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LEGISLATIVE ACTION

Senate	.	House
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Senator Deutch moved the following:

Senate Amendment (with title amendment)

Delete lines 418 - 581

and insert:

Section 4. Subsection (10) is added to section 400.471, Florida Statutes, to read:

400.471 Application for license; fee.—

(10) The agency may not issue a renewal license for a home health agency in any county having at least one licensed home health agency and that has more than one home health agency per 5,000 persons, as indicated by the most recent population estimates published by the Legislature's Office of Economic and Demographic Research, if the applicant or any controlling



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14 interest has been administratively sanctioned by the agency
15 since the last licensure renewal application for one or more of
16 the following acts:

17 (a) An intentional or negligent act that materially affects
18 the health or safety of a client of the provider;

19 (b) Knowingly providing home health services in an
20 unlicensed assisted living facility or unlicensed adult family-
21 care home, unless the home health agency or employee reports the
22 unlicensed facility or home to the agency within 72 hours after
23 providing the services;

24 (c) Preparing or maintaining fraudulent patient records,
25 such as, but not limited to, charting ahead, recording vital
26 signs or symptoms which were not personally obtained or observed
27 by the home health agency's staff at the time indicated,
28 borrowing patients or patient records from other home health
29 agencies to pass a survey or inspection, or falsifying
30 signatures;

31 (d) Failing to provide at least one service directly to a
32 patient for a period of 60 days;

33 (e) Demonstrating a pattern of falsifying documents
34 relating to the training of home health aides or certified
35 nursing assistants or demonstrating a pattern of falsifying
36 health statements for staff who provide direct care to patients.
37 A pattern may be demonstrated by a showing of at least three
38 fraudulent entries or documents;

39 (f) Demonstrating a pattern of billing any payor for
40 services not provided. A pattern may be demonstrated by a
41 showing of at least three billings for services not provided
42 within a 12-month period;



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43 (g) Demonstrating a pattern of failing to provide a service
44 specified in the home health agency's written agreement with a
45 patient or the patient's legal representative, or the plan of
46 care for that patient, unless a reduction in service is mandated
47 by Medicare, Medicaid, or a state program or as provided in s.
48 400.492(3). A pattern may be demonstrated by a showing of at
49 least three incidents, regardless of the patient or service, in
50 which the home health agency did not provide a service specified
51 in a written agreement or plan of care during a 3-month period;

52 (h) Giving remuneration to a case manager, discharge
53 planner, facility-based staff member, or third-party vendor who
54 is involved in the discharge planning process of a facility
55 licensed under chapter 395, chapter 429, or this chapter from
56 whom the home health agency receives referrals or gives
57 remuneration as prohibited in s. 400.474(6)(a);

58 (i) Giving cash, or its equivalent, to a Medicare or
59 Medicaid beneficiary;

60 (j) Demonstrating a pattern of billing the Medicaid program
61 for services to Medicaid recipients which are medically
62 unnecessary. A pattern may be demonstrated by a showing of at
63 least two fraudulent entries or documents;

64 (k) Providing services to residents in an assisted living
65 facility for which the home health agency does not receive fair
66 market value remuneration; or

67 (l) Providing staffing to an assisted living facility for
68 which the home health agency does not receive fair market value
69 remuneration.

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71 Nothing in this subsection shall be interpreted as applying to



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72 or precluding any discount, compensation, waiver of payment, or
73 payment practice permitted by 52 U.S.C. s. 1320a-7b(b) or
74 regulations adopted thereunder, including 42 C.F.R. s. 1001.952,
75 or by 42 U.S.C. s. 1395nn or regulations adopted thereunder.

76 Section 5. Subsection (6) of section 400.474, Florida
77 Statutes, is amended to read:

78 400.474 Administrative penalties.—

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

82 (a) Gives remuneration for staffing services to:

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

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

87
88 unless the home health agency has activated its comprehensive
89 emergency management plan in accordance with s. 400.492. This
90 paragraph does not apply to a Medicare-certified home health
91 agency that provides fair market value remuneration for staffing
92 services to a non-Medicare-certified home health agency that is
93 part of a continuing care facility licensed under chapter 651
94 for providing services to its own residents if each resident
95 receiving home health services pursuant to this arrangement
96 attests in writing that he or she made a decision without
97 influence from staff of the facility to select, from a list of
98 Medicare-certified home health agencies provided by the
99 facility, that Medicare-certified home health agency to provide
100 the services.



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

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

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

110 (e) Gives remuneration to a case manager, discharge
111 planner, facility-based staff member, or third-party vendor who
112 is involved in the discharge planning process of a facility
113 licensed under chapter 395, chapter 429, or this chapter from
114 whom the home health agency receives referrals.

115 (f) Fails to submit to the agency, within 15 days after the
116 end of each calendar quarter, a written report that includes the
117 following data based on data as it existed on the last day of
118 the quarter:

119 1. The number of insulin-dependent diabetic patients
120 receiving insulin-injection services from the home health
121 agency;

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

124 3. The number of patients receiving home health services
125 from that home health agency; and

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



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130 (g) Gives cash, or its equivalent, to a Medicare or
131 Medicaid beneficiary.

132 (h) Has more than one medical director contract in effect
133 at one time or more than one medical director contract and one
134 contract with a physician-specialist whose services are mandated
135 for the home health agency in order to qualify to participate in
136 a federal or state health care program at one time.

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

- 139 1. Be in writing and signed by both parties;
- 140 2. Provide for remuneration that is at fair market value
141 for an hourly rate, which must be supported by invoices
142 submitted by the medical director describing the work performed,
143 the dates on which that work was performed, and the duration of
144 that work; and
- 145 3. Be for a term of at least 1 year.

146

147 The hourly rate specified in the contract may not be increased
148 during the term of the contract. The home health agency may not
149 execute a subsequent contract with that physician which has an
150 increased hourly rate and covers any portion of the term that
151 was in the original contract.

152 (j) Gives remuneration to:

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

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

156 3. An immediate family member of the physician,

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158 if the home health agency has received a patient referral in the



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159 preceding 12 months from that physician or physician's office
160 staff.

161 (k) Fails to provide to the agency, upon request, copies of
162 all contracts with a medical director which were executed within
163 5 years before the request.

164 (l) Demonstrates a pattern of billing the Medicaid program
165 for services to Medicaid recipients which are medically
166 unnecessary. A pattern may be demonstrated by a showing of at
167 least two medically unnecessary services.

168
169 Nothing in paragraph (a), paragraph (e), or paragraph (j) shall
170 be interpreted as applying to or precluding any discount,
171 compensation, waiver of payment, or payment practice permitted
172 by 52 U.S.C. s. 1320a-7b(b) or regulations adopted thereunder,
173 including 42 C.F.R. s. 1001.952, or by 42 U.S.C. s. 1395nn or
174 regulations adopted thereunder.

175
176 ===== T I T L E A M E N D M E N T =====

177 And the title is amended as follows:

178 Delete line 16

179 and insert:

180 certain misconduct; providing that certain
181 administrative penalties do not apply to or preclude
182 certain discounts, compensations, waivers of payment,
183 or payment practices; amending s. 400.474, F.S.;