

FOR CONSIDERATION By the Committee on Health Regulation

588-02720A-08

20087012\_\_

1 A bill to be entitled

2 An act relating to home health care; amending s. 400.462,  
3 F.S.; revising definitions; amending s. 400.471, F.S.;  
4 requiring an applicant for a new home health agency  
5 license to submit a surety bond or other security of a  
6 specified amount to the Agency for Health Care  
7 Administration; providing procedures for the agency with  
8 respect to making a claim against a surety bond or  
9 security; limiting the number of new home health agency  
10 licensure applications that the agency may accept each  
11 month; providing an exception under certain circumstances  
12 for a home health agency that is part of a retirement  
13 community; providing for the future expiration of such  
14 provisions; amending s. 400.474, F.S.; providing  
15 additional grounds for disciplinary action; creating s.  
16 400.476, F.S.; establishing staffing requirements for home  
17 health agencies; reducing the number of home health  
18 agencies that an administrator or director of nursing may  
19 serve; requiring that an alternate administrator be  
20 designated in writing; limiting the period that a home  
21 health agency may operate without a director of nursing;  
22 requiring notification upon the termination and  
23 replacement of a director of nursing; providing training  
24 requirements for certified nursing assistants and home  
25 health aides; prohibiting a home health agency from  
26 providing certain staffing services; amending s. 400.484,  
27 F.S.; increasing the administrative fines imposed for  
28 certain deficiencies; specifying fines for additional  
29 proscribed actions; authorizing the agency to revoke a

588-02720A-08

20087012\_\_

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

54  
55 Be It Enacted by the Legislature of the State of Florida:

56  
57 Section 1. Subsections (1), (5), (10), (14), and (25) of  
58 section 400.462, Florida Statutes, are amended to read:

588-02720A-08

20087012\_\_

59 400.462 Definitions.--As used in this part, the term:

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

78 (5) "Certified nursing assistant" means any person who has  
79 been issued a certificate under part II of chapter 464. ~~The~~  
80 ~~licensed home health agency or licensed nurse registry shall~~  
81 ~~ensure that the certified nursing assistant employed by or under~~  
82 ~~contract with the home health agency or licensed nurse registry~~  
83 ~~is adequately trained to perform the tasks of a home health aide~~  
84 ~~in the home setting.~~

85 (10) "Director of nursing" means a registered nurse who is  
86 a direct employee, as defined in subsection (9), of the agency  
87 and who is a graduate of an approved school of nursing and is

588-02720A-08

20087012\_\_

88 licensed in this state; who has at least 1 year of supervisory  
89 experience as a registered nurse; and who is responsible for  
90 overseeing the professional nursing and home health aid delivery  
91 of services of the agency. ~~A director of nursing may be the~~  
92 ~~director of a maximum of five licensed home health agencies~~  
93 ~~operated by a related business entity and located within one~~  
94 ~~agency service district or within an immediately contiguous~~  
95 ~~county. If the home health agency is licensed under this chapter~~  
96 ~~and is part of a retirement community that provides multiple~~  
97 ~~levels of care, an employee of the retirement community may serve~~  
98 ~~as the director of nursing of the home health agency and of up to~~  
99 ~~four entities licensed under this chapter or chapter 429 which~~  
100 ~~are owned, operated, or managed by the same corporate entity.~~

101 (14) "Home health aide" means a person who is trained or  
102 qualified, as provided by rule, and who provides hands-on  
103 personal care, performs simple procedures as an extension of  
104 therapy or nursing services, assists in ambulation or exercises,  
105 or assists in administering medications as permitted in rule and  
106 for which the person has received training established by the  
107 agency under s. 400.497(1). ~~The licensed home health agency or~~  
108 ~~licensed nurse registry shall ensure that the home health aide~~  
109 ~~employed by or under contract with the home health agency or~~  
110 ~~licensed nurse registry is adequately trained to perform the~~  
111 ~~tasks of a home health aide in the home setting.~~

112 (25) "Staffing services" means services provided to a  
113 health care facility or school ~~other business entity~~ on a  
114 temporary basis by licensed health care personnel and by  
115 certified nursing assistants and home health aides who are  
116 employed by, or work under the auspices of, a licensed home

588-02720A-08

20087012\_\_

117 health agency or who are registered with a licensed nurse  
118 registry. ~~Staffing services may be provided anywhere within the~~  
119 ~~state.~~

120 Section 2. Section 400.471, Florida Statutes, is amended to  
121 read:

122 400.471 Application for license; fee; bond; limitation on  
123 applications accepted.--

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

126 (2) In addition to the requirements of part II of chapter  
127 408, the initial applicant must file with the application  
128 satisfactory proof that the home health agency is in compliance  
129 with this part and applicable rules, including:

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

133 (b) The number and discipline of professional staff to be  
134 employed.

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

137 (3) In addition to the requirements of s. 408.810, the home  
138 health agency must also obtain and maintain the following  
139 insurance coverage in an amount of not less than \$250,000 per  
140 claim, and the home health agency must submit proof of coverage  
141 with an initial application for licensure and with each  
142 application for license renewal:

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

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

588-02720A-08

20087012\_\_

145 (4) The agency shall accept, in lieu of its own periodic  
146 licensure survey, submission of the survey of an accrediting  
147 organization that is recognized by the agency if the  
148 accreditation of the licensed home health agency is not  
149 provisional and if the licensed home health agency authorizes  
150 release of, and the agency receives the report of, the  
151 accrediting organization.

152 (5) In accordance with s. 408.805, an applicant or licensee  
153 shall pay a fee for each license application submitted under this  
154 part, part II of chapter 408, and applicable rules. The amount of  
155 the fee shall be established by rule and shall be set at an  
156 amount that is sufficient to cover the agency's costs in carrying  
157 out its responsibilities under this part, but not to exceed  
158 \$2,000 per biennium. However, state, county, or municipal  
159 governments applying for licenses under this part are exempt from  
160 the payment of license fees.

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

164 (7) An applicant for a new home health agency license must  
165 submit a surety bond of \$50,000, or other equivalent means of  
166 security acceptable to the agency, such as an irrevocable letter  
167 of credit or a deposit in a trust account or financial  
168 institution, payable to the Agency for Health Care  
169 Administration. A surety bond or other equivalent means of  
170 security must be renewed and valid for each license renewal  
171 period. The purpose of this bond is to secure payment of any  
172 administrative penalties imposed by the agency and any fees and  
173 costs incurred by the agency regarding the home health agency

588-02720A-08

20087012\_\_

174 license which are authorized under state law and which the  
175 licensee fails to pay 30 days after the fine or costs become  
176 final. The agency may make a claim against the surety bond or  
177 security until 1 year after the license ceases to be valid or  
178 until 60 days after any administrative or legal proceeding that  
179 involved the licensee is concluded, including any appeal,  
180 whichever occurs later.

181 (8) (a) The agency may accept each month only the following  
182 number of new applications for a home health agency license:

- 183 1. Five for each geographic service area in service areas 1  
184 through 9;  
185 2. Four for geographic service area 10; and  
186 3. Three for geographic service area 11.

187  
188 However, a new licensure application for a home health agency  
189 that is part of a retirement community providing multiple levels  
190 of care and that will provide home health services exclusively to  
191 residents of that facility is not subject to the monthly  
192 limitation and may not be counted as a new application for  
193 purposes of the monthly limitation. If the home health agency  
194 provides home health services to persons outside that facility,  
195 the agency shall impose a moratorium on the license in accordance  
196 with s. 408.814 and revoke the home health agency license. The  
197 home health agency may reapply for a new home health agency  
198 license and is subject to the limits on the agency's acceptance  
199 of new applications.

200 (b) Notwithstanding ss. 120.60 or 408.806(3), the agency  
201 shall return to the sender all applications received in excess of  
202 the limits in paragraph (a).

588-02720A-08

20087012\_\_

203        (c) This subsection expires July 1, 2011.

204        Section 3. Paragraph (d) is added to subsection (2) of  
205 section 400.474, Florida Statutes, to read:

206        400.474 Administrative penalties.--

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

209        (d) Preparing or maintaining fraudulent patient records,  
210 such as, but not limited to, charting ahead, recording vital  
211 signs or symptoms that were not personally obtained or observed  
212 by the home health agency's staff at the time indicated,  
213 borrowing patients or patient records from other home health  
214 agencies to pass a survey or inspection, or falsifying  
215 signatures.

216        Section 4. Section 400.476, Florida Statutes, is created to  
217 read:

218        400.476 Staffing requirements; notifications; limitations  
219 on staffing services.--

220        (1) ADMINISTRATOR.--

221        (a) An administrator may manage only one home health  
222 agency, except that an administrator may manage two home health  
223 agencies if the two home health agencies have identical  
224 controlling interests as defined in s. 408.803 and are located  
225 within one agency geographic service area or within an  
226 immediately contiguous county. If the home health agency is  
227 licensed under this chapter and is part of a retirement community  
228 that provides multiple levels of care, an employee of the  
229 retirement community may administer the home health agency and up  
230 to a maximum of four entities, other than home health agencies,  
231 licensed under this chapter or chapter 429 which all have



588-02720A-08

20087012\_\_

232 identical controlling interests as defined in s. 408.803. An  
233 administrator shall designate, in writing, for each licensed  
234 entity, a qualified alternate administrator to serve during the  
235 administrator's absence.

236 (b) An administrator of a home health agency who is a  
237 licensed physician, physician assistant, or registered nurse  
238 licensed to practice in this state may also be the director of  
239 nursing for the home health agency.

240 (2) DIRECTOR OF NURSING.--

241 (a) A director of nursing may be the director of nursing  
242 for a maximum of two licensed home health agencies if the  
243 agencies have identical controlling interests as defined in s.  
244 408.803 and are located within one agency service district or  
245 within an immediately contiguous county. If the home health  
246 agency is licensed under this chapter and is part of a retirement  
247 community that provides multiple levels of care, an employee of  
248 the retirement community may serve as the director of nursing of  
249 the home health agency and up to a maximum of four entities,  
250 other than home health agencies, licensed under this chapter or  
251 chapter 429 which all have identical controlling interests as  
252 defined in s. 408.803.

253 (b) A home health agency may not operate for more than 30  
254 calendar days without a director of nursing. A licensed home  
255 health agency and the director of nursing of a licensed home  
256 health agency must notify the agency within 10 business days  
257 after termination of the services of the director of nursing for  
258 the home health agency. A licensed home health agency must notify  
259 the agency of the identity and qualifications of the new director  
260 of nursing within 10 days after the new director is hired.

588-02720A-08

20087012\_\_

261       (3) TRAINING.--A home health agency shall ensure that each  
262 certified nursing assistant employed by or under contract with  
263 the home health agency and each home health aide employed by or  
264 under contract with the home health agency is adequately trained  
265 to perform the tasks of a home health aide in the home setting.

266       (4) STAFFING.--Staffing services may be provided anywhere  
267 within the state; however, a home health agency may not provide  
268 staffing services to other home health agencies or nurse  
269 registries.

270       Section 5. Section 400.484, Florida Statutes, is amended to  
271 read:

272       400.484 Right of inspection; deficiencies; fines.--

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

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

279       (a) A class I deficiency is any act, omission, or practice  
280 that results in a patient's death, disablement, or permanent  
281 injury, or places a patient at imminent risk of death,  
282 disablement, or permanent injury. Upon finding a class I  
283 deficiency, the agency may impose an administrative fine in the  
284 amount of \$15,000 ~~\$5,000~~ for each occurrence and each day that  
285 the deficiency exists.

286       (b) A class II deficiency is any act, omission, or practice  
287 that has a direct adverse effect on the health, safety, or  
288 security of a patient. Upon finding a class II deficiency, the  
289 agency may impose an administrative fine in the amount of \$5,000

588-02720A-08

20087012\_\_

290 ~~\$1,000~~ for each occurrence and each day that the deficiency  
291 exists.

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

298 (d) A class IV deficiency is any act, omission, or practice  
299 related to required reports, forms, or documents which does not  
300 have the potential of negatively affecting patients. These  
301 violations are of a type that the agency determines do not  
302 threaten the health, safety, or security of patients. Upon  
303 finding an uncorrected or repeated class IV deficiency, the  
304 agency may impose an administrative fine not to exceed \$500 ~~\$200~~  
305 for each occurrence and each day that the uncorrected or repeated  
306 deficiency exists.

307 (3) The agency shall impose a fine of \$1,000 against a home  
308 health agency that falsifies:

309 (a) Documents of training for home health aides or  
310 certified nursing assistants; or

311 (b) Health statements for staff providing direct care to  
312 patients.

313  
314 The fine must be imposed for each fraudulent document or, if  
315 multiple staff members are included on one document, for each  
316 fraudulent entry on the document.

317 (4) The agency shall impose a fine of \$1,000 against a home  
318 health agency that bills any payor for services not provided. The

588-02720A-08

20087012\_\_

319 fine must be imposed for each incident that is falsely billed.

320 The agency may also:

321 (a) Require payback of Medicaid funds;

322 (b) Revoke the license; or

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

324 (5) The agency shall impose a fine of \$5,000 against a home

325 health agency that fails to provide a service specified in its

326 written agreement with a patient or the plan of care for that

327 patient. The agency shall impose the fine for each occurrence.

328 The agency may also impose any additional administrative fines

329 for the direct or indirect harm to patients as provided in

330 subsection (2).

331 (6)~~(3)~~ In addition to any other penalties imposed pursuant

332 to this section or part, the agency may assess costs related to

333 an investigation that results in a successful prosecution,

334 excluding costs associated with an attorney's time.

335 Section 6. Subsection (2) of section 400.491, Florida

336 Statutes, is amended to read:

337 400.491 Clinical records.--

338 (2) The home health agency must maintain for each client

339 who receives nonskilled care a service provision plan. Such

340 records must be maintained by the home health agency for 3 years

341 ~~1 year~~ following termination of services.

342 Section 7. Present subsections (5), (6), (7), and (8) of

343 section 400.497, Florida Statutes, are renumbered as subsections

344 (6), (7), (8), and (9), respectively, and a new subsection (5) is

345 added to that section, to read:

346 400.497 Rules establishing minimum standards.--The agency

347 shall adopt, publish, and enforce rules to implement part II of

588-02720A-08

20087012\_\_

348 chapter 408 and this part, including, as applicable, ss. 400.506  
349 and 400.509, which must provide reasonable and fair minimum  
350 standards relating to:

351 (5) Oversight by the director of nursing. The agency, in  
352 consultation with the Department of Health, shall develop rules  
353 related to standards for the director of nursing of a home health  
354 agency. These standards must address oversight responsibilities  
355 by the director of nursing of skilled nursing services and  
356 personal care services provided by the home health agency's  
357 staff, monthly certification of a daily log maintained by each  
358 direct employee or contracted staff member of home health  
359 services provided by that person on behalf of the home health  
360 agency, and a quality assurance program for home health services  
361 provided by the home health agency.

362 Section 8. Paragraph (a) of subsection (6) of section  
363 400.506, Florida Statutes, is amended to read:

364 400.506 Licensure of nurse registries; requirements;  
365 penalties.--

366 (6) (a) A nurse registry may refer for contract in private  
367 residences registered nurses and licensed practical nurses  
368 registered and licensed under part I of chapter 464, certified  
369 nursing assistants certified under part II of chapter 464, home  
370 health aides who present documented proof of successful  
371 completion of the training required by rule of the agency, and  
372 companions or homemakers for the purposes of providing those  
373 services authorized under s. 400.509(1). A licensed nurse  
374 registry shall ensure that each certified nursing assistant  
375 referred for contract by the nurse registry and each home health  
376 aide referred for contract by the nurse registry is adequately

588-02720A-08

20087012\_\_

377 trained to perform the tasks of a home health aide in the home  
378 setting. Each person referred by a nurse registry must provide  
379 current documentation that he or she is free from communicable  
380 diseases.

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

383 400.518 Prohibited referrals to home health agencies.--

384 (4) The agency shall impose an administrative fine that may  
385 not exceed \$15,000 if a home health agency provides nurses,  
386 certified nursing assistants, home health aides, or other staff  
387 without charge to a facility licensed under chapter 429 in return  
388 for patient referrals from the facility. The proceeds of such  
389 finest must be deposited into the Health Care Trust Fund.

390 Section 10. The Agency for Health Care Administration shall  
391 conduct an unannounced survey of each home health agency within  
392 15 months after issuing a new license to the home health agency.

393 Section 11. The Agency for Health Care Administration shall  
394 review the process, procedures, and contractor's performance for  
395 the prior authorization of home health agency visits that are in  
396 excess of 60 visits over the lifetime of a Medicaid recipient.  
397 The agency shall determine whether modifications are necessary in  
398 order to reduce Medicaid fraud and abuse related to home health  
399 services for a Medicaid recipient which are not medically  
400 necessary. If modifications to the prior authorization function  
401 are necessary, the agency shall amend the contract to require  
402 contractor performance that reduces potential Medicaid fraud and  
403 abuse with respect to home health agency visits.

404 Section 12. The Agency for Health Care Administration shall  
405 report to the Legislature by January 1, 2009, on the feasibility

588-02720A-08

20087012\_\_

406 and costs of accessing the Medicare system to disallow Medicaid  
407 payment for home health services that are paid for under the  
408 Medicare prospective payment system for recipients who are dually  
409 eligible for Medicaid and Medicare.

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