

By the Committee on Health Regulation

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1 A bill to be entitled

2 An act relating to home health care; amending s. 400.462,  
3 F.S.; revising and adding definitions; amending s.  
4 400.471, F.S.; requiring an applicant for a new home  
5 health agency license to submit a surety bond or other  
6 security of a specified amount to the Agency for Health  
7 Care Administration; providing procedures for the agency  
8 with respect to making a claim against a surety bond or  
9 security; limiting the timing of receipt and the number of  
10 applications for a new home health agency license which  
11 the agency may accept each quarter; providing an exception  
12 under certain circumstances for a home health agency that  
13 is part of a retirement community; specifying a procedure  
14 for the agency to follow in selecting applications to  
15 process for a new home health agency license; providing  
16 for the future expiration of such provisions; amending s.  
17 400.474, F.S.; providing additional grounds under which  
18 the Agency for Health Care Administration may take  
19 disciplinary action against a home health agency; creating  
20 s. 400.476, F.S.; establishing staffing requirements for  
21 home health agencies; reducing the number of home health  
22 agencies that an administrator or director of nursing may  
23 serve; requiring that an alternate administrator be  
24 designated in writing; limiting the period that a home  
25 health agency may operate without a director of nursing;  
26 requiring notification upon the termination and  
27 replacement of a director of nursing; requiring the Agency  
28 for Health Care Administration to take administrative  
29 enforcement action against a home health agency for

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30 noncompliance with the notification and staffing  
31 requirements for a director of nursing; providing training  
32 requirements for certified nursing assistants and home  
33 health aides; amending s. 400.484, F.S.; requiring that  
34 the agency impose administrative fines for certain  
35 deficiencies; increasing the administrative fines imposed  
36 for certain deficiencies; amending s. 400.491, F.S.;  
37 extending the period that a home health agency must retain  
38 records of the nonskilled care it provides; amending s.  
39 400.497, F.S.; requiring that the Agency for Health Care  
40 Administration adopt rules related to standards for the  
41 director of nursing of a home health agency, requirements  
42 for a director of nursing to submit certified staff  
43 activity logs pursuant to an agency request, and quality  
44 assurance programs; amending s. 400.506, F.S.; providing  
45 training requirements for certified nursing assistants and  
46 home health aides referred for contract by a nurse  
47 registry; amending s. 400.518, F.S.; providing for a fine  
48 to be imposed against a home health agency that provides  
49 complimentary staffing to an assisted care community in  
50 exchange for patient referrals; requiring the Agency for  
51 Health Care Administration to conduct an unannounced  
52 survey of each home health agency within a specified  
53 period after issuing a license; requiring the Agency for  
54 Health Care Administration to review the process for prior  
55 authorization of home health agency visits and determine  
56 whether modifications to the process are necessary;  
57 requiring the agency to report to the Legislature on the  
58 feasibility of accessing the Medicare system to determine

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59 recipient eligibility for home health services; providing  
60 an effective date.

61

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

63

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

66 400.462 Definitions.--As used in this part, the term:

67 (1) "Administrator" means a direct employee, as defined in  
68 subsection (9), who is. ~~The administrator must be a licensed~~  
69 ~~physician, physician assistant, or registered nurse licensed to~~  
70 ~~practice in this state or an individual having at least 1 year of~~  
71 ~~supervisory or administrative experience in home health care or~~  
72 ~~in a facility licensed under chapter 395, under part II of this~~  
73 ~~chapter, or under part I of chapter 429. An administrator may~~  
74 ~~manage a maximum of five licensed home health agencies located~~  
75 ~~within one agency service district or within an immediately~~  
76 ~~contiguous county. If the home health agency is licensed under~~  
77 ~~this chapter and is part of a retirement community that provides~~  
78 ~~multiple levels of care, an employee of the retirement community~~  
79 ~~may administer the home health agency and up to a maximum of four~~  
80 ~~entities licensed under this chapter or chapter 429 that are~~  
81 ~~owned, operated, or managed by the same corporate entity. An~~  
82 ~~administrator shall designate, in writing, for each licensed~~  
83 ~~entity, a qualified alternate administrator to serve during~~  
84 ~~absences.~~

85 (2) "Admission" means a decision by the home health agency,  
86 during or after an evaluation visit to the patient's home, that  
87 there is reasonable expectation that the patient's medical,

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88 nursing, and social needs for skilled care can be adequately met  
89 by the agency in the patient's place of residence. Admission  
90 includes completion of an agreement with the patient or the  
91 patient's legal representative to provide home health services as  
92 required in s. 400.487(1).

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

97 (4) "Agency" means the Agency for Health Care  
98 Administration.

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

106 (6) "Client" means an elderly, handicapped, or convalescent  
107 individual who receives companion services or homemaker services  
108 in the individual's home or place of residence.

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

114 (8) "Department" means the Department of Children and  
115 Family Services.

116 (9) "Direct employee" means an employee for whom one of the

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117 following entities pays withholding taxes: a home health agency;  
118 a management company that has a contract to manage the home  
119 health agency on a day-to-day basis; or an employee leasing  
120 company that has a contract with the home health agency to handle  
121 the payroll and payroll taxes for the home health agency.

122 (10) "Director of nursing" means a registered nurse who is  
123 a direct employee, as defined in subsection (9), of the agency  
124 and who is a graduate of an approved school of nursing and is  
125 licensed in this state; who has at least 1 year of supervisory  
126 experience as a registered nurse; and who is responsible for  
127 overseeing the professional nursing and home health aid delivery  
128 of services of the agency. ~~A director of nursing may be the~~  
129 ~~director of a maximum of five licensed home health agencies~~  
130 ~~operated by a related business entity and located within one~~  
131 ~~agency service district or within an immediately contiguous~~  
132 ~~county. If the home health agency is licensed under this chapter~~  
133 ~~and is part of a retirement community that provides multiple~~  
134 ~~levels of care, an employee of the retirement community may serve~~  
135 ~~as the director of nursing of the home health agency and of up to~~  
136 ~~four entities licensed under this chapter or chapter 429 which~~  
137 ~~are owned, operated, or managed by the same corporate entity.~~

138 (11) "Fair market value" means the value in arms length  
139 transactions, consistent with the price that an asset would bring  
140 as the result of bona fide bargaining between well-informed  
141 buyers and sellers who are not otherwise in a position to  
142 generate business for the other party, or the compensation that  
143 would be included in a service agreement as the result of bona  
144 fide bargaining between well-informed parties to the agreement  
145 who are not otherwise in a position to generate business for the

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146 other party, on the date of acquisition of the asset or at the  
147 time of the service agreement.

148 (12)~~(11)~~ "Home health agency" means an organization that  
149 provides home health services and staffing services.

150 (13)~~(12)~~ "Home health agency personnel" means persons who  
151 are employed by or under contract with a home health agency and  
152 enter the home or place of residence of patients at any time in  
153 the course of their employment or contract.

154 (14)~~(13)~~ "Home health services" means health and medical  
155 services and medical supplies furnished by an organization to an  
156 individual in the individual's home or place of residence. The  
157 term includes organizations that provide one or more of the  
158 following:

159 (a) Nursing care.

160 (b) Physical, occupational, respiratory, or speech therapy.

161 (c) Home health aide services.

162 (d) Dietetics and nutrition practice and nutrition  
163 counseling.

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

166 (15)~~(14)~~ "Home health aide" means a person who is trained  
167 or qualified, as provided by rule, and who provides hands-on  
168 personal care, performs simple procedures as an extension of  
169 therapy or nursing services, assists in ambulation or exercises,  
170 or assists in administering medications as permitted in rule and  
171 for which the person has received training established by the  
172 agency under s. 400.497(1). ~~The licensed home health agency or~~  
173 ~~licensed nurse registry shall ensure that the home health aide~~  
174 ~~employed by or under contract with the home health agency or~~

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175 ~~licensed nurse registry is adequately trained to perform the~~  
176 ~~tasks of a home health aide in the home setting.~~

177 (16)~~(15)~~ "Homemaker" means a person who performs household  
178 chores that include housekeeping, meal planning and preparation,  
179 shopping assistance, and routine household activities for an  
180 elderly, handicapped, or convalescent individual. A homemaker may  
181 not provide hands-on personal care to a client.

182 (17)~~(16)~~ "Home infusion therapy provider" means an  
183 organization that employs, contracts with, or refers a licensed  
184 professional who has received advanced training and experience in  
185 intravenous infusion therapy and who administers infusion therapy  
186 to a patient in the patient's home or place of residence.

187 (18)~~(17)~~ "Home infusion therapy" means the administration  
188 of intravenous pharmacological or nutritional products to a  
189 patient in his or her home.

190 (19) "Immediate family member" means a husband or wife; a  
191 birth or adoptive parent, child, or sibling; a stepparent,  
192 stepchild, stepbrother, or stepsister; a father-in-law, mother-  
193 in-law, son-in-law, daughter-in-law, brother-in-law, or sister-  
194 in-law; a grandparent or grandchild; or a spouse of a grandparent  
195 or grandchild.

196 (20) "Medical director" means a physician who is a  
197 volunteer with, or who receives remuneration from, a home health  
198 agency.

199 (21)~~(18)~~ "Nurse registry" means any person that procures,  
200 offers, promises, or attempts to secure health-care-related  
201 contracts for registered nurses, licensed practical nurses,  
202 certified nursing assistants, home health aides, companions, or  
203 homemakers, who are compensated by fees as independent

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204 | contractors, including, but not limited to, contracts for the  
205 | provision of services to patients and contracts to provide  
206 | private duty or staffing services to health care facilities  
207 | licensed under chapter 395, this chapter, or chapter 429 or other  
208 | business entities.

209 |       (22)~~(19)~~ "Organization" means a corporation, government or  
210 | governmental subdivision or agency, partnership or association,  
211 | or any other legal or commercial entity, any of which involve  
212 | more than one health care professional discipline; a health care  
213 | professional and a home health aide or certified nursing  
214 | assistant; more than one home health aide; more than one  
215 | certified nursing assistant; or a home health aide and a  
216 | certified nursing assistant. The term does not include an entity  
217 | that provides services using only volunteers or only individuals  
218 | related by blood or marriage to the patient or client.

219 |       (23)~~(20)~~ "Patient" means any person who receives home  
220 | health services in his or her home or place of residence.

221 |       (24)~~(21)~~ "Personal care" means assistance to a patient in  
222 | the activities of daily living, such as dressing, bathing,  
223 | eating, or personal hygiene, and assistance in physical transfer,  
224 | ambulation, and in administering medications as permitted by  
225 | rule.

226 |       (25)~~(22)~~ "Physician" means a person licensed under chapter  
227 | 458, chapter 459, chapter 460, or chapter 461.

228 |       (26)~~(23)~~ "Physician assistant" means a person who is a  
229 | graduate of an approved program or its equivalent, or meets  
230 | standards approved by the boards, and is licensed to perform  
231 | medical services delegated by the supervising physician, as  
232 | defined in s. 458.347 or s. 459.022.



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233           (27) "Remuneration" means any payment or other benefit made  
234 directly or indirectly, overtly or covertly, in cash or in kind.

235           ~~(28)-(24)~~ "Skilled care" means nursing services or  
236 therapeutic services required by law to be delivered by a health  
237 care professional who is licensed under part I of chapter 464;  
238 part I, part III, or part V of chapter 468; or chapter 486 and  
239 who is employed by or under contract with a licensed home health  
240 agency or is referred by a licensed nurse registry.

241           ~~(29)-(25)~~ "Staffing services" means services provided to a  
242 health care facility, school, or other business entity on a  
243 temporary or school-year basis pursuant to a written contract by  
244 licensed health care personnel and by certified nursing  
245 assistants and home health aides who are employed by, or work  
246 under the auspices of, a licensed home health agency or who are  
247 registered with a licensed nurse registry. ~~Staffing services may~~  
248 ~~be provided anywhere within the state.~~

249           Section 2. Section 400.471, Florida Statutes, is amended to  
250 read:

251           400.471 Application for license; fee; bond; limitation on  
252 applications accepted.--

253           (1) Each applicant for licensure must comply with all  
254 provisions of this part and part II of chapter 408.

255           (2) In addition to the requirements of part II of chapter  
256 408, the initial applicant must file with the application  
257 satisfactory proof that the home health agency is in compliance  
258 with this part and applicable rules, including:

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

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262 (b) The number and discipline of professional staff to be  
263 employed.

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

266 (3) In addition to the requirements of s. 408.810, the home  
267 health agency must also obtain and maintain the following  
268 insurance coverage in an amount of not less than \$250,000 per  
269 claim, and the home health agency must submit proof of coverage  
270 with an initial application for licensure and with each  
271 application for license renewal:

272 (a) Malpractice insurance as defined in s. 624.605(1)(k).

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

274 (4) The agency shall accept, in lieu of its own periodic  
275 licensure survey, submission of the survey of an accrediting  
276 organization that is recognized by the agency if the  
277 accreditation of the licensed home health agency is not  
278 provisional and if the licensed home health agency authorizes  
279 release of, and the agency receives the report of, the  
280 accrediting organization.

281 (5) In accordance with s. 408.805, an applicant or licensee  
282 shall pay a fee for each license application submitted under this  
283 part, part II of chapter 408, and applicable rules. The amount of  
284 the fee shall be established by rule and shall be set at an  
285 amount that is sufficient to cover the agency's costs in carrying  
286 out its responsibilities under this part, but not to exceed  
287 \$2,000 per biennium. However, state, county, or municipal  
288 governments applying for licenses under this part are exempt from  
289 the payment of license fees.

290 (6) The agency may not issue a license designated as

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291 certified to a home health agency that fails to satisfy the  
292 requirements of a Medicare certification survey from the agency.

293 (7) An applicant for a new home health agency license must  
294 submit a surety bond of \$50,000, or other equivalent means of  
295 security acceptable to the agency, such as an irrevocable letter  
296 of credit or a deposit in a trust account or financial  
297 institution, payable to the Agency for Health Care  
298 Administration. A surety bond or other equivalent means of  
299 security must be valid from initial licensure until the end of  
300 the first license-renewal period. The purpose of this bond is to  
301 secure payment of any administrative penalties imposed by the  
302 agency and any fees and costs incurred by the agency regarding  
303 the home health agency license which are authorized under state  
304 law and which the licensee fails to pay 30 days after the fine or  
305 costs become final. The agency may make a claim against the  
306 surety bond or security until the later of:

307 (a) One year after the license ceases to be valid if the  
308 license is not renewed for a second biennial period;

309 (b) One year after the license has been renewed a second  
310 time; or

311 (c) Sixty days after any administrative or legal  
312 proceeding, including any appeal, is concluded involving an  
313 administrative penalty, fees, or costs for an act or omission  
314 that occurred at any time during the first 4 years after the  
315 license was initially issued.

316 (8) (a) The agency may accept for processing for a new home  
317 health agency license only the following number of applications  
318 quarterly:

319 1. Five for each geographic service area in service areas 1

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320 through 9;

321 2. Four for geographic service area 10; and

322 3. Three for geographic service area 11.

323

324 However, an application for a new home health agency license that  
325 is part of a retirement community providing multiple levels of  
326 care and that will provide home health services exclusively to  
327 residents of that facility is not subject to the quarterly  
328 limitation and may not be counted as a new application for  
329 purposes of the quarterly limitation. If the home health agency  
330 provides home health services to persons outside that facility,  
331 the agency shall impose a moratorium on the license in accordance  
332 with s. 408.814 and revoke the home health agency license. The  
333 home health agency may reapply for a new home health agency  
334 license and is subject to the limits on the agency's acceptance  
335 of new applications.

336 (b) The agency shall accept applications for a new home  
337 health agency license only during the first 5 business days of a  
338 calendar quarter. Applications for a new home health agency  
339 license received during this period, except an application for a  
340 new home health agency license that is part of a retirement  
341 community providing multiple levels of care and that will provide  
342 home health services exclusively to residents of that facility,  
343 must be grouped according to the geographic service area in which  
344 the home health agency is to be located. During the first 6  
345 through 10 business days of the calendar quarter, the agency  
346 shall use a lottery system to select the number of applications  
347 authorized in paragraph (a) to be accepted for processing for  
348 each geographic service area.

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349        (c) Notwithstanding ss. 120.60 or 408.806(3), the agency  
350 shall return to the sender all applications for a new home health  
351 agency license which were received:

352        1. And not accepted for processing pursuant to the lottery-  
353 selection process set forth in paragraph (b); or

354        2. Before or after the first 5 business days of a calendar  
355 quarter.

356        (d) This subsection expires July 1, 2011.

357        Section 3. Section 400.474, Florida Statutes, is amended to  
358 read:

359        400.474 Administrative penalties.--

360        (1) The agency may deny, revoke, and suspend a license and  
361 impose an administrative fine in the manner provided in chapter  
362 120.

363        (2) Any of the following actions by a home health agency or  
364 its employee is grounds for disciplinary action by the agency:

365        (a) Violation of this part, part II of chapter 408, or of  
366 applicable rules.

367        (b) An intentional, reckless, or negligent act that  
368 materially affects the health or safety of a patient.

369        (c) Knowingly providing home health services in an  
370 unlicensed assisted living facility or unlicensed adult family-  
371 care home, unless the home health agency or employee reports the  
372 unlicensed facility or home to the agency within 72 hours after  
373 providing the services.

374        (d) Preparing or maintaining fraudulent patient records,  
375 such as, but not limited to, charting ahead, recording vital  
376 signs or symptoms that were not personally obtained or observed  
377 by the home health agency's staff at the time indicated,

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378 borrowing patients or patient records from other home health  
379 agencies to pass a survey or inspection, or falsifying  
380 signatures.

381 (3) The agency shall impose a fine of \$1,000 against a home  
382 health agency that demonstrates a pattern of falsifying:

383 (a) Documents of training for home health aides or  
384 certified nursing assistants; or

385 (b) Health statements for staff providing direct care to  
386 patients.

387  
388 A pattern may be demonstrated by a showing of at least three  
389 fraudulent entries or documents. The fine shall be imposed for  
390 each fraudulent document or, if multiple staff members are  
391 included on one document, for each fraudulent entry on the  
392 document.

393 (4) The agency shall impose a fine of \$5,000 against a home  
394 health agency that demonstrates a pattern of billing any payor  
395 for services not provided. A pattern may be demonstrated by a  
396 showing of at least three billings for services not provided  
397 within a 12-month period. The fine must be imposed for each  
398 incident that is falsely billed. The agency may also:

399 (a) Require payback of all funds;

400 (b) Revoke the license; or

401 (c) Issue a moratorium in accordance with s. 408.814.

402 (5) The agency shall impose a fine of \$5,000 against a home  
403 health agency that demonstrates a pattern of failing to provide a  
404 service specified in the home health agency's written agreement  
405 with a patient or the plan of care for that patient, unless a  
406 reduction in service is mandated by Medicare, Medicaid, or a

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407 state program or as provided in s. 400.492(3). A pattern may be  
408 demonstrated by a showing of at least three incidences,  
409 regardless of the patient or service, where the home health  
410 agency did not provide a service specified in a written agreement  
411 or plan of care during a 3-month period. The agency shall impose  
412 the fine for each occurrence. The agency may also impose  
413 additional administrative fines under s. 400.484 for the direct  
414 or indirect harm to a patient, or deny, revoke, or suspend the  
415 license of the home health agency for a pattern of failing to  
416 provide a service specified in the home health agency's written  
417 agreement with a patient or the plan of care for that patient.

418 (6) The agency may deny, revoke, or suspend the license of  
419 a home health agency and shall impose a fine of \$5,000 against a  
420 home health agency that:

421 (a) Gives remuneration for staffing services to:

422 1. Another home health agency with which it has formal or  
423 informal patient-referral transactions or arrangements; or

424 2. A health services pool with which it has formal or  
425 informal patient-referral transactions or arrangements,

426  
427 unless the home health agency has activated its comprehensive  
428 emergency management plan in accordance with s. 400.492.

429 (b) Provides services to residents in an assisted living  
430 facility for which the home health agency does not receive fair  
431 market value remuneration.

432 (c) Provides staffing to an assisted living facility for  
433 which the home health agency does not receive fair market value  
434 remuneration.

435 (d) Fails to provide the agency, upon request, with copies

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436 of all contracts with assisted living facilities which were  
437 executed within 5 years before the request.

438 (e) Gives remuneration to a case manager, discharge  
439 planner, facility-based staff member, or third-party vendor who  
440 is involved in the discharge-planning process of a facility  
441 licensed under chapter 395 or this chapter from whom the home  
442 health agency receives referrals.

443 (f) Fails to submit to the agency, within 10 days after the  
444 end of each calendar quarter, a written report that includes the  
445 following data based on data as it existed on the last day of the  
446 quarter:

447 1. The number of insulin-dependent diabetic patients  
448 receiving insulin-injection services from the home health agency;

449 2. The number of patients receiving both home health  
450 services from the home health agency and hospice services;

451 3. The number of patients receiving home health services  
452 from that home health agency; and

453 4. The names and nursing license numbers of registered  
454 nurses whose primary job responsibility is to provide home health  
455 services to patients and who received remuneration from the home  
456 health agency in excess of \$25,000 during the calendar quarter.

457 (g) Gives cash, or its equivalent, to a Medicare or  
458 Medicaid beneficiary.

459 (h) Has more than one medical director contract in effect  
460 at one time or more than one medical director contract and one  
461 contract with a physician-specialist whose services are mandated  
462 for the home health agency in order to qualify to participate in  
463 a federal or state health care program at one time.

464 (i) Gives remuneration to a physician without a medical



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465 director contract being in effect. The contract must:  
466 1. Be in writing and signed by both parties;  
467 2. Provide for remuneration that is at fair market value  
468 for an hourly rate, which must be supported by invoices submitted  
469 by the medical director describing the work performed, the dates  
470 on which that work was performed, and the duration of that work;  
471 and  
472 3. Be for a term of at least 1 year.  
473

474 The hourly rate specified in the contract may not be increased  
475 during the term of the contract. The home health agency may not  
476 execute a subsequent contract with that physician which has an  
477 increased hourly rate and covers any portion of the term that was  
478 in the original contract.

479 (j) Gives remuneration to:  
480 1. A physician, and the home health agency is in violation  
481 of paragraph (h) or paragraph (i);  
482 2. A member of the physician's office staff; or  
483 3. An immediate family member of the physician,  
484

485 if the home health agency has received a patient referral in the  
486 preceding 12 months from that physician or physician's office  
487 staff.

488 (k) Fails to provide to the agency, upon request, copies of  
489 all contracts with a medical director which were executed within  
490 5 years before the request.

491 (7)~~(3)~~(a) In addition to the requirements of s. 408.813,  
492 any person, partnership, or corporation that violates s. 408.812  
493 or s. 408.813 and that previously operated a licensed home health

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494 agency or concurrently operates both a licensed home health  
495 agency and an unlicensed home health agency commits a felony of  
496 the third degree punishable as provided in s. 775.082, s.  
497 775.083, or s. 775.084.

498 (b) If any home health agency is found to be operating  
499 without a license and that home health agency has received any  
500 government reimbursement for services, the agency shall make a  
501 fraud referral to the appropriate government reimbursement  
502 program.

503 Section 4. Section 400.476, Florida Statutes, is created to  
504 read:

505 400.476 Staffing requirements; notifications; limitations  
506 on staffing services.--

507 (1) ADMINISTRATOR.--

508 (a) An administrator may manage only one home health  
509 agency, except that an administrator may manage up to five home  
510 health agencies if all five home health agencies have identical  
511 controlling interests as defined in s. 408.803 and are located  
512 within one agency geographic service area or within an  
513 immediately contiguous county. If the home health agency is  
514 licensed under this chapter and is part of a retirement community  
515 that provides multiple levels of care, an employee of the  
516 retirement community may administer the home health agency and up  
517 to a maximum of four entities licensed under this chapter or  
518 chapter 429 which all have identical controlling interests as  
519 defined in s. 408.803. An administrator shall designate, in  
520 writing, for each licensed entity, a qualified alternate  
521 administrator to serve during the administrator's absence.

522 (b) An administrator of a home health agency who is a

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523 licensed physician, physician assistant, or registered nurse  
524 licensed to practice in this state may also be the director of  
525 nursing for a home health agency. An administrator may serve as a  
526 director of nursing only for the number of entities authorized in  
527 subsection (2).

528 (2) DIRECTOR OF NURSING.--

529 (a) A director of nursing may be the director of nursing  
530 for:

531 1. Up to two licensed home health agencies if the agencies  
532 have identical controlling interests as defined in s. 408.803 and  
533 are located within one agency geographic service area or within  
534 an immediately contiguous county; or

535 2. Up to five licensed home health agencies if:

536 a. All of the home health agencies have identical  
537 controlling interests as defined in s. 408.803;

538 b. All of the home health agencies are located within one  
539 agency geographic service area or within an immediately  
540 contiguous county; and

541 c. Each home health agency has a registered nurse who meets  
542 the qualifications of a director of nursing and who has a written  
543 delegation from the director of nursing to serve as the director  
544 of nursing for that home health agency when the director of  
545 nursing is not present.

546  
547 If a home health agency licensed under this chapter is part of a  
548 retirement community that provides multiple levels of care, an  
549 employee of the retirement community may serve as the director of  
550 nursing of the home health agency and up to a maximum of four  
551 entities, other than home health agencies, licensed under this

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552 chapter or chapter 429 which all have identical controlling  
553 interests as defined in s. 408.803.

554 (b) A home health agency may not operate for more than 30  
555 calendar days without a director of nursing. A home health agency  
556 and the director of nursing of a home health agency must notify  
557 the agency within 10 business days after termination of the  
558 services of the director of nursing for the home health agency. A  
559 home health agency must notify the agency of the identity and  
560 qualifications of the new director of nursing within 10 days  
561 after the new director is hired. A home health agency that  
562 operates for more than 30 calendar days without a director of  
563 nursing commits a class II deficiency. In addition to the fine  
564 for a class II deficiency, the agency may issue a moratorium in  
565 accordance with s. 408.814 or revoke the license. The agency  
566 shall fine a home health agency that fails to notify the agency  
567 as required in this paragraph \$1,000 for the first violation and  
568 \$2,000 for a repeat violation. The agency may not take  
569 administrative action against a home health agency if the  
570 director of nursing fails to notify the department upon  
571 termination of services as the director of nursing for the home  
572 health agency.

573 (3) TRAINING.--A home health agency shall ensure that each  
574 certified nursing assistant employed by or under contract with  
575 the home health agency and each home health aide employed by or  
576 under contract with the home health agency is adequately trained  
577 to perform the tasks of a home health aide in the home setting.

578 (4) STAFFING.--Staffing services may be provided anywhere  
579 within the state.

580 Section 5. Section 400.484, Florida Statutes, is amended to

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581 read:

582 400.484 Right of inspection; deficiencies; fines.--

583 (1) In addition to the requirements of s. 408.811, the  
584 agency may make such inspections and investigations as are  
585 necessary in order to determine the state of compliance with this  
586 part, part II of chapter 408, and applicable rules.

587 (2) The agency shall impose fines for various classes of  
588 deficiencies in accordance with the following schedule:

589 (a) A class I deficiency is any act, omission, or practice  
590 that results in a patient's death, disablement, or permanent  
591 injury, or places a patient at imminent risk of death,  
592 disablement, or permanent injury. Upon finding a class I  
593 deficiency, the agency shall ~~may~~ impose an administrative fine in  
594 the amount of \$15,000 ~~\$5,000~~ for each occurrence and each day  
595 that the deficiency exists.

596 (b) A class II deficiency is any act, omission, or practice  
597 that has a direct adverse effect on the health, safety, or  
598 security of a patient. Upon finding a class II deficiency, the  
599 agency shall ~~may~~ impose an administrative fine in the amount of  
600 \$5,000 ~~\$1,000~~ for each occurrence and each day that the  
601 deficiency exists.

602 (c) A class III deficiency is any act, omission, or  
603 practice that has an indirect, adverse effect on the health,  
604 safety, or security of a patient. Upon finding an uncorrected or  
605 repeated class III deficiency, the agency shall ~~may~~ impose an  
606 administrative fine not to exceed \$1,000 ~~\$500~~ for each occurrence  
607 and each day that the uncorrected or repeated deficiency exists.

608 (d) A class IV deficiency is any act, omission, or practice  
609 related to required reports, forms, or documents which does not

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610 have the potential of negatively affecting patients. These  
611 violations are of a type that the agency determines do not  
612 threaten the health, safety, or security of patients. Upon  
613 finding an uncorrected or repeated class IV deficiency, the  
614 agency shall ~~may~~ impose an administrative fine not to exceed \$500  
615 ~~\$200~~ for each occurrence and each day that the uncorrected or  
616 repeated deficiency exists.

617 (3) In addition to any other penalties imposed pursuant to  
618 this section or part, the agency may assess costs related to an  
619 investigation that results in a successful prosecution, excluding  
620 costs associated with an attorney's time.

621 Section 6. Subsection (2) of section 400.491, Florida  
622 Statutes, is amended to read:

623 400.491 Clinical records.--

624 (2) The home health agency must maintain for each client  
625 who receives nonskilled care a service provision plan. Such  
626 records must be maintained by the home health agency for 3 years  
627 ~~1 year~~ following termination of services.

628 Section 7. Present subsections (5), (6), (7), and (8) of  
629 section 400.497, Florida Statutes, are renumbered as subsections  
630 (6), (7), (8), and (9), respectively, and a new subsection (5) is  
631 added to that section, to read:

632 400.497 Rules establishing minimum standards.--The agency  
633 shall adopt, publish, and enforce rules to implement part II of  
634 chapter 408 and this part, including, as applicable, ss. 400.506  
635 and 400.509, which must provide reasonable and fair minimum  
636 standards relating to:

637 (5) Oversight by the director of nursing. The agency shall  
638 develop rules related to:

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639       (a) Standards that address oversight responsibilities by  
640 the director of nursing of skilled nursing and personal care  
641 services provided by the home health agency's staff;

642       (b) Requirements for a director of nursing to provide to  
643 the agency, upon request, a certified daily report of the home  
644 health services provided by a specified direct employee or  
645 contracted staff member on behalf of the home health agency. The  
646 agency may request a certified daily report only for a period not  
647 to exceed 2 years prior to the date of the request; and

648       (c) A quality assurance program for home health services  
649 provided by the home health agency.

650       Section 8. Paragraph (a) of subsection (6) of section  
651 400.506, Florida Statutes, is amended to read:

652       400.506 Licensure of nurse registries; requirements;  
653 penalties.--

654       (6) (a) A nurse registry may refer for contract in private  
655 residences registered nurses and licensed practical nurses  
656 registered and licensed under part I of chapter 464, certified  
657 nursing assistants certified under part II of chapter 464, home  
658 health aides who present documented proof of successful  
659 completion of the training required by rule of the agency, and  
660 companions or homemakers for the purposes of providing those  
661 services authorized under s. 400.509(1). A licensed nurse  
662 registry shall ensure that each certified nursing assistant  
663 referred for contract by the nurse registry and each home health  
664 aide referred for contract by the nurse registry is adequately  
665 trained to perform the tasks of a home health aide in the home  
666 setting. Each person referred by a nurse registry must provide  
667 current documentation that he or she is free from communicable

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668 diseases.

669 Section 9. Subsection (4) is added to section 400.518,  
670 Florida Statutes, to read:

671 400.518 Prohibited referrals to home health agencies.--

672 (4) The agency shall impose an administrative fine of  
673 \$15,000 if a home health agency provides nurses, certified  
674 nursing assistants, home health aides, or other staff without  
675 charge to a facility licensed under chapter 429 in return for  
676 patient referrals from the facility. The proceeds of such fines  
677 shall be deposited into the Health Care Trust Fund.

678 Section 10. The Agency for Health Care Administration shall  
679 conduct an unannounced survey of each home health agency within  
680 15 months after issuing a new license to the home health agency.

681 Section 11. The Agency for Health Care Administration shall  
682 review the process, procedures, and contractor's performance for  
683 the prior authorization of home health agency visits that are in  
684 excess of 60 visits over the lifetime of a Medicaid recipient.  
685 The agency shall determine whether modifications are necessary in  
686 order to reduce Medicaid fraud and abuse related to home health  
687 services for a Medicaid recipient which are not medically  
688 necessary. If modifications to the prior authorization function  
689 are necessary, the agency shall amend the contract to require  
690 contractor performance that reduces potential Medicaid fraud and  
691 abuse with respect to home health agency visits.

692 Section 12. The Agency for Health Care Administration shall  
693 report to the Legislature by January 1, 2009, on the feasibility  
694 and costs of accessing the Medicare system to disallow Medicaid  
695 payment for home health services that are paid for under the  
696 Medicare prospective payment system for recipients who are dually



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697 eligible for Medicaid and Medicare.

698 Section 13. This act shall take effect July 1, 2008.