

By the Committees on Children, Families, and Elder Affairs; and Health Regulation; and Senator Gardiner

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1 A bill to be entitled
2 An act relating to health care; repealing s.
3 112.0455(10) (e), F.S., relating to a prohibition
4 against applying the Drug-Free Workplace Act
5 retroactively; repealing s. 383.325, F.S., relating to
6 the requirement of a licensed facility under s.
7 383.305, F.S., to maintain inspection reports;
8 repealing s. 395.1046, F.S., relating to the
9 investigation of complaints regarding hospitals;
10 repealing s. 395.3037, F.S.; deleting definitions
11 relating to obsolete provisions governing primary and
12 comprehensive stroke centers; amending s. 400.0239,
13 F.S.; deleting an obsolete provision; repealing s.
14 400.147(10), F.S., relating to a requirement that a
15 nursing home facility report any notice of a filing of
16 a claim for a violation of a resident's rights or a
17 claim of negligence; repealing s. 400.148, F.S.,
18 relating to the Medicaid "Up-or-Out" Quality of Care
19 Contract Management Program; repealing s. 400.195,
20 F.S., relating to reporting requirements for the
21 Agency for Health Care Administration; amending s.
22 400.476, F.S.; providing requirements for an
23 alternative administrator of a home health agency;
24 revising the duties of the administrator; revising the
25 requirements for a director of nursing for a specified
26 number of home health agencies; prohibiting a home
27 health agency from using an individual as a home
28 health aide unless the person has completed training
29 and an evaluation program; requiring a home health

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30 aide to meet certain standards in order to be
31 competent in performing certain tasks; requiring a
32 home health agency and staff to comply with accepted
33 professional standards; providing certain requirements
34 for a written contract between certain personnel and
35 the agency; requiring a home health agency to provide
36 certain services through its employees; authorizing a
37 home health agency to provide additional services with
38 another organization; providing responsibilities of a
39 home health agency when it provides home health aide
40 services through another organization; requiring the
41 home health agency to coordinate personnel who provide
42 home health services; requiring personnel to
43 communicate with the home health agency; amending s.
44 400.487, F.S.; requiring a home health agency to
45 provide a copy of the agreement between the agency and
46 a patient which specifies the home health services to
47 be provided; providing the rights that are protected
48 by the home health agency; requiring the home health
49 agency to furnish nursing services by or under the
50 supervision of a registered nurse; requiring the home
51 health agency to provide therapy services through a
52 qualified therapist or therapy assistant; providing
53 the duties and qualifications of a therapist and
54 therapy assistant; requiring supervision by a physical
55 therapist or occupational therapist of a physical
56 therapist assistant or occupational therapist
57 assistant; providing duties of a physical therapist
58 assistant or occupational therapist assistant;

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59 providing for speech therapy services to be provided
60 by a qualified speech pathologist or audiologist;
61 providing for a plan of care; providing that only the
62 staff of a home health agency may administer drugs and
63 treatments as ordered by certain health professionals;
64 providing requirements for verbal orders; providing
65 duties of a registered nurse, licensed practical
66 nurse, home health aide, and certified nursing
67 assistant who work for a home health agency; providing
68 for supervisory visits of services provided by a home
69 health agency; repealing s. 408.802(11), F.S.,
70 relating to the applicability of the Health Care
71 Licensing Procedures Act to private review agents;
72 repealing s. 409.912(15)(e), (f), and (g), F.S.,
73 relating to a requirement for the Agency for Health
74 Care Administration to submit a report to the
75 Legislature regarding the operations of the CARE
76 program; repealing s. 429.12(2), F.S., relating to the
77 sale or transfer of ownership of an assisted living
78 facility; repealing s. 429.23(5), F.S., relating to
79 each assisted living facility's requirement to submit
80 a report to the agency regarding liability claims
81 filed against it; repealing s. 429.911(2)(a), F.S.,
82 relating to grounds for which the agency may take
83 action against the owner of an adult day care center
84 or its operator or employee; providing an effective
85 date.

86
87 Be It Enacted by the Legislature of the State of Florida:

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89 Section 1. Paragraph (e) of subsection (10) of section
90 112.0455, Florida Statutes, is repealed.

91 Section 2. Section 383.325, Florida Statutes, is repealed.

92 Section 3. Section 395.1046, Florida Statutes, is repealed.

93 Section 4. Section 395.3037, Florida Statutes, is repealed.

94 Section 5. Paragraph (g) of subsection (2) of section
95 400.0239, Florida Statutes, is amended to read:

96 400.0239 Quality of Long-Term Care Facility Improvement
97 Trust Fund.—

98 (2) Expenditures from the trust fund shall be allowable for
99 direct support of the following:

100 (g) Other initiatives authorized by the Centers for
101 Medicare and Medicaid Services for the use of federal civil
102 monetary penalties, ~~including projects recommended through the~~
103 ~~Medicaid "Up or Out" Quality of Care Contract Management Program~~
104 ~~pursuant to s. 400.148.~~

105 Section 6. Subsection (10) of section 400.147, Florida
106 Statutes, is repealed.

107 Section 7. Section 400.148, Florida Statutes, is repealed.

108 Section 8. Section 400.195, Florida Statutes, is repealed.

109 Section 9. Section 400.476, Florida Statutes, is amended to
110 read:

111 400.476 Staffing requirements; notifications; limitations
112 on staffing services.—

113 (1) ADMINISTRATOR.—

114 (a) An administrator may manage only one home health
115 agency, except that an administrator may manage up to five home
116 health agencies if all five home health agencies have identical

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117 controlling interests as defined in s. 408.803 and are located
118 within one agency geographic service area or within an
119 immediately contiguous county. If the home health agency is
120 licensed under this chapter and is part of a retirement
121 community that provides multiple levels of care, an employee of
122 the retirement community may administer the home health agency
123 and up to a maximum of four entities licensed under this chapter
124 or chapter 429 which all have identical controlling interests as
125 defined in s. 408.803. An administrator shall designate, in
126 writing, for each licensed entity, a qualified alternate
127 administrator to serve during the administrator's absence. An
128 alternate administrator must meet the requirements in this
129 paragraph and s. 400.462(1).

130 (b) An administrator of a home health agency who is a
131 licensed physician, physician assistant, or registered nurse
132 licensed to practice in this state may also be the director of
133 nursing for a home health agency. An administrator may serve as
134 a director of nursing for up to the number of entities
135 authorized in subsection (2) only if there are 10 or fewer full-
136 time equivalent employees and contracted personnel in each home
137 health agency.

138 (c) The administrator shall organize and direct the
139 agency's ongoing functions, maintain an ongoing liaison with the
140 board members and the staff, employ qualified personnel and
141 ensure adequate staff education and evaluations, ensure the
142 accuracy of public informational materials and activities,
143 implement an effective budgeting and accounting system, and
144 ensure that the home health agency operates in compliance with
145 this part and part II of chapter 408 and rules adopted for these

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146 laws.

147 (d) The administrator shall clearly set forth in writing
148 the organizational chart, services furnished, administrative
149 control, and lines of authority for the delegation of
150 responsibilities for patient care. These responsibilities must
151 be readily identifiable. Administrative and supervisory
152 functions may not be delegated to another agency or
153 organization, and the primary home health agency shall monitor
154 and control all services that are not furnished directly,
155 including services provided through contracts.

156 (2) DIRECTOR OF NURSING.—

157 (a) A director of nursing may be the director of nursing
158 for:

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

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

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

166 b. All of the home health agencies are located within one
167 agency geographic service area or within an immediately
168 contiguous county; ~~and~~

169 c. Each home health agency has a registered nurse who meets
170 the qualifications of a director of nursing and who has a
171 written delegation from the director of nursing to serve as the
172 director of nursing for that home health agency when the
173 director of nursing is not present; ~~and-~~

174 d. This person, or similarly qualified alternate, is

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175 available at all times during operating hours and participates
176 in all activities relevant to the professional services
177 furnished, including, but not limited to, the oversight of
178 nursing services, home health aides, and certified nursing
179 assistants, and assignment of personnel.

180

181 If a home health agency licensed under this chapter is part of a
182 retirement community that provides multiple levels of care, an
183 employee of the retirement community may serve as the director
184 of nursing of the home health agency and up to a maximum of four
185 entities, other than home health agencies, licensed under this
186 chapter or chapter 429 which all have identical controlling
187 interests as defined in s. 408.803.

188 (b) A home health agency that provides skilled nursing care
189 may not operate for more than 30 calendar days without a
190 director of nursing. A home health agency that provides skilled
191 nursing care and the director of nursing of a home health agency
192 must notify the agency within 10 business days after termination
193 of the services of the director of nursing for the home health
194 agency. A home health agency that provides skilled nursing care
195 must notify the agency of the identity and qualifications of the
196 new director of nursing within 10 days after the new director is
197 hired. If a home health agency that provides skilled nursing
198 care operates for more than 30 calendar days without a director
199 of nursing, the home health agency commits a class II
200 deficiency. In addition to the fine for a class II deficiency,
201 the agency may issue a moratorium in accordance with s. 408.814
202 or revoke the license. The agency shall fine a home health
203 agency that fails to notify the agency as required in this

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204 paragraph \$1,000 for the first violation and \$2,000 for a repeat
205 violation. The agency may not take administrative action against
206 a home health agency if the director of nursing fails to notify
207 the department upon termination of services as the director of
208 nursing for the home health agency.

209 (c) A home health agency that is not Medicare or Medicaid
210 certified and does not provide skilled care or provides only
211 physical, occupational, or speech therapy is not required to
212 have a director of nursing and is exempt from paragraph (b).

213 (3) TRAINING.—A home health agency shall ensure that each
214 certified nursing assistant employed by or under contract with
215 the home health agency and each home health aide employed by or
216 under contract with the home health agency is adequately trained
217 to perform the tasks of a home health aide in the home setting.

218 (a) The home health agency may not use as a home health
219 aide on a full-time, temporary, per diem, or other basis, any
220 individual to provide services unless the individual has
221 completed a training and competency evaluation program, or a
222 competency evaluation program, as permitted in s. 400.497, which
223 meets the minimum standards established by the agency in state
224 rules.

225 (b) A home health aide is not competent in any task for
226 which he or she is evaluated as "unsatisfactory." The aide must
227 perform any such task only under direct supervision by a
228 licensed nurse until he or she receives training in the task and
229 satisfactorily passes a subsequent evaluation in performing the
230 task. A home health aide has not successfully passed a
231 competency evaluation if the aide does not have a passing score
232 on the test as specified by agency rule.

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233 (4) STAFFING.—Staffing services may be provided anywhere
234 within the state.

235 (5) PERSONNEL.—

236 (a) The home health agency and its staff must comply with
237 accepted professional standards and principles that apply to
238 professionals, including, but not limited to, the state practice
239 acts and the home health agency's policies and procedures.

240 (b) If personnel under hourly or per-visit contracts are
241 used by the home health agency, there must be a written contract
242 between those personnel and the agency which specifies the
243 following requirements:

244 1. Acceptance for care only of patients by the primary home
245 health agency.

246 2. The services to be furnished.

247 3. The necessity to conform to all applicable agency
248 policies, including personnel qualifications.

249 4. The responsibility for participating in developing plans
250 of care.

251 5. The manner in which services are controlled,
252 coordinated, and evaluated by the primary home health agency.

253 6. The procedures for submitting clinical and progress
254 notes, scheduling of visits, and periodic patient evaluation.

255 7. The procedures for payment for services furnished under
256 the contract.

257 (c) A home health agency shall directly provide at least
258 one of the types of services through home health agency
259 employees, but may provide additional services under
260 arrangements with another agency or organization. Services
261 furnished under such arrangements must have a written contract

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262 conforming to the requirements specified in paragraph (b).

263 (d) If home health aide services are provided by an
264 individual who is not employed directly by the home health
265 agency, the services of the home health aide must be provided
266 under arrangements as stated in paragraphs (b) and (c). If the
267 home health agency chooses to provide home health aide services
268 under arrangements with another organization, the
269 responsibilities of the home health agency include, but are not
270 limited to:

271 1. Ensuring the overall quality of the care provided by the
272 aide;

273 2. Supervising the aide's services as described in s.
274 400.487; and

275 3. Ensuring that each home health aide providing services
276 under arrangements with another organization has met the
277 training requirements or competency evaluation requirements of
278 s. 400.497.

279 (e) The home health agency shall coordinate the efforts of
280 all personnel furnishing services, and the personnel shall
281 maintain communication with the home health agency to ensure
282 that personnel efforts support the objectives outlined in the
283 plan of care. The clinical record or minutes of case conferences
284 shall ensure that effective interchange, reporting, and
285 coordination of patient care occurs.

286 Section 10. Section 400.487, Florida Statutes, is amended
287 to read:

288 400.487 Home health service agreements; physician's,
289 physician assistant's, and advanced registered nurse
290 practitioner's treatment orders; patient assessment;

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291 establishment and review of plan of care; provision of services;
292 orders not to resuscitate.-

293 (1) Services provided by a home health agency must be
294 covered by an agreement between the home health agency and the
295 patient or the patient's legal representative specifying the
296 home health services to be provided, the rates or charges for
297 services paid with private funds, and the sources of payment,
298 which may include Medicare, Medicaid, private insurance,
299 personal funds, or a combination thereof. The home health agency
300 shall provide a copy of the agreement to the patient or the
301 patient's legal representative. A home health agency providing
302 skilled care must make an assessment of the patient's needs
303 within 48 hours after the start of services.

304 (2) When required by the provisions of chapter 464; part I,
305 part III, or part V of chapter 468; or chapter 486, the
306 attending physician, physician assistant, or advanced registered
307 nurse practitioner, acting within his or her respective scope of
308 practice, shall establish treatment orders for a patient who is
309 to receive skilled care. The treatment orders must be signed by
310 the physician, physician assistant, or advanced registered nurse
311 practitioner before a claim for payment for the skilled services
312 is submitted by the home health agency. If the claim is
313 submitted to a managed care organization, the treatment orders
314 must be signed within the time allowed under the provider
315 agreement. The treatment orders shall be reviewed, as frequently
316 as the patient's illness requires, by the physician, physician
317 assistant, or advanced registered nurse practitioner in
318 consultation with the home health agency.

319 (3) A home health agency shall arrange for supervisory

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320 visits by a registered nurse to the home of a patient receiving
321 home health aide services as specified in subsection (9) ~~in~~
322 ~~accordance with the patient's direction, approval, and agreement~~
323 ~~to pay the charge for the visits.~~

324 (4) The home health agency shall protect and promote the
325 rights of each individual under its care, including each of the
326 following rights:

327 (a) Notice of rights.—The home health agency shall provide
328 the patient with a written notice of the patient's rights in
329 advance of furnishing care to the patient or during the initial
330 evaluation visit before the initiation of treatment. The home
331 health agency must maintain documentation showing that it has
332 complied with the requirements of this section.

333 (b) Exercise of rights and respect for property and
334 person.—

335 1. The patient has the right to exercise his or her rights
336 as a patient of the home health agency.

337 2. The patient has the right to have his or her property
338 treated with respect.

339 3. The patient has the right to voice grievances regarding
340 treatment or care that is or fails to be furnished, or regarding
341 the lack of respect for property by anyone who is furnishing
342 services on behalf of the home health agency, and not be
343 subjected to discrimination or reprisal for doing so.

344 4. The home health agency must investigate complaints made
345 by a patient or the patient's family or guardian regarding
346 treatment or care that is or fails to be furnished, or regarding
347 the lack of respect for the patient's property by anyone
348 furnishing services on behalf of the home health agency. The

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349 home health agency shall document the existence of the complaint
350 and its resolution.

351 5. The patient and his or her immediate family or
352 representative must be informed of the right to report
353 complaints via the statewide toll-free telephone number to the
354 agency as required in s. 408.810.

355 (c) Right to be informed and to participate in planning
356 care and treatment.-

357 1. The patient has the right to be informed, in advance,
358 about the care to be furnished and of any changes in the care to
359 be furnished. The home health agency shall advise the patient in
360 advance of which disciplines will furnish care and the frequency
361 of visits proposed to be furnished. The home health agency must
362 advise the patient in advance of any change in the plan of care
363 before the change is made.

364 2. The patient has the right to participate in the planning
365 of the care. The home health agency must advise the patient in
366 advance of the right to participate in planning the care or
367 treatment and in planning changes in the care or treatment. Each
368 ~~patient has the right to be informed of and to participate in~~
369 ~~the planning of his or her care.~~ Each patient must be provided,
370 upon request, a copy of the plan of care established and
371 maintained for that patient by the home health agency.

372 (5) When nursing services are ordered, the home health
373 agency to which a patient has been admitted for care must
374 provide the initial admission visit, all service evaluation
375 visits, and the discharge visit by a direct employee. Services
376 provided by others under contractual arrangements to a home
377 health agency must be monitored and managed by the admitting

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378 home health agency. The admitting home health agency is fully
379 responsible for ensuring that all care provided through its
380 employees or contract staff is delivered in accordance with this
381 part and applicable rules.

382 (6) The skilled care services provided by a home health
383 agency, directly or under contract, must be supervised and
384 coordinated in accordance with the plan of care. The home health
385 agency shall furnish skilled nursing services by or under the
386 supervision of a registered nurse and in accordance with the
387 plan of care. Any therapy services offered directly or under
388 arrangement by the home health agency must be provided by a
389 qualified therapist or by a qualified therapy assistant under
390 the supervision of a qualified therapist and in accordance with
391 the plan of care.

392 (a) Duties and qualifications.—A qualified therapist shall
393 assist the physician in evaluating the level of function, help
394 develop or revise the plan of care, prepare clinical and
395 progress notes, advise and consult with the family and other
396 agency personnel, and participate in in-service programs. The
397 therapist or therapy assistant must meet the qualifications in
398 the state practice acts and related applicable rules.

399 (b) Physical therapy assistants and occupational therapy
400 assistants.—Services provided by a physical therapy assistant or
401 occupational therapy assistant must be under the supervision of
402 a qualified physical therapist or occupational therapist as
403 required in chapter 486 and part III of chapter 468,
404 respectively, and related applicable rules. A physical therapy
405 assistant or occupational therapy assistant shall perform
406 services planned, delegated, and supervised by the therapist,

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407 assist in preparing clinical notes and progress reports,
408 participate in educating the patient and his or her family, and
409 participate in in-service programs.

410 (c) *Speech therapy services.*—Speech therapy services shall
411 be furnished only by or under supervision of a qualified speech
412 pathologist or audiologist as required in part I of chapter 468
413 and related applicable rules.

414 (d) *Care follows a written plan of care.*—The plan of care
415 shall be reviewed by the physician or health professional who
416 provided the treatment orders pursuant to subsection (2) and
417 home health agency personnel as often as the severity of the
418 patient's condition requires, but at least once every 60 days or
419 more when there is a patient-elected transfer, a significant
420 change in condition, or a discharge and return to the same home
421 health agency during the 60-day episode. Professional staff of a
422 home health agency shall promptly alert the physician or other
423 health professional who provided the treatment orders of any
424 change that suggests a need to alter the plan of care.

425 (e) *Administration of drugs and treatment.*—Only
426 professional staff of a home health agency may administer drugs
427 and treatments as ordered by the physician or health
428 professional pursuant to subsection (2), with the exception of
429 influenza and pneumococcal polysaccharide vaccines, which may be
430 administered according to the policy of the home health agency
431 developed in consultation with a physician and after an
432 assessment for contraindications. Verbal orders shall be in
433 writing and signed and dated with the date of receipt by the
434 registered nurse or qualified therapist who is responsible for
435 furnishing or supervising the ordered service. A verbal order

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436 may be accepted only by personnel who are authorized to do so by
437 applicable state laws, rules, and internal policies of the home
438 health agency.

439 (7) A registered nurse shall conduct the initial evaluation
440 visit, regularly reevaluate the patient's nursing needs,
441 initiate the plan of care and necessary revisions, furnish those
442 services requiring substantial and specialized nursing skill,
443 initiate appropriate preventive and rehabilitative nursing
444 procedures, prepare clinical and progress notes, coordinate
445 services, inform the physician and other personnel of changes in
446 the patient's condition and needs, counsel the patient and his
447 or her family in meeting nursing and related needs, participate
448 in in-service programs, and supervise and teach other nursing
449 personnel, unless the home health agency providing the home
450 health aide services is not Medicare-certified or Medicaid-
451 certified and does not provide skilled care.

452 (8) A licensed practical nurse shall furnish services in
453 accordance with agency policies, prepare clinical and progress
454 notes, assist the physician and registered nurse in performing
455 specialized procedures, prepare equipment and materials for
456 treatments observing aseptic technique as required, and assist
457 the patient in learning appropriate self-care techniques.

458 (9) A home health aide and certified nursing assistant
459 shall provide services that are in the service provision plan
460 provided in s. 400.491 and other services that the home health
461 aide or certified nursing assistant is permitted to perform
462 under state law. The duties of a home health aide or certified
463 nursing assistant include the provision of hands-on personal
464 care, performance of simple procedures as an extension of

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465 therapy or nursing services, assistance in ambulation or
466 exercises, and assistance in administering medications that are
467 ordinarily self-administered and are specified in agency rules.
468 Any services by a home health aide which are offered by a home
469 health agency must be provided by a qualified home health aide
470 or certified nursing assistant.

471 (a) Assignment and duties.—A home health aide or certified
472 nursing assistant shall be assigned to a specific patient by a
473 registered nurse, unless the home health agency providing the
474 home health aide services is not Medicare-certified or Medicaid-
475 certified and does not provide skilled care. Written patient
476 care instructions for the home health aide and certified nursing
477 assistant must be prepared by the registered nurse or other
478 appropriate professional who is responsible for the supervision
479 of the home health aide and certified nursing assistant as
480 stated in this section.

481 (b) Supervision.—If a patient receives skilled nursing
482 care, the registered nurse shall perform the supervisory visit.
483 If the patient is not receiving skilled nursing care but is
484 receiving physical therapy, occupational therapy, or speech-
485 language pathology services, the appropriate therapist may
486 provide the supervision. A registered nurse or other
487 professional must make an onsite visit to the patient's home at
488 least once every 2 weeks. The visit is not required while the
489 aide is providing care.

490 (c) Supervising visits.—If home health aide services are
491 provided to a patient who is not receiving skilled nursing care,
492 physical or occupational therapy, or speech-language pathology
493 services, a registered nurse must make a supervisory visit to

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494 the patient's home at least once every 60 days, unless the home
495 health agency providing the home health aide services is not
496 Medicare or Medicaid certified and does not provide skilled
497 care, either directly or through contracts. The registered nurse
498 shall ensure that the aide is properly caring for the patient
499 and each supervisory visit must occur while the home health aide
500 is providing patient care. In addition to the requirements in
501 this subsection, a home health agency shall arrange for
502 additional supervisory visits by a registered nurse to the home
503 of a patient receiving home health aide services in accordance
504 with the patient's direction, approval, and agreement to pay the
505 charge for the visits.

506 (10)~~(7)~~ Home health agency personnel may withhold or
507 withdraw cardiopulmonary resuscitation if presented with an
508 order not to resuscitate executed pursuant to s. 401.45. The
509 agency shall adopt rules providing for the implementation of
510 such orders. Home health personnel and agencies shall not be
511 subject to criminal prosecution or civil liability, nor be
512 considered to have engaged in negligent or unprofessional
513 conduct, for withholding or withdrawing cardiopulmonary
514 resuscitation pursuant to such an order and rules adopted by the
515 agency.

516 Section 11. Subsection (11) of section 408.802, Florida
517 Statutes, is repealed.

518 Section 12. Paragraphs (e), (f), and (g) of subsection (15)
519 of section 409.912, Florida Statutes, are repealed.

520 Section 13. Subsection (2) of section 429.12, Florida
521 Statutes, is repealed.

522 Section 14. Subsection (5) of section 429.23, Florida

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523 Statutes, is repealed.

524 Section 15. Paragraph (a) of subsection (2) of section
525 429.911, Florida Statutes, is repealed.

526 Section 16. This act shall take effect July 1, 2010.