

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; changing the timeframe for a home  
25          health agency to retain patient records;  
26          changing a reference; amending s. 400.494,  
27          F.S.; providing for the continued  
28          confidentiality of patient information in  
29          compliance with federal law; providing for  
30          disclosure in accordance with certain specified  
31          state laws; deleting a requirement for written

1 consent of the patient or the patient's  
2 guardian for disclosure of confidential patient  
3 information; amending s. 400.506, F.S.;  
4 revising requirements governing nurse  
5 registries; increasing license fee; increasing  
6 the period of licensure; authorizing  
7 administrative penalties; revising criminal  
8 penalties and sanctions; revising certain  
9 requirements pertaining to health care  
10 professionals that provide services on behalf  
11 of a nurse registry; amending s. 400.512, F.S.,  
12 relating to employment screening; revising the  
13 date on which an annual affidavit must be  
14 signed which verifies that certain personnel of  
15 a home health agency, a nurse registry, or  
16 homemaker service have been screened; amending  
17 s. 400.515, F.S.; providing additional  
18 circumstances under which the agency may  
19 petition for an injunction; providing an  
20 effective date.

21  
22 Be It Enacted by the Legislature of the State of Florida:

23  
24 Section 1. Subsection (2) of section 400.461, Florida  
25 Statutes, is amended to read:

26 400.461 Short title; purpose.--

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

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

3           400.462 Definitions.--As used in this part, the term:

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

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

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

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

7 ~~(4)(2)~~ "Agency" means the Agency for Health Care  
8 Administration.

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

16 ~~(6)(4)~~ "Client" means an elderly, handicapped, or  
17 convalescent individual who receives ~~personal care services,~~  
18 ~~companion services,~~ or homemaker services in the individual's  
19 home or place of residence.

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

26 ~~(8)(6)~~ "Department" means the Department of Children  
27 and Family Services.

28 (9) "Direct employee" means an employee for whom one  
29 of the following entities pays withholding taxes: a home  
30 health agency; a management company that has a contract to  
31 manage the home health agency on a day-to-day basis; or an

1 employee leasing company that has a contract with the home  
 2 health agency to handle the payroll and payroll taxes for the  
 3 home health agency.

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

27 ~~(11)(8)~~ "Home health agency" means an organization  
 28 that provides home health services and staffing services.

29 ~~(12)(9)~~ "Home health agency personnel" means persons  
 30 who are employed by or under contract with a home health  
 31

1 agency and enter the home or place of residence of patients at  
2 any time in the course of their employment or contract.

3 ~~(13)(10)~~ "Home health services" means health and  
4 medical services and medical supplies furnished by an  
5 organization to an individual in the individual's home or  
6 place of residence. The term includes organizations that  
7 provide one or more of the following:

8 (a) Nursing care.

9 (b) Physical, occupational, respiratory, or speech  
10 therapy.

11 (c) Home health aide services.

12 (d) Dietetics and nutrition practice and nutrition  
13 counseling.

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

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

28 ~~(15)(12)~~ "Homemaker" means a person who performs  
29 household chores that include housekeeping, meal planning and  
30 preparation, shopping assistance, and routine household  
31 activities for an elderly, handicapped, or convalescent

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

3 ~~(16)(13)~~ "Home infusion therapy provider" means an  
4 organization that employs, contracts with, or refers a  
5 licensed professional who has received advanced training and  
6 experience in intravenous infusion therapy and who administers  
7 infusion therapy to a patient in the patient's home or place  
8 of residence.

9 ~~(17)(14)~~ "Home infusion therapy" means the  
10 administration of intravenous pharmacological or nutritional  
11 products to a patient in his or her home.

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

22 ~~(19)(16)~~ "Organization" means a corporation,  
23 government or governmental subdivision or agency, partnership  
24 or association, or any other legal or commercial entity, any  
25 of which involve more than one health care professional  
26 discipline; ~~or~~ a health care professional and a home health  
27 aide or certified nursing assistant; more than one home health  
28 aide; more than one certified nursing assistant; or a home  
29 health aide and a certified nursing assistant. The term does  
30 not include an entity that provides services using only  
31

1 volunteers or only individuals related by blood or marriage to  
2 the patient or client.

3 ~~(20)(17)~~ "Patient" means any person who receives home  
4 health services in his or her home or place of residence.

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

10 ~~(22)(19)~~ "Physician" means a person licensed under  
11 chapter 458, chapter 459, chapter 460, or chapter 461.

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

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

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



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

3 400.464 Home health agencies to be licensed;  
4 expiration of license; exemptions; unlawful acts; penalties.--

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

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

24 (b) The operation or maintenance of an unlicensed home  
25 health agency or the performance of any home health services  
26 in violation of this part is declared a nuisance, inimical to  
27 the public health, welfare, and safety. The agency or any  
28 state attorney may, in addition to other remedies provided in  
29 this part, bring an action for an injunction to restrain such  
30 violation, or to enjoin the future operation or maintenance of  
31 the home health agency or the provision of home health

1 services in violation of this part, until compliance with this  
2 part or the rules adopted under this part has been  
3 demonstrated to the satisfaction of the agency.

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

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

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

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

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

28 400.471 Application for license; fee; provisional  
29 license; temporary permit.--

30 (1) Application for an initial license or for renewal  
31 of an existing license must be made under oath to the agency

1 on forms furnished by it and must be accompanied by the  
2 appropriate license fee as provided in subsection ~~(10)(8)~~.  
3 The agency must take final action on an initial licensure  
4 application within 60 days after receipt of all required  
5 documentation.

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

9 (a) A listing of services to be provided, either  
10 directly by the applicant or through contractual arrangements  
11 with existing providers. ~~;~~

12 (b) The number and discipline of professional staff to  
13 be employed. ~~;~~ ~~and~~

14 (c) Proof of financial ability to operate.

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

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

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

31

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

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

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

30           (d) A provisional license may be granted to an  
31 applicant when each individual required by this section to

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

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

26 (f) Each applicant must submit to the agency a  
27 description and explanation of any conviction of an offense  
28 prohibited under the level 2 standards of chapter 435 by a  
29 member of the board of directors of the applicant, its  
30 officers, or any individual owning 5 percent or more of the  
31 applicant. This requirement does not apply to a director of a

1 not-for-profit corporation or organization if the director  
2 serves solely in a voluntary capacity for the corporation or  
3 organization, does not regularly take part in the day-to-day  
4 operational decisions of the corporation or organization,  
5 receives no remuneration for his or her services on the  
6 corporation or organization's board of directors, and has no  
7 financial interest and has no family members with a financial  
8 interest in the corporation or organization, provided that the  
9 director and the not-for-profit corporation or organization  
10 include in the application a statement affirming that the  
11 director's relationship to the corporation satisfies the  
12 requirements of this paragraph.

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

20 (h) The agency may deny or revoke licensure if the  
21 applicant+

22 ~~1. Has falsely represented a material fact in the~~  
23 ~~application required by paragraph (c) or paragraph (f), or has~~  
24 ~~omitted any material fact from the application required by~~  
25 ~~paragraph (c) or paragraph (f); or~~

26 ~~2. has been or is currently excluded, suspended,~~  
27 ~~terminated from, or has involuntarily withdrawn from~~  
28 ~~participation in this state's Medicaid program, or the~~  
29 ~~Medicaid program of any other state, or from participation in~~  
30 ~~the Medicare program or any other governmental or private~~  
31 health care or health insurance program.

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

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

7 ~~(6)(5)~~ The home health agency must also obtain and  
8 maintain the following insurance coverage ~~coverages~~ in an  
9 amount of not less than \$250,000 per claim, and the home  
10 health agency must submit proof of coverage with an initial  
11 application for licensure and with each ~~annual~~ application for  
12 license renewal:

13 (a) Malpractice insurance as defined in s.  
14 624.605(1)(k).; (b) Liability insurance as defined in s.  
15 624.605(1)(b).

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

31

1           ~~(8)(7)~~ When transferring the ownership of a home  
2 health agency, the transferee must submit an application for a  
3 license at least 60 days before the effective date of the  
4 transfer. If the application is filed late, an administrative  
5 fine shall be imposed in the amount of \$50 per day. Each day  
6 of continuing violation is a separate violation; however, the  
7 aggregate of such fines may not exceed \$500. If the home  
8 health agency is being leased, a copy of the lease agreement  
9 must be filed with the application.

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

17           ~~(10)(8)~~ The license fee and ~~annual~~ renewal fee  
18 required of a home health agency are nonrefundable. The agency  
19 shall set the license fees in an amount that is sufficient to  
20 cover its costs in carrying out its responsibilities under  
21 this part, but not to exceed ~~\$2,000~~\$1,000. However, state,  
22 county, or municipal governments applying for licenses under  
23 this part are exempt from the payment of license fees. All  
24 fees collected under this part must be deposited in the Health  
25 Care Trust Fund for the administration of this part.

26           ~~(11)(9)~~ The license must be displayed in a conspicuous  
27 place in the administrative office of the home health agency  
28 and is valid only while in the possession of the person to  
29 which it is issued. The license may not be sold, assigned, or  
30 otherwise transferred, voluntarily or involuntarily, and is  
31



1 valid only for the home health agency and location for which  
2 originally issued.

3 ~~(12)~~~~(10)~~ A home health agency against whom a  
4 revocation or suspension proceeding is pending at the time of  
5 license renewal may be issued a provisional license effective  
6 until final disposition by the agency of such proceedings. If  
7 judicial relief is sought from the final disposition, the  
8 court that has jurisdiction may issue a temporary permit for  
9 the duration of the judicial proceeding.

10 ~~(13)~~~~(11)~~ The agency may not issue a license designated  
11 as certified to a home health agency that fails to satisfy the  
12 requirements of a Medicare certification survey from the  
13 agency.

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

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

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

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

1 of the patient's needs within 48 hours after the start of  
2 services.

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

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

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

31

1           (5) When nursing services are ordered, the home health  
 2 agency to which a patient has been admitted for care must  
 3 provide the initial admission visit, all service evaluation  
 4 visits, and the discharge visit by a direct employee ~~qualified~~  
 5 ~~personnel who are on the payroll of, and to whom an IRS~~  
 6 ~~payroll form W 2 will be issued by, the home health agency.~~  
 7 Services provided by others under contractual arrangements to  
 8 a home health agency must be monitored and managed by the  
 9 admitting home health agency. The admitting home health agency  
 10 is fully responsible for ensuring that all care provided  
 11 through its employees or contract staff is delivered in  
 12 accordance with this part and applicable rules.

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

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

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

28           400.491 Clinical records.--

29           (1) The home health agency must maintain for each  
 30 patient who receives skilled care a clinical record that  
 31 includes pertinent past and current medical, nursing, social

1 and other therapeutic information, the treatment orders, and  
2 other such information as is necessary for the safe and  
3 adequate care of the patient. When home health services are  
4 terminated, the record must show the date and reason for  
5 termination. Such records are considered patient records under  
6 s. 400.494 ~~s. 456.057~~, and must be maintained by the home  
7 health agency for 65 years following termination of services.  
8 If a patient transfers to another home health agency, a copy  
9 of his or her record must be provided to the other home health  
10 agency upon request.

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

13 400.494 Information about patients confidential.--

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

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

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

1           400.506 Licensure of nurse registries; requirements;  
2 penalties.--

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

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

25           (7) A person that provides, offers, or advertises to  
26 the public ~~that it provides~~ any service for which licensure is  
27 required under this section must include in such advertisement  
28 the license number issued to it by the Agency for Health Care  
29 Administration. The agency shall assess a fine of not less  
30 than \$100 against any licensee who fails to include the  
31 license number when submitting the advertisement for

1 publication, broadcast, or printing. The fine for a second or  
2 subsequent offense is \$500.

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

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

15 (c) Any person who owns, operates, or maintains an  
16 unlicensed nurse registry and who, within 10 working days  
17 after receiving notification from the agency, fails to cease  
18 operation and apply for a license under this part commits a  
19 misdemeanor of the second degree, punishable as provided in s.  
20 775.082 or s. 775.083. Each day of continued operation is a  
21 separate offense.

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

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

1 providing those services authorized under s. 400.509(1). Each  
2 person referred by a nurse registry must provide current  
3 documentation that he or she is free from communicable  
4 diseases.

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

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

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

7 (13) Each nurse registry must comply with the  
8 procedures set forth in s. 400.512 for maintaining records of  
9 the ~~work~~employment history of all persons referred for  
10 contract and is subject to the standards and conditions set  
11 forth in that section. However, an initial screening may not  
12 be required for persons who have been continuously registered  
13 with the nurse registry since October 1, 2000 ~~September 30,~~  
14 ~~1990~~.

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

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

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



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

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

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

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

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

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