

CHAMBER ACTION

1 The Health Care Regulation Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to health care; amending s. 400.461, F.S.;
7 revising the purpose of part IV of ch. 400, F.S., to
8 include the licensure of nurse registries; amending s.
9 400.462, F.S.; revising definitions; defining the terms
10 "admission," "advanced registered nurse practitioner,"
11 "direct employee," and "physician assistant" for purposes
12 of part IV of ch. 400, F.S.; amending s. 400.464, F.S.,
13 relating to licensure of home health agencies; revising
14 the licensure period; revising and providing additional
15 administrative, civil, and criminal penalties, sanctions,
16 and fines; amending s. 400.471, F.S.; revising
17 requirements for license application by a home health
18 agency; authorizing the Agency for Health Care
19 Administration to revoke a license under certain
20 circumstances; authorizing administrative fines; amending
21 s. 400.487, F.S.; revising requirements for home health
22 agency service agreements and treatment orders; amending
23 s. 400.491, F.S., relating to clinical records; changing

HB 739

2005
CS

24 | the timeframe for a home health agency to retain patient
 25 | records; changing a reference; amending s. 400.494, F.S.;
 26 | providing for the continued confidentiality of patient
 27 | information in compliance with federal law; providing for
 28 | disclosure in accordance with certain specified state
 29 | laws; deleting a requirement for written consent of the
 30 | patient or the patient's guardian for disclosure of
 31 | confidential patient information; deleting an exemption
 32 | provided for the Medicaid Fraud Control Unit of the
 33 | Department of Legal Affairs; amending s. 400.506, F.S.;
 34 | revising requirements governing nurse registries;
 35 | increasing license fee; increasing the period of
 36 | licensure; authorizing administrative penalties; revising
 37 | criminal penalties and sanctions; revising certain
 38 | requirements pertaining to health care professionals that
 39 | provide services on behalf of a nurse registry; amending
 40 | s. 400.512, F.S., relating to employment screening;
 41 | revising the date on which an annual affidavit must be
 42 | signed which verifies that certain personnel of a home
 43 | health agency, a nurse registry, or homemaker service have
 44 | been screened; amending s. 400.515, F.S.; providing
 45 | additional circumstances under which the agency may
 46 | petition for an injunction; providing an effective date.

47 |
 48 | Be It Enacted by the Legislature of the State of Florida:

49 |
 50 | Section 1. Subsection (2) of section 400.461, Florida
 51 | Statutes, is amended to read:

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

HB 739

2005
CS

52 | 400.461 Short title; purpose.--

53 | (2) The purpose of this part is to provide for the
54 | licensure of every home health agency and nurse registry and to
55 | provide for the development, establishment, and enforcement of
56 | basic standards that will ensure the safe and adequate care of
57 | persons receiving health services in their own homes.

58 | Section 2. Section 400.462, Florida Statutes, is amended
59 | to read:

60 | 400.462 Definitions.--As used in this part, the term:

61 | (1) "Administrator" means a direct employee, as defined in
62 | subsection (9) of the home health agency or a related
63 | ~~organization, or of a management company that has a contract to~~
64 | ~~manage the home health agency, to whom the governing body has~~
65 | ~~delegated the responsibility for day-to-day administration of~~
66 | ~~the home health agency.~~ The administrator must be a licensed
67 | physician, physician assistant, or registered nurse licensed to
68 | practice in this state or an individual having at least 1 year
69 | of supervisory or administrative experience in home health care
70 | or in a facility licensed under chapter 395 or under part II or
71 | part III of this chapter. An administrator may manage a maximum
72 | of five licensed home health agencies located within one agency
73 | service district or within an immediately contiguous county. If
74 | the home health agency is licensed under this chapter and is
75 | part of a retirement community that provides multiple levels of
76 | care, an employee of the retirement community may administer the
77 | home health agency and up to a maximum of four entities licensed
78 | under this chapter that are owned, operated, or managed by the
79 | same corporate entity. An administrator shall designate, in

80 writing, for each licensed entity, a qualified alternate
81 administrator to serve during absences.

82 (2) "Admission" means a decision by the home health
83 agency, during or after an evaluation visit to the patient's
84 home, that there is reasonable expectation that the patient's
85 medical, nursing, and social needs for skilled care can be
86 adequately met by the agency in the patient's place of
87 residence. Admission includes completion of an agreement with
88 the patient or the patient's legal representative to provide
89 home health services as required in s. 400.487(1).

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

94 (4)-(2) "Agency" means the Agency for Health Care
95 Administration.

96 (5)-(3) "Certified nursing assistant" means any person who
97 has been issued a certificate under part II of chapter 464. The
98 licensed home health agency or licensed nurse registry shall
99 ensure that the certified nursing assistant employed by or under
100 contract with the home health agency or licensed nurse registry
101 is adequately trained to perform the tasks of a home health aide
102 in the home setting.

103 (6)-(4) "Client" means an elderly, handicapped, or
104 convalescent individual who receives ~~personal care services,~~
105 ~~companion services,~~ or homemaker services in the individual's
106 home or place of residence.

HB 739

2005
CS

107 ~~(7)(5)~~ "Companion" or "sitter" means a person who spends
 108 time with or cares for an elderly, handicapped, or convalescent
 109 individual and accompanies such individual on trips and outings
 110 and may prepare and serve meals to such individual. A companion
 111 may not provide hands-on personal care to a client.

112 ~~(8)(6)~~ "Department" means the Department of Children and
 113 Family Services.

114 (9) "Direct employee" means an employee for whom one of
 115 the following entities pays withholding taxes: a home health
 116 agency; a management company that has a contract to manage the
 117 home health agency on a day-to-day basis; or an employee leasing
 118 company that has a contract with the home health agency to
 119 handle the payroll and payroll taxes for the home health agency.

120 ~~(10)(7)~~ "Director of nursing" means a registered nurse who
 121 is a ~~and~~ direct employee, as defined in subsection (9), of the
 122 agency ~~and or related business entity~~ who is a graduate of an
 123 approved school of nursing and is licensed in this state; who
 124 has at least 1 year of supervisory experience as a registered
 125 nurse ~~in a licensed home health agency, a facility licensed~~
 126 ~~under chapter 395, or a facility licensed under part II or part~~
 127 ~~III of this chapter;~~ and who is responsible for overseeing the
 128 professional nursing and home health aid delivery of services of
 129 the agency. A director of nursing ~~An employee~~ may be the
 130 director ~~of nursing~~ of a maximum of five licensed home health
 131 agencies operated by a related business entity and located
 132 within one agency service district or within an immediately
 133 contiguous county. If the home health agency is licensed under
 134 this chapter and is part of a retirement community that provides

HB 739

2005
CS

135 multiple levels of care, an employee of the retirement community
 136 may serve as the director of nursing of the home health agency
 137 and of up to four entities licensed under this chapter which are
 138 owned, operated, or managed by the same corporate entity. A
 139 ~~director of nursing shall designate, in writing, for each~~
 140 ~~licensed entity, a qualified alternate registered nurse to serve~~
 141 ~~during the absence of the director of nursing.~~

142 (11)~~(8)~~ "Home health agency" means an organization that
 143 provides home health services and staffing services.

144 (12)~~(9)~~ "Home health agency personnel" means persons who
 145 are employed by or under contract with a home health agency and
 146 enter the home or place of residence of patients at any time in
 147 the course of their employment or contract.

148 (13)~~(10)~~ "Home health services" means health and medical
 149 services and medical supplies furnished by an organization to an
 150 individual in the individual's home or place of residence. The
 151 term includes organizations that provide one or more of the
 152 following:

- 153 (a) Nursing care.
- 154 (b) Physical, occupational, respiratory, or speech
 155 therapy.
- 156 (c) Home health aide services.
- 157 (d) Dietetics and nutrition practice and nutrition
 158 counseling.
- 159 (e) Medical supplies, restricted to drugs and biologicals
 160 prescribed by a physician.

161 (14)~~(11)~~ "Home health aide" means a person who is trained
 162 or qualified, as provided by rule, and who provides hands-on

HB 739

2005
CS

163 | personal care, performs simple procedures as an extension of
 164 | therapy or nursing services, assists in ambulation or exercises,
 165 | or assists in administering medications as permitted in rule and
 166 | for which the person has received training established by the
 167 | agency under s. 400.497(1). The licensed home health agency or
 168 | licensed nurse registry shall ensure that the home health aide
 169 | employed by or under contract with the home health agency or
 170 | licensed nurse registry is adequately trained to perform the
 171 | tasks of a home health aide in the home setting.

172 | ~~(15)~~~~(12)~~ "Homemaker" means a person who performs household
 173 | chores that include housekeeping, meal planning and preparation,
 174 | shopping assistance, and routine household activities for an
 175 | elderly, handicapped, or convalescent individual. A homemaker
 176 | may not provide hands-on personal care to a client.

177 | ~~(16)~~~~(13)~~ "Home infusion therapy provider" means an
 178 | organization that employs, contracts with, or refers a licensed
 179 | professional who has received advanced training and experience
 180 | in intravenous infusion therapy and who administers infusion
 181 | therapy to a patient in the patient's home or place of
 182 | residence.

183 | ~~(17)~~~~(14)~~ "Home infusion therapy" means the administration
 184 | of intravenous pharmacological or nutritional products to a
 185 | patient in his or her home.

186 | ~~(18)~~~~(15)~~ "Nurse registry" means any person that procures,
 187 | offers, promises, or attempts to secure health-care-related
 188 | contracts for registered nurses, licensed practical nurses,
 189 | certified nursing assistants, home health aides, companions, or
 190 | homemakers, who are compensated by fees as independent

HB 739

2005
CS

191 contractors, including, but not limited to, contracts for the
 192 provision of services to patients and contracts to provide
 193 private duty or staffing services to health care facilities
 194 licensed under chapter 395 or this chapter or other business
 195 entities.

196 (19)~~(16)~~ "Organization" means a corporation, government or
 197 governmental subdivision or agency, partnership or association,
 198 or any other legal or commercial entity, any of which involve
 199 more than one health care professional discipline; ~~or~~ a health
 200 care professional and a home health aide or certified nursing
 201 assistant; more than one home health aide; more than one
 202 certified nursing assistant; or a home health aide and a
 203 certified nursing assistant. The term does not include an entity
 204 that provides services using only volunteers or only individuals
 205 related by blood or marriage to the patient or client.

206 (20)~~(17)~~ "Patient" means any person who receives home
 207 health services in his or her home or place of residence.

208 (21)~~(18)~~ "Personal care" means assistance to a patient in
 209 the activities of daily living, such as dressing, bathing,
 210 eating, or personal hygiene, and assistance in physical
 211 transfer, ambulation, and in administering medications as
 212 permitted by rule.

213 (22)~~(19)~~ "Physician" means a person licensed under chapter
 214 458, chapter 459, chapter 460, or chapter 461.

215 (23) "Physician assistant" means a person who is a
 216 graduate of an approved program or its equivalent, or meets
 217 standards approved by the boards, and is licensed to perform

HB 739

2005
CS

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

220 (24)~~(20)~~ "Skilled care" means nursing services or
221 therapeutic services required by law to be delivered by a health
222 care professional who is licensed under part I of chapter 464;
223 part I, part III, or part V of chapter 468; or chapter 486 and
224 who is employed by or under contract with a licensed home health
225 agency or is referred by a licensed nurse registry.

226 (25)~~(21)~~ "Staffing services" means services provided to a
227 health care facility or other business entity on a temporary
228 basis by licensed health care personnel and by,~~including~~
229 certified nursing assistants and home health aides who are
230 employed by, or work under the auspices of, a licensed home
231 health agency or who are registered with a licensed nurse
232 registry. Staffing services may be provided anywhere within the
233 state.

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

236 400.464 Home health agencies to be licensed; expiration of
237 license; exemptions; unlawful acts; penalties.--

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

242 (4)(a) An organization may not provide, offer, or
243 advertise home health services to the public unless the
244 organization has a valid license or is specifically exempted
245 under this part. An organization that offers or advertises to

HB 739

2005
CS

246 | the public any service for which licensure or registration is
 247 | required under this part must include in the advertisement the
 248 | license number or registration ~~regulation~~ number issued to the
 249 | organization by the agency. The agency shall assess a fine of
 250 | not less than \$100 to any licensee or registrant who fails to
 251 | include the license or registration number when submitting the
 252 | advertisement for publication, broadcast, or printing. The fine
 253 | for a second or subsequent offense is \$500. The holder of a
 254 | license issued under this part may not advertise or indicate to
 255 | the public that it holds a home health agency or nurse registry
 256 | license other than the one it has been issued.

257 | (b) The operation or maintenance of an unlicensed home
 258 | health agency or the performance of any home health services in
 259 | violation of this part is declared a nuisance, inimical to the
 260 | public health, welfare, and safety. The agency or any state
 261 | attorney may, in addition to other remedies provided in this
 262 | part, bring an action for an injunction to restrain such
 263 | violation, or to enjoin the future operation or maintenance of
 264 | the home health agency or the provision of home health services
 265 | in violation of this part, until compliance with this part or
 266 | the rules adopted under this part has been demonstrated to the
 267 | satisfaction of the agency.

268 | (c)~~(b)~~ A person who violates paragraph (a) is subject to
 269 | an injunctive proceeding under s. 400.515. A violation of
 270 | paragraph (a) is a deceptive and unfair trade practice and
 271 | constitutes a violation of the Florida Deceptive and Unfair
 272 | Trade Practices Act under part II of chapter 501.

HB 739

2005
CS

273 ~~(d)(e)~~ A person who violates the provisions of paragraph
 274 (a) commits a misdemeanor of the second degree, punishable as
 275 provided in s. 775.082 or s. 775.083. Any person who commits a
 276 second or subsequent violation commits a misdemeanor of the
 277 first degree, punishable as provided in s. 775.082 or s.
 278 775.083. Each day of continuing violation constitutes a separate
 279 offense.

280 (e) Any person who owns, operates, or maintains an
 281 unlicensed home health agency and who, within 10 working days
 282 after receiving notification from the agency, fails to cease
 283 operation and apply for a license under this part commits a
 284 misdemeanor of the first degree, punishable as provided in s.
 285 775.082 or s. 775.083. Each day of continued operation is a
 286 separate offense.

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

290 Section 4. Section 400.471, Florida Statutes, is amended
 291 to read:

292 400.471 Application for license; fee; provisional license;
 293 temporary permit.--

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

HB 739

2005
CS

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

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

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

308 (c) Proof of financial ability to operate.

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

311 (3) An applicant for initial licensure must demonstrate
 312 financial ability to operate by submitting a balance sheet and
 313 income and expense statement for the first 2 years of operation
 314 which provide evidence of having sufficient assets, credit, and
 315 projected revenues to cover liabilities and expenses. The
 316 applicant shall have demonstrated financial ability to operate
 317 if the applicant's assets, credit, and projected revenues meet
 318 or exceed projected liabilities and expenses. All documents
 319 required under this subsection must be prepared in accordance
 320 with generally accepted accounting principles, and must be
 321 compiled ~~the financial statement must be signed~~ by a certified
 322 public accountant.

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

325 (a) Upon receipt of a completed, signed, and dated
 326 application, the agency shall require background screening of
 327 the applicant, in accordance with the level 2 standards for

HB 739

2005
CS

328 screening set forth in chapter 435. As used in this subsection,
 329 the term "applicant" means the administrator, or a similarly
 330 titled person who is responsible for the day-to-day operation of
 331 the licensed home health agency, and the financial officer, or
 332 similarly titled individual who is responsible for the financial
 333 operation of the licensed home health agency.

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

340 (c) Proof of compliance with the level 2 background
 341 screening requirements of chapter 435 which has been submitted
 342 within the previous 5 years in compliance with any other health
 343 care or assisted living licensure requirements of this state is
 344 acceptable in fulfillment of paragraph (a). Proof of compliance
 345 with background screening which has been submitted within the
 346 previous 5 years to fulfill the requirements of the Financial
 347 Services Commission and the Office of Insurance Regulation
 348 pursuant to chapter 651 as part of an application for a
 349 certificate of authority to operate a continuing care retirement
 350 community is acceptable in fulfillment of the Department of Law
 351 Enforcement and Federal Bureau of Investigation background
 352 check.

353 (d) A provisional license may be granted to an applicant
 354 when each individual required by this section to undergo
 355 background screening has met the standards for the Department of

356 Law Enforcement background check, but the agency has not yet
 357 received background screening results from the Federal Bureau of
 358 Investigation. A standard license may be granted to the licensee
 359 upon the agency's receipt of a report of the results of the
 360 Federal Bureau of Investigation background screening for each
 361 individual required by this section to undergo background
 362 screening which confirms that all standards have been met, or
 363 upon the granting of a disqualification exemption by the agency
 364 as set forth in chapter 435. Any other person who is required to
 365 undergo level 2 background screening may serve in his or her
 366 capacity pending the agency's receipt of the report from the
 367 Federal Bureau of Investigation. However, the person may not
 368 continue to serve if the report indicates any violation of
 369 background screening standards and a disqualification exemption
 370 has not been requested of and granted by the agency as set forth
 371 in chapter 435.

372 (e) Each applicant must submit to the agency, with its
 373 application, a description and explanation of any exclusions,
 374 permanent suspensions, or terminations of the licensee or
 375 potential licensee from the Medicare or Medicaid programs. Proof
 376 of compliance with the requirements for disclosure of ownership
 377 and control interest under the Medicaid or Medicare programs may
 378 be accepted in lieu of this submission.

379 (f) Each applicant must submit to the agency a description
 380 and explanation of any conviction of an offense prohibited under
 381 the level 2 standards of chapter 435 by a member of the board of
 382 directors of the applicant, its officers, or any individual
 383 owning 5 percent or more of the applicant. This requirement does

HB 739

2005
CS

384 not apply to a director of a not-for-profit corporation or
 385 organization if the director serves solely in a voluntary
 386 capacity for the corporation or organization, does not regularly
 387 take part in the day-to-day operational decisions of the
 388 corporation or organization, receives no remuneration for his or
 389 her services on the corporation or organization's board of
 390 directors, and has no financial interest and has no family
 391 members with a financial interest in the corporation or
 392 organization, provided that the director and the not-for-profit
 393 corporation or organization include in the application a
 394 statement affirming that the director's relationship to the
 395 corporation satisfies the requirements of this paragraph.

396 (g) A license may not be granted to an applicant if the
 397 applicant, administrator, or financial officer has been found
 398 guilty of, regardless of adjudication, or has entered a plea of
 399 nolo contendere or guilty to, any offense prohibited under the
 400 level 2 standards for screening set forth in chapter 435, unless
 401 an exemption from disqualification has been granted by the
 402 agency as set forth in chapter 435.

403 (h) The agency may deny or revoke licensure if the
 404 applicant:

405 ~~1. Has falsely represented a material fact in the~~
 406 ~~application required by paragraph (e) or paragraph (f), or has~~
 407 ~~omitted any material fact from the application required by~~
 408 ~~paragraph (e) or paragraph (f); or~~

409 ~~2. has been or is currently excluded, suspended,~~
 410 ~~terminated from, or has involuntarily withdrawn from~~
 411 ~~participation in this state's Medicaid program, or the Medicaid~~

HB 739

2005
CS

412 ~~program of any other state, or from participation in the~~
 413 ~~Medicare program or any other~~ governmental or private health
 414 care or health insurance program.

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

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

421 (6)~~(5)~~ The home health agency must also obtain and
 422 maintain the following insurance coverage ~~coverages~~ in an amount
 423 of not less than \$250,000 per claim, and the home health agency
 424 must submit proof of coverage with an initial application for
 425 licensure and with each ~~annual~~ application for license renewal:

- 426 (a) Malpractice insurance as defined in s. 624.605(1)(k).~~+~~
- 427 (b) Liability insurance as defined in s. 624.605(1)(b).

428 (7)~~(6)~~ Sixty ~~Ninety~~ days before the expiration date, an
 429 application for renewal must be submitted to the agency under
 430 oath on forms furnished by it, and a license must be renewed if
 431 the applicant has met the requirements established under this
 432 part and applicable rules. The home health agency must file with
 433 the application satisfactory proof that it is in compliance with
 434 this part and applicable rules. If there is evidence of
 435 financial instability, the home health agency must submit
 436 satisfactory proof of its financial ability to comply with the
 437 requirements of this part. The agency shall impose an
 438 administrative fine of \$50 per day for each day the home health
 439 agency fails to file an application within the timeframe

HB 739

2005
CS

440 specified in this subsection. Each day of continuing violation
 441 is a separate violation; however, the aggregate of such fines
 442 may not exceed \$500.

443 (8)(7) When transferring the ownership of a home health
 444 agency, the transferee must submit an application for a license
 445 at least 60 days before the effective date of the transfer. If
 446 the application is filed late, an administrative fine shall be
 447 imposed in the amount of \$50 per day. Each day of continuing
 448 violation is a separate violation; however, the aggregate of
 449 such fines may not exceed \$500. If the home health agency is
 450 being leased, a copy of the lease agreement must be filed with
 451 the application.

452 (9) The agency shall accept, in lieu of its own periodic
 453 licensure survey, submission of the survey of an accrediting
 454 organization that is recognized by the agency if the
 455 accreditation of the licensed home health agency is not
 456 provisional and if the licensed home health agency authorizes
 457 release of, and the agency receives the report of, the
 458 accrediting organization.

459 (10)(8) The license fee and ~~annual~~ renewal fee required of
 460 a home health agency are nonrefundable. The agency shall set the
 461 license fees in an amount that is sufficient to cover its costs
 462 in carrying out its responsibilities under this part, but not to
 463 exceed \$2,000 ~~\$1,000~~. However, state, county, or municipal
 464 governments applying for licenses under this part are exempt
 465 from the payment of license fees. All fees collected under this
 466 part must be deposited in the Health Care Trust Fund for the
 467 administration of this part.

HB 739

2005
CS

468 ~~(11)(9)~~ The license must be displayed in a conspicuous
 469 place in the administrative office of the home health agency and
 470 is valid only while in the possession of the person to which it
 471 is issued. The license may not be sold, assigned, or otherwise
 472 transferred, voluntarily or involuntarily, and is valid only for
 473 the home health agency and location for which originally issued.

474 ~~(12)(10)~~ A home health agency against whom a revocation or
 475 suspension proceeding is pending at the time of license renewal
 476 may be issued a provisional license effective until final
 477 disposition by the agency of such proceedings. If judicial
 478 relief is sought from the final disposition, the court that has
 479 jurisdiction may issue a temporary permit for the duration of
 480 the judicial proceeding.

481 ~~(13)(11)~~ The agency may not issue a license designated as
 482 certified to a home health agency that fails to satisfy the
 483 requirements of a Medicare certification survey from the agency.

484 ~~(14)(12)~~ The agency may not issue a license to a home
 485 health agency that has any unpaid fines assessed under this
 486 part.

487 Section 5. Section 400.487, Florida Statutes, is amended
 488 to read:

489 400.487 Home health service agreements; physician's,
 490 physician assistant's, and advanced registered nurse
 491 practitioner's treatment orders; patient assessment;
 492 establishment and review of plan of care; provision of services;
 493 orders not to resuscitate.--

494 (1) Services provided by a home health agency must be
 495 covered by an agreement between the home health agency and the

496 patient or the patient's legal representative specifying the
 497 home health services to be provided, the rates or charges for
 498 services paid with private funds, and the sources method of
 499 payment, which may include Medicare, Medicaid, private
 500 insurance, personal funds, or a combination thereof. A home
 501 health agency providing skilled care must make an assessment of
 502 the patient's needs within 48 hours after the start of services.

503 (2) When required by the provisions of chapter 464; part
 504 I, part III, or part V of chapter 468; or chapter 486, the
 505 attending physician, physician assistant, or advanced registered
 506 nurse practitioner, acting within his or her respective scope of
 507 practice, shall ~~for a patient who is to receive skilled care~~
 508 ~~must~~ establish treatment orders for a patient who is to receive
 509 skilled care. The treatment orders must be signed by the
 510 physician, physician assistant, or advanced registered nurse
 511 practitioner before a claim for payment for the skilled services
 512 is submitted by the home health agency. If the claim is
 513 submitted to a managed care organization, the treatment orders
 514 must be signed within the time allowed under the provider
 515 agreement. The treatment orders shall ~~within 30 days after the~~
 516 ~~start of care and must~~ be reviewed, as frequently as the
 517 patient's illness requires, by the physician, physician
 518 assistant, or advanced registered nurse practitioner in
 519 consultation with the home health agency ~~personnel that provide~~
 520 ~~services to the patient~~.

521 (3) A home health agency shall arrange for supervisory
 522 visits by a registered nurse to the home of a patient receiving
 523 home health aide services in accordance with the patient's

HB 739

2005
CS

524 | direction, ~~and~~ approval, and agreement to pay the charge for the
525 | visits.

526 | (4) Each patient has the right to be informed of and to
527 | participate in the planning of his or her care. Each patient
528 | must be provided, upon request, a copy of the plan of care
529 | established and maintained for that patient by the home health
530 | agency.

531 | (5) When nursing services are ordered, the home health
532 | agency to which a patient has been admitted for care must
533 | provide the initial admission visit, all service evaluation
534 | visits, and the discharge visit by a direct employee ~~qualified~~
535 | ~~personnel who are on the payroll of, and to whom an IRS payroll~~
536 | ~~form W-2 will be issued by, the home health agency.~~ Services
537 | provided by others under contractual arrangements to a home
538 | health agency must be monitored and managed by the admitting
539 | home health agency. The admitting home health agency is fully
540 | responsible for ensuring that all care provided through its
541 | employees or contract staff is delivered in accordance with this
542 | part and applicable rules.

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

546 | (7) Home health agency personnel may withhold or withdraw
547 | cardiopulmonary resuscitation if presented with an order not to
548 | resuscitate executed pursuant to s. 401.45. The agency shall
549 | adopt rules providing for the implementation of such orders.
550 | Home health personnel and agencies shall not be subject to
551 | criminal prosecution or civil liability, nor be considered to

HB 739

2005
CS

552 | have engaged in negligent or unprofessional conduct, for
 553 | withholding or withdrawing cardiopulmonary resuscitation
 554 | pursuant to such an order and rules adopted by the agency.

555 | Section 6. Subsection (1) of section 400.491, Florida
 556 | Statutes, is amended to read:

557 | 400.491 Clinical records.--

558 | (1) The home health agency must maintain for each patient
 559 | who receives skilled care a clinical record that includes
 560 | pertinent past and current medical, nursing, social and other
 561 | therapeutic information, the treatment orders, and other such
 562 | information as is necessary for the safe and adequate care of
 563 | the patient. When home health services are terminated, the
 564 | record must show the date and reason for termination. Such
 565 | records are considered patient records under s. 400.494 ~~s.~~
 566 | ~~456.057~~, and must be maintained by the home health agency for 6
 567 | ~~5~~ years following termination of services. If a patient
 568 | transfers to another home health agency, a copy of his or her
 569 | record must be provided to the other home health agency upon
 570 | request.

571 | Section 7. Section 400.494, Florida Statutes, is amended
 572 | to read:

573 | 400.494 Information about patients confidential.--

574 | ~~(1)~~ Information about patients received by persons
 575 | employed by, or providing services to, a home health agency or
 576 | received by the licensing agency through reports or inspection
 577 | shall be confidential and exempt from the provisions of s.
 578 | 119.07(1) and shall only ~~not~~ be disclosed to any person, other
 579 | than the patient, as permitted under the provisions of 45 C.F.R.

HB 739

2005
CS

580 ss. 160.102, 160.103, and 164, subpart A, commonly referred to
 581 as the HIPAA Privacy Regulation; except that clinical records
 582 described in ss. 381.004, 384.29, 385.202, 392.65, 394.4615,
 583 395.404, 397.501, and 760.40 shall be disclosed as authorized in
 584 those sections without the written consent of that patient or
 585 the patient's guardian.

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

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

592 400.506 Licensure of nurse registries; requirements;
 593 penalties.--

594 (3) Application for license must be made to the Agency for
 595 Health Care Administration on forms furnished by it and must be
 596 accompanied by the appropriate licensure fee, as established by
 597 rule and not to exceed the cost of regulation under this part.
 598 The licensure fee for nurse registries may not exceed \$2,000
 599 ~~\$1,000~~ and must be deposited in the Health Care Trust Fund.

600 (5) A license issued for the operation of a nurse
 601 registry, unless sooner suspended or revoked, expires 2 years ±
 602 ~~year~~ after its date of issuance. Sixty days before the
 603 expiration date, an application for renewal must be submitted to
 604 the Agency for Health Care Administration on forms furnished by
 605 it. The Agency for Health Care Administration shall renew the
 606 license if the applicant has met the requirements of this
 607 section and applicable rules. A nurse registry against which a

HB 739

2005
CS

608 | revocation or suspension proceeding is pending at the time of
 609 | license renewal may be issued a conditional license effective
 610 | until final disposition by the Agency for Health Care
 611 | Administration of such proceedings. If judicial relief is sought
 612 | from the final disposition, the court having jurisdiction may
 613 | issue a conditional license for the duration of the judicial
 614 | proceeding.

615 | (7) A person that provides, offers, or advertises to the
 616 | public ~~that it provides~~ any service for which licensure is
 617 | required under this section must include in such advertisement
 618 | the license number issued to it by the Agency for Health Care
 619 | Administration. The agency shall assess a fine of not less than
 620 | \$100 against any licensee who fails to include the license
 621 | number when submitting the advertisement for publication,
 622 | broadcast, or printing. The fine for a second or subsequent
 623 | offense is \$500.

624 | (8)(a) It is unlawful for a person to provide, offer, or
 625 | advertise to the public services as defined by rule without
 626 | obtaining a valid license from the Agency for Health Care
 627 | Administration. It is unlawful for any holder of a license to
 628 | advertise or hold out to the public that he or she holds a
 629 | license for other than that for which he or she actually holds a
 630 | license. A person who violates this subsection is subject to
 631 | injunctive proceedings under s. 400.515.

632 | (b) A person who violates the provisions of paragraph (a)
 633 | commits a misdemeanor of the second degree, punishable as
 634 | provided in s. 775.082 or s. 775.083. Each day of continuing
 635 | violation is a separate offense.

HB 739

2005
CS

636 (c) Any person who owns, operates, or maintains an
637 unlicensed nurse registry and who, within 10 working days after
638 receiving notification from the agency, fails to cease operation
639 and apply for a license under this part commits a misdemeanor of
640 the second degree, punishable as provided in s. 775.082 or s.
641 775.083. Each day of continued operation is a separate offense.

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

645 (10)(a) A nurse registry may refer for contract in private
646 residences registered nurses and licensed practical nurses
647 registered and licensed under part I of chapter 464, certified
648 nursing assistants certified under part II of chapter 464, home
649 health aides who present documented proof of successful
650 completion of the training required by rule of the agency, and
651 companions or homemakers for the purposes of providing those
652 services authorized under s. 400.509(1). Each person referred by
653 a nurse registry must provide current documentation that he or
654 she is free from communicable diseases.

655 (b) A certified nursing assistant or home health aide may
656 be referred for a contract to provide care to a patient in his
657 or her home only if that patient is under a physician's care. A
658 certified nursing assistant or home health aide referred for
659 contract in a private residence shall be limited to assisting a
660 patient with bathing, dressing, toileting, grooming, eating,
661 physical transfer, and those normal daily routines the patient
662 could perform for himself or herself were he or she physically
663 capable. A certified nursing assistant or home health aide may

HB 739

2005
CS

664 not provide medical or other health care services that require
 665 specialized training and that may be performed only by licensed
 666 health care professionals. The nurse registry shall obtain the
 667 name and address of the attending physician and send written
 668 notification to the physician within 48 hours after a contract
 669 is concluded that a certified nursing assistant or home health
 670 aide will be providing care for that patient.

671 (c) When a certified nursing assistant or home health aide
 672 is referred to a patient's home by a nurse registry, the nurse
 673 registry shall advise the patient, the patient's family, or any
 674 other person acting on behalf of the patient at the time the
 675 contract for services is made that registered nurses are
 676 available to make visits to the patient's home for an additional
 677 cost. ~~A registered nurse shall make monthly visits to the~~
 678 ~~patient's home to assess the patient's condition and quality of~~
 679 ~~care being provided by the certified nursing assistant or home~~
 680 ~~health aide.~~ Any condition which, in the professional judgment
 681 of the nurse, requires further medical attention shall be
 682 reported to the attending physician and the nurse registry. A
 683 record of the nurse's visit ~~The assessment~~ shall become a part
 684 of the patient's file with the nurse registry and may be
 685 reviewed by the agency during their survey procedure.

686 (13) Each nurse registry must comply with the procedures
 687 set forth in s. 400.512 for maintaining records of the work
 688 ~~employment~~ history of all persons referred for contract and is
 689 subject to the standards and conditions set forth in that
 690 section. However, an initial screening may not be required for

HB 739

2005
CS

691 persons who have been continuously registered with the nurse
692 registry since October 1, 2000 ~~September 30, 1990~~.

693 (14) The nurse registry must maintain the application on
694 file, and that file must be open to the inspection of the Agency
695 for Health Care Administration. The nurse registry must maintain
696 on file the name and address of the patient or client to whom
697 ~~the nurse or other~~ nurse registry personnel are referred ~~is sent~~
698 for contract and the amount of the fee received by the nurse
699 registry. A nurse registry must maintain the file that includes
700 the application and other applicable documentation for 3 years
701 after the date of the last file entry of patient-related or
702 client-related information.

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

706 (a) When, in accordance with the privileges and
707 restrictions imposed upon a nurse under part I of chapter 464,
708 the delivery of care to a patient is under the direction or
709 supervision of a physician or when a physician is responsible
710 for the medical care of the patient, a medical plan of treatment
711 must be established for each patient receiving care or treatment
712 provided by a licensed nurse in the home. The original medical
713 plan of treatment must be timely signed by the physician,
714 physician assistant, or advanced registered nurse practitioner,
715 acting within his or her respective scope of practice, and
716 reviewed ~~by him or her~~ in consultation with the licensed nurse
717 at least every 2 months. Any additional order or change in
718 orders must be obtained from the physician, physician assistant,

HB 739

2005
CS

719 | or advanced registered nurse practitioner and reduced to writing
 720 | and timely signed by the physician, physician assistant, or
 721 | advanced registered nurse practitioner. The delivery of care
 722 | under a medical plan of treatment must be substantiated by the
 723 | appropriate nursing notes or documentation made by the nurse in
 724 | compliance with nursing practices established under part I of
 725 | chapter 464.

726 | (b) Whenever a medical plan of treatment is established
 727 | for a patient, the initial medical plan of treatment, any
 728 | amendment to the plan, additional order or change in orders, and
 729 | copy of nursing notes must be filed in the office of the nurse
 730 | registry.

731 | Section 9. Subsection (2) of section 400.512, Florida
 732 | Statutes, is amended to read:

733 | 400.512 Screening of home health agency personnel; nurse
 734 | registry personnel; and companions and homemakers.--The agency
 735 | shall require employment or contractor screening as provided in
 736 | chapter 435, using the level 1 standards for screening set forth
 737 | in that chapter, for home health agency personnel; persons
 738 | referred for employment by nurse registries; and persons
 739 | employed by companion or homemaker services registered under s.
 740 | 400.509.

741 | (2) The administrator of each home health agency, the
 742 | managing employee of each nurse registry, and the managing
 743 | employee of each companion or homemaker service registered under
 744 | s. 400.509 must sign an affidavit annually, under penalty of
 745 | perjury, stating that all personnel hired or, contracted with,
 746 | or registered on or after October 1, 2000 ~~October 1, 1994~~, who

HB 739

2005
CS

747 enter the home of a patient or client in their service capacity
 748 have been screened ~~and that its remaining personnel have worked~~
 749 ~~for the home health agency or registrant continuously since~~
 750 ~~before October 1, 1994.~~

751 Section 10. Section 400.515, Florida Statutes, is amended
 752 to read:

753 400.515 Injunction proceedings.--In addition to the other
 754 powers provided under this chapter, the agency may institute
 755 injunction proceedings in a court of competent jurisdiction to
 756 restrain or prevent the establishment or operation of a home
 757 health agency or nurse registry that does not have a license or
 758 that is in violation of any provision of this part or any rule
 759 adopted pursuant to this part. The agency ~~for Health Care~~
 760 ~~Administration~~ may also institute injunction proceedings in a
 761 court of competent jurisdiction when violation of this part or
 762 of applicable rules constitutes an emergency affecting the
 763 immediate health and safety of a patient or client.

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