

1 A bill to be entitled
2 An act relating to health care; amending s.
3 400.23, F.S.; prescribing conditions applicable
4 to requests by nursing home residents or their
5 representatives for bed placement that is not
6 in compliance with building codes; amending s.
7 400.461, F.S.; revising the purpose of part IV
8 of ch. 400, F.S., to include the licensure of
9 nurse registries; amending s. 400.462, F.S.;
10 revising definitions; defining the terms
11 "admission," "advanced registered nurse
12 practitioner," "direct employee," and
13 "physician assistant" for purposes of part IV
14 of ch. 400, F.S.; amending s. 400.464, F.S.,
15 relating to licensure of home health agencies;
16 revising the licensure period; revising and
17 providing additional administrative fines;
18 increasing penalties; amending s. 400.471,
19 F.S.; revising requirements for license
20 application by a home health agency;
21 authorizing the Agency for Health Care
22 Administration to revoke a license under
23 certain circumstances; authorizing
24 administrative fines; amending s. 400.487,
25 F.S.; revising requirements for home health
26 agency service agreements and treatment orders;
27 amending s. 400.491, F.S., relating to clinical
28 records; revising the ownership of patient
29 records generated by a home health agency;
30 changing the timeframe for a home health agency
31 to retain patient records; providing for the

1 disposition of patient records when a home
2 health agency ceases business; deleting a
3 requirement for a service provision plan
4 pertaining to nonskilled care; deleting
5 requirements for maintaining such records;
6 amending s. 400.494, F.S.; providing for the
7 continued confidentiality of patient
8 information in compliance with federal law;
9 providing for disclosure in accordance with
10 certain specified state laws; deleting a
11 requirement for written consent of the patient
12 or the patient's guardian for disclosure of
13 confidential patient information; amending s.
14 400.506, F.S.; revising requirements governing
15 nurse registries; increasing license fee;
16 increasing the period of licensure; authorizing
17 administrative penalties; providing criminal
18 penalties and sanctions; revising certain
19 requirements pertaining to health care
20 professionals that provide services on behalf
21 of a nurse registry; amending s. 400.512, F.S.,
22 relating to employment screening; revising the
23 date in which an annual affidavit must be
24 signed which verifies that certain personnel of
25 a home health agency, a nurse registry, or
26 homemaker service have been screened; amending
27 s. 400.515, F.S.; providing additional
28 circumstances under which the agency may
29 petition for an injunction; providing an
30 effective date.
31

1 Be It Enacted by the Legislature of the State of Florida:

2

3 Section 1. Paragraph (a) of subsection (2) of section
4 400.23, Florida Statutes, is amended to read:

5 400.23 Rules; evaluation and deficiencies; licensure
6 status.--

7 (2) Pursuant to the intention of the Legislature, the
8 agency, in consultation with the Department of Health and the
9 Department of Elderly Affairs, shall adopt and enforce rules
10 to implement this part, which shall include reasonable and
11 fair criteria in relation to:

12 (a) The location of the facility and housing
13 conditions that will ensure the health, safety, and comfort of
14 residents, including an adequate call system. In making such
15 rules, the agency shall be guided by criteria recommended by
16 nationally recognized reputable professional groups and
17 associations with knowledge of such subject matters. The
18 agency shall update or revise such criteria as the need
19 arises. The agency may require alterations to a building if it
20 determines that an existing condition constitutes a distinct
21 hazard to life, health, or safety. In performing any
22 inspections of facilities authorized by this part, the agency
23 may enforce the special-occupancy provisions of the Florida
24 Building Code and the Florida Fire Prevention Code which apply
25 to nursing homes. A resident or his or her representative may
26 request a change in the placement of the bed in the resident's
27 room, provided that at admission he or she is presented with a
28 room that meets requirements of the Florida Building Code. The
29 location of a bed may be changed if the requested placement
30 does not infringe on the resident's roommate or interfere with
31 the resident's care or safety as determined by the care

1 planning team in accordance with facility policies and
2 procedures. In addition, the bed placement may not be used as
3 a restraint. Each facility shall maintain a log of resident
4 rooms with beds that are not in strict compliance with the
5 Florida Building Code in order for such log to be used by
6 surveyors and nurse monitors during inspections and visits.
7 Any resident or resident representative who requests that a
8 bed be moved shall sign a statement indicating that he or she
9 understands the room will not be in compliance with the
10 Florida Building Code, but would prefer to exercise the right
11 to self-determination. The statement must be retained as part
12 of the resident's care plan. Any facility that offers this
13 option shall submit a letter signed by the nursing home
14 administrator of record to the agency notifying it of this
15 practice with a copy of the facility's policies and
16 procedures. The agency is directed to provide assistance to
17 the Florida Building Commission in updating the construction
18 standards of the code relative to nursing homes.

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

21 400.461 Short title; purpose.--

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

27 Section 3. Section 400.462, Florida Statutes, is
28 amended to read:

29 400.462 Definitions.--As used in this part, the term:

30 (1) "Administrator" means a direct employee, as
31 defined in subsection (9) of the home health agency or a

1 ~~related organization, or of a management company that has a~~
2 ~~contract to manage the home health agency, to whom the~~
3 ~~governing body has delegated the responsibility for day to day~~
4 ~~administration of the home health agency.~~ The administrator
5 must be a licensed physician, physician assistant, or
6 registered nurse licensed to practice in this state or an
7 individual having at least 1 year of supervisory or
8 administrative experience in home health care or in a facility
9 licensed under chapter 395 or under part II or part III of
10 this chapter. An administrator may manage a maximum of five
11 licensed home health agencies located within one agency
12 service district or within an immediately contiguous county.
13 If the home health agency is licensed under this chapter and
14 is part of a retirement community that provides multiple
15 levels of care, an employee of the retirement community may
16 administer the home health agency and up to a maximum of four
17 entities licensed under this chapter that are owned, operated,
18 or managed by the same corporate entity. An administrator
19 shall designate, in writing, for each licensed entity, a
20 qualified alternate administrator to serve during absences.

21 (2) "Admission" means a decision by the home health
22 agency, during or after an evaluation visit to the patient's
23 home, that there is reasonable expectation that the patient's
24 medical, nursing, and social needs for skilled care can be
25 adequately met by the agency in the patient's place of
26 residence. Admission includes completion of an agreement with
27 the patient or the patient's legal representative to provide
28 home health services as required in s. 400.487(1).

29 (3) "Advanced registered nurse practitioner" means a
30 person licensed in this state to practice professional nursing
31

1 and certified in advanced or specialized nursing practice, as
2 defined in s. 464.003.

3 ~~(4)(2)~~ "Agency" means the Agency for Health Care
4 Administration.

5 ~~(5)(3)~~ "Certified nursing assistant" means any person
6 who has been issued a certificate under part II of chapter
7 464. The licensed home health agency or licensed nurse
8 registry shall ensure that the certified nursing assistant
9 employed by or under contract with the home health agency or
10 licensed nurse registry is adequately trained to perform the
11 tasks of a home health aide in the home setting.

12 ~~(6)(4)~~ "Client" means an elderly, handicapped, or
13 convalescent individual who receives ~~personal care services,~~
14 companion services, or homemaker services in the individual's
15 home or place of residence.

16 ~~(7)(5)~~ "Companion" or "sitter" means a person who
17 spends time with ~~cares for~~ an elderly, handicapped, or
18 convalescent individual and accompanies such individual on
19 trips and outings and may prepare and serve meals to such
20 individual. A companion may not provide hands-on personal care
21 to a client.

22 ~~(8)(6)~~ "Department" means the Department of Children
23 and Family Services.

24 ~~(9)~~ "Direct employee" means an employee for whom one
25 of the following entities pays withholding taxes: a home
26 health agency; a management company that has a contract to
27 manage the home health agency on a day-to-day basis; or an
28 employee leasing company that has a contract with the home
29 health agency to handle the payroll and payroll taxes for the
30 home health agency.

31

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

24 ~~(11)(8)~~ "Home health agency" means an organization
25 that provides home health services and staffing services.

26 ~~(12)(9)~~ "Home health agency personnel" means persons
27 who are employed by or under contract with a home health
28 agency and enter the home or place of residence of patients at
29 any time in the course of their employment or contract.

30 ~~(13)(10)~~ "Home health services" means health and
31 medical services and medical supplies furnished by an

1 organization to an individual in the individual's home or
2 place of residence. The term includes organizations that
3 provide one or more of the following:

4 (a) Nursing care.

5 (b) Physical, occupational, respiratory, or speech
6 therapy.

7 (c) Home health aide services.

8 (d) Dietetics and nutrition practice and nutrition
9 counseling.

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

12 ~~(14)(11)~~ "Home health aide" means a person who is
13 trained or qualified, as provided by rule, and who provides
14 hands-on personal care, performs simple procedures as an
15 extension of therapy or nursing services, assists in
16 ambulation or exercises, or assists in administering
17 medications as permitted in rule and for which the person has
18 received training established by the agency under s.
19 400.497(1). The licensed home health agency or licensed nurse
20 registry shall ensure that the home health aide employed by,
21 or under contract with, the home health agency or licensed
22 nurse registry is adequately trained to perform the tasks of a
23 home health aide in the home setting.

24 ~~(15)(12)~~ "Homemaker" means a person who performs
25 household chores that include housekeeping, meal planning and
26 preparation, shopping assistance, and routine household
27 activities for an elderly, handicapped, or convalescent
28 individual. A homemaker may not provide hands-on personal care
29 to a client.

30 ~~(16)(13)~~ "Home infusion therapy provider" means an
31 organization that employs, contracts with, or refers a

1 licensed professional who has received advanced training and
2 experience in intravenous infusion therapy and who administers
3 infusion therapy to a patient in the patient's home or place
4 of residence.

5 ~~(17)~~~~(14)~~ "Home infusion therapy" means the
6 administration of intravenous pharmacological or nutritional
7 products to a patient in his or her home.

8 ~~(18)~~~~(15)~~ "Nurse registry" means any person that
9 procures, offers, promises, or attempts to secure
10 health-care-related contracts for registered nurses, licensed
11 practical nurses, certified nursing assistants, home health
12 aides, companions, or homemakers, who are compensated by fees
13 as independent contractors, including, but not limited to,
14 contracts for the provision of services to patients and
15 contracts to provide private duty or staffing services to
16 health care facilities licensed under chapter 395 or this
17 chapter or other business entities.

18 ~~(19)~~~~(16)~~ "Organization" means a corporation,
19 government or governmental subdivision or agency, partnership
20 or association, or any other legal or commercial entity, any
21 of which involve more than one health care professional
22 discipline; ~~or~~ a health care professional and a home health
23 aide or certified nursing assistant; more than one home health
24 aide; more than one certified nursing assistant; or a home
25 health aide and a certified nursing assistant. The term does
26 not include an entity that provides services using only
27 volunteers or only individuals related by blood or marriage to
28 the patient or client.

29 ~~(20)~~~~(17)~~ "Patient" means any person who receives home
30 health services in his or her home or place of residence.

31

1 ~~(21)(18)~~ "Personal care" means assistance to a patient
 2 in the activities of daily living, such as dressing, bathing,
 3 eating, or personal hygiene, and assistance in physical
 4 transfer, ambulation, and in administering medications as
 5 permitted by rule.

6 ~~(22)(19)~~ "Physician" means a person licensed under
 7 chapter 458, chapter 459, chapter 460, or chapter 461.

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

13 ~~(24)(20)~~ "Skilled care" means nursing services or
 14 therapeutic services required by law to be delivered by a
 15 health care professional who is licensed under part I of
 16 chapter 464; part I, part III, or part V of chapter 468; or
 17 chapter 486 and who is employed by or under contract with a
 18 licensed home health agency or is referred by a licensed nurse
 19 registry.

20 ~~(25)(21)~~ "Staffing services" means services provided
 21 to a health care facility or other business entity on a
 22 temporary basis by licensed health care personnel and by
 23 ~~including~~ certified nursing assistants and home health aides
 24 who are employed by, or work under the auspices of, a licensed
 25 home health agency or who are registered with a licensed nurse
 26 registry. Staffing services may be provided anywhere within
 27 the state.

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

30 400.464 Home health agencies to be licensed;
 31 expiration of license; exemptions; unlawful acts; penalties.--

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

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

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

31

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

6 ~~(d)(e)~~ A person who violates the provisions of
7 paragraph (a) commits a misdemeanor of the second degree,
8 punishable as provided in s. 775.082 or s. 775.083. Any
9 person who commits a second or subsequent violation commits a
10 misdemeanor of the first degree, punishable as provided in s.
11 775.082 or s. 775.083. Each day of continuing violation
12 constitutes a separate offense.

13 ~~(e)~~ Any person who owns, operates, or maintains an
14 unlicensed home health agency and who, after receiving
15 notification from the agency, fails to cease operation may be
16 fined \$500 for each day of noncompliance.

17 Section 5. Section 400.471, Florida Statutes, is
18 amended to read:

19 400.471 Application for license; fee; provisional
20 license; temporary permit.--

21 (1) Application for an initial license or for renewal
22 of an existing license must be made under oath to the agency
23 on forms furnished by it and must be accompanied by the
24 appropriate license fee as provided in subsection (8). The
25 agency must take final action on an initial licensure
26 application within 60 days after receipt of all required
27 documentation.

28 (2) The initial applicant must file with the
29 application satisfactory proof that the home health agency is
30 in compliance with this part and applicable rules, including:
31

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

4 (b) The number and discipline of professional staff to
5 be employed; ~~and~~

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

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

9 (3) An applicant for initial licensure must
10 demonstrate financial ability to operate by submitting a
11 balance sheet and income and expense statement for the first 2
12 years of operation which provide evidence of having sufficient
13 assets, credit, and projected revenues to cover liabilities
14 and expenses. The applicant shall have demonstrated financial
15 ability to operate if the applicant's assets, credit, and
16 projected revenues meet or exceed projected liabilities and
17 expenses. All documents required under this subsection must
18 be prepared in accordance with generally accepted accounting
19 principles, and must be compiled ~~the financial statement must~~
20 ~~be signed~~ by a certified public accountant.

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

23 (a) Upon receipt of a completed, signed, and dated
24 application, the agency shall require background screening of
25 the applicant, in accordance with the level 2 standards for
26 screening set forth in chapter 435. As used in this
27 subsection, the term "applicant" means the administrator, or a
28 similarly titled person who is responsible for the day-to-day
29 operation of the licensed home health agency, and the
30 financial officer, or similarly titled individual who is
31

1 responsible for the financial operation of the licensed home
2 health agency.

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

9 (c) Proof of compliance with the level 2 background
10 screening requirements of chapter 435 which has been submitted
11 within the previous 5 years in compliance with any other
12 health care or assisted living licensure requirements of this
13 state is acceptable in fulfillment of paragraph (a). Proof of
14 compliance with background screening which has been submitted
15 within the previous 5 years to fulfill the requirements of the
16 Financial Services Commission and the Office of Insurance
17 Regulation pursuant to chapter 651 as part of an application
18 for a certificate of authority to operate a continuing care
19 retirement community is acceptable in fulfillment of the
20 Department of Law Enforcement and Federal Bureau of
21 Investigation background check.

22 (d) A provisional license may be granted to an
23 applicant when each individual required by this section to
24 undergo background screening has met the standards for the
25 Department of Law Enforcement background check, but the agency
26 has not yet received background screening results from the
27 Federal Bureau of Investigation. A standard license may be
28 granted to the licensee upon the agency's receipt of a report
29 of the results of the Federal Bureau of Investigation
30 background screening for each individual required by this
31 section to undergo background screening which confirms that

1 all standards have been met, or upon the granting of a
2 disqualification exemption by the agency as set forth in
3 chapter 435. Any other person who is required to undergo level
4 2 background screening may serve in his or her capacity
5 pending the agency's receipt of the report from the Federal
6 Bureau of Investigation. However, the person may not continue
7 to serve if the report indicates any violation of background
8 screening standards and a disqualification exemption has not
9 been requested of and granted by the agency as set forth in
10 chapter 435.

11 (e) Each applicant must submit to the agency, with its
12 application, a description and explanation of any exclusions,
13 permanent suspensions, or terminations of the licensee or
14 potential licensee from the Medicare or Medicaid programs.
15 Proof of compliance with the requirements for disclosure of
16 ownership and control interest under the Medicaid or Medicare
17 programs may be accepted in lieu of this submission.

18 (f) Each applicant must submit to the agency a
19 description and explanation of any conviction of an offense
20 prohibited under the level 2 standards of chapter 435 by a
21 member of the board of directors of the applicant, its
22 officers, or any individual owning 5 percent or more of the
23 applicant. This requirement does not apply to a director of a
24 not-for-profit corporation or organization if the director
25 serves solely in a voluntary capacity for the corporation or
26 organization, does not regularly take part in the day-to-day
27 operational decisions of the corporation or organization,
28 receives no remuneration for his or her services on the
29 corporation or organization's board of directors, and has no
30 financial interest and has no family members with a financial
31 interest in the corporation or organization, provided that the

1 director and the not-for-profit corporation or organization
 2 include in the application a statement affirming that the
 3 director's relationship to the corporation satisfies the
 4 requirements of this paragraph.

5 (g) A license may not be granted to an applicant if
 6 the applicant, administrator, or financial officer has been
 7 found guilty of, regardless of adjudication, or has entered a
 8 plea of nolo contendere or guilty to, any offense prohibited
 9 under the level 2 standards for screening set forth in chapter
 10 435, unless an exemption from disqualification has been
 11 granted by the agency as set forth in chapter 435.

12 (h) The agency may deny or revoke licensure if the
 13 applicant+

14 ~~1. Has falsely represented a material fact in the~~
 15 ~~application required by paragraph (e) or paragraph (f), or has~~
 16 ~~omitted any material fact from the application required by~~
 17 ~~paragraph (e) or paragraph (f); or~~

18 ~~2. has been or is currently excluded, suspended,~~
 19 ~~terminated from, or has involuntarily withdrawn from~~
 20 ~~participation in this state's Medicaid program, or the~~
 21 ~~Medicaid program of any other state, or from participation in~~
 22 ~~the Medicare program or any other governmental or private~~
 23 health care or health insurance program.

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

26 (5) The agency may deny or revoke licensure if the
 27 applicant has falsely represented a material fact, or has
 28 omitted any material fact, from the application required by
 29 this section.

30 ~~(6)(5)~~ The home health agency must also obtain and
 31 maintain the following insurance coverage ~~coverages~~ in an

1 amount of not less than \$250,000 per claim, and the home
2 health agency must submit proof of coverage with an initial
3 application for licensure and with each annual application for
4 license renewal:

5 (a) Malpractice insurance as defined in s.
6 624.605(1)(k); and

7 (b) Liability insurance as defined in s.
8 624.605(1)(b).

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

24 ~~(8)(7)~~ When transferring the ownership of a home
25 health agency, the transferee must submit an application for a
26 license at least 60 days before the effective date of the
27 transfer. If the application is filed late, an administrative
28 fine shall be imposed in the amount of \$50 per day. Each day
29 of continuing violation is a separate violation; however, the
30 aggregate of such fines may not exceed \$500. If the home
31

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

3 (9) The agency shall accept, in lieu of its own
4 periodic licensure survey, submission of the survey of an
5 accrediting organization that is recognized by the agency if
6 the accreditation of the licensed home health agency is not
7 provisional and if the licensed home health agency authorizes
8 release of, and the agency receives the report of, the
9 accrediting organization.

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

19 (11)(9) The license must be displayed in a conspicuous
20 place in the administrative office of the home health agency
21 and is valid only while in the possession of the person to
22 which it is issued. The license may not be sold, assigned, or
23 otherwise transferred, voluntarily or involuntarily, and is
24 valid only for the home health agency and location for which
25 originally issued.

26 (12)(10) A home health agency against whom a
27 revocation or suspension proceeding is pending at the time of
28 license renewal may be issued a provisional license effective
29 until final disposition by the agency of such proceedings. If
30 judicial relief is sought from the final disposition, the
31

1 court that has jurisdiction may issue a temporary permit for
2 the duration of the judicial proceeding.

3 ~~(13)(11)~~ The agency may not issue a license designated
4 as certified to a home health agency that fails to satisfy the
5 requirements of a Medicare certification survey from the
6 agency.

7 ~~(14)(12)~~ The agency may not issue a license to a home
8 health agency that has any unpaid fines assessed under this
9 part.

10 Section 6. Section 400.487, Florida Statutes, is
11 amended to read:

12 400.487 Home health service agreements; physician's,
13 physician's assistant's, and advanced registered nurse
14 practitioner's treatment orders; patient assessment;
15 establishment and review of plan of care; provision of
16 services; orders not to resuscitate.--

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

27 (2) When required by the provisions of chapter 464;
28 part I, part III, or part V of chapter 468; or chapter 486,
29 the attending physician, physician's assistant, or advanced
30 registered nurse practitioner, acting within his or her
31 respective scope of practice, shall ~~for a patient who is to~~

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

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

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

24 (5) When nursing services are ordered, the home health
25 agency to which a patient has been admitted for care must
26 provide the initial admission visit, all service evaluation
27 visits, and the discharge visit by a direct employee ~~qualified~~
28 ~~personnel who are on the payroll of, and to whom an IRS~~
29 ~~payroll form W 2 will be issued by, the home health agency.~~
30 Services provided by others under contractual arrangements to
31 a home health agency must be monitored and managed by the

1 admitting home health agency. The admitting home health agency
2 is fully responsible for ensuring that all care provided
3 through its employees or contract staff is delivered in
4 accordance with this part and applicable rules.

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

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

18 Section 7. Section 400.491, Florida Statutes, is
19 amended to read:

20 400.491 Clinical records.--

21 (1) The home health agency must maintain for each
22 patient who receives skilled care a clinical record that
23 includes pertinent past and current medical, nursing, social
24 and other therapeutic information, the treatment orders, and
25 other such information as is necessary for the safe and
26 adequate care of the patient. When home health services are
27 terminated, the record must show the date and reason for
28 termination. Such records are considered patient records
29 under s. 400.494 ~~s. 456.057~~, and must be maintained by the
30 home health agency for 6 ~~5~~ years following termination of
31 services. If a patient transfers to another home health

1 agency, a copy of his or her record must be provided to the
2 other home health agency upon request.

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

14 Section 8. Section 400.494, Florida Statutes, is
15 amended to read:

16 400.494 Information about patients confidential.--

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

29 (2) This section does not apply to information
30 lawfully requested by the Medicaid Fraud Control Unit of the
31 Department of Legal Affairs.

1 Section 9. Subsections (3), (5), (7), (8), (10), (13),
 2 (14), and (17) of section 400.506, Florida Statutes, are
 3 amended to read:

4 400.506 Licensure of nurse registries; requirements;
 5 penalties.--

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

13 (5) A license issued for the operation of a nurse
 14 registry, unless sooner suspended or revoked, expires 2 years
 15 ~~1 year~~ after its date of issuance. Sixty days before the
 16 expiration date, an application for renewal must be submitted
 17 to the Agency for Health Care Administration on forms
 18 furnished by it. The Agency for Health Care Administration
 19 shall renew the license if the applicant has met the
 20 requirements of this section and applicable rules. A nurse
 21 registry against which a revocation or suspension proceeding
 22 is pending at the time of license renewal may be issued a
 23 conditional license effective until final disposition by the
 24 Agency for Health Care Administration of such proceedings. If
 25 judicial relief is sought from the final disposition, the
 26 court having jurisdiction may issue a conditional license for
 27 the duration of the judicial proceeding.

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

1 Administration. The agency shall assess a fine of not less
2 than \$100 against any licensee who fails to include the
3 license number when submitting the advertisement for
4 publication, broadcast, or printing. The fine for a second or
5 subsequent offense is \$500.

6 (8)(a) It is unlawful for a person to provide, offer,
7 or advertise to the public services as defined by rule without
8 obtaining a valid license from the Agency for Health Care
9 Administration. It is unlawful for any holder of a license to
10 advertise or hold out to the public that he or she holds a
11 license for other than that for which he or she actually holds
12 a license. A person who violates this subsection is subject
13 to injunctive proceedings under s. 400.515.

14 (b) A person who violates paragraph (a) commits a
15 misdemeanor of the second degree, punishable as provided in s.
16 775.082 or s. 775.083. Any person who commits a second or
17 subsequent violation commits a misdemeanor of the first
18 degree, punishable as provided in s. 775.082 or s. 775.083.
19 Each day of continuing violation is a separate offense.

20 (c) Any person who owns, operates, or maintains an
21 unlicensed nurse registry and who, after receiving
22 notification from the agency, fails to cease operation is
23 subject to a fine of \$500 for each day of noncompliance.

24 (10)(a) A nurse registry may refer for contract in
25 private residences registered nurses and licensed practical
26 nurses registered and licensed under part I of chapter 464,
27 certified nursing assistants certified under part II of
28 chapter 464, home health aides who present documented proof of
29 successful completion of the training required by rule of the
30 agency, and companions or homemakers for the purposes of
31 providing those services authorized under s. 400.509(1). Each

1 person referred by a nurse registry must provide current
2 documentation that he or she is free from communicable
3 diseases.

4 (b) A certified nursing assistant or home health aide
5 may be referred for a contract to provide care to a patient in
6 his or her home only if that patient is under a physician's
7 care. A certified nursing assistant or home health aide
8 referred for contract in a private residence shall be limited
9 to assisting a patient with bathing, dressing, toileting,
10 grooming, eating, physical transfer, and those normal daily
11 routines the patient could perform for himself or herself were
12 he or she physically capable. A certified nursing assistant
13 or home health aide may not provide medical or other health
14 care services that require specialized training and that may
15 be performed only by licensed health care professionals. The
16 nurse registry shall obtain the name and address of the
17 attending physician and send written notification to the
18 physician within 48 hours after a contract is concluded that a
19 certified nursing assistant or home health aide will be
20 providing care for that patient.

21 (c) When a certified nursing assistant or home health
22 aide is referred to a patient's home by a nurse registry, the
23 nurse registry shall advise the patient, the patient's family,
24 or a person acting on behalf of the patient at the time of
25 contracting for services through the nurse registry of the
26 availability of registered nurses to visit the patient's home
27 to assess the patient's condition at an additional cost. A
28 ~~registered nurse shall make monthly visits to the patient's~~
29 ~~home to assess the patient's condition and quality of care~~
30 ~~being provided by the certified nursing assistant or home~~
31 ~~health aide.~~ Any condition which, in the professional judgment

1 of the nurse, requires further medical attention shall be
2 reported to the attending physician and the nurse registry.
3 The assessment shall become a part of the patient's file with
4 the nurse registry and may be reviewed by the agency during
5 their survey procedure.

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

14 (14) The nurse registry must maintain the application
15 on file, and that file must be open to the inspection of the
16 Agency for Health Care Administration. The nurse registry
17 must maintain on file the name and address of the patient or
18 ~~client to whom the nurse or other~~ nurse registry personnel are
19 referred ~~is sent~~ for contract and the amount of the fee
20 received by the nurse registry. A nurse registry must maintain
21 the file that includes the application and other applicable
22 documentation for 3 years after the date of the last file
23 entry of client-related information.

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

27 (a) When, in accordance with the privileges and
28 restrictions imposed upon a nurse under part I of chapter 464,
29 the delivery of care to a patient is under the direction or
30 supervision of a physician or when a physician is responsible
31 for the medical care of the patient, a medical plan of

1 treatment must be established for each patient receiving care
2 or treatment provided by a licensed nurse in the home. The
3 original medical plan of treatment must be timely signed by
4 the physician, physician's assistant, or advanced registered
5 nurse practitioner, acting within his or her respective scope
6 of practice, and reviewed ~~by him or her~~ in consultation with
7 the licensed nurse at least every 2 months. Any additional
8 order or change in orders must be obtained from the physician,
9 physician's assistant, or advanced registered nurse
10 practitioner and reduced to writing and timely signed by the
11 physician, physician's assistant, or advanced registered nurse
12 practitioner. The delivery of care under a medical plan of
13 treatment must be substantiated by the appropriate nursing
14 notes or documentation made by the nurse in compliance with
15 nursing practices established under part I of chapter 464.

16 (b) Whenever a medical plan of treatment is
17 established for a patient, the initial medical plan of
18 treatment, any amendment to the plan, additional order or
19 change in orders, and copy of nursing notes must be filed in
20 the office of the nurse registry.

21 Section 10. Subsection (2) of section 400.512, Florida
22 Statutes, is amended to read:

23 400.512 Screening of home health agency personnel;
24 nurse registry personnel; and companions and homemakers.--The
25 agency shall require employment or contractor screening as
26 provided in chapter 435, using the level 1 standards for
27 screening set forth in that chapter, for home health agency
28 personnel; persons referred for employment by nurse
29 registries; and persons employed by companion or homemaker
30 services registered under s. 400.509.

31

1 (2) The administrator of each home health agency, the
2 managing employee of each nurse registry, and the managing
3 employee of each companion or homemaker service registered
4 under s. 400.509 must sign an affidavit annually, under
5 penalty of perjury, stating that all personnel hired, or
6 contracted with, or registered on or after October 1, 2000
7 ~~October 1, 1994~~, who enter the home of a patient or client in
8 their service capacity have been screened ~~and that its~~
9 ~~remaining personnel have worked for the home health agency or~~
10 ~~registrant continuously since before October 1, 1994.~~

11 Section 11. Section 400.515, Florida Statutes, is
12 amended to read:

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

25 Section 12. This act shall take effect July 1, 2005.
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