

By the Committees on Health Regulation; Health Regulation; and
Senator Jones

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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.
4 400.464, F.S.; authorizing a home infusion therapy
5 provider to be licensed as a nurse registry; deleting
6 provisions related to Medicare reimbursement; amending s.
7 400.471, F.S.; requiring an applicant for a home health
8 agency license to submit to the Agency for Health Care
9 Administration a business plan and evidence of contingency
10 funding, and disclose other controlling ownership
11 interests in health care entities; requiring certain
12 standards in documentation demonstrating financial ability
13 to operate; requiring an applicant for a new home health
14 agency license to submit a surety bond or other security
15 of a specified amount to the Agency for Health Care
16 Administration; providing procedures for the agency with
17 respect to making a claim against a surety bond or
18 security; limiting the timing of receipt and the number of
19 applications for a new home health agency license which
20 the agency may accept each quarter; providing an exception
21 under certain circumstances for a home health agency that
22 is part of a retirement community; specifying a procedure
23 for the agency to follow in selecting applications to
24 process for a new home health agency license; providing
25 for the future expiration of such provisions; prohibiting
26 the agency from issuing an initial license to a home
27 health agency licensure applicant located within 20 miles
28 of a licensed home health agency that has common
29 controlling interests; prohibiting the transfer of an

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30 application to another home health agency; requiring
31 submission of an initial application to relocate a
32 licensed home health to another geographic service area;
33 imposing the burden of proof on an applicant to
34 demonstrate that a factual determination made by the
35 agency is not supported by a preponderance of the
36 evidence; amending s. 400.474, F.S.; providing additional
37 grounds under which the Agency for Health Care
38 Administration may take disciplinary action against a
39 home health agency; creating s. 400.476, F.S.;

40 establishing staffing requirements for home health
41 agencies; reducing the number of home health agencies that
42 an administrator or director of nursing may serve;
43 requiring that an alternate administrator be designated in
44 writing; limiting the period that a home health agency
45 that provides skilled nursing care may operate without a
46 director of nursing; requiring notification upon the
47 termination and replacement of a director of nursing;
48 requiring the Agency for Health Care Administration to
49 take administrative enforcement action against a home
50 health agency for noncompliance with the notification and
51 staffing requirements for a director of nursing; exempting
52 a home health agency that provides only physical,
53 occupational, or speech therapy from requirements related
54 to a director of nursing; providing training requirements
55 for certified nursing assistants and home health aides;
56 amending s. 400.484, F.S.; requiring the agency to conduct
57 the first unannounced survey of a newly licensed home
58 health agency within a specified period after issuing the

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59 | license; requiring that the agency impose administrative
60 | fines for certain deficiencies; increasing the
61 | administrative fines imposed for certain deficiencies;
62 | amending s. 400.488, F.S.; deleting provisions authorizing
63 | the administration of medication to home health patients
64 | by unlicensed staff; providing for the delegation of
65 | nursing tasks as provided in ch. 464, F.S., and related
66 | rules; amending s. 400.491, F.S.; extending the period
67 | that a home health agency must retain records of the
68 | nonskilled care it provides; amending s. 400.497, F.S.;
69 | requiring that the Agency for Health Care Administration
70 | adopt rules related to standards for the director of
71 | nursing of a home health agency, requirements for a
72 | director of nursing to submit certified staff activity
73 | logs pursuant to an agency request, and quality assurance
74 | programs; amending s. 400.506, F.S.; providing training
75 | requirements for certified nursing assistants and home
76 | health aides referred for contract by a nurse registry;
77 | providing for the denial, suspension, or revocation of
78 | nurse registry license and fines for paying remuneration
79 | to certain entities in exchange for patient referrals or
80 | refusing fair remuneration in exchange for patient
81 | referrals; amending s. 400.518, F.S.; providing for a fine
82 | to be imposed against a home health agency that provides
83 | complimentary staffing to an assisted care community in
84 | exchange for patient referrals; amending s. 409.906, F.S.;
85 | requiring durable medical equipment providers enrolled in
86 | the Medicaid program to be accredited and have a physical
87 | business location that meets specified conditions;

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88 providing for exceptions of certain business location
89 criteria; requiring a durable medical equipment provider
90 enrolled in the Medicaid program to obtain a surety bond
91 of a specified amount and for certain staff to undergo
92 background screening; providing for exemptions from
93 accreditation and the surety bond for specified durable
94 medical equipment providers; requiring the Agency for
95 Health Care Administration to review the process for prior
96 authorization of home health agency visits and determine
97 whether modifications to the process are necessary;
98 requiring the agency to report to the Legislature on the
99 feasibility of accessing the Medicare system to determine
100 recipient eligibility for home health services; providing
101 an effective date.

102
103 Be It Enacted by the Legislature of the State of Florida:

104
105 Section 1. Section 400.462, Florida Statutes, is amended to
106 read:

107 400.462 Definitions.--As used in this part, the term:

108 (1) "Administrator" means a direct employee, as defined in
109 subsection (9), who is. ~~The administrator must be~~ a licensed
110 physician, physician assistant, or registered nurse licensed to
111 practice in this state or an individual having at least 1 year of
112 supervisory or administrative experience in home health care or
113 in a facility licensed under chapter 395, under part II of this
114 chapter, or under part I of chapter 429. ~~An administrator may~~
115 ~~manage a maximum of five licensed home health agencies located~~
116 ~~within one agency service district or within an immediately~~

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117 ~~contiguous county. If the home health agency is licensed under~~
118 ~~this chapter and is part of a retirement community that provides~~
119 ~~multiple levels of care, an employee of the retirement community~~
120 ~~may administer the home health agency and up to a maximum of four~~
121 ~~entities licensed under this chapter or chapter 429 that are~~
122 ~~owned, operated, or managed by the same corporate entity. An~~
123 ~~administrator shall designate, in writing, for each licensed~~
124 ~~entity, a qualified alternate administrator to serve during~~
125 ~~absences.~~

126 (2) "Admission" means a decision by the home health agency,
127 during or after an evaluation visit to the patient's home, that
128 there is reasonable expectation that the patient's medical,
129 nursing, and social needs for skilled care can be adequately met
130 by the agency in the patient's place of residence. Admission
131 includes completion of an agreement with the patient or the
132 patient's legal representative to provide home health services as
133 required in s. 400.487(1).

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

138 (4) "Agency" means the Agency for Health Care
139 Administration.

140 (5) "Certified nursing assistant" means any person who has
141 been issued a certificate under part II of chapter 464. ~~The~~
142 ~~licensed home health agency or licensed nurse registry shall~~
143 ~~ensure that the certified nursing assistant employed by or under~~
144 ~~contract with the home health agency or licensed nurse registry~~
145 ~~is adequately trained to perform the tasks of a home health aide~~

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146 ~~in the home setting.~~

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

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

155 (8) "Department" means the Department of Children and
156 Family Services.

157 (9) "Direct employee" means an employee for whom one of the
158 following entities pays withholding taxes: a home health agency;
159 a management company that has a contract to manage the home
160 health agency on a day-to-day basis; or an employee leasing
161 company that has a contract with the home health agency to handle
162 the payroll and payroll taxes for the home health agency.

163 (10) "Director of nursing" means a registered nurse who is
164 a direct employee, as defined in subsection (9), of the agency
165 and who is a graduate of an approved school of nursing and is
166 licensed in this state; who has at least 1 year of supervisory
167 experience as a registered nurse; and who is responsible for
168 overseeing the professional nursing and home health aid delivery
169 of services of the agency. ~~A director of nursing may be the
170 director of a maximum of five licensed home health agencies
171 operated by a related business entity and located within one
172 agency service district or within an immediately contiguous
173 county. If the home health agency is licensed under this chapter
174 and is part of a retirement community that provides multiple~~

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175 | ~~levels of care, an employee of the retirement community may serve~~
176 | ~~as the director of nursing of the home health agency and of up to~~
177 | ~~four entities licensed under this chapter or chapter 429 which~~
178 | ~~are owned, operated, or managed by the same corporate entity.~~

179 | (11) "Fair market value" means the value in arms length
180 | transactions, consistent with the price that an asset would bring
181 | as the result of bona fide bargaining between well-informed
182 | buyers and sellers who are not otherwise in a position to
183 | generate business for the other party, or the compensation that
184 | would be included in a service agreement as the result of bona
185 | fide bargaining between well-informed parties to the agreement
186 | who are not otherwise in a position to generate business for the
187 | other party, on the date of acquisition of the asset or at the
188 | time of the service agreement.

189 | ~~(12)-(11)~~ "Home health agency" means an organization that
190 | provides home health services and staffing services.

191 | ~~(13)-(12)~~ "Home health agency personnel" means persons who
192 | are employed by or under contract with a home health agency and
193 | enter the home or place of residence of patients at any time in
194 | the course of their employment or contract.

195 | ~~(14)-(13)~~ "Home health services" means health and medical
196 | services and medical supplies furnished by an organization to an
197 | individual in the individual's home or place of residence. The
198 | term includes organizations that provide one or more of the
199 | following:

- 200 | (a) Nursing care.
201 | (b) Physical, occupational, respiratory, or speech therapy.
202 | (c) Home health aide services.
203 | (d) Dietetics and nutrition practice and nutrition

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204 counseling.

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

207 ~~(15)-(14)~~ "Home health aide" means a person who is trained
208 or qualified, as provided by rule, and who provides hands-on
209 personal care, performs simple procedures as an extension of
210 therapy or nursing services, assists in ambulation or exercises,
211 or assists in administering medications as permitted in rule and
212 for which the person has received training established by the
213 agency under s. 400.497(1). ~~The licensed home health agency or
214 licensed nurse registry shall ensure that the home health aide
215 employed by or under contract with the home health agency or
216 licensed nurse registry is adequately trained to perform the
217 tasks of a home health aide in the home setting.~~

218 ~~(16)-(15)~~ "Homemaker" means a person who performs household
219 chores that include housekeeping, meal planning and preparation,
220 shopping assistance, and routine household activities for an
221 elderly, handicapped, or convalescent individual. A homemaker may
222 not provide hands-on personal care to a client.

223 ~~(17)-(16)~~ "Home infusion therapy provider" means an
224 organization that employs, contracts with, or refers a licensed
225 professional who has received advanced training and experience in
226 intravenous infusion therapy and who administers infusion therapy
227 to a patient in the patient's home or place of residence.

228 ~~(18)-(17)~~ "Home infusion therapy" means the administration
229 of intravenous pharmacological or nutritional products to a
230 patient in his or her home.

231 (19) "Immediate family member" means a husband or wife; a
232 birth or adoptive parent, child, or sibling; a stepparent,

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233 stepchild, stepbrother, or stepsister; a father-in-law, mother-
234 in-law, son-in-law, daughter-in-law, brother-in-law, or sister-
235 in-law; a grandparent or grandchild; or a spouse of a grandparent
236 or grandchild.

237 (20) "Medical director" means a physician who is a
238 volunteer with, or who receives remuneration from, a home health
239 agency.

240 (21)-(18) "Nurse registry" means any person that procures,
241 offers, promises, or attempts to secure health-care-related
242 contracts for registered nurses, licensed practical nurses,
243 certified nursing assistants, home health aides, companions, or
244 homemakers, who are compensated by fees as independent
245 contractors, including, but not limited to, contracts for the
246 provision of services to patients and contracts to provide
247 private duty or staffing services to health care facilities
248 licensed under chapter 395, this chapter, or chapter 429 or other
249 business entities.

250 (22)-(19) "Organization" means a corporation, government or
251 governmental subdivision or agency, partnership or association,
252 or any other legal or commercial entity, any of which involve
253 more than one health care professional discipline; a health care
254 professional and a home health aide or certified nursing
255 assistant; more than one home health aide; more than one
256 certified nursing assistant; or a home health aide and a
257 certified nursing assistant. The term does not include an entity
258 that provides services using only volunteers or only individuals
259 related by blood or marriage to the patient or client.

260 (23)-(20) "Patient" means any person who receives home
261 health services in his or her home or place of residence.

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262 ~~(24)~~~~(21)~~ "Personal care" means assistance to a patient in
263 the activities of daily living, such as dressing, bathing,
264 eating, or personal hygiene, and assistance in physical transfer,
265 ambulation, and in administering medications as permitted by
266 rule.

267 ~~(25)~~~~(22)~~ "Physician" means a person licensed under chapter
268 458, chapter 459, chapter 460, or chapter 461.

269 ~~(26)~~~~(23)~~ "Physician assistant" means a person who is a
270 graduate of an approved program or its equivalent, or meets
271 standards approved by the boards, and is licensed to perform
272 medical services delegated by the supervising physician, as
273 defined in s. 458.347 or s. 459.022.

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

276 ~~(28)~~~~(24)~~ "Skilled care" means nursing services or
277 therapeutic services required by law to be delivered by a health
278 care professional who is licensed under part I of chapter 464;
279 part I, part III, or part V of chapter 468; or chapter 486 and
280 who is employed by or under contract with a licensed home health
281 agency or is referred by a licensed nurse registry.

282 ~~(29)~~~~(25)~~ "Staffing services" means services provided to a
283 health care facility, school, or other business entity on a
284 temporary or school-year basis pursuant to a written contract by
285 licensed health care personnel and by certified nursing
286 assistants and home health aides who are employed by, or work
287 under the auspices of, a licensed home health agency or who are
288 registered with a licensed nurse registry. ~~Staffing services may~~
289 ~~be provided anywhere within the state.~~

290 Section 2. Subsection (3) of section 400.464, Florida

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291 Statutes, is amended to read:

292 400.464 Home Health agencies to be licensed; expiration of
293 license; exemptions; unlawful acts; penalties.--

294 (3) A ~~Any~~ home infusion therapy provider must ~~shall~~ be
295 licensed as a home health agency or nurse registry. ~~Any infusion~~
296 ~~therapy provider currently authorized to receive Medicare~~
297 ~~reimbursement under a DME - Part B Provider number for the~~
298 ~~provision of infusion therapy shall be licensed as a non~~
299 ~~certified home health agency. Such a provider shall continue to~~
300 ~~receive that specified Medicare reimbursement without being~~
301 ~~certified so long as the reimbursement is limited to those items~~
302 ~~authorized pursuant to the DME - Part B Provider Agreement and~~
303 ~~the agency is licensed in compliance with the other provisions of~~
304 ~~this part.~~

305 Section 3. Section 400.471, Florida Statutes, is amended to
306 read:

307 400.471 Application for license; fee; bond; limitation on
308 applications accepted.--

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

311 (2) In addition to the requirements of part II of chapter
312 408, the initial applicant must file with the application
313 satisfactory proof that the home health agency is in compliance
314 with this part and applicable rules, including:

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

318 (b) The number and discipline of professional staff to be
319 employed.

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

322 (d) A business plan, signed by the applicant, which details
323 the home health agency's methods to obtain patients and its plan
324 to recruit and maintain staff.

325 (e) Evidence of contingency funding equal to 1 month's
326 average operating expense over the first year of operation.

327 (f) A balance sheet, income and expense statement, and
328 statement of cash flows for the first 2 years of operation which
329 provide evidence of having sufficient assets, credit, and
330 projected revenues to cover liabilities and expenses. The
331 applicant has demonstrated financial ability to operate if the
332 applicant's assets, credit, and projected revenues meet or exceed
333 projected liabilities and expenses. An applicant may not project
334 an operating margin for any month in the first year of operation
335 of 15 percent or greater. All documents required under this
336 paragraph must be prepared in accordance with generally accepted
337 accounting principles and compiled and signed by a certified
338 public accountant.

339 (g) All other ownership interests in health care entities
340 for each controlling interest, as defined in part II of chapter
341 408.

342 (3) In addition to the requirements of s. 408.810, the home
343 health agency must also obtain and maintain the following
344 insurance coverage in an amount of not less than \$250,000 per
345 claim, and the home health agency must submit proof of coverage
346 with an initial application for licensure and with each
347 application for license renewal:

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

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

350 (4) The agency shall accept, in lieu of its own periodic
351 licensure survey, submission of the survey of an accrediting
352 organization that is recognized by the agency if the
353 accreditation of the licensed home health agency is not
354 provisional and if the licensed home health agency authorizes
355 release of, and the agency receives the report of, the
356 accrediting organization.

357 (5) In accordance with s. 408.805, an applicant or licensee
358 shall pay a fee for each license application submitted under this
359 part, part II of chapter 408, and applicable rules. The amount of
360 the fee shall be established by rule and shall be set at an
361 amount that is sufficient to cover the agency's costs in carrying
362 out its responsibilities under this part, but not to exceed
363 \$2,000 per biennium. However, state, county, or municipal
364 governments applying for licenses under this part are exempt from
365 the payment of license fees.

366 (6) The agency may not issue a license designated as
367 certified to a home health agency that fails to satisfy the
368 requirements of a Medicare certification survey from the agency.

369 (7) An applicant for a new home health agency license must
370 submit a surety bond of \$50,000, or other equivalent means of
371 security acceptable to the agency, such as an irrevocable letter
372 of credit or a deposit in a trust account or financial
373 institution, payable to the Agency for Health Care
374 Administration. A surety bond or other equivalent means of
375 security must be valid from initial licensure until the end of
376 the first license-renewal period. The purpose of this bond is to
377 secure payment of any administrative penalties imposed by the

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378 agency and any fees and costs incurred by the agency regarding
379 the home health agency license which are authorized under state
380 law and which the licensee fails to pay 30 days after the fine or
381 costs become final. The agency may make a claim against the
382 surety bond or security until the later of:

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

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

387 (c) Sixty days after any administrative or legal
388 proceeding, including any appeal, is concluded involving an
389 administrative penalty, fees, or costs for an act or omission
390 that occurred at any time during the first 4 years after the
391 license was initially issued.

392 (8) (a) The agency may accept for processing for a new home
393 health agency license only the following number of applications
394 quarterly, as determined using the number of licensed home health
395 agencies in each geographic service area on June 1, 2008, and the
396 Florida Population Estimates for Counties and Municipalities,
397 April 1, 2007, as published by the Office of Economic and
398 Demographic Research of the Legislature:

399 1. Five for each geographic service area in which the
400 number of residents over the age of 64 per number of licensed
401 home health agencies in that geographic service area is between
402 2,000 and 2,999;

403 2. Four for each geographic service area in which the
404 number of residents over the age of 64 per number of licensed
405 home health agencies in that geographic service area is between
406 1,000 and 1,999; and

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407 3. Three for each geographic service area in which the
408 number of residents over the age of 64 per number of licensed
409 home health agencies in that geographic service area is between 0
410 and 999.

411
412 However, an application for a new home health agency license that
413 is part of a retirement community providing multiple levels of
414 care and that will provide home health services exclusively to
415 residents of that facility is not subject to the quarterly
416 limitation and may not be counted as a new application for
417 purposes of the quarterly limitation. If the home health agency
418 provides home health services to persons outside that facility,
419 the agency shall impose a moratorium on the license in accordance
420 with s. 408.814 and revoke the home health agency license. The
421 home health agency may reapply for a new home health agency
422 license and is subject to the limits on the agency's acceptance
423 of new applications.

424 (b) The agency shall accept applications for a new home
425 health agency license only during the first 5 business days of a
426 calendar quarter. Applications for a new home health agency
427 license received during this period, except an application for a
428 new home health agency license that is part of a retirement
429 community providing multiple levels of care and that will provide
430 home health services exclusively to residents of that facility,
431 must be grouped according to the geographic service area in which
432 the home health agency is to be located. During the first 6
433 through 10 business days of the calendar quarter, the agency
434 shall use a lottery system to select the number of applications
435 authorized in paragraph (a) to be accepted for processing for

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436 each geographic service area.

437 (c) Notwithstanding ss. 120.60 or 408.806(3), the agency
438 shall return to the sender all applications and fees for a new
439 home health agency license which were received:

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

442 2. Before or after the first 5 business days of a calendar
443 quarter.

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

445 (9) The agency may not issue an initial license to a home
446 health agency licensure applicant if the applicant shares common
447 controlling interests with another licensed home health agency
448 that is located within 20 miles of the applicant. The agency must
449 return the application and fees to the applicant.

450 (10) An application for a home health agency license may
451 not be transferred to another home health agency or controlling
452 interest prior to issuance of the license.

453 (11) A licensed home health agency that seeks to relocate
454 to a different geographic service area not listed on its license
455 must submit an initial application for a home health agency
456 license for the new location.

457 (12) When an applicant alleges that a factual determination
458 made by the agency is incorrect, the burden of proof is on the
459 applicant to demonstrate that such determination is, in light of
460 the total record, not supported by the preponderance of the
461 evidence.

462 Section 4. Section 400.474, Florida Statutes, is amended to
463 read:

464 400.474 Administrative penalties.--

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465 (1) The agency may deny, revoke, and suspend a license and
466 impose an administrative fine in the manner provided in chapter
467 120.

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

470 (a) Violation of this part, part II of chapter 408, or of
471 applicable rules.

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

474 (c) Knowingly providing home health services in an
475 unlicensed assisted living facility or unlicensed adult family-
476 care home, unless the home health agency or employee reports the
477 unlicensed facility or home to the agency within 72 hours after
478 providing the services.

479 (d) Preparing or maintaining fraudulent patient records,
480 such as, but not limited to, charting ahead, recording vital
481 signs or symptoms that were not personally obtained or observed
482 by the home health agency's staff at the time indicated,
483 borrowing patients or patient records from other home health
484 agencies to pass a survey or inspection, or falsifying
485 signatures.

486 (e) Failing to provide at least one service directly to a
487 patient for a period of 60 days.

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

490 (a) Documents of training for home health aides or
491 certified nursing assistants; or

492 (b) Health statements for staff providing direct care to
493 patients.

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495 A pattern may be demonstrated by a showing of at least three
496 fraudulent entries or documents. The fine shall be imposed for
497 each fraudulent document or, if multiple staff members are
498 included on one document, for each fraudulent entry on the
499 document.

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

506 (a) Require payback of all funds;

507 (b) Revoke the license; or

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

509 (5) The agency shall impose a fine of \$5,000 against a home
510 health agency that demonstrates a pattern of failing to provide a
511 service specified in the home health agency's written agreement
512 with a patient or the patient's legal representative, or the plan
513 of care for that patient, unless a reduction in service is
514 mandated by Medicare, Medicaid, or a state program or as provided
515 in s. 400.492(3). A pattern may be demonstrated by a showing of
516 at least three incidences, regardless of the patient or service,
517 where the home health agency did not provide a service specified
518 in a written agreement or plan of care during a 3-month period.
519 The agency shall impose the fine for each occurrence. The agency
520 may also impose additional administrative fines under s. 400.484
521 for the direct or indirect harm to a patient, or deny, revoke, or
522 suspend the license of the home health agency for a pattern of

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523 failing to provide a service specified in the home health
524 agency's written agreement with a patient or the plan of care for
525 that patient.

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

529 (a) Gives remuneration for staffing services to:

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

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

534
535 unless the home health agency has activated its comprehensive
536 emergency management plan in accordance with s. 400.492.

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

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

543 (d) Fails to provide the agency, upon request, with copies
544 of all contracts with assisted living facilities which were
545 executed within 5 years before the request.

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

551 (f) Fails to submit to the agency, within 10 days after the

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552 end of each calendar quarter, a written report that includes the
553 following data based on data as it existed on the last day of the
554 quarter:

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

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

559 3. The number of patients receiving home health services
560 from that home health agency; and

561 4. The names and license numbers of nurses whose primary
562 job responsibility is to provide home health services to patients
563 and who received remuneration from the home health agency in
564 excess of \$25,000 during the calendar quarter.

565 (g) Gives cash, or its equivalent, to a Medicare or
566 Medicaid beneficiary.

567 (h) Has more than one medical director contract in effect
568 at one time or more than one medical director contract and one
569 contract with a physician-specialist whose services are mandated
570 for the home health agency in order to qualify to participate in
571 a federal or state health care program at one time.

572 (i) Gives remuneration to a physician without a medical
573 director contract being in effect. The contract must:

574 1. Be in writing and signed by both parties;

575 2. Provide for remuneration that is at fair market value
576 for an hourly rate, which must be supported by invoices submitted
577 by the medical director describing the work performed, the dates
578 on which that work was performed, and the duration of that work;
579 and

580 3. Be for a term of at least 1 year.

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581
582 The hourly rate specified in the contract may not be increased
583 during the term of the contract. The home health agency may not
584 execute a subsequent contract with that physician which has an
585 increased hourly rate and covers any portion of the term that was
586 in the original contract.

587 (j) Gives remuneration to:

588 1. A physician, and the home health agency is in violation
589 of paragraph (h) or paragraph (i);

590 2. A member of the physician's office staff; or

591 3. An immediate family member of the physician,

592
593 if the home health agency has received a patient referral in the
594 preceding 12 months from that physician or physician's office
595 staff.

596 (k) Fails to provide to the agency, upon request, copies of
597 all contracts with a medical director which were executed within
598 5 years before the request.

599 (7)(3)(a) In addition to the requirements of s. 408.813,
600 any person, partnership, or corporation that violates s. 408.812
601 or s. 408.813 and that previously operated a licensed home health
602 agency or concurrently operates both a licensed home health
603 agency and an unlicensed home health agency commits a felony of
604 the third degree punishable as provided in s. 775.082, s.
605 775.083, or s. 775.084.

606 (b) If any home health agency is found to be operating
607 without a license and that home health agency has received any
608 government reimbursement for services, the agency shall make a
609 fraud referral to the appropriate government reimbursement

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610 program.

611 Section 5. Section 400.476, Florida Statutes, is created to
612 read:

613 400.476 Staffing requirements; notifications; limitations
614 on staffing services.--

615 (1) ADMINISTRATOR.--

616 (a) An administrator may manage only one home health
617 agency, except that an administrator may manage up to five home
618 health agencies if all five home health agencies have identical
619 controlling interests as defined in s. 408.803 and are located
620 within one agency geographic service area or within an
621 immediately contiguous county. If the home health agency is
622 licensed under this chapter and is part of a retirement community
623 that provides multiple levels of care, an employee of the
624 retirement community may administer the home health agency and up
625 to a maximum of four entities licensed under this chapter or
626 chapter 429 which all have identical controlling interests as
627 defined in s. 408.803. An administrator shall designate, in
628 writing, for each licensed entity, a qualified alternate
629 administrator to serve during the administrator's absence.

630 (b) An administrator of a home health agency who is a
631 licensed physician, physician assistant, or registered nurse
632 licensed to practice in this state may also be the director of
633 nursing for a home health agency. An administrator may serve as a
634 director of nursing only for the number of entities authorized in
635 subsection (2) if there are 10 or fewer full-time equivalent
636 employees and contracted personnel in each home health agency.

637 (2) DIRECTOR OF NURSING.--

638 (a) A director of nursing may be the director of nursing

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639 for:

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

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

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

647 b. All of the home health agencies are located within one
648 agency geographic service area or within an immediately
649 contiguous county; and

650 c. Each home health agency has a registered nurse who meets
651 the qualifications of a director of nursing and who has a written
652 delegation from the director of nursing to serve as the director
653 of nursing for that home health agency when the director of
654 nursing is not present.

655
656 If a home health agency licensed under this chapter is part of a
657 retirement community that provides multiple levels of care, an
658 employee of the retirement community may serve as the director of
659 nursing of the home health agency and up to a maximum of four
660 entities, other than home health agencies, licensed under this
661 chapter or chapter 429 which all have identical controlling
662 interests as defined in s. 408.803.

663 (b) A home health agency that provides skilled nursing care
664 may not operate for more than 30 calendar days without a director
665 of nursing. A home health agency that provides skilled nursing
666 care and the director of nursing of a home health agency must
667 notify the agency within 10 business days after termination of

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668 the services of the director of nursing for the home health
669 agency. A home health agency that provides skilled nursing care
670 must notify the agency of the identity and qualifications of the
671 new director of nursing within 10 days after the new director is
672 hired. If a home health agency that provides skilled nursing care
673 operates for more than 30 calendar days without a director of
674 nursing, the home health agency commits a class II deficiency. In
675 addition to the fine for a class II deficiency, the agency may
676 issue a moratorium in accordance with s. 408.814 or revoke the
677 license. The agency shall fine a home health agency that fails to
678 notify the agency as required in this paragraph \$1,000 for the
679 first violation and \$2,000 for a repeat violation. The agency may
680 not take administrative action against a home health agency if
681 the director of nursing fails to notify the department upon
682 termination of services as the director of nursing for the home
683 health agency.

684 (c) A home health agency that provides only physical,
685 occupational, or speech therapy is not required to have a
686 director of nursing and is exempt from paragraph (b).

687 (3) TRAINING.--A home health agency shall ensure that each
688 certified nursing assistant employed by or under contract with
689 the home health agency and each home health aide employed by or
690 under contract with the home health agency is adequately trained
691 to perform the tasks of a home health aide in the home setting.

692 (4) STAFFING.--Staffing services may be provided anywhere
693 within the state.

694 Section 6. Section 400.484, Florida Statutes, is amended to
695 read:

696 400.484 Right of inspection; deficiencies; fines.--

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697 (1) In addition to the requirements of s. 408.811, the
698 agency may make such inspections and investigations as are
699 necessary in order to determine the state of compliance with this
700 part, part II of chapter 408, and applicable rules. The agency
701 shall conduct an unannounced survey of each home health agency
702 within 15 months after issuing a new license to the home health
703 agency.

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

706 (a) A class I deficiency is any act, omission, or practice
707 that results in a patient's death, disablement, or permanent
708 injury, or places a patient at imminent risk of death,
709 disablement, or permanent injury. Upon finding a class I
710 deficiency, the agency shall ~~may~~ impose an administrative fine in
711 the amount of \$15,000 ~~\$5,000~~ for each occurrence and each day
712 that the deficiency exists.

713 (b) A class II deficiency is any act, omission, or practice
714 that has a direct adverse effect on the health, safety, or
715 security of a patient. Upon finding a class II deficiency, the
716 agency shall ~~may~~ impose an administrative fine in the amount of
717 \$5,000 ~~\$1,000~~ for each occurrence and each day that the
718 deficiency exists.

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

725 (d) A class IV deficiency is any act, omission, or practice

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726 related to required reports, forms, or documents which does not
727 have the potential of negatively affecting patients. These
728 violations are of a type that the agency determines do not
729 threaten the health, safety, or security of patients. Upon
730 finding an uncorrected or repeated class IV deficiency, the
731 agency shall ~~may~~ impose an administrative fine not to exceed \$500
732 ~~\$200~~ for each occurrence and each day that the uncorrected or
733 repeated deficiency exists.

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

738 Section 7. Section 400.488, Florida Statutes, is amended to
739 read:

740 400.488 Nurse delegation Assistance with self-
741 ~~administration of medication.--~~ A home health agency nurse may
742 delegate nursing tasks as provided in chapter 464 and related
743 rules.

744 ~~(1) For purposes of this section, the term:~~

745 ~~(a) "Informed consent" means advising the patient, or the~~
746 ~~patient's surrogate, guardian, or attorney in fact, that the~~
747 ~~patient may be receiving assistance with self-administration of~~
748 ~~medication from an unlicensed person.~~

749 ~~(b) "Unlicensed person" means an individual not currently~~
750 ~~licensed to practice nursing or medicine who is employed by or~~
751 ~~under contract to a home health agency and who has received~~
752 ~~training with respect to assisting with the self-administration~~
753 ~~of medication as provided by agency rule.~~

754 ~~(2) Patients who are capable of self-administering their~~

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755 ~~own medications without assistance shall be encouraged and~~
756 ~~allowed to do so. However, an unlicensed person may, consistent~~
757 ~~with a dispensed prescription's label or the package directions~~
758 ~~of an over-the-counter medication, assist a patient whose~~
759 ~~condition is medically stable with the self-administration of~~
760 ~~routine, regularly scheduled medications that are intended to be~~
761 ~~self-administered. Assistance with self-medication by an~~
762 ~~unlicensed person may occur only upon a documented request by,~~
763 ~~and the written informed consent of, a patient or the patient's~~
764 ~~surrogate, guardian, or attorney in fact. For purposes of this~~
765 ~~section, self-administered medications include both legend and~~
766 ~~over-the-counter oral dosage forms, topical dosage forms, and~~
767 ~~topical ophthalmic, otic, and nasal dosage forms, including~~
768 ~~solutions, suspensions, sprays, and inhalers.~~

769 ~~(3) Assistance with self-administration of medication~~
770 ~~includes:~~

771 ~~(a) Taking the medication, in its previously dispensed,~~
772 ~~properly labeled container, from where it is stored and bringing~~
773 ~~it to the patient.~~

774 ~~(b) In the presence of the patient, reading the label,~~
775 ~~opening the container, removing a prescribed amount of medication~~
776 ~~from the container, and closing the container.~~

777 ~~(c) Placing an oral dosage in the patient's hand or placing~~
778 ~~the dosage in another container and helping the patient by~~
779 ~~lifting the container to his or her mouth.~~

780 ~~(d) Applying topical medications.~~

781 ~~(e) Returning the medication container to proper storage.~~

782 ~~(f) Keeping a record of when a patient receives assistance~~
783 ~~with self-administration under this section.~~

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784 ~~(4) Assistance with self-administration does not include:~~

785 ~~(a) Mixing, compounding, converting, or calculating~~
786 ~~medication doses, except for measuring a prescribed amount of~~
787 ~~liquid medication or breaking a scored tablet or crushing a~~
788 ~~tablet as prescribed.~~

789 ~~(b) The preparation of syringes for injection or the~~
790 ~~administration of medications by any injectable route.~~

791 ~~(c) Administration of medications through intermittent~~
792 ~~positive pressure breathing machines or a nebulizer.~~

793 ~~(d) Administration of medications by way of a tube inserted~~
794 ~~in a cavity of the body.~~

795 ~~(e) Administration of parenteral preparations.~~

796 ~~(f) Irrigations or debriding agents used in the treatment~~
797 ~~of a skin condition.~~

798 ~~(g) Rectal, urethral, or vaginal preparations.~~

799 ~~(h) Medications ordered by the physician or health care~~
800 ~~professional with prescriptive authority to be given "as needed,"~~
801 ~~unless the order is written with specific parameters that~~
802 ~~preclude independent judgment on the part of the unlicensed~~
803 ~~person, and at the request of a competent patient.~~

804 ~~(i) Medications for which the time of administration, the~~
805 ~~amount, the strength of dosage, the method of administration, or~~
806 ~~the reason for administration requires judgment or discretion on~~
807 ~~the part of the unlicensed person.~~

808 ~~(5) Assistance with the self-administration of medication~~
809 ~~by an unlicensed person as described in this section does not~~
810 ~~constitute administration as defined in s. 465.003.~~

811 ~~(6) The agency may by rule establish procedures and~~
812 ~~interpret terms as necessary to administer this section.~~

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813 Section 8. Subsection (2) of section 400.491, Florida
814 Statutes, is amended to read:

815 400.491 Clinical records.--

816 (2) The home health agency must maintain for each client
817 who receives nonskilled care a service provision plan. Such
818 records must be maintained by the home health agency for 3 years
819 ~~1 year~~ following termination of services.

820 Section 9. Present subsections (5), (6), (7), and (8) of
821 section 400.497, Florida Statutes, are renumbered as subsections
822 (6), (7), (8), and (9), respectively, and a new subsection (5) is
823 added to that section, to read:

824 400.497 Rules establishing minimum standards.--The agency
825 shall adopt, publish, and enforce rules to implement part II of
826 chapter 408 and this part, including, as applicable, ss. 400.506
827 and 400.509, which must provide reasonable and fair minimum
828 standards relating to:

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

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

834 (b) Requirements for a director of nursing to provide to
835 the agency, upon request, a certified daily report of the home
836 health services provided by a specified direct employee or
837 contracted staff member on behalf of the home health agency. The
838 agency may request a certified daily report only for a period not
839 to exceed 2 years prior to the date of the request; and

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

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842 Section 10. Paragraph (a) of subsection (6) of section
843 400.506, Florida Statutes, is amended, present subsections (15)
844 and (16) of that section are renumbered as subsections (16) and
845 (17), respectively, and a new subsection (15) is added to that
846 section, to read:

847 400.506 Licensure of nurse registries; requirements;
848 penalties.--

849 (6) (a) A nurse registry may refer for contract in private
850 residences registered nurses and licensed practical nurses
851 registered and licensed under part I of chapter 464, certified
852 nursing assistants certified under part II of chapter 464, home
853 health aides who present documented proof of successful
854 completion of the training required by rule of the agency, and
855 companions or homemakers for the purposes of providing those
856 services authorized under s. 400.509(1). A licensed nurse
857 registry shall ensure that each certified nursing assistant
858 referred for contract by the nurse registry and each home health
859 aide referred for contract by the nurse registry is adequately
860 trained to perform the tasks of a home health aide in the home
861 setting. Each person referred by a nurse registry must provide
862 current documentation that he or she is free from communicable
863 diseases.

864 (15) (a) The agency may deny, suspend, or revoke the
865 license of a nurse registry and shall impose a fine of \$5,000
866 against a nurse registry that:

867 1. Provides services to residents in an assisted living
868 facility for which the nurse registry does not receive fair
869 market value remuneration.

870 2. Provides staffing to an assisted living facility for

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871 which the nurse registry does not receive fair market value
872 remuneration.

873 3. Fails to provide the agency, upon request, with copies
874 of all contracts with assisted living facilities which were
875 executed within the last 5 years.

876 4. Gives remuneration to a case manager, discharge
877 planner, facility-based staff member, or third-party vendor who
878 is involved in the discharge-planning process of a facility
879 licensed under chapter 395 or this chapter and from whom the
880 nurse registry receives referrals.

881 5. Gives remuneration to a physician, a member of the
882 physician's office staff, or an immediate family member of the
883 physician, and the nurse registry received a patient referral
884 in the last 12 months from that physician or the physician's
885 office staff.

886 6. Gives remuneration to an insurance agent, a member of
887 the insurance agent's office staff, or an immediate family
888 member of the insurance agent, and the nurse registry received
889 a patient referral within the last 12 months from that agent or
890 the agent's office staff.

891 (b) The agency shall also impose an administrative fine
892 of \$15,000 if the nurse registry refers nurses, certified
893 nursing assistants, home health aides, or other staff without
894 charge to a facility licensed under chapter 429 in return for
895 patient referrals from the facility.

896 (c) The proceeds of all fines collected under this
897 subsection shall be deposited into the Health Care Trust Fund.

898 Section 11. Subsection (4) is added to section 400.518,
899 Florida Statutes, to read:

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900 400.518 Prohibited referrals to home health agencies.--

901 (4) The agency shall impose an administrative fine of
902 \$15,000 if a home health agency provides nurses, certified
903 nursing assistants, home health aides, or other staff without
904 charge to a facility licensed under chapter 429 in return for
905 patient referrals from the facility. The proceeds of such fines
906 shall be deposited into the Health Care Trust Fund.

907 Section 12. Subsection (10) of section 409.906, Florida
908 Statutes, is amended to read:

909 409.906 Optional Medicaid services.--Subject to specific
910 appropriations, the agency may make payments for services which
911 are optional to the state under Title XIX of the Social Security
912 Act and are furnished by Medicaid providers to recipients who are
913 determined to be eligible on the dates on which the services were
914 provided. Any optional service that is provided shall be provided
915 only when medically necessary and in accordance with state and
916 federal law. Optional services rendered by providers in mobile
917 units to Medicaid recipients may be restricted or prohibited by
918 the agency. Nothing in this section shall be construed to prevent
919 or limit the agency from adjusting fees, reimbursement rates,
920 lengths of stay, number of visits, or number of services, or
921 making any other adjustments necessary to comply with the
922 availability of moneys and any limitations or directions provided
923 for in the General Appropriations Act or chapter 216. If
924 necessary to safeguard the state's systems of providing services
925 to elderly and disabled persons and subject to the notice and
926 review provisions of s. 216.177, the Governor may direct the
927 Agency for Health Care Administration to amend the Medicaid state
928 plan to delete the optional Medicaid service known as

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929 "Intermediate Care Facilities for the Developmentally Disabled."
930 Optional services may include:

931 (10) DURABLE MEDICAL EQUIPMENT.--The agency may authorize
932 and pay for certain durable medical equipment and supplies
933 provided to a Medicaid recipient as medically necessary. As of
934 January 1, 2009, the agency shall limit payment for durable
935 medical equipment and supplies to providers who meet all of the
936 criteria in this subsection.

937 (a) Durable medical equipment and medical supply providers
938 must be accredited by an Agency for Health Care Administration
939 approved accreditation organization specifically designated as a
940 durable medical equipment accrediting organization. The provider
941 must be re-accredited periodically and is subject to unannounced
942 reviews by the accrediting organization.

943 (b) Durable medical equipment and medical supply providers
944 must have a physical business location with durable medical
945 equipment and medical supplies on site and must be readily
946 available to the general public. The physical business location
947 must meet the following criteria:

948 1. The location must maintain a substantial inventory that
949 is readily available and sufficient to meet the needs of the
950 durable medical equipment business location's customers;

951 2. The location must be clearly identified with signage
952 that can be read from 20 feet away which readily identifies the
953 business location as a business that furnishes durable medical
954 equipment, medical supplies, or both;

955 3. The location must have a functional landline business
956 telephone;

957 4. The physical business location may not be located within

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958 or at the same numbered street address as another Medicaid-
959 enrolled durable medical equipment and medical supply provider or
960 an enrolled Medicaid pharmacy that is also enrolled as a durable
961 medical equipment provider. A location within or at the same
962 numbered street address includes unique suite or storefront
963 numbers assigned by the United States Postal Service or the
964 building's owner;

965 5. For out-of-state providers, the physical business
966 location must be no more than 50 miles from the Florida state
967 line. Exceptions may be made for manufacturers of a specific type
968 of unique durable medical equipment that is not otherwise
969 available from other durable medical equipment distributors or
970 providers located within the state; and

971 6. Unless the provider is an out-of-state manufacturer
972 business that is located more than 50 miles from the Florida
973 state line and is excepted from sub-paragraph 5., the location
974 must be easily accessible to the public during normal, scheduled,
975 and posted business hours and must operate no less than 5 hours a
976 day, and no less than 5 days a week, with the exception of
977 scheduled and posted holidays.

978 (c) Durable medical equipment and medical supply providers
979 must obtain a \$50,000 surety bond for each provider location, up
980 to a maximum of five bonds statewide or an aggregate bond of
981 \$250,000 statewide as identified per federal employer
982 identification number. Providers who qualify for a statewide or
983 an aggregate bond must identify all of their locations in any
984 enrollment application or bond renewal as a Medicaid durable
985 medical equipment and medical supply provider. Each provider
986 location's surety bond must be renewed annually and the provider

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987 must submit proof of renewal, even if the original bond is a
988 continuous bond.

989 (d) A level 2 background screening, as described in s.
990 435.04, is required as a condition of employment for provider
991 staff in direct contact with and providing direct services to
992 recipients of durable medical equipment and medical supplies in
993 their homes. This requirement includes, but is not limited to,
994 repair and service technicians, fitters, and delivery staff.

995 (e) The following providers are exempt from paragraphs (a)
996 and (c):

997 1. A durable medical equipment and medical supply provider
998 owned and operated by a governmental entity;

999 2. A durable medical equipment and medical supply provider
1000 that is operating within a pharmacy that is currently enrolled as
1001 a Medicaid pharmacy provider; and

1002 3. An active Medicaid-enrolled orthopedic physician's
1003 group, primarily owned by physicians, which is providing only
1004 orthotic and prosthetic devices.

1005 Section 13. The Agency for Health Care Administration shall
1006 review the process, procedures, and contractor's performance for
1007 the prior authorization of home health agency visits that are in
1008 excess of 60 visits over the lifetime of a Medicaid recipient.
1009 The agency shall determine whether modifications are necessary in
1010 order to reduce Medicaid fraud and abuse related to home health
1011 services for a Medicaid recipient which are not medically
1012 necessary. If modifications to the prior authorization function
1013 are necessary, the agency shall amend the contract to require
1014 contractor performance that reduces potential Medicaid fraud and
1015 abuse with respect to home health agency visits.

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1016 Section 14. The Agency for Health Care Administration shall
1017 report to the Legislature by January 1, 2009, on the feasibility
1018 and costs of accessing the Medicare system to disallow Medicaid
1019 payment for home health services that are paid for under the
1020 Medicare prospective payment system for recipients who are dually
1021 eligible for Medicaid and Medicare.

1022 Section 15. This act shall take effect July 1, 2008.