

1 A bill to be entitled
2 An act relating to health care; amending s. 400.461, F.S.;
3 revising the purpose of part IV of ch. 400, F.S., to
4 include the licensure of nurse registries; amending s.
5 400.462, F.S.; revising definitions; defining the terms
6 "admission," "advanced registered nurse practitioner,"
7 "direct employee," and "physician assistant" for purposes
8 of part IV of ch. 400, F.S.; amending s. 400.464, F.S.,
9 relating to licensure of home health agencies; revising
10 the licensure period; revising and providing additional
11 administrative, civil, and criminal penalties, sanctions,
12 and fines; amending s. 400.471, F.S.; revising
13 requirements for license application by a home health
14 agency; authorizing the Agency for Health Care
15 Administration to revoke a license under certain
16 circumstances; authorizing administrative fines; amending
17 s. 400.487, F.S.; revising requirements for home health
18 agency service agreements and treatment orders; amending
19 s. 400.491, F.S., relating to clinical records; revising
20 the ownership of patient records generated by a home
21 health agency; changing the timeframe for a home health
22 agency to retain patient records; providing for the
23 disposition of patient records when a home health agency
24 ceases business; deleting a requirement for a service
25 provision plan pertaining to nonskilled care; deleting
26 requirements for maintaining such records; amending s.
27 400.494, F.S.; providing for the continued confidentiality
28 of patient information in compliance with federal law;

29 providing for disclosure in accordance with certain
30 specified state laws; deleting a requirement for written
31 consent of the patient or the patient's guardian for
32 disclosure of confidential patient information; deleting
33 an exemption provided for the Medicaid Fraud Control Unit
34 of the Department of Legal Affairs; amending s. 400.506,
35 F.S.; revising requirements governing nurse registries;
36 increasing license fee; increasing the period of
37 licensure; authorizing administrative penalties; revising
38 criminal penalties and sanctions; revising certain
39 requirements pertaining to health care professionals that
40 provide services on behalf of a nurse registry; amending
41 s. 400.512, F.S., relating to employment screening;
42 revising the date on which an annual affidavit must be
43 signed which verifies that certain personnel of a home
44 health agency, a nurse registry, or homemaker service have
45 been screened; amending s. 400.515, F.S.; providing
46 additional circumstances under which the agency may
47 petition for an injunction; providing an effective date.

48
49 Be It Enacted by the Legislature of the State of Florida:

50
51 Section 1. Subsection (2) of section 400.461, Florida
52 Statutes, is amended to read:

53 400.461 Short title; purpose.--

54 (2) The purpose of this part is to provide for the
55 licensure of every home health agency and nurse registry and to
56 provide for the development, establishment, and enforcement of

57 basic standards that will ensure the safe and adequate care of
 58 persons receiving health services in their own homes.

59 Section 2. Section 400.462, Florida Statutes, is amended
 60 to read:

61 400.462 Definitions.--As used in this part, the term:

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

83 (2) "Admission" means a decision by the home health
 84 agency, during or after an evaluation visit to the patient's

85 home, that there is reasonable expectation that the patient's
 86 medical, nursing, and social needs for skilled care can be
 87 adequately met by the agency in the patient's place of
 88 residence.

89 (3) "Advanced registered nurse practitioner" means a
 90 person licensed in this state to practice professional nursing
 91 and certified in advanced or specialized nursing practice, as
 92 defined in s. 464.003.

93 (4)(2) "Agency" means the Agency for Health Care
 94 Administration.

95 (5)(3) "Certified nursing assistant" means any person who
 96 has been issued a certificate under part II of chapter 464. The
 97 licensed home health agency or licensed nurse registry shall
 98 ensure that the certified nursing assistant or home health aide
 99 employed by or under contract with the home health agency or
 100 licensed nurse registry is adequately trained to perform the
 101 tasks of a home health aide in the home setting.

102 (6)(4) "Client" means an elderly, handicapped, or
 103 convalescent individual who receives ~~personal care services,~~
 104 ~~companion services,~~ or homemaker services in the individual's
 105 home or place of residence.

106 (7)(5) "Companion" or "sitter" means a person who spends
 107 time with ~~eares for~~ an elderly, handicapped, or convalescent
 108 individual and accompanies such individual on trips and outings
 109 and may prepare and serve meals to such individual. A companion
 110 may not provide hands-on personal care to a client.

111 (8)(6) "Department" means the Department of Children and
 112 Family Services.

113 (9) "Direct employee" means an employee for whom one of
 114 the following entities pays withholding taxes: a home health
 115 agency; a management company that has a contract to manage the
 116 home health agency on a day-to-day basis; or an employee leasing
 117 company that has a contract with the home health agency to
 118 handle the payroll and payroll taxes for the home health agency.

119 ~~(10)(7)~~ "Director of nursing" means a registered nurse who
 120 is a ~~and~~ direct employee, as defined in subsection (9), of the
 121 agency and ~~or related business entity~~ who is a graduate of an
 122 approved school of nursing and is licensed in this state; who
 123 has at least 1 year of supervisory experience as a registered
 124 nurse ~~in a licensed home health agency, a facility licensed~~
 125 ~~under chapter 395, or a facility licensed under part II or part~~
 126 ~~III of this chapter;~~ and who is responsible for overseeing the
 127 professional nursing and home health aid delivery of services of
 128 the agency. A director of nursing ~~An employee~~ may be the
 129 director ~~of nursing~~ of a maximum of five licensed home health
 130 agencies operated by a related business entity and located
 131 within one agency service district or within an immediately
 132 contiguous county. If the home health agency is licensed under
 133 this chapter and is part of a retirement community that provides
 134 multiple levels of care, an employee of the retirement community
 135 may serve as the director of nursing of the home health agency
 136 and of up to four entities licensed under this chapter which are
 137 owned, operated, or managed by the same corporate entity. A
 138 ~~director of nursing shall designate, in writing, for each~~
 139 ~~licensed entity, a qualified alternate registered nurse to serve~~
 140 ~~during the absence of the director of nursing.~~

141 ~~(11)(8)~~ "Home health agency" means an organization that
 142 provides home health services and staffing services.

143 ~~(12)(9)~~ "Home health agency personnel" means persons who
 144 are employed by or under contract with a home health agency and
 145 enter the home or place of residence of patients at any time in
 146 the course of their employment or contract.

147 ~~(13)(10)~~ "Home health services" means health and medical
 148 services and medical supplies furnished by an organization to an
 149 individual in the individual's home or place of residence. The
 150 term includes organizations that provide one or more of the
 151 following:

- 152 (a) Nursing care.
- 153 (b) Physical, occupational, respiratory, or speech
 154 therapy.
- 155 (c) Home health aide services.
- 156 (d) Dietetics and nutrition practice and nutrition
 157 counseling.
- 158 (e) Medical supplies, restricted to drugs and biologicals
 159 prescribed by a physician.

160 ~~(14)(11)~~ "Home health aide" means a person who is trained
 161 or qualified, as provided by rule, and who provides hands-on
 162 personal care, performs simple procedures as an extension of
 163 therapy or nursing services, assists in ambulation or exercises,
 164 or assists in administering medications as permitted in rule and
 165 for which the person has received training established by the
 166 agency under s. 400.497(1).

167 ~~(15)(12)~~ "Homemaker" means a person who performs household
 168 chores that include housekeeping, meal planning and preparation,

169 shopping assistance, and routine household activities for an
 170 elderly, handicapped, or convalescent individual. A homemaker
 171 may not provide hands-on personal care to a client.

172 (16)~~(13)~~ "Home infusion therapy provider" means an
 173 organization that employs, contracts with, or refers a licensed
 174 professional who has received advanced training and experience
 175 in intravenous infusion therapy and who administers infusion
 176 therapy to a patient in the patient's home or place of
 177 residence.

178 (17)~~(14)~~ "Home infusion therapy" means the administration
 179 of intravenous pharmacological or nutritional products to a
 180 patient in his or her home.

181 (18)~~(15)~~ "Nurse registry" means any person that procures,
 182 offers, promises, or attempts to secure health-care-related
 183 contracts for registered nurses, licensed practical nurses,
 184 certified nursing assistants, home health aides, companions, or
 185 homemakers, who are compensated by fees as independent
 186 contractors, including, but not limited to, contracts for the
 187 provision of services to patients and contracts to provide
 188 private duty or staffing services to health care facilities
 189 licensed under chapter 395 or this chapter or other business
 190 entities.

191 (19)~~(16)~~ "Organization" means a corporation, government or
 192 governmental subdivision or agency, partnership or association,
 193 or any other legal or commercial entity, any of which involve
 194 more than one health care professional discipline; ~~or~~ a health
 195 care professional and a home health aide or certified nursing
 196 assistant; more than one home health aide; more than one

197 certified nursing assistant; or a home health aide and a
 198 certified nursing assistant. The term does not include an entity
 199 that provides services using only volunteers or only individuals
 200 related by blood or marriage to the patient or client.

201 ~~(20)(17)~~ "Patient" means any person who receives home
 202 health services in his or her home or place of residence.

203 ~~(21)(18)~~ "Personal care" means assistance to a patient in
 204 the activities of daily living, such as dressing, bathing,
 205 eating, or personal hygiene, and assistance in physical
 206 transfer, ambulation, and in administering medications as
 207 permitted by rule.

208 ~~(22)(19)~~ "Physician" means a person licensed under chapter
 209 458, chapter 459, chapter 460, or chapter 461.

210 ~~(23)~~ "Physician assistant" means a person who is a
 211 graduate of an approved program or its equivalent, or meets
 212 standards approved by the boards, and is licensed to perform
 213 medical services delegated by the supervising physician, as
 214 defined in s. 458.347 or s. 459.022.

215 ~~(24)(20)~~ "Skilled care" means nursing services or
 216 therapeutic services required by law to be delivered by a health
 217 care professional who is licensed under part I of chapter 464;
 218 part I, part III, or part V of chapter 468; or chapter 486 and
 219 who is employed by or under contract with a licensed home health
 220 agency or is referred by a licensed nurse registry.

221 ~~(25)(21)~~ "Staffing services" means services provided to a
 222 health care facility or other business entity on a temporary
 223 basis by licensed health care personnel and by, ~~including~~
 224 certified nursing assistants and home health aides who are

225 employed by, or work under the auspices of, a licensed home
 226 health agency or who are registered with a licensed nurse
 227 registry. Staffing services may be provided anywhere within the
 228 state.

229 Section 3. Subsections (1) and (4) of section 400.464,
 230 Florida Statutes, are amended to read:

231 400.464 Home health agencies to be licensed; expiration of
 232 license; exemptions; unlawful acts; penalties.--

233 (1) Any home health agency must be licensed by the agency
 234 to operate in this state. A license issued to a home health
 235 agency, unless sooner suspended or revoked, expires 2 years ±
 236 ~~year~~ after its date of issuance.

237 (4)(a) An organization may not provide, offer, or
 238 advertise home health services to the public unless the
 239 organization has a valid license or is specifically exempted
 240 under this part. An organization that offers or advertises to
 241 the public any service for which licensure or registration is
 242 required under this part must include in the advertisement the
 243 license number or registration ~~regulation~~ number issued to the
 244 organization by the agency. The agency shall assess a fine of
 245 not less than \$100 to any licensee or registrant who fails to
 246 include the license or registration number when submitting the
 247 advertisement for publication, broadcast, or printing. The fine
 248 for a second or subsequent offense is \$500. The holder of a
 249 license issued under this part may not advertise or indicate to
 250 the public that it holds a home health agency or nurse registry
 251 license other than the one it has been issued.

252 (b) The operation or maintenance of an unlicensed home

253 health agency or the performance of any home health services in
 254 violation of this part is declared a nuisance, inimical to the
 255 public health, welfare, and safety. The agency or any state
 256 attorney may, in addition to other remedies provided in this
 257 part, bring an action for an injunction to restrain such
 258 violation, or to enjoin the future operation or maintenance of
 259 the home health agency or the provision of home health services
 260 in violation of this part, until compliance with this part or
 261 the rules adopted under this part has been demonstrated to the
 262 satisfaction of the agency.

263 (c)~~(b)~~ A person who violates paragraph (a) is subject to
 264 an injunctive proceeding under s. 400.515. A violation of
 265 paragraph (a) is a deceptive and unfair trade practice and
 266 constitutes a violation of the Florida Deceptive and Unfair
 267 Trade Practices Act under part II of chapter 501.

268 (d)~~(e)~~ A person who violates the provisions of paragraph
 269 (a) commits a felony ~~misdemeanor~~ of the third ~~second~~ degree,
 270 punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s.
 271 775.084. Any person who commits a second or subsequent violation
 272 ~~commits a misdemeanor of the first degree, punishable as~~
 273 ~~provided in s. 775.082 or s. 775.083.~~ Each day of continuing
 274 violation constitutes a separate offense.

275 (e) Any person who owns, operates, or maintains an
 276 unlicensed home health agency and who, within 10 working days
 277 after receiving notification from the agency, fails to cease
 278 operation and apply for a license under this part commits a
 279 felony of the third degree, punishable as provided in s.
 280 775.082, s. 775.083, or s. 775.084. Each day of continued

281 operation is a separate offense.

282 (f) Any home health agency that fails to cease operation
 283 after agency notification may be fined \$500 for each day of
 284 noncompliance.

285 Section 4. Section 400.471, Florida Statutes, is amended
 286 to read:

287 400.471 Application for license; fee; provisional license;
 288 temporary permit.--

289 (1) Application for an initial license or for renewal of
 290 an existing license must be made under oath to the agency on
 291 forms furnished by it and must be accompanied by the appropriate
 292 license fee as provided in subsection (10) ~~(8)~~. The agency must
 293 take final action on an initial licensure application within 60
 294 days after receipt of all required documentation.

295 (2) The initial applicant must file with the application
 296 satisfactory proof that the home health agency is in compliance
 297 with this part and applicable rules, including:

298 (a) A listing of services to be provided, ~~either directly~~
 299 ~~by the applicant or through contractual arrangements with~~
 300 ~~existing providers;~~

301 (b) The number and discipline of professional staff to be
 302 employed, ~~;~~ ~~and~~

303 (c) Proof of financial ability to operate.

304 (d) Completion of questions concerning volume data on the
 305 renewal application as determined by rule.

306 (3) An applicant for initial licensure must demonstrate
 307 financial ability to operate by submitting a balance sheet and
 308 income and expense statement for the first 2 years of operation

309 which provide evidence of having sufficient assets, credit, and
 310 projected revenues to cover liabilities and expenses. The
 311 applicant shall have demonstrated financial ability to operate
 312 if the applicant's assets, credit, and projected revenues meet
 313 or exceed projected liabilities and expenses. All documents
 314 required under this subsection must be prepared in accordance
 315 with generally accepted accounting principles, and must be
 316 compiled ~~the financial statement must be signed~~ by a certified
 317 public accountant.

318 (4) Each applicant for licensure must comply with the
 319 following requirements:

320 (a) Upon receipt of a completed, signed, and dated
 321 application, the agency shall require background screening of
 322 the applicant, in accordance with the level 2 standards for
 323 screening set forth in chapter 435. As used in this subsection,
 324 the term "applicant" means the administrator, or a similarly
 325 titled person who is responsible for the day-to-day operation of
 326 the licensed home health agency, and the financial officer, or
 327 similarly titled individual who is responsible for the financial
 328 operation of the licensed home health agency.

329 (b) The agency may require background screening for a
 330 member of the board of directors of the licensee or an officer
 331 or an individual owning 5 percent or more of the licensee if the
 332 agency reasonably suspects that such individual has been
 333 convicted of an offense prohibited under the level 2 standards
 334 for screening set forth in chapter 435.

335 (c) Proof of compliance with the level 2 background
 336 screening requirements of chapter 435 which has been submitted

337 within the previous 5 years in compliance with any other health
338 care or assisted living licensure requirements of this state is
339 acceptable in fulfillment of paragraph (a). Proof of compliance
340 with background screening which has been submitted within the
341 previous 5 years to fulfill the requirements of the Financial
342 Services Commission and the Office of Insurance Regulation
343 pursuant to chapter 651 as part of an application for a
344 certificate of authority to operate a continuing care retirement
345 community is acceptable in fulfillment of the Department of Law
346 Enforcement and Federal Bureau of Investigation background
347 check.

348 (d) A provisional license may be granted to an applicant
349 when each individual required by this section to undergo
350 background screening has met the standards for the Department of
351 Law Enforcement background check, but the agency has not yet
352 received background screening results from the Federal Bureau of
353 Investigation. A standard license may be granted to the licensee
354 upon the agency's receipt of a report of the results of the
355 Federal Bureau of Investigation background screening for each
356 individual required by this section to undergo background
357 screening which confirms that all standards have been met, or
358 upon the granting of a disqualification exemption by the agency
359 as set forth in chapter 435. Any other person who is required to
360 undergo level 2 background screening may serve in his or her
361 capacity pending the agency's receipt of the report from the
362 Federal Bureau of Investigation. However, the person may not
363 continue to serve if the report indicates any violation of
364 background screening standards and a disqualification exemption

365 has not been requested of and granted by the agency as set forth
366 in chapter 435.

367 (e) Each applicant must submit to the agency, with its
368 application, a description and explanation of any exclusions,
369 permanent suspensions, or terminations of the licensee or
370 potential licensee from the Medicare or Medicaid programs. Proof
371 of compliance with the requirements for disclosure of ownership
372 and control interest under the Medicaid or Medicare programs may
373 be accepted in lieu of this submission.

374 (f) Each applicant must submit to the agency a description
375 and explanation of any conviction of an offense prohibited under
376 the level 2 standards of chapter 435 by a member of the board of
377 directors of the applicant, its officers, or any individual
378 owning 5 percent or more of the applicant. This requirement does
379 not apply to a director of a not-for-profit corporation or
380 organization if the director serves solely in a voluntary
381 capacity for the corporation or organization, does not regularly
382 take part in the day-to-day operational decisions of the
383 corporation or organization, receives no remuneration for his or
384 her services on the corporation or organization's board of
385 directors, and has no financial interest and has no family
386 members with a financial interest in the corporation or
387 organization, provided that the director and the not-for-profit
388 corporation or organization include in the application a
389 statement affirming that the director's relationship to the
390 corporation satisfies the requirements of this paragraph.

391 (g) A license may not be granted to an applicant if the
392 applicant, administrator, or financial officer has been found

393 guilty of, regardless of adjudication, or has entered a plea of
 394 nolo contendere or guilty to, any offense prohibited under the
 395 level 2 standards for screening set forth in chapter 435, unless
 396 an exemption from disqualification has been granted by the
 397 agency as set forth in chapter 435.

398 (h) The agency may deny or revoke licensure if the
 399 applicant:

400 ~~1. Has falsely represented a material fact in the~~
 401 ~~application required by paragraph (e) or paragraph (f), or has~~
 402 ~~omitted any material fact from the application required by~~
 403 ~~paragraph (e) or paragraph (f); or~~

404 ~~2. has been or is currently excluded, suspended,~~
 405 ~~terminated from, or has involuntarily withdrawn from~~
 406 ~~participation in this state's Medicaid program, or the Medicaid~~
 407 ~~program of any other state, or from participation in the~~
 408 ~~Medicare program or any other governmental or private health~~
 409 ~~care or health insurance program.~~

410 (i) An application for license renewal must contain the
 411 information required under paragraphs (e) and (f).

412 (5) The agency may deny or revoke licensure if the
 413 applicant has falsely represented a material fact, or has
 414 omitted any material fact, from the application required by this
 415 section.

416 (6)~~(5)~~ The home health agency must also obtain and
 417 maintain the following insurance coverage ~~coverages~~ in an amount
 418 of not less than \$250,000 per claim, and the home health agency
 419 must submit proof of coverage with an initial application for
 420 licensure and with each annual application for license renewal:

421 (a) Malpractice insurance as defined in s. 624.605(1)(k).~~†~~

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

423 (7)(6) ~~Sixty~~ Ninety days before the expiration date, an
 424 application for renewal must be submitted to the agency under
 425 oath on forms furnished by it, and a license must be renewed if
 426 the applicant has met the requirements established under this
 427 part and applicable rules. The home health agency must file with
 428 the application satisfactory proof that it is in compliance with
 429 this part and applicable rules. If there is evidence of
 430 financial instability, the home health agency must submit
 431 satisfactory proof of its financial ability to comply with the
 432 requirements of this part. The agency shall impose an
 433 administrative fine of \$50 per day for each day the home health
 434 agency fails to file an application within the timeframe
 435 specified in this subsection. Each day of continuing violation
 436 is a separate violation; however, the aggregate of such fines
 437 may not exceed \$500.

438 (8)(7) When transferring the ownership of a home health
 439 agency, the transferee must submit an application for a license
 440 at least 60 days before the effective date of the transfer. If
 441 the application is filed late, an administrative fine shall be
 442 imposed in the amount of \$50 per day. Each day of continuing
 443 violation is a separate violation; however, the aggregate of
 444 such fines may not exceed \$500. If the home health agency is
 445 being leased, a copy of the lease agreement must be filed with
 446 the application.

447 (9) The agency shall accept, in lieu of its own periodic
 448 licensure survey, submission of the survey of an accrediting

449 organization that is recognized by the agency if the
 450 accreditation of the licensed home health agency is not
 451 provisional and if the licensed home health agency authorizes
 452 release of, and the agency receives the report of, the
 453 accrediting organization.

454 (10)~~(8)~~ The license fee and ~~annual~~ renewal fee required of
 455 a home health agency are nonrefundable. The agency shall set the
 456 license fees in an amount that is sufficient to cover its costs
 457 in carrying out its responsibilities under this part, but not to
 458 exceed \$2,000 ~~\$1,000~~. However, state, county, or municipal
 459 governments applying for licenses under this part are exempt
 460 from the payment of license fees. All fees collected under this
 461 part must be deposited in the Health Care Trust Fund for the
 462 administration of this part.

463 (11)~~(9)~~ The license must be displayed in a conspicuous
 464 place in the administrative office of the home health agency and
 465 is valid only while in the possession of the person to which it
 466 is issued. The license may not be sold, assigned, or otherwise
 467 transferred, voluntarily or involuntarily, and is valid only for
 468 the home health agency and location for which originally issued.

469 (12)~~(10)~~ A home health agency against whom a revocation or
 470 suspension proceeding is pending at the time of license renewal
 471 may be issued a provisional license effective until final
 472 disposition by the agency of such proceedings. If judicial
 473 relief is sought from the final disposition, the court that has
 474 jurisdiction may issue a temporary permit for the duration of
 475 the judicial proceeding.

476 (13)~~(11)~~ The agency may not issue a license designated as

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477 certified to a home health agency that fails to satisfy the
 478 requirements of a Medicare certification survey from the agency.

479 ~~(14)(12)~~ The agency may not issue a license to a home
 480 health agency that has any unpaid fines assessed under this
 481 part.

482 Section 5. Section 400.487, Florida Statutes, is amended
 483 to read:

484 400.487 Home health service agreements; physician's,
 485 physician assistant's, and advanced registered nurse
 486 practitioner's treatment orders; patient assessment;
 487 establishment and review of plan of care; provision of services;
 488 orders not to resuscitate.--

489 (1) Services provided by a home health agency must be
 490 covered by an agreement between the home health agency and the
 491 patient or the patient's legal representative specifying the
 492 home health services to be provided, the rates or charges for
 493 services paid with private funds, and the sources ~~method~~ of
 494 payment, which may include Medicare, Medicaid, private
 495 insurance, personal funds, or a combination thereof. A home
 496 health agency providing skilled care must make an assessment of
 497 the patient's needs within 48 hours after the start of services.

498 (2) When required by the provisions of chapter 464; part
 499 I, part III, or part V of chapter 468; or chapter 486, the
 500 attending physician, physician assistant, or advanced registered
 501 nurse practitioner, acting within his or her respective scope of
 502 practice, shall ~~for a patient who is to receive skilled care~~
 503 ~~must~~ establish treatment orders for a patient who is to receive
 504 skilled care. The treatment orders must be signed by the

505 physician, physician assistant, or advanced registered nurse
 506 practitioner before a claim for payment for the skilled services
 507 is submitted by the home health agency. If the claim is
 508 submitted to a managed care organization, the treatment orders
 509 must be signed within the time allowed under the provider
 510 agreement. The treatment orders shall ~~within 30 days after the~~
 511 ~~start of care and must~~ be reviewed, as frequently as the
 512 patient's illness requires, by the physician, physician
 513 assistant, or advanced registered nurse practitioner in
 514 consultation with the home health agency ~~personnel that provide~~
 515 ~~services to the patient.~~

516 (3) A home health agency shall arrange for supervisory
 517 visits by a registered nurse to the home of a patient receiving
 518 home health aide services in accordance with the patient's
 519 direction, ~~and approval,~~ and agreement to pay the charge for the
 520 visits.

521 (4) Each patient has the right to be informed of and to
 522 participate in the planning of his or her care. Each patient
 523 must be provided, upon request, a copy of the plan of care
 524 established and maintained for that patient by the home health
 525 agency.

526 (5) When nursing services are ordered, the home health
 527 agency to which a patient has been admitted for care must
 528 provide the initial admission visit, all service evaluation
 529 visits, and the discharge visit by a direct employee ~~qualified~~
 530 ~~personnel who are on the payroll of, and to whom an IRS payroll~~
 531 ~~form W-2 will be issued by, the home health agency.~~ Services
 532 provided by others under contractual arrangements to a home

533 health agency must be monitored and managed by the admitting
 534 home health agency. The admitting home health agency is fully
 535 responsible for ensuring that all care provided through its
 536 employees or contract staff is delivered in accordance with this
 537 part and applicable rules.

538 (6) The skilled care services provided by a home health
 539 agency, directly or under contract, must be supervised and
 540 coordinated in accordance with the plan of care.

541 (7) Home health agency personnel may withhold or withdraw
 542 cardiopulmonary resuscitation if presented with an order not to
 543 resuscitate executed pursuant to s. 401.45. The agency shall
 544 adopt rules providing for the implementation of such orders.
 545 Home health personnel and agencies shall not be subject to
 546 criminal prosecution or civil liability, nor be considered to
 547 have engaged in negligent or unprofessional conduct, for
 548 withholding or withdrawing cardiopulmonary resuscitation
 549 pursuant to such an order and rules adopted by the agency.

550 Section 6. Section 400.491, Florida Statutes, is amended
 551 to read:

552 400.491 Clinical records.--

553 (1) The home health agency must maintain for each patient
 554 who receives skilled care a clinical record that includes
 555 pertinent past and current medical, nursing, social and other
 556 therapeutic information, the treatment orders, and other such
 557 information as is necessary for the safe and adequate care of
 558 the patient. When home health services are terminated, the
 559 record must show the date and reason for termination. Such
 560 records are considered patient records under s. 400.494 ~~s.~~

561 ~~456.057,~~ and must be maintained by the home health agency for 6
 562 ~~5~~ years following termination of services. If a patient
 563 transfers to another home health agency, a copy of his or her
 564 record must be provided to the other home health agency upon
 565 request.

566 (2) If a licensed home health agency ceases to remain in
 567 business, it shall notify each patient whose clinical records it
 568 has in its possession of the fact that it is ceasing operations
 569 and give each patient 15 calendar days to retrieve his or her
 570 clinical record at a specified location within 2 hours' driving
 571 time of the patient's residence between, at a minimum, the hours
 572 of 10 a.m. and 3 p.m. Monday through Friday. The home health
 573 agency must maintain for each client who receives nonskilled
 574 care a service provision plan. Such records must be maintained
 575 by the home health agency for 1 year following termination of
 576 services.

577 Section 7. Section 400.494, Florida Statutes, is amended
 578 to read:

579 400.494 Information about patients confidential.--

580 ~~(1)~~ Information about patients received by persons
 581 employed by, or providing services to, a home health agency or
 582 received by the licensing agency through reports or inspection
 583 shall be confidential and exempt from the provisions of s.
 584 119.07(1) and shall only ~~not~~ be disclosed to any person, other
 585 than the patient, as permitted under the provisions of 45 C.F.R.
 586 ss. 160.102, 160.103, and 164, subpart A, commonly referred to
 587 as the HIPAA Privacy Regulation; except that clinical records
 588 described in ss. 381.004, 384.29, 385.202, 392.65, 394.4615,

589 395.404, 397.501, and 760.40 shall be disclosed as authorized in
 590 those sections ~~without the written consent of that patient or~~
 591 ~~the patient's guardian.~~

592 ~~(2) This section does not apply to information lawfully~~
 593 ~~requested by the Medicaid Fraud Control Unit of the Department~~
 594 ~~of Legal Affairs.~~

595 Section 8. Subsections (3), (5), (7), (8), (10), (13),
 596 (14), and (17) of section 400.506, Florida Statutes, are amended
 597 to read:

598 400.506 Licensure of nurse registries; requirements;
 599 penalties.--

600 (3) Application for license must be made to the Agency for
 601 Health Care Administration on forms furnished by it and must be
 602 accompanied by the appropriate licensure fee, as established by
 603 rule and not to exceed the cost of regulation under this part.
 604 The licensure fee for nurse registries may not exceed \$2,000
 605 ~~\$1,000~~ and must be deposited in the Health Care Trust Fund.

606 (5) A license issued for the operation of a nurse
 607 registry, unless sooner suspended or revoked, expires 2 years ±
 608 ~~year~~ after its date of issuance. Sixty days before the
 609 expiration date, an application for renewal must be submitted to
 610 the Agency for Health Care Administration on forms furnished by
 611 it. The Agency for Health Care Administration shall renew the
 612 license if the applicant has met the requirements of this
 613 section and applicable rules. A nurse registry against which a
 614 revocation or suspension proceeding is pending at the time of
 615 license renewal may be issued a conditional license effective
 616 until final disposition by the Agency for Health Care

617 Administration of such proceedings. If judicial relief is sought
618 from the final disposition, the court having jurisdiction may
619 issue a conditional license for the duration of the judicial
620 proceeding.

621 (7) A person that provides, offers, or advertises to the
622 public ~~that it provides~~ any service for which licensure is
623 required under this section must include in such advertisement
624 the license number issued to it by the Agency for Health Care
625 Administration. The agency shall assess a fine of not less than
626 \$100 against any licensee who fails to include the license
627 number when submitting the advertisement for publication,
628 broadcast, or printing. The fine for a second or subsequent
629 offense is \$500.

630 (8)(a) It is unlawful for a person to provide, offer, or
631 advertise to the public services as defined by rule without
632 obtaining a valid license from the Agency for Health Care
633 Administration. It is unlawful for any holder of a license to
634 advertise or hold out to the public that he or she holds a
635 license for other than that for which he or she actually holds a
636 license. A person who violates this subsection is subject to
637 injunctive proceedings under s. 400.515.

638 (b) A person who violates paragraph (a) commits a felony
639 of the third degree, punishable as provided in s. 775.082, s.
640 775.083, or s. 775.084. Each day of continuing violation is a
641 separate offense.

642 (c) Any person who owns, operates, or maintains an
643 unlicensed nurse registry and who, within 10 working days after
644 receiving notification from the agency, fails to cease operation

645 and apply for a license under this part commits a felony of the
 646 third degree, punishable as provided in s. 775.082, s. 775.083,
 647 or s. 775.084. Each day of continued operation is a separate
 648 offense.

649 (d) If a nurse registry fails to cease operation after
 650 agency notification, the agency may impose a fine of \$500 for
 651 each day of noncompliance.

652 (10)(a) A nurse registry may refer for contract in private
 653 residences registered nurses and licensed practical nurses
 654 registered and licensed under part I of chapter 464, certified
 655 nursing assistants certified under part II of chapter 464, home
 656 health aides who present documented proof of successful
 657 completion of the training required by rule of the agency, and
 658 companions or homemakers for the purposes of providing those
 659 services authorized under s. 400.509(1). Each person referred by
 660 a nurse registry must provide current documentation that he or
 661 she is free from communicable diseases.

662 (b) A certified nursing assistant or home health aide may
 663 be referred for a contract to provide care to a patient in his
 664 or her home only if that patient is under a physician's care. A
 665 certified nursing assistant or home health aide referred for
 666 contract in a private residence shall be limited to assisting a
 667 patient with bathing, dressing, toileting, grooming, eating,
 668 physical transfer, and those normal daily routines the patient
 669 could perform for himself or herself were he or she physically
 670 capable. A certified nursing assistant or home health aide may
 671 not provide medical or other health care services that require
 672 specialized training and that may be performed only by licensed

673 health care professionals. The nurse registry shall obtain the
 674 name and address of the attending physician and send written
 675 notification to the physician within 48 hours after a contract
 676 is concluded that a certified nursing assistant or home health
 677 aide will be providing care for that patient.

678 (c) At the time of contracting for services, the nurse
 679 registry shall advise the patient, the patient's family, or a
 680 person acting on behalf of the patient of the availability of
 681 registered nurses to make visits to the patient's home at an
 682 additional cost. ~~A registered nurse shall make monthly visits to~~
 683 ~~the patient's home to assess the patient's condition and quality~~
 684 ~~of care being provided by the certified nursing assistant or~~
 685 ~~home health aide.~~ Any condition which, in the professional
 686 judgment of the nurse, requires further medical attention shall
 687 be reported to the attending physician and the nurse registry.
 688 The assessment shall become a part of the patient's file with
 689 the nurse registry and may be reviewed by the agency during
 690 their survey procedure.

691 (13) Each nurse registry must comply with the procedures
 692 set forth in s. 400.512 for maintaining records of the work
 693 ~~employment~~ history of all persons referred for contract and is
 694 subject to the standards and conditions set forth in that
 695 section. However, an initial screening may not be required for
 696 persons who have been continuously registered with the nurse
 697 registry since October 1, 2000 ~~September 30, 1990~~.

698 (14) The nurse registry must maintain the application on
 699 file, and that file must be open to the inspection of the Agency
 700 for Health Care Administration. The nurse registry must maintain

701 on file the name and address of the patient or client to whom
 702 ~~the nurse or other~~ nurse registry personnel are referred ~~is sent~~
 703 for contract and the amount of the fee received by the nurse
 704 registry. A nurse registry must maintain the file that includes
 705 the application and other applicable documentation for 3 years
 706 after the date of the last file entry of patient-related or
 707 client-related information.

708 (17) All persons referred for contract in private
 709 residences by a nurse registry must comply with the following
 710 requirements for a plan of treatment:

711 (a) When, in accordance with the privileges and
 712 restrictions imposed upon a nurse under part I of chapter 464,
 713 the delivery of care to a patient is under the direction or
 714 supervision of a physician or when a physician is responsible
 715 for the medical care of the patient, a medical plan of treatment
 716 must be established for each patient receiving care or treatment
 717 provided by a licensed nurse in the home. The original medical
 718 plan of treatment must be timely signed by the physician,
 719 physician assistant, or advanced registered nurse practitioner,
 720 acting within his or her respective scope of practice, and
 721 reviewed ~~by him or her~~ in consultation with the licensed nurse
 722 at least every 2 months. Any additional order or change in
 723 orders must be obtained from the physician, physician assistant,
 724 or advanced registered nurse practitioner and reduced to writing
 725 and timely signed by the physician, physician assistant, or
 726 advanced registered nurse practitioner. The delivery of care
 727 under a medical plan of treatment must be substantiated by the
 728 appropriate nursing notes or documentation made by the nurse in

729 compliance with nursing practices established under part I of
 730 chapter 464.

731 (b) Whenever a medical plan of treatment is established
 732 for a patient, the initial medical plan of treatment, any
 733 amendment to the plan, additional order or change in orders, and
 734 copy of nursing notes must be filed in the office of the nurse
 735 registry.

736 Section 9. Subsection (2) of section 400.512, Florida
 737 Statutes, is amended to read:

738 400.512 Screening of home health agency personnel; nurse
 739 registry personnel; and companions and homemakers.--The agency
 740 shall require employment or contractor screening as provided in
 741 chapter 435, using the level 1 standards for screening set forth
 742 in that chapter, for home health agency personnel; persons
 743 referred for employment by nurse registries; and persons
 744 employed by companion or homemaker services registered under s.
 745 400.509.

746 (2) The administrator of each home health agency, the
 747 managing employee of each nurse registry, and the managing
 748 employee of each companion or homemaker service registered under
 749 s. 400.509 must sign an affidavit annually, under penalty of
 750 perjury, stating that all personnel hired or, contracted with,
 751 or registered on or after October 1, 2000 ~~October 1, 1994~~, who
 752 enter the home of a patient or client in their service capacity
 753 have been screened and ~~that its remaining personnel have worked~~
 754 ~~for the home health agency or registrant continuously since~~
 755 ~~before October 1, 1994.~~

756 Section 10. Section 400.515, Florida Statutes, is amended

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2005

757 to read:

758 400.515 Injunction proceedings.--In addition to the other
759 powers provided under this chapter, the agency may institute
760 injunction proceedings in a court of competent jurisdiction to
761 restrain or prevent the establishment or operation of a home
762 health agency or nurse registry that does not have a license or
763 that is in violation of any provision of this part or any rule
764 adopted pursuant to this part. The agency ~~for Health Care~~
765 ~~Administration~~ may also institute injunction proceedings in a
766 court of competent jurisdiction when violation of this part or
767 of applicable rules constitutes an emergency affecting the
768 immediate health and safety of a patient or client.

769 Section 11. This act shall take effect July 1, 2005.