



212654

CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
Comm: RE	.	
1/23/2008	.	
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	.	

1 The Committee on Health Regulation (Atwater) recommended the
 2 following **amendment**:

3
 4 **Senate Amendment (with title amendment)**

5 Delete everything after the enacting clause
 6 and insert:

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

9 400.462 Definitions.--As used in this part, the term:

10 (1) "Administrator" means a direct employee, as defined in
 11 subsection (9), who is. ~~The administrator must be~~ a licensed
 12 physician, physician assistant, or registered nurse licensed to
 13 practice in this state or an individual having at least 1 year
 14 of supervisory or administrative experience in home health care
 15 or in a facility licensed under chapter 395, under part II of



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16 this chapter, or under part I of chapter 429. ~~An administrator~~
17 ~~may manage a maximum of five licensed home health agencies~~
18 ~~located within one agency service district or within an~~
19 ~~immediately contiguous county. If the home health agency is~~
20 ~~licensed under this chapter and is part of a retirement~~
21 ~~community that provides multiple levels of care, an employee of~~
22 ~~the retirement community may administer the home health agency~~
23 ~~and up to a maximum of four entities licensed under this chapter~~
24 ~~or chapter 429 that are owned, operated, or managed by the same~~
25 ~~corporate entity. An administrator shall designate, in writing,~~
26 ~~for each licensed entity, a qualified alternate administrator to~~
27 ~~serve during absences.~~

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

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

40 (4) "Agency" means the Agency for Health Care
41 Administration.

42 (5) "Certified nursing assistant" means any person who has
43 been issued a certificate under part II of chapter 464. ~~The~~



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44 ~~licensed home health agency or licensed nurse registry shall~~
45 ~~ensure that the certified nursing assistant employed by or under~~
46 ~~contract with the home health agency or licensed nurse registry~~
47 ~~is adequately trained to perform the tasks of a home health aide~~
48 ~~in the home setting.~~

49 (6) "Client" means an elderly, handicapped, or
50 convalescent individual who receives companion services or
51 homemaker services in the individual's home or place of
52 residence.

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

58 (8) "Department" means the Department of Children and
59 Family Services.

60 (9) "Direct employee" means an employee for whom one of
61 the following entities pays withholding taxes: a home health
62 agency; a management company that has a contract to manage the
63 home health agency on a day-to-day basis; or an employee leasing
64 company that has a contract with the home health agency to
65 handle the payroll and payroll taxes for the home health agency.

66 (10) "Director of nursing" means a registered nurse who is
67 a direct employee, as defined in subsection (9), of the agency
68 and who is a graduate of an approved school of nursing and is
69 licensed in this state; who has at least 1 year of supervisory
70 experience as a registered nurse; and who is responsible for
71 overseeing the professional nursing and home health aid delivery

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72 of services of the agency. ~~A director of nursing may be the~~
73 ~~director of a maximum of five licensed home health agencies~~
74 ~~operated by a related business entity and located within one~~
75 ~~agency service district or within an immediately contiguous~~
76 ~~county. If the home health agency is licensed under this chapter~~
77 ~~and is part of a retirement community that provides multiple~~
78 ~~levels of care, an employee of the retirement community may~~
79 ~~serve as the director of nursing of the home health agency and~~
80 ~~of up to four entities licensed under this chapter or chapter~~
81 ~~429 which are owned, operated, or managed by the same corporate~~
82 ~~entity.~~

83 (11) "Fair market value" means the value in arms length
84 transactions, consistent with the price that an asset would
85 bring as the result of bona fide bargaining between well-
86 informed buyers and sellers who are not otherwise in a position
87 to generate business for the other party, or the compensation
88 that would be included in a service agreement as the result of
89 bona fide bargaining between well-informed parties to the
90 agreement who are not otherwise in a position to generate
91 business for the other party, on the date of acquisition of the
92 asset or at the time of the service agreement.

93 (12)-(11) "Home health agency" means an organization that
94 provides home health services and staffing services.

95 (13)-(12) "Home health agency personnel" means persons who
96 are employed by or under contract with a home health agency and
97 enter the home or place of residence of patients at any time in
98 the course of their employment or contract.

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99 (14)~~(13)~~ "Home health services" means health and medical
100 services and medical supplies furnished by an organization to an
101 individual in the individual's home or place of residence. The
102 term includes organizations that provide one or more of the
103 following:

104 (a) Nursing care.

105 (b) Physical, occupational, respiratory, or speech
106 therapy.

107 (c) Home health aide services.

108 (d) Dietetics and nutrition practice and nutrition
109 counseling.

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

112 (15)~~(14)~~ "Home health aide" means a person who is trained
113 or qualified, as provided by rule, and who provides hands-on
114 personal care, performs simple procedures as an extension of
115 therapy or nursing services, assists in ambulation or exercises,
116 or assists in administering medications as permitted in rule and
117 for which the person has received training established by the
118 agency under s. 400.497(1). ~~The licensed home health agency or~~
119 ~~licensed nurse registry shall ensure that the home health aide~~
120 ~~employed by or under contract with the home health agency or~~
121 ~~licensed nurse registry is adequately trained to perform the~~
122 ~~tasks of a home health aide in the home setting.~~

123 (16)~~(15)~~ "Homemaker" means a person who performs household
124 chores that include housekeeping, meal planning and preparation,
125 shopping assistance, and routine household activities for an



126 elderly, handicapped, or convalescent individual. A homemaker
127 may not provide hands-on personal care to a client.

128 ~~(17)-(16)~~ "Home infusion therapy provider" means an
129 organization that employs, contracts with, or refers a licensed
130 professional who has received advanced training and experience
131 in intravenous infusion therapy and who administers infusion
132 therapy to a patient in the patient's home or place of
133 residence.

134 ~~(18)-(17)~~ "Home infusion therapy" means the administration
135 of intravenous pharmacological or nutritional products to a
136 patient in his or her home.

137 (19) "Immediate family member" means a husband or wife; a
138 birth or adoptive parent, child, or sibling; a stepparent,
139 stepchild, stepbrother, or stepsister; a father-in-law, mother-
140 in-law, son-in-law, daughter-in-law, brother-in-law, or sister-
141 in-law; a grandparent or grandchild; or a spouse of a
142 grandparent or grandchild.

143 (20) "Medical director" means a physician who is a
144 volunteer with, or who receives remuneration from, a home health
145 agency.

146 ~~(21)-(18)~~ "Nurse registry" means any person that procures,
147 offers, promises, or attempts to secure health-care-related
148 contracts for registered nurses, licensed practical nurses,
149 certified nursing assistants, home health aides, companions, or
150 homemakers, who are compensated by fees as independent
151 contractors, including, but not limited to, contracts for the
152 provision of services to patients and contracts to provide
153 private duty or staffing services to health care facilities

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154 licensed under chapter 395, this chapter, or chapter 429 or
155 other business entities.

156 ~~(22)-(19)~~ "Organization" means a corporation, government or
157 governmental subdivision or agency, partnership or association,
158 or any other legal or commercial entity, any of which involve
159 more than one health care professional discipline; a health care
160 professional and a home health aide or certified nursing
161 assistant; more than one home health aide; more than one
162 certified nursing assistant; or a home health aide and a
163 certified nursing assistant. The term does not include an entity
164 that provides services using only volunteers or only individuals
165 related by blood or marriage to the patient or client.

166 ~~(23)-(20)~~ "Patient" means any person who receives home
167 health services in his or her home or place of residence.

168 ~~(24)-(21)~~ "Personal care" means assistance to a patient in
169 the activities of daily living, such as dressing, bathing,
170 eating, or personal hygiene, and assistance in physical
171 transfer, ambulation, and in administering medications as
172 permitted by rule.

173 ~~(25)-(22)~~ "Physician" means a person licensed under chapter
174 458, chapter 459, chapter 460, or chapter 461.

175 ~~(26)-(23)~~ "Physician assistant" means a person who is a
176 graduate of an approved program or its equivalent, or meets
177 standards approved by the boards, and is licensed to perform
178 medical services delegated by the supervising physician, as
179 defined in s. 458.347 or s. 459.022.

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

183 ~~(28)-(24)~~ "Skilled care" means nursing services or
184 therapeutic services required by law to be delivered by a health
185 care professional who is licensed under part I of chapter 464;
186 part I, part III, or part V of chapter 468; or chapter 486 and
187 who is employed by or under contract with a licensed home health
188 agency or is referred by a licensed nurse registry.

189 ~~(29)-(25)~~ "Staffing services" means services provided to a
190 health care facility, school, or other business entity on a
191 temporary or school-year basis pursuant to a written contract by
192 licensed health care personnel and by certified nursing
193 assistants and home health aides who are employed by, or work
194 under the auspices of, a licensed home health agency or who are
195 registered with a licensed nurse registry. ~~Staffing services may~~
196 ~~be provided anywhere within the state.~~

197 Section 2. Section 400.471, Florida Statutes, is amended
198 to read:

199 400.471 Application for license; fee; bond; limitation on
200 applications accepted.--

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

203 (2) In addition to the requirements of part II of chapter
204 408, the initial applicant must file with the application
205 satisfactory proof that the home health agency is in compliance
206 with this part and applicable rules, including:



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

210 (b) The number and discipline of professional staff to be
211 employed.

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

214 (3) In addition to the requirements of s. 408.810, the
215 home health agency must also obtain and maintain the following
216 insurance coverage in an amount of not less than \$250,000 per
217 claim, and the home health agency must submit proof of coverage
218 with an initial application for licensure and with each
219 application for license renewal:

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

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

222 (4) The agency shall accept, in lieu of its own periodic
223 licensure survey, submission of the survey of an accrediting
224 organization that is recognized by the agency if the
225 accreditation of the licensed home health agency is not
226 provisional and if the licensed home health agency authorizes
227 release of, and the agency receives the report of, the
228 accrediting organization.

229 (5) In accordance with s. 408.805, an applicant or
230 licensee shall pay a fee for each license application submitted
231 under this part, part II of chapter 408, and applicable rules.
232 The amount of the fee shall be established by rule and shall be
233 set at an amount that is sufficient to cover the agency's costs
234 in carrying out its responsibilities under this part, but not to



235 exceed \$2,000 per biennium. However, state, county, or municipal
236 governments applying for licenses under this part are exempt
237 from the payment of license fees.

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

241 (7) An applicant for a new home health agency license must
242 submit a surety bond of \$50,000, or other equivalent means of
243 security acceptable to the agency, such as an irrevocable letter
244 of credit or a deposit in a trust account or financial
245 institution, payable to the Agency for Health Care
246 Administration. A surety bond or other equivalent means of
247 security must be valid from initial licensure until the end of
248 the first license-renewal period. The purpose of this bond is to
249 secure payment of any administrative penalties imposed by the
250 agency and any fees and costs incurred by the agency regarding
251 the home health agency license which are authorized under state
252 law and which the licensee fails to pay 30 days after the fine
253 or costs become final. The agency may make a claim against the
254 surety bond or security until the later of:

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

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

259 (c) Sixty days after any administrative or legal
260 proceeding, including any appeal, is concluded involving an
261 administrative penalty, fees, or costs for an act or omission

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262 that occurred at any time during the first 4 years after the
263 license was initially issued.

264 (8) (a) The agency may accept for processing for a new home
265 health agency license only the following number of applications
266 quarterly:

267 1. Five for each geographic service area in service areas
268 1 through 9;

269 2. Four for geographic service area 10; and

270 3. Three for geographic service area 11.

271

272 However, an application for a new home health agency license
273 that is part of a retirement community providing multiple levels
274 of care and that will provide home health services exclusively
275 to residents of that facility is not subject to the quarterly
276 limitation and may not be counted as a new application for
277 purposes of the quarterly limitation. If the home health agency
278 provides home health services to persons outside that facility,
279 the agency shall impose a moratorium on the license in
280 accordance with s. 408.814 and revoke the home health agency
281 license. The home health agency may reapply for a new home
282 health agency license and is subject to the limits on the
283 agency's acceptance of new applications.

284 (b) The agency shall accept applications for a new home
285 health agency license only during the first 5 business days of a
286 calendar quarter. Applications for a new home health agency
287 license received during this period, except an application for a
288 new home health agency license that is part of a retirement
289 community providing multiple levels of care and that will



290 provide home health services exclusively to residents of that
291 facility, must be grouped according to the geographic service
292 area in which the home health agency is to be located. During
293 the first 6 through 10 business days of the calendar quarter,
294 the agency shall use a lottery system to select the number of
295 applications authorized in paragraph (a) to be accepted for
296 processing for each geographic service area.

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

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

302 2. Before or after the first 5 business days of a calendar
303 quarter.

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

305 Section 3. Section 400.474, Florida Statutes, is amended
306 to read:

307 400.474 Administrative penalties.--

308 (1) The agency may deny, revoke, and suspend a license and
309 impose an administrative fine in the manner provided in chapter
310 120.

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

314 (a) Violation of this part, part II of chapter 408, or of
315 applicable rules.

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



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318 (c) Knowingly providing home health services in an
319 unlicensed assisted living facility or unlicensed adult family-
320 care home, unless the home health agency or employee reports the
321 unlicensed facility or home to the agency within 72 hours after
322 providing the services.

323 (d) Preparing or maintaining fraudulent patient records,
324 such as, but not limited to, charting ahead, recording vital
325 signs or symptoms that were not personally obtained or observed
326 by the home health agency's staff at the time indicated,
327 borrowing patients or patient records from other home health
328 agencies to pass a survey or inspection, or falsifying
329 signatures.

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

332 (a) Documents of training for home health aides or
333 certified nursing assistants; or

334 (b) Health statements for staff providing direct care to
335 patients.

336
337 A pattern may be demonstrated by a showing of at least three
338 fraudulent entries or documents. The fine shall be imposed for
339 each fraudulent document or, if multiple staff members are
340 included on one document, for each fraudulent entry on the
341 document.

342 (4) The agency shall impose a fine of \$5,000 against a
343 home health agency that demonstrates a pattern of billing any
344 payor for services not provided. A pattern may be demonstrated
345 by a showing of at least three billings for services not



346 provided within a 12-month period. The fine must be imposed for
347 each incident that is falsely billed. The agency may also:

348 (a) Require payback of all funds;

349 (b) Revoke the license; or

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

351 (5) The agency shall impose a fine of \$5,000 against a
352 home health agency that demonstrates a pattern of failing to
353 provide a service specified in the home health agency's written
354 agreement with a patient or the plan of care for that patient,
355 unless a reduction in service is mandated by Medicare, Medicaid,
356 or a state program or as provided in s. 400.492(3). A pattern
357 may be demonstrated by a showing of at least three incidences,
358 regardless of the patient or service, where the home health
359 agency did not provide a service specified in a written
360 agreement or plan of care during a 3-month period. The agency
361 shall impose the fine for each occurrence. The agency may also
362 impose additional administrative fines under s. 400.484 for the
363 direct or indirect harm to a patient, or deny, revoke, or
364 suspend the license of the home health agency for a pattern of
365 failing to provide a service specified in the home health
366 agency's written agreement with a patient or the plan of care
367 for that patient.

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

371 (a) Gives remuneration for staffing services to:

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



374 2. A health services pool with which it has formal or
375 informal patient-referral transactions or arrangements,
376
377 unless the home health agency has activated its comprehensive
378 emergency management plan in accordance with s. 400.492.

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

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

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

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

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

397 1. The number of insulin-dependent diabetic patients
398 receiving insulin-injection services from the home health
399 agency;

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



402 3. The number of patients receiving home health services
403 from that home health agency; and

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

409 (g) Gives cash, or its equivalent, to a Medicare or
410 Medicaid beneficiary.

411 (h) Has more than one medical director contract in effect
412 at one time or more than one medical director contract and one
413 contract with a physician-specialist whose services are mandated
414 for the home health agency in order to qualify to participate in
415 a federal or state health care program at one time.

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

418 1. Be in writing and signed by both parties;
419 2. Provide for remuneration that is at fair market value
420 for an hourly rate, which must be supported by invoices
421 submitted by the medical director describing the work performed,
422 the dates on which that work was performed, and the duration of
423 that work; and

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

425
426 The hourly rate specified in the contract may not be increased
427 during the term of the contract. The home health agency may not
428 execute a subsequent contract with that physician which has an



429 increased hourly rate and covers any portion of the term that
430 was in the original contract.

431 (j) Gives remuneration to:

432 1. A physician and the home health agency in violation of
433 paragraph (h) or paragraph (i);

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

435 3. An immediate family member of the physician,

436

437 if the home health agency has received a patient referral in the
438 preceding 12 months from that physician or physician's office
439 staff.

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

443 (7)(3)(a) In addition to the requirements of s. 408.813,
444 any person, partnership, or corporation that violates s. 408.812
445 or s. 408.813 and that previously operated a licensed home
446 health agency or concurrently operates both a licensed home
447 health agency and an unlicensed home health agency commits a
448 felony of the third degree punishable as provided in s. 775.082,
449 s. 775.083, or s. 775.084.

450 (b) If any home health agency is found to be operating
451 without a license and that home health agency has received any
452 government reimbursement for services, the agency shall make a
453 fraud referral to the appropriate government reimbursement
454 program.

455 Section 4. Section 400.476, Florida Statutes, is created
456 to read:

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457 400.476 Staffing requirements; notifications; limitations
458 on staffing services.--

459 (1) ADMINISTRATOR.--

460 (a) An administrator may manage only one home health
461 agency, except that an administrator may manage up to five home
462 health agencies if all five home health agencies have identical
463 controlling interests as defined in s. 408.803 and are located
464 within one agency geographic service area or within an
465 immediately contiguous county. If the home health agency is
466 licensed under this chapter and is part of a retirement
467 community that provides multiple levels of care, an employee of
468 the retirement community may administer the home health agency
469 and up to a maximum of four entities licensed under this chapter
470 or chapter 429 which all have identical controlling interests as
471 defined in s. 408.803. An administrator shall designate, in
472 writing, for each licensed entity, a qualified alternate
473 administrator to serve during the administrator's absence.

474 (b) An administrator of a home health agency who is a
475 licensed physician, physician assistant, or registered nurse
476 licensed to practice in this state may also be the director of
477 nursing for a home health agency. An administrator may serve as
478 a director of nursing only for the number of entities authorized
479 in subsection (2).

480 (2) DIRECTOR OF NURSING.--

481 (a) A director of nursing may be the director of nursing
482 for:

483 1. Up to two licensed home health agencies if the agencies
484 have identical controlling interests as defined in s. 408.803

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485 and are located within one agency geographic service area or
486 within an immediately contiguous county; or

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

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

490 b. All of the home health agencies are located within one
491 agency geographic service area or within an immediately
492 contiguous county; and

493 c. Each home health agency has a registered nurse who
494 meets the qualifications of a director of nursing and who has a
495 written delegation from the director of nursing to serve as the
496 director of nursing for that home health agency when the
497 director of nursing is not present.

498
499 If a home health agency licensed under this chapter is part of a
500 retirement community that provides multiple levels of care, an
501 employee of the retirement community may serve as the director
502 of nursing of the home health agency and up to a maximum of four
503 entities, other than home health agencies, licensed under this
504 chapter or chapter 429 which all have identical controlling
505 interests as defined in s. 408.803.

506 (b) A home health agency may not operate for more than 30
507 calendar days without a director of nursing. A home health
508 agency and the director of nursing of a home health agency must
509 notify the agency within 10 business days after termination of
510 the services of the director of nursing for the home health
511 agency. A home health agency must notify the agency of the
512 identity and qualifications of the new director of nursing



513 within 10 days after the new director is hired. A home health
514 agency that operates for more than 30 calendar days without a
515 director of nursing commits a class II deficiency. In addition
516 to the fine for a class II deficiency, the agency may issue a
517 moratorium in accordance with s. 408.814 or revoke the license.
518 The agency shall fine a home health agency that fails to notify
519 the agency as required in this paragraph \$1,000 for the first
520 violation and \$2,000 for a repeat violation. The agency may not
521 take administrative action against a home health agency if the
522 director of nursing fails to notify the department upon
523 termination of services as the director of nursing for the home
524 health agency.

525 (3) TRAINING.--A home health agency shall ensure that each
526 certified nursing assistant employed by or under contract with
527 the home health agency and each home health aide employed by or
528 under contract with the home health agency is adequately trained
529 to perform the tasks of a home health aide in the home setting.

530 (4) STAFFING.--Staffing services may be provided anywhere
531 within the state.

532 Section 5. Section 400.484, Florida Statutes, is amended
533 to read:

534 400.484 Right of inspection; deficiencies; fines.--

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

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



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541 (a) A class I deficiency is any act, omission, or practice
542 that results in a patient's death, disablement, or permanent
543 injury, or places a patient at imminent risk of death,
544 disablement, or permanent injury. Upon finding a class I
545 deficiency, the agency shall ~~may~~ impose an administrative fine
546 in the amount of \$15,000 ~~\$5,000~~ for each occurrence and each day
547 that the deficiency exists.

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

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

561 (d) A class IV deficiency is any act, omission, or
562 practice related to required reports, forms, or documents which
563 does not have the potential of negatively affecting patients.
564 These violations are of a type that the agency determines do not
565 threaten the health, safety, or security of patients. Upon
566 finding an uncorrected or repeated class IV deficiency, the
567 agency shall ~~may~~ impose an administrative fine not to exceed

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568 \$500 ~~\$200~~ for each occurrence and each day that the uncorrected
569 or repeated deficiency exists.

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

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

576 400.491 Clinical records.--

577 (2) The home health agency must maintain for each client
578 who receives nonskilled care a service provision plan. Such
579 records must be maintained by the home health agency for 3 years
580 ~~1 year~~ following termination of services.

581 Section 7. Present subsections (5), (6), (7), and (8) of
582 section 400.497, Florida Statutes, are renumbered as subsections
583 (6), (7), (8), and (9), respectively, and a new subsection (5)
584 is added to that section, to read:

585 400.497 Rules establishing minimum standards.--The agency
586 shall adopt, publish, and enforce rules to implement part II of
587 chapter 408 and this part, including, as applicable, ss. 400.506
588 and 400.509, which must provide reasonable and fair minimum
589 standards relating to:

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

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

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595 (b) Requirements for a director of nursing to provide to
596 the agency, upon request, a certified daily report of the home
597 health services provided by a specified direct employee or
598 contracted staff member on behalf of the home health agency. The
599 agency may request a certified daily report only for a period
600 not to exceed 2 years prior to the date of the request; and

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

603 Section 8. Paragraph (a) of subsection (6) of section
604 400.506, Florida Statutes, is amended to read:

605 400.506 Licensure of nurse registries; requirements;
606 penalties.--

607 (6) (a) A nurse registry may refer for contract in private
608 residences registered nurses and licensed practical nurses
609 registered and licensed under part I of chapter 464, certified
610 nursing assistants certified under part II of chapter 464, home
611 health aides who present documented proof of successful
612 completion of the training required by rule of the agency, and
613 companions or homemakers for the purposes of providing those
614 services authorized under s. 400.509(1). A licensed nurse
615 registry shall ensure that each certified nursing assistant
616 referred for contract by the nurse registry and each home health
617 aide referred for contract by the nurse registry is adequately
618 trained to perform the tasks of a home health aide in the home
619 setting. Each person referred by a nurse registry must provide
620 current documentation that he or she is free from communicable
621 diseases.

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

624 400.518 Prohibited referrals to home health agencies.--

625 (4) The agency shall impose an administrative fine of
626 \$15,000 if a home health agency provides nurses, certified
627 nursing assistants, home health aides, or other staff without
628 charge to a facility licensed under chapter 429 in return for
629 patient referrals from the facility. The proceeds of such fines
630 shall be deposited into the Health Care Trust Fund.

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

635 Section 11. The Agency for Health Care Administration
636 shall review the process, procedures, and contractor's
637 performance for the prior authorization of home health agency
638 visits that are in excess of 60 visits over the lifetime of a
639 Medicaid recipient. The agency shall determine whether
640 modifications are necessary in order to reduce Medicaid fraud
641 and abuse related to home health services for a Medicaid
642 recipient which are not medically necessary. If modifications to
643 the prior authorization function are necessary, the agency shall
644 amend the contract to require contractor performance that
645 reduces potential Medicaid fraud and abuse with respect to home
646 health agency visits.

647 Section 12. The Agency for Health Care Administration
648 shall report to the Legislature by January 1, 2009, on the
649 feasibility and costs of accessing the Medicare system to



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650 disallow Medicaid payment for home health services that are paid
651 for under the Medicare prospective payment system for recipients
652 who are dually eligible for Medicaid and Medicare.

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

654
655 ===== T I T L E A M E N D M E N T =====

656 And the title is amended as follows:

657 Delete everything before the enacting clause
658 and insert:

659 A bill to be entitled
660 An act relating to home health care; amending s. 400.462,
661 F.S.; revising and adding definitions; amending s.
662 400.471, F.S.; requiring an applicant for a new home
663 health agency license to submit a surety bond or other
664 security of a specified amount to the Agency for Health
665 Care Administration; providing procedures for the agency
666 with respect to making a claim against a surety bond or
667 security; limiting the timing of receipt and the number of
668 applications for a new home health agency license which
669 the agency may accept each quarter; providing an exception
670 under certain circumstances for a home health agency that
671 is part of a retirement community; specifying a procedure
672 for the agency to follow in selecting applications to
673 process for a new home health agency license; providing
674 for the future expiration of such provisions; amending s.
675 400.474, F.S.; providing additional grounds under which
676 the Agency for Health Care Administration may take
677 disciplinary action against a home health agency; creating

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678 s. 400.476, F.S.; establishing staffing requirements for
679 home health agencies; reducing the number of home health
680 agencies that an administrator or director of nursing may
681 serve; requiring that an alternate administrator be
682 designated in writing; limiting the period that a home
683 health agency may operate without a director of nursing;
684 requiring notification upon the termination and
685 replacement of a director of nursing; requiring the Agency
686 for Health Care Administration to take administrative
687 enforcement action against a home health agency for
688 noncompliance with the notification and staffing
689 requirements for a director of nursing; providing training
690 requirements for certified nursing assistants and home
691 health aides; amending s. 400.484, F.S.; requiring that
692 the agency impose administrative fines for certain
693 deficiencies; increasing the administrative fines imposed
694 for certain deficiencies; amending s. 400.491, F.S.;
695 extending the period that a home health agency must retain
696 records of the nonskilled care it provides; amending s.
697 400.497, F.S.; requiring that the Agency for Health Care
698 Administration adopt rules related to standards for the
699 director of nursing of a home health agency, requirements
700 for a director of nursing to submit certified staff
701 activity logs pursuant to an agency request, and quality
702 assurance programs; amending s. 400.506, F.S.; providing
703 training requirements for certified nursing assistants and
704 home health aides referred for contract by a nurse
705 registry; amending s. 400.518, F.S.; providing for a fine



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706 | to be imposed against a home health agency that provides
707 | complimentary staffing to an assisted care community in
708 | exchange for patient referrals; requiring the Agency for
709 | Health Care Administration to conduct an unannounced
710 | survey of each home health agency within a specified
711 | period after issuing a license; requiring the Agency for
712 | Health Care Administration to review the process for prior
713 | authorization of home health agency visits and determine
714 | whether modifications to the process are necessary;
715 | requiring the agency to report to the Legislature on the
716 | feasibility of accessing the Medicare system to determine
717 | recipient eligibility for home health services; providing
718 | an effective date.