,
8 the attending physician, physician's assistant, or advanced
9 registered nurse practitioner, acting within his or her
10 respective scope of practice, shall ~~for a patient who is to~~
11 ~~receive skilled care must~~ establish treatment orders for a
12 patient who is to receive skilled care. The treatment orders
13 must be signed by the physician, physician's assistant, or
14 advanced registered nurse practitioner before a claim for
15 payment for the skilled services is submitted by the home
16 health agency. If the claim is submitted to a managed care
17 organization, the treatment orders must be signed in the time
18 allowed under the provider agreement. The treatment orders
19 shall ~~within 30 days after the start of care and must be~~
20 reviewed, as frequently as the patient's illness requires, by
21 the physician, physician's assistant, or advanced registered
22 nurse practitioner in consultation with the home health agency
23 ~~personnel that provide services to the patient.~~

24 (3) A home health agency shall arrange for supervisory
25 visits by a registered nurse to the home of a patient
26 receiving home health aide services in accordance with the
27 patient's direction, ~~and~~ approval, and agreement to pay the
28 charge for the visits.

29 (4) Each patient has the right to be informed of and
30 to participate in the planning of his or her care. Each
31 patient must be provided, upon request, a copy of the plan of

1 care established and maintained for that patient by the home
2 health agency.

3 (5) When nursing services are ordered, the home health
4 agency to which a patient has been admitted for care must
5 provide the initial admission visit, all service evaluation
6 visits, and the discharge visit by a direct employee ~~qualified~~
7 ~~personnel who are on the payroll of, and to whom an IRS~~
8 ~~payroll form W 2 will be issued by, the home health agency.~~

9 Services provided by others under contractual arrangements to
10 a home health agency must be monitored and managed by the
11 admitting home health agency. The admitting home health agency
12 is fully responsible for ensuring that all care provided
13 through its employees or contract staff is delivered in
14 accordance with this part and applicable rules.

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

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

28 Section 6. Section 400.491, Florida Statutes, is
29 amended to read:

30 400.491 Clinical records.--
31

1 (1) The home health agency must maintain for each
2 patient who receives skilled care a clinical record that
3 includes pertinent past and current medical, nursing, social
4 and other therapeutic information, the treatment orders, and
5 other such information as is necessary for the safe and
6 adequate care of the patient. When home health services are
7 terminated, the record must show the date and reason for
8 termination. Such records are considered patient records
9 under s. 400.494 ~~s. 456.057~~, and must be maintained by the
10 home health agency for 6 ~~5~~ years following termination of
11 services. If a patient transfers to another home health
12 agency, a copy of his or her record must be provided to the
13 other home health agency upon request.

14 (2) If a licensed home health agency ceases to remain
15 in business, it shall notify each patient, whose clinical
16 records it has in its possession, of the fact that it is
17 ceasing operations and give each patient 15 calendar days to
18 retrieve his or her clinical record at a specified location
19 within 2 hours' driving time of the patient's residence and,
20 at a minimum, between the hours of 10 a.m. and 3 p.m. Monday
21 through Friday. The home health agency must maintain for each
22 client who receives nonskilled care a service provision plan.
23 ~~Such records must be maintained by the home health agency for~~
24 ~~1 year following termination of services.~~

25 Section 7. Section 400.494, Florida Statutes, is
26 amended to read:

27 400.494 Information about patients confidential.--

28 ~~(1)~~ Information about patients received by persons
29 employed by, or providing services to, a home health agency or
30 received by the licensing agency through reports or inspection
31 shall be confidential and exempt from the provisions of s.

1 119.07(1) and shall only ~~not~~ be disclosed to any person, other
2 than the patient, as permitted under the provisions of 45
3 C.F.R. ss. 160.102, 160.103, and 164, subpart A, commonly
4 referred to as the HIPAA Privacy Regulation; except that
5 clinical records described in ss. 381.004, 384.29, 385.202,
6 392.65, 394.4615, 395.404, 397.501, and 760.40 shall be
7 disclosed as authorized in those sections without the written
8 consent of that patient or the patient's guardian.

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

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

15 400.506 Licensure of nurse registries; requirements;
16 penalties.--

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

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

1 registry against which a revocation or suspension proceeding
2 is pending at the time of license renewal may be issued a
3 conditional license effective until final disposition by the
4 Agency for Health Care Administration of such proceedings. If
5 judicial relief is sought from the final disposition, the
6 court having jurisdiction may issue a conditional license for
7 the duration of the judicial proceeding.

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

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

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

29 (c) Any person who owns, operates, or maintains an
30 unlicensed nurse registry and who, within 10 working days
31 after receiving notification from the agency, fails to cease

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

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

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

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

1 attending physician and send written notification to the
2 physician within 48 hours after a contract is concluded that a
3 certified nursing assistant or home health aide will be
4 providing care for that patient.

5 (c) At the time of contracting for services, the nurse
6 registry shall advise the patient, the patient's family, or a
7 person acting on behalf of the patient of the availability of
8 registered nurses to make visits to the patient's home at an
9 additional cost. A registered nurse shall make monthly visits
10 to the patient's home to assess the patient's condition and
11 quality of care being provided by the certified nursing
12 assistant or home health aide. Any condition which, in the
13 professional judgment of the nurse, requires further medical
14 attention shall be reported to the attending physician and the
15 nurse registry. The assessment shall become a part of the
16 patient's file with the nurse registry and may be reviewed by
17 the agency during their survey procedure.

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

26 (14) The nurse registry must maintain the application
27 on file, and that file must be open to the inspection of the
28 Agency for Health Care Administration. The nurse registry
29 must maintain on file the name and address of the patient or
30 client to whom the nurse or other nurse registry personnel are
31 referred is sent for contract and the amount of the fee

1 received by the nurse registry. A nurse registry must maintain
2 the file that includes the application and other applicable
3 documentation for 3 years after the date of the last file
4 entry of client-related information.

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

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

28 (b) Whenever a medical plan of treatment is
29 established for a patient, the initial medical plan of
30 treatment, any amendment to the plan, additional order or
31

1 change in orders, and copy of nursing notes must be filed in
2 the office of the nurse registry.

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

5 400.512 Screening of home health agency personnel;
6 nurse registry personnel; and companions and homemakers.--The
7 agency shall require employment or contractor screening as
8 provided in chapter 435, using the level 1 standards for
9 screening set forth in that chapter, for home health agency
10 personnel; persons referred for employment by nurse
11 registries; and persons employed by companion or homemaker
12 services registered under s. 400.509.

13 (2) The administrator of each home health agency, the
14 managing employee of each nurse registry, and the managing
15 employee of each companion or homemaker service registered
16 under s. 400.509 must sign an affidavit annually, under
17 penalty of perjury, stating that all personnel hired, or
18 contracted with, or registered on or after October 1, 2000
19 ~~October 1, 1994~~, who enter the home of a patient or client in
20 their service capacity have been screened ~~and that its~~
21 ~~remaining personnel have worked for the home health agency or~~
22 ~~registrant continuously since before October 1, 1994.~~

23 Section 10. Section 400.515, Florida Statutes, is
24 amended to read:

25 400.515 Injunction proceedings.--In addition to the
26 other powers provided under this chapter, the Agency for
27 Health Care Administration may institute injunction
28 proceedings in a court of competent jurisdiction to restrain
29 or prevent the establishment or operation of a home health
30 agency or nurse registry that does not have a license or that
31 is in violation of any provision of this part or any rule

1 adopted pursuant to this part. The Agency for Health Care
2 Administration may also institute injunction proceedings in a
3 court of competent jurisdiction when violation of this part or
4 of applicable rules constitutes an emergency affecting the
5 immediate health and safety of a patient or client.

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

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9 SENATE SUMMARY

10 Revises certain provisions governing the licensure of
11 home health agencies and licensed nurse registries.
12 Provides additional administrative, civil, and criminal
13 penalties, sanctions, and fines. Revises requirements for
14 license application. Revises requirements for home health
15 agency service agreements and treatment orders. Revises
16 requirements for maintaining patient and client records.
17 Requires the Agency for Health Care Administration to
18 adopt rules. (See bill for details.)
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