

Bill No. SB 484

Barcode 231126

Proposed Committee Substitute by the Committee on Health Care

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

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1 requirements for maintaining such records;
2 amending s. 400.494, F.S.; providing for the
3 continued confidentiality of patient
4 information in compliance with federal law;
5 providing for disclosure in accordance with
6 certain specified state laws; deleting a
7 requirement for written consent of the patient
8 or the patient's guardian for disclosure of
9 confidential patient information; amending s.
10 400.506, F.S.; revising requirements governing
11 nurse registries; increasing license fee;
12 increasing the period of licensure; authorizing
13 administrative penalties; providing criminal
14 penalties and sanctions; revising certain
15 requirements pertaining to health care
16 professionals that provide services on behalf
17 of a nurse registry; amending s. 400.512, F.S.,
18 relating to employment screening; revising the
19 date in which an annual affidavit must be
20 signed which verifies that certain personnel of
21 a home health agency, a nurse registry, or
22 homemaker service have been screened; amending
23 s. 400.515, F.S.; providing additional
24 circumstances under which the agency may
25 petition for an injunction; providing an
26 effective date.

27

28 Be It Enacted by the Legislature of the State of Florida:

29

30 Section 1. Subsection (2) of section 400.461, Florida
31 Statutes, is amended to read:

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1 400.461 Short title; purpose.--

2 (2) The purpose of this part is to provide for the
3 licensure of every home health agency and nurse registry and
4 to provide for the development, establishment, and enforcement
5 of basic standards that will ensure the safe and adequate care
6 of persons receiving health services in their own homes.

7 Section 2. Section 400.462, Florida Statutes, is
8 amended to read:

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

10 (1) "Administrator" means a direct employee, as
11 defined in subsection (9) of the home health agency or a
12 related organization, or of a management company that has a
13 contract to manage the home health agency, to whom the
14 governing body has delegated the responsibility for day-to-day
15 administration of the home health agency. The administrator
16 must be a licensed physician, physician assistant, or
17 registered nurse licensed to practice in this state or an
18 individual having at least 1 year of supervisory or
19 administrative experience in home health care or in a facility
20 licensed under chapter 395 or under part II or part III of
21 this chapter. An administrator may manage a maximum of five
22 licensed home health agencies located within one agency
23 service district or within an immediately contiguous county.
24 If the home health agency is licensed under this chapter and
25 is part of a retirement community that provides multiple
26 levels of care, an employee of the retirement community may
27 administer the home health agency and up to a maximum of four
28 entities licensed under this chapter that are owned, operated,
29 or managed by the same corporate entity. An administrator
30 shall designate, in writing, for each licensed entity, a
31 qualified alternate administrator to serve during absences.

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

9 (3) "Advanced registered nurse practitioner" means a
10 person licensed in this state to practice professional nursing
11 and certified in advanced or specialized nursing practice, as
12 defined in s. 464.003.

13 (4)(2) "Agency" means the Agency for Health Care
14 Administration.

15 (5)(3) "Certified nursing assistant" means any person
16 who has been issued a certificate under part II of chapter
17 464. The licensed home health agency or licensed nurse
18 registry shall ensure that the certified nursing assistant
19 employed by or under contract with the home health agency or
20 licensed nurse registry is adequately trained to perform the
21 tasks of a home health aide in the home setting.

22 (6)(4) "Client" means an elderly, handicapped, or
23 convalescent individual who receives ~~personal care services,~~
24 companion services, or homemaker services in the individual's
25 home or place of residence.

26 (7)(5) "Companion" or "sitter" means a person who
27 spends time with ~~cares for~~ an elderly, handicapped, or
28 convalescent individual and accompanies such individual on
29 trips and outings and may prepare and serve meals to such
30 individual. A companion may not provide hands-on personal care
31 to a client.

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1 ~~(8)(6)~~ "Department" means the Department of Children
2 and Family Services.

3 (9) "Direct employee" means an employee for whom one
4 of the following entities pays withholding taxes: a home
5 health agency; a management company that has a contract to
6 manage the home health agency on a day-to-day basis; or an
7 employee leasing company that has a contract with the home
8 health agency to handle the payroll and payroll taxes for the
9 home health agency.

10 ~~(10)(7)~~ "Director of nursing" means a registered nurse
11 who is a ~~and~~ direct employee, as defined in subsection (9), of
12 the agency and ~~or related business entity~~ who is a graduate of
13 an approved school of nursing and is licensed in this state;
14 who has at least 1 year of supervisory experience as a
15 registered nurse ~~in a licensed home health agency, a facility~~
16 ~~licensed under chapter 395, or a facility licensed under part~~
17 ~~II or part III of this chapter;~~ and who is responsible for
18 overseeing the professional nursing and home health aid
19 delivery of services of the agency. A director of nursing ~~An~~
20 ~~employee~~ may be the director ~~of nursing~~ of a maximum of five
21 licensed home health agencies operated by a related business
22 entity and located within one agency service district or
23 within an immediately contiguous county. If the home health
24 agency is licensed under this chapter and is part of a
25 retirement community that provides multiple levels of care, an
26 employee of the retirement community may serve as the director
27 of nursing of the home health agency and of up to four
28 entities licensed under this chapter which are owned,
29 operated, or managed by the same corporate entity. ~~A director~~
30 ~~of nursing shall designate, in writing, for each licensed~~
31 ~~entity, a qualified alternate registered nurse to serve during~~

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1 ~~the absence of the director of nursing.~~

2 ~~(11)(8)~~ "Home health agency" means an organization
3 that provides home health services and staffing services.

4 ~~(12)(9)~~ "Home health agency personnel" means persons
5 who are employed by or under contract with a home health
6 agency and enter the home or place of residence of patients at
7 any time in the course of their employment or contract.

8 ~~(13)(10)~~ "Home health services" means health and
9 medical services and medical supplies furnished by an
10 organization to an individual in the individual's home or
11 place of residence. The term includes organizations that
12 provide one or more of the following:

13 (a) Nursing care.

14 (b) Physical, occupational, respiratory, or speech
15 therapy.

16 (c) Home health aide services.

17 (d) Dietetics and nutrition practice and nutrition
18 counseling.

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

21 ~~(14)(11)~~ "Home health aide" means a person who is
22 trained or qualified, as provided by rule, and who provides
23 hands-on personal care, performs simple procedures as an
24 extension of therapy or nursing services, assists in
25 ambulation or exercises, or assists in administering
26 medications as permitted in rule and for which the person has
27 received training established by the agency under s.
28 400.497(1). The licensed home health agency or licensed nurse
29 registry shall ensure that the home health aide employed by,
30 or under contract with, the home health agency or licensed
31 nurse registry is adequately trained to perform the tasks of a

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1 home health aide in the home setting.

2 ~~(15)(12)~~ "Homemaker" means a person who performs
3 household chores that include housekeeping, meal planning and
4 preparation, shopping assistance, and routine household
5 activities for an elderly, handicapped, or convalescent
6 individual. A homemaker may not provide hands-on personal care
7 to a client.

8 ~~(16)(13)~~ "Home infusion therapy provider" means an
9 organization that employs, contracts with, or refers a
10 licensed professional who has received advanced training and
11 experience in intravenous infusion therapy and who administers
12 infusion therapy to a patient in the patient's home or place
13 of residence.

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

17 ~~(18)(15)~~ "Nurse registry" means any person that
18 procures, offers, promises, or attempts to secure
19 health-care-related contracts for registered nurses, licensed
20 practical nurses, certified nursing assistants, home health
21 aides, companions, or homemakers, who are compensated by fees
22 as independent contractors, including, but not limited to,
23 contracts for the provision of services to patients and
24 contracts to provide private duty or staffing services to
25 health care facilities licensed under chapter 395 or this
26 chapter or other business entities.

27 ~~(19)(16)~~ "Organization" means a corporation,
28 government or governmental subdivision or agency, partnership
29 or association, or any other legal or commercial entity, any
30 of which involve more than one health care professional
31 discipline; ~~or~~ a health care professional and a home health

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1 aide or certified nursing assistant; more than one home health
2 aide; more than one certified nursing assistant; or a home
3 health aide and a certified nursing assistant. The term does
4 not include an entity that provides services using only
5 volunteers or only individuals related by blood or marriage to
6 the patient or client.

7 ~~(20)(17)~~ "Patient" means any person who receives home
8 health services in his or her home or place of residence.

9 ~~(21)(18)~~ "Personal care" means assistance to a patient
10 in the activities of daily living, such as dressing, bathing,
11 eating, or personal hygiene, and assistance in physical
12 transfer, ambulation, and in administering medications as
13 permitted by rule.

14 ~~(22)(19)~~ "Physician" means a person licensed under
15 chapter 458, chapter 459, chapter 460, or chapter 461.

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

21 ~~(24)(20)~~ "Skilled care" means nursing services or
22 therapeutic services required by law to be delivered by a
23 health care professional who is licensed under part I of
24 chapter 464; part I, part III, or part V of chapter 468; or
25 chapter 486 and who is employed by or under contract with a
26 licensed home health agency or is referred by a licensed nurse
27 registry.

28 ~~(25)(21)~~ "Staffing services" means services provided
29 to a health care facility or other business entity on a
30 temporary basis by licensed health care personnel and by
31 ~~including~~ certified nursing assistants and home health aides

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1 who are employed by, or work under the auspices of, a licensed
2 home health agency or who are registered with a licensed nurse
3 registry. Staffing services may be provided anywhere within
4 the state.

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

7 400.464 Home health agencies to be licensed;
8 expiration of license; exemptions; unlawful acts; penalties.--

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

13 (4) (a) An organization may not provide, offer, or
14 advertise home health services to the public unless the
15 organization has a valid license or is specifically exempted
16 under this part. An organization that offers or advertises to
17 the public any service for which licensure or registration is
18 required under this part must include in the advertisement the
19 license number or registration ~~regulation~~ number issued to the
20 organization by the agency. The agency shall assess a fine of
21 not less than \$100 to any licensee or registrant who fails to
22 include the license or registration number when submitting the
23 advertisement for publication, broadcast, or printing. The
24 fine for a second or subsequent offense is \$500. The holder of
25 a license issued under this part may not advertise or indicate
26 to the public that it holds a home health agency or nurse
27 registry license other than the one it has been issued.

28 (b) The operation or maintenance of an unlicensed home
29 health agency or the performance of any home health services
30 in violation of this part is declared a nuisance, inimical to
31 the public health, welfare, and safety. The agency, or any

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1 state attorney may, in addition to other remedies provided in
 2 this part, bring an action for an injunction to restrain such
 3 violation, or to enjoin the future operation or maintenance of
 4 the home health agency or the provision of home health
 5 services in violation of this part, until compliance with this
 6 part or the rules adopted under this part has been
 7 demonstrated to the satisfaction of the agency.

8 (c) (b) A person who violates paragraph (a) is subject
 9 to an injunctive proceeding under s. 400.515. A violation of
 10 paragraph (a) is a deceptive and unfair trade practice and
 11 constitutes a violation of the Florida Deceptive and Unfair
 12 Trade Practices Act under part II of chapter 501.

13 (d) (e) A person who violates the provisions of
 14 paragraph (a) commits a misdemeanor of the second degree,
 15 punishable as provided in s. 775.082 or s. 775.083. Any
 16 person who commits a second or subsequent violation commits a
 17 felony misdemeanor of the third first degree, punishable as
 18 provided in s. 775.082 or s. 775.083. Each day of continuing
 19 violation constitutes a separate offense.

20 (e) Any person who owns, operates, or maintains an
 21 unlicensed home health agency and who, after receiving
 22 notification from the agency, fails to cease operation may be
 23 fined \$500 for each day of noncompliance.

24 Section 4. Section 400.471, Florida Statutes, is
 25 amended to read:

26 400.471 Application for license; fee; provisional
 27 license; temporary permit.--

28 (1) Application for an initial license or for renewal
 29 of an existing license must be made under oath to the agency
 30 on forms furnished by it and must be accompanied by the
 31 appropriate license fee as provided in subsection (8). The

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1 agency must take final action on an initial licensure
2 application within 60 days after receipt of all required
3 documentation.

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

7 (a) A listing of services to be provided, either
8 directly by the applicant or through contractual arrangements
9 with existing providers;

10 (b) The number and discipline of professional staff to
11 be employed; ~~and~~

12 (c) Proof of financial ability to operate; ~~and-~~

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

15 (3) An applicant for initial licensure must
16 demonstrate financial ability to operate by submitting a
17 balance sheet and income and expense statement for the first 2
18 years of operation which provide evidence of having sufficient
19 assets, credit, and projected revenues to cover liabilities
20 and expenses. The applicant shall have demonstrated financial
21 ability to operate if the applicant's assets, credit, and
22 projected revenues meet or exceed projected liabilities and
23 expenses. All documents required under this subsection must
24 be prepared in accordance with generally accepted accounting
25 principles, and must be compiled ~~the financial statement must~~
26 ~~be signed~~ by a certified public accountant.

27 (4) Each applicant for licensure must comply with the
28 following requirements:

29 (a) Upon receipt of a completed, signed, and dated
30 application, the agency shall require background screening of
31 the applicant, in accordance with the level 2 standards for

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1 screening set forth in chapter 435. As used in this
2 subsection, the term "applicant" means the administrator, or a
3 similarly titled person who is responsible for the day-to-day
4 operation of the licensed home health agency, and the
5 financial officer, or similarly titled individual who is
6 responsible for the financial operation of the licensed home
7 health agency.

8 (b) The agency may require background screening for a
9 member of the board of directors of the licensee or an officer
10 or an individual owning 5 percent or more of the licensee if
11 the agency reasonably suspects that such individual has been
12 convicted of an offense prohibited under the level 2 standards
13 for screening set forth in chapter 435.

14 (c) Proof of compliance with the level 2 background
15 screening requirements of chapter 435 which has been submitted
16 within the previous 5 years in compliance with any other
17 health care or assisted living licensure requirements of this
18 state is acceptable in fulfillment of paragraph (a). Proof of
19 compliance with background screening which has been submitted
20 within the previous 5 years to fulfill the requirements of the
21 Financial Services Commission and the Office of Insurance
22 Regulation pursuant to chapter 651 as part of an application
23 for a certificate of authority to operate a continuing care
24 retirement community is acceptable in fulfillment of the
25 Department of Law Enforcement and Federal Bureau of
26 Investigation background check.

27 (d) A provisional license may be granted to an
28 applicant when each individual required by this section to
29 undergo background screening has met the standards for the
30 Department of Law Enforcement background check, but the agency
31 has not yet received background screening results from the

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1 Federal Bureau of Investigation. A standard license may be
2 granted to the licensee upon the agency's receipt of a report
3 of the results of the Federal Bureau of Investigation
4 background screening for each individual required by this
5 section to undergo background screening which confirms that
6 all standards have been met, or upon the granting of a
7 disqualification exemption by the agency as set forth in
8 chapter 435. Any other person who is required to undergo level
9 2 background screening may serve in his or her capacity
10 pending the agency's receipt of the report from the Federal
11 Bureau of Investigation. However, the person may not continue
12 to serve if the report indicates any violation of background
13 screening standards and a disqualification exemption has not
14 been requested of and granted by the agency as set forth in
15 chapter 435.

16 (e) Each applicant must submit to the agency, with its
17 application, a description and explanation of any exclusions,
18 permanent suspensions, or terminations of the licensee or
19 potential licensee from the Medicare or Medicaid programs.
20 Proof of compliance with the requirements for disclosure of
21 ownership and control interest under the Medicaid or Medicare
22 programs may be accepted in lieu of this submission.

23 (f) Each applicant must submit to the agency a
24 description and explanation of any conviction of an offense
25 prohibited under the level 2 standards of chapter 435 by a
26 member of the board of directors of the applicant, its
27 officers, or any individual owning 5 percent or more of the
28 applicant. This requirement does not apply to a director of a
29 not-for-profit corporation or organization if the director
30 serves solely in a voluntary capacity for the corporation or
31 organization, does not regularly take part in the day-to-day

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1 operational decisions of the corporation or organization,
2 receives no remuneration for his or her services on the
3 corporation or organization's board of directors, and has no
4 financial interest and has no family members with a financial
5 interest in the corporation or organization, provided that the
6 director and the not-for-profit corporation or organization
7 include in the application a statement affirming that the
8 director's relationship to the corporation satisfies the
9 requirements of this paragraph.

10 (g) A license may not be granted to an applicant if
11 the applicant, administrator, or financial officer has been
12 found guilty of, regardless of adjudication, or has entered a
13 plea of nolo contendere or guilty to, any offense prohibited
14 under the level 2 standards for screening set forth in chapter
15 435, unless an exemption from disqualification has been
16 granted by the agency as set forth in chapter 435.

17 (h) The agency may deny or revoke licensure if the
18 applicant:

19 ~~1. Has falsely represented a material fact in the~~
20 ~~application required by paragraph (e) or paragraph (f), or has~~
21 ~~omitted any material fact from the application required by~~
22 ~~paragraph (e) or paragraph (f); or~~

23 ~~2. has been or is currently excluded, suspended,~~
24 ~~terminated from, or has involuntarily withdrawn from~~
25 ~~participation in this state's Medicaid program, or the~~
26 ~~Medicaid program of any other state, or from participation in~~
27 ~~the Medicare program or any other governmental or private~~
28 health care or health insurance program.

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

31 (5) The agency may deny or revoke licensure if the

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1 applicant has falsely represented a material fact, or has
2 omitted any material fact, from the application required by
3 this section.

4 ~~(6)(5)~~ The home health agency must also obtain and
5 maintain the following insurance coverage ~~coverages~~ in an
6 amount of not less than \$250,000 per claim, and the home
7 health agency must submit proof of coverage with an initial
8 application for licensure and with each annual application for
9 license renewal:

10 (a) Malpractice insurance as defined in s.
11 624.605(1)(k); and

12 (b) Liability insurance as defined in s.
13 624.605(1)(b).

14 ~~(7)(6)~~ Sixty ~~Ninety~~ days before the expiration date,
15 an application for renewal must be submitted to the agency
16 under oath on forms furnished by it, and a license must be
17 renewed if the applicant has met the requirements established
18 under this part and applicable rules. The home health agency
19 must file with the application satisfactory proof that it is
20 in compliance with this part and applicable rules. If there
21 is evidence of financial instability, the home health agency
22 must submit satisfactory proof of its financial ability to
23 comply with the requirements of this part. The agency shall
24 impose an administrative fine of \$50 per day for each day the
25 home health agency fails to file an application within the
26 timeframe specified in this subsection. Each day of continuing
27 violation is a separate violation; however, the aggregate of
28 such fines may not exceed \$500.

29 ~~(8)(7)~~ When transferring the ownership of a home
30 health agency, the transferee must submit an application for a
31 license at least 60 days before the effective date of the

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1 transfer. If the application is filed late, an administrative
2 fine shall be imposed in the amount of \$50 per day. Each day
3 of continuing violation is a separate violation; however, the
4 aggregate of such fines may not exceed \$500. If the home
5 health agency is being leased, a copy of the lease agreement
6 must be filed with the application.

7 (9) The agency shall accept, in lieu of its own
8 periodic licensure survey, submission of the survey of an
9 accrediting organization that is recognized by the agency if
10 the accreditation of the licensed home health agency is not
11 provisional and if the licensed home health agency authorizes
12 release of, and the agency receives the report of, the
13 accrediting organization.

14 (10) ~~(8)~~ The license fee and ~~annual~~ renewal fee
15 required of a home health agency are nonrefundable. The agency
16 shall set the license fees in an amount that is sufficient to
17 cover its costs in carrying out its responsibilities under
18 this part, but not to exceed ~~\$2000~~\$1,000. However, state,
19 county, or municipal governments applying for licenses under
20 this part are exempt from the payment of license fees. All
21 fees collected under this part must be deposited in the Health
22 Care Trust Fund for the administration of this part.

23 (11) ~~(9)~~ The license must be displayed in a conspicuous
24 place in the administrative office of the home health agency
25 and is valid only while in the possession of the person to
26 which it is issued. The license may not be sold, assigned, or
27 otherwise transferred, voluntarily or involuntarily, and is
28 valid only for the home health agency and location for which
29 originally issued.

30 (12) ~~(10)~~ A home health agency against whom a
31 revocation or suspension proceeding is pending at the time of

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1 license renewal may be issued a provisional license effective
2 until final disposition by the agency of such proceedings. If
3 judicial relief is sought from the final disposition, the
4 court that has jurisdiction may issue a temporary permit for
5 the duration of the judicial proceeding.

6 ~~(13)~~(11) The agency may not issue a license designated
7 as certified to a home health agency that fails to satisfy the
8 requirements of a Medicare certification survey from the
9 agency.

10 ~~(14)~~(12) The agency may not issue a license to a home
11 health agency that has any unpaid fines assessed under this
12 part.

13 Section 5. Section 400.487, Florida Statutes, is
14 amended to read:

15 400.487 Home health service agreements; physician's,
16 physician's assistant's, and advanced registered nurse
17 practitioner's treatment orders; patient assessment;
18 establishment and review of plan of care; provision of
19 services; orders not to resuscitate.--

20 (1) Services provided by a home health agency must be
21 covered by an agreement between the home health agency and the
22 patient or the patient's legal representative specifying the
23 home health services to be provided, the rates or charges for
24 services paid with private funds, and the sources ~~method~~ of
25 payment, which may include Medicare, Medicaid, private
26 insurance, personal funds, or a combination thereof. A home
27 health agency providing skilled care must make an assessment
28 of the patient's needs within 48 hours after the start of
29 services.

30 (2) When required by the provisions of chapter 464;
31 part I, part III, or part V of chapter 468; or chapter 486,

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1 the attending physician, physician's assistant, or advanced
2 registered nurse practitioner, acting within his or her
3 respective scope of practice, shall ~~for a patient who is to~~
4 ~~receive skilled care must~~ establish treatment orders for a
5 patient who is to receive skilled care. The treatment orders
6 must be signed by the physician, physician's assistant, or
7 advanced registered nurse practitioner before a claim for
8 payment for the skilled services is submitted by the home
9 health agency. If the claim is submitted to a managed care
10 organization, the treatment orders must be signed in the time
11 allowed under the provider agreement. The treatment orders
12 shall ~~within 30 days after the start of care and must~~ be
13 reviewed, as frequently as the patient's illness requires, by
14 the physician, physician's assistant, or advanced registered
15 nurse practitioner in consultation with the home health agency
16 ~~personnel that provide services to the patient.~~

17 (3) A home health agency shall arrange for supervisory
18 visits by a registered nurse to the home of a patient
19 receiving home health aide services in accordance with the
20 patient's direction, ~~and approval, and agreement to pay the~~
21 charge for the visits.

22 (4) Each patient has the right to be informed of and
23 to participate in the planning of his or her care. Each
24 patient must be provided, upon request, a copy of the plan of
25 care established and maintained for that patient by the home
26 health agency.

27 (5) When nursing services are ordered, the home health
28 agency to which a patient has been admitted for care must
29 provide the initial admission visit, all service evaluation
30 visits, and the discharge visit by a direct employee ~~qualified~~
31 ~~personnel who are on the payroll of, and to whom an IRS~~

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1 ~~payroll form W-2 will be issued by, the home health agency.~~

2 Services provided by others under contractual arrangements to
3 a home health agency must be monitored and managed by the
4 admitting home health agency. The admitting home health agency
5 is fully responsible for ensuring that all care provided
6 through its employees or contract staff is delivered in
7 accordance with this part and applicable rules.

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

11 (7) Home health agency personnel may withhold or
12 withdraw cardiopulmonary resuscitation if presented with an
13 order not to resuscitate executed pursuant to s. 401.45. The
14 agency shall adopt rules providing for the implementation of
15 such orders. Home health personnel and agencies shall not be
16 subject to criminal prosecution or civil liability, nor be
17 considered to have engaged in negligent or unprofessional
18 conduct, for withholding or withdrawing cardiopulmonary
19 resuscitation pursuant to such an order and rules adopted by
20 the agency.

21 Section 6. Section 400.491, Florida Statutes, is
22 amended to read:

23 400.491 Clinical records.--

24 (1) The home health agency must maintain for each
25 patient who receives skilled care a clinical record that
26 includes pertinent past and current medical, nursing, social
27 and other therapeutic information, the treatment orders, and
28 other such information as is necessary for the safe and
29 adequate care of the patient. When home health services are
30 terminated, the record must show the date and reason for
31 termination. Such records are considered patient records

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1 under s. 400.494 ~~s. 456.057~~, and must be maintained by the
2 home health agency for 6 ~~5~~ years following termination of
3 services. If a patient transfers to another home health
4 agency, a copy of his or her record must be provided to the
5 other home health agency upon request.

6 (2) If a licensed home health agency ceases to remain
7 in business, it shall notify each patient, whose clinical
8 records it has in its possession, of the fact that it is
9 ceasing operations and give each patient 15 calendar days to
10 retrieve his or her clinical record at a specified location
11 within 2 hours' driving time of the patient's residence and,
12 at a minimum, between the hours of 10 a.m. and 3 p.m. Monday
13 through Friday. The home health agency must maintain for each
14 client who receives nonskilled care a service provision plan.
15 Such records must be maintained by the home health agency for
16 1 year following termination of services.

17 Section 7. Section 400.494, Florida Statutes, is
18 amended to read:

19 400.494 Information about patients confidential.--

20 (1) Information about patients received by persons
21 employed by, or providing services to, a home health agency or
22 received by the licensing agency through reports or inspection
23 shall be confidential and exempt from the provisions of s.
24 119.07(1) and shall only ~~not~~ be disclosed to any person, other
25 than the patient, as permitted under the provisions of 45
26 C.F.R. ss. 160.102, 160.103, and 164, subpart A, commonly
27 referred to as the HIPAA Privacy Regulation; except that
28 clinical records described in ss. 381.004, 384.29, 385.202,
29 392.65, 394.4615, 395.404, 397.501, and 760.40 shall be
30 disclosed as authorized in those sections ~~without the written~~
31 ~~consent of that patient or the patient's guardian.~~

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1 (2) This section does not apply to information
 2 lawfully requested by the Medicaid Fraud Control Unit of the
 3 Department of Legal Affairs.

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

7 400.506 Licensure of nurse registries; requirements;
 8 penalties.--

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

16 (5) A license issued for the operation of a nurse
 17 registry, unless sooner suspended or revoked, expires 2 years
 18 ~~1 year~~ after its date of issuance. Sixty days before the
 19 expiration date, an application for renewal must be submitted
 20 to the Agency for Health Care Administration on forms
 21 furnished by it. The Agency for Health Care Administration
 22 shall renew the license if the applicant has met the
 23 requirements of this section and applicable rules. A nurse
 24 registry against which a revocation or suspension proceeding
 25 is pending at the time of license renewal may be issued a
 26 conditional license effective until final disposition by the
 27 Agency for Health Care Administration of such proceedings. If
 28 judicial relief is sought from the final disposition, the
 29 court having jurisdiction may issue a conditional license for
 30 the duration of the judicial proceeding.

31 (7) A person that provides, offers, or advertises to

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1 the public ~~that it provides~~ any service for which licensure is
2 required under this section must include in such advertisement
3 the license number issued to it by the Agency for Health Care
4 Administration. The agency shall assess a fine of not less
5 than \$100 against any licensee who fails to include the
6 license number when submitting the advertisement for
7 publication, broadcast, or printing. The fine for a second or
8 subsequent offense is \$500.

9 (8) (a) It is unlawful for a person to provide, offer,
10 or advertise to the public services as defined by rule without
11 obtaining a valid license from the Agency for Health Care
12 Administration. It is unlawful for any holder of a license to
13 advertise or hold out to the public that he or she holds a
14 license for other than that for which he or she actually holds
15 a license. A person who violates this subsection is subject
16 to injunctive proceedings under s. 400.515.

17 (b) A person who violates paragraph (a) commits a
18 misdeemeanor of the second degree, punishable as provided in s.
19 775.082 or s. 775.083. Any person who commits a second or
20 subsequent violation commits a felony of the third degree
21 punishable as provided in s. 775.082 or s. 775.083. Each day
22 of continuing violation is a separate offense.

23 (c) Any person who owns, operates, or maintains an
24 unlicensed nurse registry and who, after receiving
25 notification from the agency, fails to cease operation, is
26 subject to a fine of \$500 for each day of noncompliance.

27 (10) (a) A nurse registry may refer for contract in
28 private residences registered nurses and licensed practical
29 nurses registered and licensed under part I of chapter 464,
30 certified nursing assistants certified under part II of
31 chapter 464, home health aides who present documented proof of

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1 successful completion of the training required by rule of the
2 agency, and companions or homemakers for the purposes of
3 providing those services authorized under s. 400.509(1). Each
4 person referred by a nurse registry must provide current
5 documentation that he or she is free from communicable
6 diseases.

7 (b) A certified nursing assistant or home health aide
8 may be referred for a contract to provide care to a patient in
9 his or her home only if that patient is under a physician's
10 care. A certified nursing assistant or home health aide
11 referred for contract in a private residence shall be limited
12 to assisting a patient with bathing, dressing, toileting,
13 grooming, eating, physical transfer, and those normal daily
14 routines the patient could perform for himself or herself were
15 he or she physically capable. A certified nursing assistant
16 or home health aide may not provide medical or other health
17 care services that require specialized training and that may
18 be performed only by licensed health care professionals. The
19 nurse registry shall obtain the name and address of the
20 attending physician and send written notification to the
21 physician within 48 hours after a contract is concluded that a
22 certified nursing assistant or home health aide will be
23 providing care for that patient.

24 (c) When a certified nursing assistant or home health
25 aide is referred to a patient's home by a nurse registry, the
26 nurse registry shall advise the patient, the patient's family,
27 or a person acting on behalf of the patient at the time of
28 contracting for services through the nurse registry of the
29 availability of registered nurses to visit the patient's home
30 to assess the patient's condition at an additional cost. A
31 registered nurse shall make monthly visits to the patient's

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1 ~~home to assess the patient's condition and quality of care~~
2 ~~being provided by the certified nursing assistant or home~~
3 ~~health aide.~~ Any condition which, in the professional judgment
4 of the nurse, requires further medical attention shall be
5 reported to the attending physician and the nurse registry.
6 The assessment shall become a part of the patient's file with
7 the nurse registry and may be reviewed by the agency during
8 their survey procedure.

9 (13) Each nurse registry must comply with the
10 procedures set forth in s. 400.512 for maintaining records of
11 the work ~~employment~~ history of all persons referred for
12 contract and is subject to the standards and conditions set
13 forth in that section. However, an initial screening may not
14 be required for persons who have been continuously registered
15 with the nurse registry since October 1, 2000 ~~September 30,~~
16 ~~1990~~.

17 (14) The nurse registry must maintain the application
18 on file, and that file must be open to the inspection of the
19 Agency for Health Care Administration. The nurse registry
20 must maintain on file the name and address of the patient or
21 client to whom ~~the nurse or other~~ nurse registry personnel are
22 referred ~~is sent~~ for contract and the amount of the fee
23 received by the nurse registry. A nurse registry must maintain
24 the file that includes the application and other applicable
25 documentation for 3 years after the date of the last file
26 entry of client-related information.

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

30 (a) When, in accordance with the privileges and
31 restrictions imposed upon a nurse under part I of chapter 464,

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1 the delivery of care to a patient is under the direction or
2 supervision of a physician or when a physician is responsible
3 for the medical care of the patient, a medical plan of
4 treatment must be established for each patient receiving care
5 or treatment provided by a licensed nurse in the home. The
6 original medical plan of treatment must be timely signed by
7 the physician, physician's assistant, or advanced registered
8 nurse practitioner, acting within his or her respective scope
9 of practice, and reviewed ~~by him or her~~ in consultation with
10 the licensed nurse at least every 2 months. Any additional
11 order or change in orders must be obtained from the physician,
12 physician's assistant, or advanced registered nurse
13 practitioner and reduced to writing and timely signed by the
14 physician, physician's assistant, or advanced registered nurse
15 practitioner. The delivery of care under a medical plan of
16 treatment must be substantiated by the appropriate nursing
17 notes or documentation made by the nurse in compliance with
18 nursing practices established under part I of chapter 464.

19 (b) Whenever a medical plan of treatment is
20 established for a patient, the initial medical plan of
21 treatment, any amendment to the plan, additional order or
22 change in orders, and copy of nursing notes must be filed in
23 the office of the nurse registry.

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

26 400.512 Screening of home health agency personnel;
27 nurse registry personnel; and companions and homemakers.--The
28 agency shall require employment or contractor screening as
29 provided in chapter 435, using the level 1 standards for
30 screening set forth in that chapter, for home health agency
31 personnel; persons referred for employment by nurse

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1 registries; and persons employed by companion or homemaker
2 services registered under s. 400.509.

3 (2) The administrator of each home health agency, the
4 managing employee of each nurse registry, and the managing
5 employee of each companion or homemaker service registered
6 under s. 400.509 must sign an affidavit annually, under
7 penalty of perjury, stating that all personnel hired, or
8 contracted with, or registered on or after October 1, 2000
9 ~~October 1, 1994~~, who enter the home of a patient or client in
10 their service capacity have been screened ~~and that its~~
11 ~~remaining personnel have worked for the home health agency or~~
12 ~~registrant continuously since before October 1, 1994.~~

13 Section 10. Section 400.515, Florida Statutes, is
14 amended to read:

15 400.515 Injunction proceedings.--In addition to the
16 other powers provided under this chapter, the Agency for
17 Health Care Administration may institute injunction
18 proceedings in a court of competent jurisdiction to restrain
19 or prevent the establishment or operation of a home health
20 agency or nurse registry that does not have a license or that
21 is in violation of any provision of this part or any rule
22 adopted pursuant to this part. The Agency for Health Care
23 Administration may also institute injunction proceedings in a
24 court of competent jurisdiction when violation of this part or
25 of applicable rules constitutes an emergency affecting the
26 immediate health and safety of a patient or client.

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

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