

Committee Substitute for Senate Bill No. 2360

An act relating to home health agencies; amending s. 400.462, F.S.; providing definitions; amending s. 400.464, F.S.; establishing licensure and exemptions from licensure requirements for home health agencies; amending s. 400.471, F.S.; providing insurance coverage requirements; amending s. 400.474, F.S.; providing grounds for disciplinary action, penalties for operating without a license, and grounds for revocation or suspension of license; amending s. 400.484, F.S.; establishing administrative fines for various classes of deficiencies; amending s. 400.487, F.S.; providing for patient assessment and establishment and review of plan of care; creating s. 400.488, F.S.; providing for assistance with self-administration of medication; amending s. 400.491, F.S.; providing for maintenance of service provision plan; amending s. 400.497, F.S.; providing for establishment of rules; amending s. 400.506, F.S.; providing for licensure of nurse registries; amending s. 400.509, F.S.; providing for registration of particular service providers; amending s. 400.512, F.S.; providing for screening of home health agency personnel; establishing a Task Force on Home Health Services Licensure Provisions; amending ss. 400.23, 400.441, F.S.; requiring that rules adopted by the Agency for Health Care Administration and the Department of Elderly Affairs include provisions governing the cooling of facilities; amending s. 458.3115, F.S.; revising requirements with respect to eligibility of certain foreign-licensed physicians to take and pass standardized examinations; amending s. 458.3124, F.S.; changing the date by which application for a restricted license must be submitted; amending s. 301, ch. 98-166, Laws of Florida; prescribing fees for foreign-licensed physicians taking a certain examination; providing an effective date.

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

Section 1. Section 400.462, Florida Statutes, is amended to read:

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

(1) “Administrator” means a direct employee of the home health agency or a related organization, or of a management company that has a contract to manage the home health agency, to whom the governing body has delegated the responsibility for day-to-day administration of the home health agency. The administrator must be a licensed physician, physician assistant, or registered nurse licensed to practice in this state or an individual having at least 1 year of supervisory or administrative experience in home health care or in a facility licensed under chapter 395 or under part II or part III of chapter 400. An administrator may manage a maximum of five licensed home health agencies located within one agency service district or within an immediately contiguous county. If the home health agency is licensed under this chapter and is part of a retirement community that provides multiple levels of care, an employee of the retirement community

may administer the home health agency and up to a maximum of four entities licensed under chapter 400 that are owned, operated, or managed by the same corporate entity. An administrator shall designate, in writing, for each licensed entity, a qualified alternate administrator to serve during absences.

(2) “Agency” means the Agency for Health Care Administration.

~~(3)(4)~~ “Certified nursing assistant” means any person who has been issued a certificate under after fulfilling the requirements of s. 400.211. The licensed home health agency or licensed nurse registry shall ensure that the certified nursing assistant employed by or under contract with the home health agency or licensed nurse registry is adequately trained to perform the tasks of a home health aide in the home setting.

(4) “Client” means an elderly, handicapped, or convalescent individual who receives personal care services, companion services, or homemaker services in the individual’s home or place of residence.

~~(5)(2)~~ “Companion” or “sitter” means a person who cares for an elderly, handicapped, or convalescent individual and accompanies such individual on trips and outings and may prepare and serve meals to such individual. A companion may not provide hands-on personal care to a client.

~~(6)(3)~~ “Department” means the Department of Children and Family Health and Rehabilitative Services.

(7) “Director of nursing” means a registered nurse and direct employee of the agency or related business entity who is a graduate of an approved school of nursing and is licensed in this state; who has at least 1 year of supervisory experience as a registered nurse in a licensed home health agency, a facility licensed under chapter 395, or a facility licensed under part II or part III of chapter 400; and who is responsible for overseeing the professional nursing and home health aid delivery of services of the agency. An employee may be the director of nursing of a maximum of five licensed home health agencies operated by a related business entity and located within one agency service district or within an immediately contiguous county. If the home health agency is licensed under this chapter and is part of a retirement community that provides multiple levels of care, an employee of the retirement community may serve as the director of nursing of the home health agency and of up to four entities licensed under chapter 400 which are owned, operated, or managed by the same corporate entity. A director of nursing shall designate, in writing, for each licensed entity, a qualified alternate registered nurse to serve during the absence of the director of nursing.

~~(8)(4)~~ “Home health agency” means an organization that provides home health services and staffing services for health care facilities.

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

~~(10)(6)~~ “Home health services” means health and medical services and medical supplies furnished by an organization to an individual by home health agency personnel or by others under arrangements with the agency, on a visiting basis, in the individual’s home or place of residence. The term includes organizations that provide one or more of, ~~but is not limited to~~, the following:

(a) Nursing care.

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

(c) Home health aide services.

(d) Dietetics and nutrition practice and nutrition counseling ~~Nutritional guidance~~.

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

(11) “Home health aide” means a person who provides hands-on personal care, performs simple procedures as an extension of therapy or nursing services, assists in ambulation or exercises, or assists in administering medications as permitted in rule and for which the person has received training established by the agency under s. 400.497(1).

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

(13) “Home infusion therapy provider” means an organization that employs, contracts with, or refers a licensed professional, who has received advanced training and experience in intravenous infusion therapy and who administers infusion therapy to a patient in the patient’s home or place of residence.

(14) “Home infusion therapy” means the administration of intravenous pharmacological or nutritional products to a patient in his or her home.

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

(16) “Organization” means a corporation, government or governmental subdivision or agency, partnership or association, or any other legal or commercial entity, any of which involve more than one health care professional discipline or a health care professional and a home health aide or

certified nursing assistant. The term does not include an entity that provides services using only volunteers or only individuals related by blood or marriage to the patient or client.

(17)(9) “Patient” means any person who receives home health services in his or her home or place of residence.

(18) “Personal care” means assistance to a patient in the activities of daily living, such as dressing, bathing, eating, or personal hygiene, and assistance in physical transfer, ambulation, and in administering medications as permitted by rule.

(19) “Physician” means a person licensed under chapter 458, chapter 459, chapter 460, or chapter 461.

(20)(10) “Screening” means the assessment of the background of home health agency personnel, nurse registry personnel, and persons registered under s. 400.509 and includes employment or contractual history checks, records checks of the department’s central abuse hotline under chapter 415 relating to vulnerable adults, and statewide criminal records correspondence checks through the Department of Law Enforcement.

(21) “Skilled care” means nursing services or therapeutic services delivered by a health care professional who is licensed under chapter 464; part I, part III, or part V of chapter 468; or chapter 486 and who is employed by or under contract with a licensed home health agency or is referred by a licensed nurse registry.

(22)(11) “Staffing services” means services provided to a health care facility or other business entity on a temporary basis by licensed health care personnel, including certified nursing assistants and home health aides who are employed by, or work under the auspices of, a licensed home health agency or who are registered with a licensed nurse registry.

Section 2. Section 400.464, Florida Statutes, is amended to read:

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

(1) Any home health agency must be licensed by the agency for ~~Health Care Administration~~ to operate in this state. A license issued to a home health agency, unless sooner suspended or revoked, expires 1 year after its date of issuance. ~~However, any home health agency that is operated by the Federal Government is exempt from this part.~~

(2) If the licensed home health agency operates related offices, each related office outside the county where the main office is located must be separately licensed. The counties where the related offices are operating must be specified on the license in the main office.

(3) An entity receiving a certificate-of-need exemption under s. 408.0366 may request one home health agency license to provide Medicare and non-Medicare home health services to residents of the facility and non-Medicare

home health services to persons in one or more counties within the agency service district where the main office of the home health agency is located.

~~(3) The furnishing of only home dialysis services, supplies, or equipment, or personal care services as provided by a community-care-for-the-elderly lead agency under s. 430.205, or personal care services provided through a community-care-for-disabled-adults program under s. 410.604, is exempt from this part. The personal care services exemptions apply only to community-care-for-the-elderly lead agencies and community-care-for-disabled-adults programs that directly provide only personal care services to their clients and do not provide other home health services.~~

~~(4) Any program offered through a county health department that makes home visits for the purpose of providing only environmental assessments, case management, health education, or personal care services is exempt from this part.~~

~~(5)(a) It is unlawful for any person to offer or advertise home health services to the public unless he or she has a valid license under this part. It is unlawful for any holder of a license issued under this part to advertise or indicate to the public that it holds a home health agency license other than the one it has been issued.~~

~~(b) A person who violates paragraph (a) is subject to an injunctive proceeding under s. 400.515. A violation of paragraph (a) is a deceptive and unfair trade practice and constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act.~~

~~(c) A person who violates paragraph (a) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Any person who commits a second or subsequent violation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.~~

~~Each day of continuing violation constitutes a separate offense.~~

~~(4)(6) Any home infusion therapy provider shall be licensed as a home health agency. Any infusion therapy provider currently authorized to receive Medicare reimbursement under a DME - Part B Provider number for the provision of infusion therapy shall be licensed as a noncertified home health agency. Such a provider shall continue to receive that specified Medicare reimbursement without being certified so long as the reimbursement is limited to those items authorized pursuant to the DME - Part B Provider Agreement and the agency is licensed in compliance with the other provisions of this part.~~

(5)(a) An organization may not provide, offer, or advertise home health services to the public unless the organization has a valid license or is specifically exempted under this part. An organization that offers or advertises to the public any service for which licensure or registration is required under this part must include in the advertisement the license number or regulation number issued to the organization by the agency. The agency shall

assess a fine of not less than \$100 to any licensee or registrant who fails to include the license or registration number when submitting the advertisement for publication, broadcast or printing. The holder of a license issued under this part may not advertise or indicate to the public that it holds a home health agency or nurse registry license other than the one it has been issued.

(b) A person who violates paragraph (a) is subject to an injunctive proceeding under s. 400.515. A violation of paragraph (a) is a deceptive and unfair trade practice and constitutes a violation of the Florida Unfair and Deceptive Trade Practices Act.

(c) A person who violates the provisions of paragraph (a) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Any person who commits a second or subsequent violation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Each day of continuing violation constitutes a separate offense.

(6) The following are exempt from the licensure requirements of this part:

(a) A home health agency operated by the Federal Government.

(b) Home health services provided by a state agency, either directly or through a contractor with:

1. The Department of Elderly Affairs.

2. The Department of Health, a community health center, or a rural health network that furnishes home visits for the purpose of providing environmental assessments, case management, health education, personal-care services, family planning, or follow-up treatment, or for the purpose of monitoring and tracking disease.

3. Services provided to persons who have developmental disabilities, as defined in s. 393.063(11).

4. Companion and sitter organizations that were registered under s. 440.509(1) on January 1, 1999, and were authorized to provide personal services under s. 393.063(35) under a developmental services provider certificate on January 1, 1999, may continue to provide such services to past, present, and future clients of the organization who need such services, notwithstanding the provisions of this act.

5. The Department of Children and Family Services.

(c) A health care professional, whether or not incorporated, who is licensed under chapter 457, chapter 458, chapter 459, chapter 464, chapter 467, part I, part III, part V, or part X of chapter 468, chapter 480, chapter 486, chapter 490, or chapter 491, and who is acting alone within the scope of his or her professional license to provide care to patients in their homes.

(d) A home health aide or certified nursing assistant who is acting in his or her individual capacity, within the definitions and standards of his or her occupation, and who provides hands-on care to patients in their homes.

(e) An individual who acts alone, in his or her individual capacity, and who is not employed by or affiliated with a licensed home health agency or registered with a licensed nurse registry. This exemption does not entitle an individual to perform home health services without the required professional license.

(f) The delivery of instructional services in home dialysis and home dialysis supplies and equipment.

(g) The delivery of nursing home services for which the nursing home is licensed under part II of this chapter, to serve its residents in its facility.

(h) The delivery of assisted living facility services for which the assisted living facility is licensed under part III of this chapter, to serve its residents in its facility.

(i) The delivery of hospice services for which the hospice is licensed under part VI of this chapter, to serve hospice patients admitted to its service.

(j) A hospital that provides services for which it is licensed under chapter 395.

(k) The delivery of community residential services for which the community residential home is licensed under chapter 419, to serve the residents in its facility.

(l) A not-for-profit, community-based agency that provides early intervention services to infants and toddlers.

(m) Certified rehabilitation agencies and comprehensive outpatient rehabilitation facilities that are certified under Title 18 of the Social Security Act.

(n) The delivery of adult family care home services for which the adult family care home is licensed under part VII of this chapter, to serve the residents in its facility.

Section 3. Section 400.471, Florida Statutes, 1998 Supplement, is amended to read:

400.471 Application for license; fee; provisional license; temporary permit.—

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

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

- (a) A listing of services to be provided, either directly by the applicant or through contractual arrangements with existing providers;
- (b) The number and discipline of professional staff to be employed; and
- (c) Proof of financial ability to operate.

If the applicant has applied for a certificate of need under ss. 408.0331-408.045 within the preceding 12 months, the applicant may submit the proof required during the certificate-of-need process along with an attestation that there has been no substantial change in the facts and circumstances underlying the original submission.

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

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

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

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

(c) Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years in compliance with any other health care or assisted living licensure requirements of this state is acceptable in fulfillment of paragraph (a). Proof of compliance with background screening which has been submitted within the previous 5 years to fulfill the requirements of the Department of Insurance pursuant to chapter 651 as part of an application for a certificate of authority to operate a continuing care retirement community is acceptable in

fulfillment of the Department of Law Enforcement and Federal Bureau of Investigation background check.

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

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

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

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

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

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

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

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

(5) The home health agency must also obtain and maintain the following liability insurance coverages in an ~~Proof of liability insurance, as defined in s. 624.605, must be submitted with the application. The Agency for Health Care Administration shall set the required amounts of liability insurance by rule, but the required amount of~~ must not be less than \$250,000 per claim, and the home health agency must submit proof of coverage with an initial application for licensure and with each annual application for license renewal:

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

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

(6) Ninety Sixty days before the expiration date, an application for renewal must be submitted to the agency ~~for Health Care Administration~~ under oath on forms furnished by it, and a license must be renewed if the applicant has met the requirements established under this part and applicable rules. The home health agency must file with the application satisfactory proof that it is in compliance with this part and applicable rules. If there is evidence of financial instability, the home health agency must submit satisfactory proof of its financial ability to comply with the requirements of this part.

(7) When transferring the ownership of a home health agency, the transferee must submit an application for a license at least 60 days before the effective date of the transfer. If the home health agency is being leased, a copy of the lease agreement must be filed with the application.

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

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

(10) A home health agency against whom a revocation or suspension proceeding is pending at the time of license renewal may be issued a provi-

sional license effective until final disposition by the agency for Health Care Administration of such proceedings. If judicial relief is sought from the final disposition, the court that has jurisdiction may issue a temporary permit for the duration of the judicial proceeding.

(11) The agency may department shall not issue a license designated as certified to a home health agency that which fails to receive a certificate of need under the provisions of ss. 408.031-408.045 or that fails to satisfy the requirements of a Medicare certification survey from the agency.

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

Section 4. Section 400.474, Florida Statutes, 1998 Supplement, is amended to read:

400.474 Denial, suspension, revocation of license; injunction; grounds; penalties.—

(1) ~~The agency for Health Care Administration~~ may deny, revoke, or suspend a license, or impose an administrative fine in the manner provided in chapter 120, or initiate injunctive proceedings under s. 400.515.

(2) Any of the following actions by a home health agency or its employee is grounds for disciplinary action by the agency ~~for Health Care Administration:~~

(a) Violation of this part or of applicable rules.

(b) An intentional, reckless, or negligent act that materially affects the health or safety of a patient.

(c) Knowingly providing home health services in an unlicensed assisted living facility or unlicensed adult family-care home, unless the home health agency or employee reports the unlicensed facility or home to the agency within 72 hours after providing the services.

(3) The agency may impose the following penalties for operating without a license upon an applicant or owner who has in the past operated, or who currently operates, a licensed home health agency.

(a) If a home health agency that is found to be operating without a license wishes to apply for a license, the home health agency may submit an application only after the agency has verified that the home health agency no longer operates an unlicensed home health agency.

(b) Any person, partnership, or corporation that violates paragraph (a) and that previously operated a licensed home health agency or concurrently operates both a licensed home health agency and an unlicensed home health agency commits a felony of the third degree punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If an owner has an interest in more than one home health agency and fails to license any one of those home health agencies, the agency must issue a cease and desist order for the activities of the unlicensed home health agency and impose a moratorium on any or

all of the licensed related home health agencies until the unlicensed home health agency is licensed.

(c) If any home health agency meets the criteria in paragraph (a) or paragraph (b) and that home health agency has received any government reimbursement for services provided by an unlicensed home health agency, the agency shall make a fraud referral to the appropriate government reimbursement program.

(4) The agency may deny, revoke, or suspend the license of a home health agency, or may impose on a home health agency administrative fines not to exceed the aggregate sum of \$5,000 if:

(a) The agency is unable to obtain entry to the home health agency to conduct a licensure survey, complaint investigation, surveillance visit, or monitoring visit.

(b) An applicant or a licensed home health agency has falsely represented a material fact in the application, or has omitted from the application any material fact, including, but not limited to, the fact that the controlling or ownership interest is held by any officer, director, agent, manager, employee, affiliated person, partner, or shareholder who is not eligible to participate.

(c) An applicant, owner, or person who has a 5 percent or greater interest in a licensed entity:

1. Has been previously found by any licensing, certifying, or professional standards board or agency to have violated the standards or conditions that relate to home health-related licensure or certification, or to the quality of home health-related services provided; or

2. Has been or is currently excluded, suspended, terminated from, or has involuntarily withdrawn from, participation in the Medicaid program of this state or any other state, the Medicare program, or any other governmental health care or health insurance program.

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

400.484 Right of inspection; deficiencies; fines.—

(1) Any duly authorized officer or employee of the agency for Health Care Administration may make such inspections and investigations as are necessary in order to determine the state of compliance with this part and with applicable rules. The right of inspection extends to any business that the agency for Health Care Administration has reason to believe is being operated as a home health agency without a license, but such inspection of any such business may not be made without the permission of the owner or person in charge unless a warrant is first obtained from a circuit court. Any application for a license issued under this part or for license renewal constitutes permission for an appropriate inspection to verify the information submitted on or in connection with the application.

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

(a) A class I deficiency is any act, omission, or practice that results in a patient's death, disablement, or permanent injury, or places a patient at imminent risk of death, disablement, or permanent injury. Upon finding a class I deficiency, the agency may impose an administrative fine in the amount of \$5,000 for each occurrence and each day that the deficiency exists. In addition, the agency may immediately revoke the license, or impose a moratorium on the admission of new patients, until the factors causing the deficiency have been corrected.

(b) A class II deficiency is any act, omission, or practice that has a direct adverse effect on the health, safety, or security of a patient. Upon finding a class II deficiency, the agency may impose an administrative fine in the amount of \$1,000 for each occurrence and each day that the deficiency exists. In addition, the agency may suspend the license, or impose a moratorium on the admission of new patients, until the deficiency has been corrected.

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

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

Section 6. Section 400.487, Florida Statutes, is amended to read:

400.487 Patient assessment; establishment and review of plan of care; provision of services.—

(1) The home health agency providing skilled care ~~and treatment~~ must make an assessment of the patient's needs within 48 hours after the start of services.

(2) The attending physician for a patient who is to receive skilled receiving care or treatment provided by a licensed nurse or by a physical, occupational, or speech therapist must establish treatment orders a plan of care for the patient on behalf of the home health agency that provides services to the patient. The original plan of treatment orders must be signed by the physician within 24 days after the start of care and must be reviewed, at least every 62 days or more frequently if the patient's illness requires, by the physician in consultation with home health agency personnel that provide services to the patient.

(3) If a client is accepted for home health aide services or homemaker or companion services and such services do not require a physician's order, the

home health agency shall establish a service provision plan and maintain a record of the services provided.

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

~~(4) Home health services that are provided to a patient must be evaluated in the patient's home by a physician licensed under chapter 458, chapter 459, chapter 460, or chapter 461 or by a registered nurse licensed under chapter 464 as frequently as necessary to assure safe and adequate care, but not less frequently than once every 62 days.~~

(5) When nursing services are ordered, the home health agency to which a patient has been admitted for care must provide the initial admission visit, all service evaluation visits, and the discharge visit by qualified personnel who are on the payroll of, and to whom an IRS payroll form W-2 will be issued by, the home health agency. A home health agency must provide at least one home health service to patients for whom it has agreed to provide care. Services provided by others under contractual arrangements to a home health agency agency's patients must be monitored and managed controlled by the admitting home health agency. The admitting home health agency is fully responsible for ensuring that all care provided through its employees or contract staff is delivered in accordance with this part and applicable rules.

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

Section 7. Section 400.488, Florida Statutes, is created to read:

400.488 Assistance with self-administration of medication.—

(1) For purposes of this section, the term:

(a) "Informed consent" means advising the patient, or the patient's surrogate, guardian, or attorney in fact, that the patient may be receiving assistance with self-administration of medication from an unlicensed person.

(b) "Unlicensed person" means an individual not currently licensed to practice nursing or medicine who is employed by or under contract to a home health agency and who has received training with respect to assisting with the self-administration of medication as provided by agency rule.

(2) Patients who are capable of self-administering their own medications without assistance shall be encouraged and allowed to do so. However, an unlicensed person may, consistent with a dispensed prescription's label or the package directions of an over-the-counter medication, assist a patient whose condition is medically stable with the self-administration of routine, regularly scheduled medications that are intended to be self-administered. Assistance with self-medication by an unlicensed person may occur only

upon a documented request by, and the written informed consent of, a patient or the patient's surrogate, guardian, or attorney in fact. For purposes of this section, self-administered medications include both legend and over-the-counter oral dosage forms, topical dosage forms, and topical ophthalmic, otic, and nasal dosage forms, including solutions, suspensions, sprays, and inhalers.

(3) Assistance with self-administration of medication includes:

(a) Taking the medication, in its previously dispensed, properly labeled container, from where it is stored and bringing it to the patient.

(b) In the presence of the patient, reading the label, opening the container, removing a prescribed amount of medication from the container, and closing the container.

(c) Placing an oral dosage in the patient's hand or placing the dosage in another container and helping the patient by lifting the container to his or her mouth.

(d) Applying topical medications.

(e) Returning the medication container to proper storage.

(f) Keeping a record of when a patient receives assistance with self-administration under this section.

(4) Assistance with self-administration does not include:

(a) Mixing, compounding, converting, or calculating medication doses, except for measuring a prescribed amount of liquid medication or breaking a scored tablet or crushing a tablet as prescribed.

(b) The preparation of syringes for injection or the administration of medications by any injectable route.

(c) Administration of medications through intermittent positive pressure breathing machines or a nebulizer.

(d) Administration of medications by way of a tube inserted in a cavity of the body.

(e) Administration of parenteral preparations.

(f) Irrigations or debriding agents used in the treatment of a skin condition.

(g) Rectal, urethral, or vaginal preparations.

(h) Medications ordered by the physician or health care professional with prescriptive authority to be given "as needed," unless the order is written with specific parameters that preclude independent judgment on the part of the unlicensed person, and at the request of a competent patient.

(i) Medications for which the time of administration, the amount, the strength of dosage, the method of administration, or the reason for administration requires judgment or discretion on the part of the unlicensed person.

(5) Assistance with the self-administration of medication by an unlicensed person as described in this section does not constitute administration as defined in s. 465.003.

(6) The agency may by rule establish procedures and interpret terms as necessary to administer this section.

Section 8. Section 400.491, Florida Statutes, 1998 Supplement, is amended to read:

400.491 Clinical records.—

(1) The home health agency must maintain for each patient who receives skilled care a clinical record that includes the services the home health agency provides directly and those provided through arrangement with another health care provider, except for those services provided by persons referred under s. 400.509. Such records must contain pertinent past and current medical, nursing, social and other therapeutic information, the plan of treatment orders, and other such information as is necessary for the safe and adequate care of the patient. When home health services are terminated, the record must show the date and reason for termination. Such records are considered patient records under s. 455.241 s. 455.667, and must be maintained by the home health agency for 5 years following termination of services. If a patient transfers to another home health agency, a copy of his or her record must be provided to the other home health agency upon request.

(2) The home health agency must maintain for each client who receives nonskilled care a service-provision plan. Such records must be maintained by the home health agency for 1 year following termination of services.

Section 9. Section 400.497, Florida Statutes, is amended to read:

400.497 Rules establishing minimum standards.—~~The agency for Health Care Administration shall adopt, publish, and enforce rules to implement this part, including, as applicable, ss. 400.506 and 400.509, which must provide reasonable and fair minimum standards relating to:~~

~~(1) Scope of home health services to be provided.~~

(1)(2) The qualifications, and minimum training requirements, and supervision requirements of all home health agency personnel. The agency shall establish the curriculum and instructor qualifications for home health aide training. Licensed home health agencies may provide this training and shall furnish documentation of such training to other licensed home health agencies upon request. The agency shall allow shared staffing if the home health agency is part of a retirement community that provides multiple levels of care, is located on one campus, is licensed under this chapter, and otherwise meets the requirements of law and rule.

~~(2)(3) Requirements for prospective employees procedures for maintaining a record of the employment history of all home health agency personnel. A home health agency must require prospective employees and contractors its personnel to submit an employment or contractual history to the home health agency, and it must verify the employment or contractual history unless through diligent efforts such verification is not possible. The agency for Health Care Administration shall prescribe by rule the minimum requirements for establishing that diligent efforts have been made. The administrator of a home health agency must review the employment history and references of home health agency personnel and applicants for employment. The Agency for Health Care Administration must review the employment history and references of each administrator of a home health agency. There is no monetary liability on the part of, and no cause of action for damages arising arises against, a former employer of a prospective employee of or prospective independent contractor with a licensed home health agency who reasonably and in good faith communicates his or her honest opinions about the former employee's job performance. This subsection does not affect the official immunity of an officer or employee of a public corporation.~~

~~(3)(4) Licensure application and renewal.~~

~~(4)(5) The administration of the home health agency, including requirements for onsite and electronic accessibility of supervisory personnel.~~

~~(5)(6) Procedures for administering drugs and biologicals.~~

~~(6)(7) Procedures for maintaining patients' patient records.~~

~~(7)(8) Ensuring that the home health services provided by a home health agency are provided in accordance with the plan of treatment orders established for each patient for whom physician orders are required.~~

~~(8)(9) Geographic service areas.~~

~~(9)(10) Standards for contractual arrangements for the provision of home health services by providers not employed by the home health agency to whom the patient has been admitted providing for the patient's care and treatment.~~

Section 10. Subsections (1) and (10) of section 400.506, Florida Statutes, 1998 Supplement, are amended to read:

400.506 Licensure of nurse registries; requirements; penalties.—

(1) A nurse registry is exempt from the licensing requirements of a home health agency, but must be licensed as a nurse registry. Each operational site of the nurse registry must be licensed, unless there is more than one site within a county. If there is more than one site within a county only one license per county is required. Each operational site must be listed on the license.

(10)(a) A nurse registry may refer for contract in private residences registered nurses and licensed practical nurses registered and licensed under

chapter 464, certified nursing assistants certified under s. 400.211, home health aides who present documented proof of successful completion of the training required by rule of the agency, and ~~sitters~~, companions, or homemakers for the purposes of providing those services authorized under s. 400.509(1). Each person referred by a nurse registry must provide current documentation that he or she is free from communicable diseases.

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

(c) A registered nurse shall make monthly visits to the patient's home to assess the patient's condition and quality of care being provided by the certified nursing assistant or home health aide. Any condition which in the professional judgment of the nurse requires further medical attention shall be reported to the attending physician and the nurse registry. The assessment shall become a part of the patient's file with the nurse registry and may be reviewed by the agency for Health Care Administration during their survey procedure.

~~(d) In order to refer for contract in private residences a certified nursing assistant or any person specified in s. 400.509(1), the nurse registry and such person registered with the nurse registry must also be registered under s. 400.509. Any person registered as an independent contractor with a nurse registry for the purpose of providing services authorized under s. 400.509(1) on or before October 1, 1990, is exempt from registration under s. 400.509 so long as such person remains continuously registered with that nurse registry.~~

Section 11. Subsections (1), (2), and (3) of section 400.509, Florida Statutes, are amended, present subsections (4), (5), and (6) of that section are amended and renumbered as subsections (5), (6), and (7), respectively, present subsections (7), (8), (9), (10), (11), (12), and (13) of that section are renumbered as subsections (8), (9), (10), (11), (12), (13), and (14), respectively, and a new subsection (4) is added to that section, to read:

400.509 Registration of particular service providers exempt from licensure; certificate of registration; regulation of registrants.—

(1) Any organization person that provides ~~domestic maid services, sitter services, companion services, or homemaker services~~ and does not provide a home health service to a person is exempt from licensure under this part. However, any organization ~~person~~ that provides ~~sitter services for adults,~~

companion services, or homemaker services must register with the agency for ~~Health Care Administration~~.

(2) Registration consists of annually filing with the agency for ~~Health Care Administration~~, under oath, on forms provided by it, the following information:

~~(a) The name, address, date of birth, and social security number of the individual, or the name and address of the person, providing the service.~~

~~(a)(b)~~ If the registrant is a firm or partnership, the name, address, date of birth, and social security number of every member.

~~(b)(c)~~ If the registrant is a corporation or association, its name and address, the name, address, date of birth, and social security number of each of its directors and officers, and the name and address of each person having at least a 5-percent ~~10-percent~~ interest in the corporation or association.

~~(c)(d)~~ The name, address, date of birth, and social security number of each person employed by or under contract with the organization.

(3) The agency for ~~Health Care Administration~~ shall charge a registration fee of \$25 to be submitted with the information required under subsection (2).

(4) Each applicant for registration must comply with the following requirements:

(a) Upon receipt of a completed, signed, and dated application, the agency shall require background screening, in accordance with the level 1 standards for screening set forth in chapter 435, of every individual who will have contact with the client. The agency shall require background screening of the managing employee or other similarly titled individual who is responsible for the operation of the entity, and of the financial officer or other similarly titled individual who is responsible for the financial operation of the entity, including billings for client services in accordance with the level 2 standards for background screening as set forth in chapter 435.

(b) The agency may require background screening of any other individual who is affiliated with the applicant if the agency has a reasonable basis for believing that he or she has been convicted of a crime or has committed any other offense prohibited under the level 2 standards for screening set forth in chapter 435.

(c) Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years in compliance with any other healthcare or assisted living licensure requirements of this state is acceptable in fulfillment of paragraph (a).

(d) A provisional registration may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the abuse-registry background check and the Department of Law Enforcement background check but the agency has not yet received

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

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

(f) Each applicant must submit to the agency a description and explanation of any conviction of an offense prohibited under the level 2 standards of chapter 435 which was committed by a member of the board of directors of the applicant, its officers, or any individual owning 5 percent or more of the applicant. This requirement does not apply to a director of a not-for-profit corporation or organization who serves solely in a voluntary capacity for the corporation or organization, does not regularly take part in the day-to-day operational decisions of the corporation or organization, receives no remuneration for his or her services on the corporation's or organization's board of directors, and has no financial interest and no family members having a financial interest in the corporation or organization, if the director and the not-for-profit corporation or organization include in the application a statement affirming that the director's relationship to the corporation satisfies the requirements of this paragraph.

(g) A registration may not be granted to an applicant if the applicant or managing employee has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to, any offense prohibited under the level 2 standards for screening set forth in chapter 435, unless an exemption from disqualification has been granted by the agency as set forth in chapter 435.

(h) The agency may deny or revoke the registration of any applicant who:

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

2. Has had prior action taken against the applicant under the Medicaid or Medicare program as set forth in paragraph (e).

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

(5)(4) Each registrant must obtain establish the employment or contract history of persons who are employed by or under contract with the organization and who will have having contact at any time with patients or clients in their homes by:

(a) Requiring such persons ~~employed or under contract~~ to submit an employment or contractual history to the registrant; and

(b) Verifying the employment or contractual history, unless through diligent efforts such verification is not possible. The agency ~~for Health Care Administration~~ shall prescribe by rule the minimum requirements for establishing that diligent efforts have been made.

There is no monetary liability on the part of, and no cause of action for damages arises against, a former employer of a prospective employee or prospective independent contractor with a registrant who reasonably and in good faith communicates his or her honest opinions about the former employee's or contractor's job performance. This subsection does not affect the official immunity of an officer or employee of a public corporation.

(6)(5) On or before the first day on which services are provided to a patient or client, any registrant under this part must inform the patient or client and his or her immediate family, if appropriate, of the right to report abusive, neglectful, or exploitative practices. The statewide toll-free telephone number for the central abuse registry must be provided to patients or clients in a manner that is clearly legible and must include the words: "To report abuse, neglect, or exploitation, please call toll-free ...(phone number)...." Registrants must establish appropriate policies and procedures for providing such notice to patients or clients.

(7)(6) The provisions of s. 400.512 regarding screening apply to any person or business entity registered under this section on or after October 1, 1994 ~~1989~~.

Section 12. Section 400.512, Florida Statutes, is amended to read:

400.512 Screening of home health agency personnel; nurse registry personnel; and ~~sitters, companions, and homemakers.~~—The agency ~~for Health Care Administration~~ shall require employment or contractor screening as provided in chapter 435, using the level 1 standards for screening set forth in that chapter, for home health agency personnel; persons referred for employment by nurse registries; and persons employed by ~~sitter, companion,~~ or homemaker services registered under s. 400.509.

(1) The ~~agency for Health Care Administration~~ may grant exemptions from disqualification from employment or contracting under this section as provided in s. 435.07.

(2) The administrator of each home health agency, the managing employee of each nurse registry, and the managing employee of each or-sitter, ~~companion, or homemaker service~~ registered under s. 400.509 must sign an affidavit annually, under penalty of perjury, stating that all personnel hired, contracted with, or registered on or after October 1, 1994 ~~1989~~, who enter

the home of a patient or client in the capacity of their service capacity employment have been screened and that its remaining personnel have worked for the home health agency or registrant continuously since before October 1, 1994 ~~1989~~.

(3) As a prerequisite to operating as a home health agency, nurse registry, or sitter, companion, or homemaker service under s. 400.509, the administrator or managing employee, respectively, must submit to the agency his or her ~~for Health Care Administration~~ their name and any other information necessary to conduct a complete screening according to this section. The agency ~~for Health Care Administration~~ shall submit the information to the Department of Law Enforcement and the department's abuse hotline for state processing. The agency ~~for Health Care Administration~~ shall review the record of the administrator or manager with respect to the offenses specified in this section and shall notify the owner of its findings. If disposition information is missing on a criminal record, the administrator or manager, upon request of the agency ~~for Health Care Administration,~~ must obtain and supply within 30 days the missing disposition information to the agency ~~for Health Care Administration.~~ Failure to supply missing information within 30 days or to show reasonable efforts to obtain such information will result in automatic disqualification.

(4) Proof of compliance with the screening requirements of chapter 435 shall be accepted in lieu of the requirements of this section if the provided that such person has been continuously employed or registered without a breach in service that exceeds 180 days, the proof of compliance is not more than 2 years old, and the person has been screened through the central abuse registry and tracking system of the department and by the Department of Law Enforcement. A home health agency, nurse registry, or companion or homemaker service registered under s. 400.509 shall directly provide proof of compliance to another home health agency, nurse registry, or companion or homemaker service registered under s. 400.509. The recipient home health agency, nurse registry, or companion or homemaker service registered under s. 400.509 may not accept any proof of compliance directly from the person who requires screening. Proof of compliance with the screening requirements of this section shall be provided upon request to the person screened by the home health agencies; nurse registries; or sitter, companion, or homemaker services registered under s. 400.509.

(5) There is no monetary liability on the part of, and no cause of action for damages arises against, a licensed home health agency, licensed nurse registry, or sitter, companion, or homemaker service registered under s. 400.509, that, upon notice of a confirmed report of adult abuse, neglect, or exploitation under paragraph (2)(b), terminates the employee or contractor against whom the report was issued, whether or not the employee or contractor has filed for an exemption with the agency in accordance with chapter 435 for Health Care Administration under subparagraph (3)(a)5, and whether or not the time for filing has expired.

(6) The costs of processing the statewide correspondence criminal records checks and the search of the department's central abuse hotline must be borne by the home health agency; the nurse registry; or the sitter, companion, or homemaker service registered under s. 400.509, or by the person

being screened, at the discretion of the home health agency, nurse registry, or s. 400.509 registrant.

~~(7) The Agency for Health Care Administration; the home health agency; nurse registry; or sitter, companion, or homemaker service registered under s. 400.509 may not use the criminal records, juvenile records, or central abuse hotline information of a person for any purpose other than determining whether that person meets minimum standards of good moral character for home health agency personnel. The criminal records, juvenile records, or central abuse hotline information obtained by the Agency for Health Care Administration; home health agency; nurse registry; or sitter, companion, or homemaker service for determining the moral character of such personnel are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.~~

(7)(8)(a) It is a misdemeanor of the first degree, punishable under s. 775.082 or s. 775.083, for any person willfully, knowingly, or intentionally to:

1. Fail, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose in any application for voluntary or paid employment a material fact used in making a determination as to such person's qualifications to be an employee under this section;

2. Operate or attempt to operate an entity licensed or registered under this part with persons who do not meet the minimum standards for good moral character as contained in this section; or

3. Use information from the criminal records or central abuse hotline obtained under this section for any purpose other than screening that person for employment as specified in this section or release such information to any other person for any purpose other than screening for employment under this section.

(b) It is a felony of the third degree, punishable under s. 775.082, s. 775.083, or s. 775.084, for any person willfully, knowingly, or intentionally to use information from the juvenile records of a person obtained under this section for any purpose other than screening for employment under this section.

Section 13. Task Force on Home Health Services Licensure Provisions.— There is created a task force composed of representatives of the Agency for Health Care Administration, the Department of Elderly Affairs, the Department of Health, Private Care Association of Florida, and Associated Home Health Industries and a representative of the homemaker companion services industry to review the provisions of part IV of chapter 400, Florida Statutes, and recommend additional legislative revisions to that part. The review must encompass, at a minimum, the following issues: adult abuse registry screening; exemptions for individuals who provide home health services; registration for organizations that provide companion and homemaker services; and adjustments in the fee schedule for Medicaid home health services. The task force shall submit a report must be submitted to the appropriate legislative committees by December 31, 1999.

Section 14. Paragraph (a) of subsection (2) of section 400.23, Florida Statutes, 1998 Supplement, is amended to read:

400.23 Rules; criteria; Nursing Home Advisory Committee; evaluation and rating system; fee for review of plans.—

(2) Pursuant to the intention of the Legislature, the agency, in consultation with the Department of Health and Rehabilitative Services and the Department of Elderly Affairs, shall adopt and enforce rules to implement this part, which shall include reasonable and fair criteria in relation to:

(a) The location and construction of the facility; including fire and life safety, plumbing, heating, cooling, lighting, ventilation, and other housing conditions which will ensure the health, safety, and comfort of residents, including an adequate call system. The agency shall establish standards for facilities and equipment to increase the extent to which new facilities and a new wing or floor added to an existing facility after July 1, 1999, are structurally capable of serving as shelters only for residents, staff, and families of residents and staff, and equipped to be self-supporting during and immediately following disasters. The Agency for Health Care Administration shall work with facilities licensed under this part and report to the Governor and Legislature by April 1, 1999, its recommendations for cost-effective renovation standards to be applied to existing facilities. In making such rules, the agency shall be guided by criteria recommended by nationally recognized reputable professional groups and associations with knowledge of such subject matters. The agency shall update or revise such criteria as the need arises. All nursing homes must comply with those lifesafety code requirements and building code standards applicable at the time of approval of their construction plans. The agency may require alterations to a building if it determines that an existing condition constitutes a distinct hazard to life, health, or safety. The agency shall adopt fair and reasonable rules setting forth conditions under which existing facilities undergoing additions, alterations, conversions, renovations, or repairs shall be required to comply with the most recent updated or revised standards.

Section 15. Paragraph (a) of subsection (1) of section 400.441, Florida Statutes, 1998 Supplement, is amended to read:

400.441 Rules establishing standards.—

(1) It is the intent of the Legislature that rules published and enforced pursuant to this section shall include criteria by which a reasonable and consistent quality of resident care and quality of life may be ensured and the results of such resident care may be demonstrated. Such rules shall also ensure a safe and sanitary environment that is residential and noninstitutional in design or nature. It is further intended that reasonable efforts be made to accommodate the needs and preferences of residents to enhance the quality of life in a facility. In order to provide safe and sanitary facilities and the highest quality of resident care accommodating the needs and preferences of residents, the department, in consultation with the agency, the Department of Children and Family Services, and the Department of Health, shall adopt rules, policies, and procedures to administer this part, which must include reasonable and fair minimum standards in relation to:

(a) The requirements for and maintenance of facilities, not in conflict with the provisions of chapter 553, relating to plumbing, heating, cooling, lighting, ventilation, living space, and other housing conditions, which will ensure the health, safety, and comfort of residents and protection from fire hazard, including adequate provisions for fire alarm and other fire protection suitable to the size of the structure. Uniform firesafety standards shall be established and enforced by the State Fire Marshal in cooperation with the agency, the department, and the Department of Health.

1. Evacuation capability determination.—

a. The provisions of the National Fire Protection Association, NFPA 101A, Chapter 5, 1995 edition, shall be used for determining the ability of the residents, with or without staff assistance, to relocate from or within a licensed facility to a point of safety as provided in the fire codes adopted herein. An evacuation capability evaluation for initial licensure shall be conducted within 6 months after the date of licensure. For existing licensed facilities that are not equipped with an automatic fire sprinkler system, the administrator shall evaluate the evacuation capability of residents at least annually. The evacuation capability evaluation for each facility not equipped with an automatic fire sprinkler system shall be validated, without liability, by the State Fire Marshal, by the local fire marshal, or by the local authority having jurisdiction over firesafety, before the license renewal date. If the State Fire Marshal, local fire marshal, or local authority having jurisdiction over firesafety has reason to believe that the evacuation capability of a facility as reported by the administrator may have changed, it may, with assistance from the facility administrator, reevaluate the evacuation capability through timed exiting drills. Translation of timed fire exiting drills to evacuation capability may be determined:

- (I) Three minutes or less: prompt.
- (II) More than 3 minutes, but not more than 13 minutes: slow.
- (III) More than 13 minutes: impractical.

b. The Office of the State Fire Marshal shall provide or cause the provision of training and education on the proper application of Chapter 5, NFPA 101A, 1995 edition, to its employees, to staff of the Agency for Health Care Administration who are responsible for regulating facilities under this part, and to local governmental inspectors. The Office of the State Fire Marshal shall provide or cause the provision of this training within its existing budget, but may charge a fee for this training to offset its costs. The initial training must be delivered within 6 months after July 1, 1995, and as needed thereafter.

c. The Office of the State Fire Marshal, in cooperation with provider associations, shall provide or cause the provision of a training program designed to inform facility operators on how to properly review bid documents relating to the installation of automatic fire sprinklers. The Office of the State Fire Marshal shall provide or cause the provision of this training within its existing budget, but may charge a fee for this training to offset its

costs. The initial training must be delivered within 6 months after July 1, 1995, and as needed thereafter.

d. The administrator of a licensed facility shall sign an affidavit verifying the number of residents occupying the facility at the time of the evacuation capability evaluation.

2. Firesafety requirements.—

a. Except for the special applications provided herein, effective January 1, 1996, the provisions of the National Fire Protection Association, Life Safety Code, NFPA 101, 1994 edition, Chapter 22 for new facilities and Chapter 23 for existing facilities shall be the uniform fire code applied by the State Fire Marshal for assisted living facilities, pursuant to s. 633.022.

b. Any new facility, regardless of size, that applies for a license on or after January 1, 1996, must be equipped with an automatic fire sprinkler system. The exceptions as provided in section 22-2.3.5.1, NFPA 101, 1994 edition, as adopted herein, apply to any new facility housing eight or fewer residents. On July 1, 1995, local governmental entities responsible for the issuance of permits for construction shall inform, without liability, any facility whose permit for construction is obtained prior to January 1, 1996, of this automatic fire sprinkler requirement. As used in this part, the term "a new facility" does not mean an existing facility that has undergone change of ownership.

c. Notwithstanding any provision of s. 633.022 or of the National Fire Protection Association, NFPA 101A, Chapter 5, 1995 edition, to the contrary, any existing facility housing eight or fewer residents is not required to install an automatic fire sprinkler system, nor to comply with any other requirement in Chapter 23 of NFPA 101, 1994 edition, that exceeds the firesafety requirements of NFPA 101, 1988 edition, that applies to this size facility, unless the facility has been classified as impractical to evacuate. Any existing facility housing eight or fewer residents that is classified as impractical to evacuate must install an automatic fire sprinkler system within the timeframes granted in this section.

d. Any existing facility that is required to install an automatic fire sprinkler system under this paragraph need not meet other firesafety requirements of Chapter 23, NFPA 101, 1994 edition, which exceed the provisions of NFPA 101, 1988 edition. The mandate contained in this paragraph which requires certain facilities to install an automatic fire sprinkler system supersedes any other requirement.

e. This paragraph does not supersede the exceptions granted in NFPA 101, 1988 edition or 1994 edition.

f. This paragraph does not exempt facilities from other firesafety provisions adopted under s. 633.022 and local building code requirements in effect before July 1, 1995.

g. A local government may charge fees only in an amount not to exceed the actual expenses incurred by local government relating to the installation

and maintenance of an automatic fire sprinkler system in an existing and properly licensed assisted living facility structure as of January 1, 1996.

h. If a licensed facility undergoes major reconstruction or addition to an existing building on or after January 1, 1996, the entire building must be equipped with an automatic fire sprinkler system. Major reconstruction of a building means repair or restoration that costs in excess of 50 percent of the value of the building as reported on the tax rolls, excluding land, before reconstruction. Multiple reconstruction projects within a 5-year period the total costs of which exceed 50 percent of the initial value of the building at the time the first reconstruction project was permitted are to be considered as major reconstruction. Application for a permit for an automatic fire sprinkler system is required upon application for a permit for a reconstruction project that creates costs that go over the 50-percent threshold.

i. Any facility licensed before January 1, 1996, that is required to install an automatic fire sprinkler system shall ensure that the installation is completed within the following timeframes based upon evacuation capability of the facility as determined under subparagraph 1.:

- (I) Impractical evacuation capability, 24 months.
- (II) Slow evacuation capability, 48 months.
- (III) Prompt evacuation capability, 60 months.

The beginning date from which the deadline for the automatic fire sprinkler installation requirement must be calculated is upon receipt of written notice from the local fire official that an automatic fire sprinkler system must be installed. The local fire official shall send a copy of the document indicating the requirement of a fire sprinkler system to the Agency for Health Care Administration.

j. It is recognized that the installation of an automatic fire sprinkler system may create financial hardship for some facilities. The appropriate local fire official shall, without liability, grant two 1-year extensions to the timeframes for installation established herein, if an automatic fire sprinkler installation cost estimate and proof of denial from two financial institutions for a construction loan to install the automatic fire sprinkler system are submitted. However, for any facility with a class I or class II, or a history of uncorrected class III, firesafety deficiencies, an extension must not be granted. The local fire official shall send a copy of the document granting the time extension to the Agency for Health Care Administration.

k. A facility owner whose facility is required to be equipped with an automatic fire sprinkler system under Chapter 23, NFPA 101, 1994 edition, as adopted herein, must disclose to any potential buyer of the facility that an installation of an automatic fire sprinkler requirement exists. The sale of the facility does not alter the timeframe for the installation of the automatic fire sprinkler system.

l. Existing facilities required to install an automatic fire sprinkler system as a result of construction-type restrictions in Chapter 23, NFPA 101,

1994 edition, as adopted herein, or evacuation capability requirements shall be notified by the local fire official in writing of the automatic fire sprinkler requirement, as well as the appropriate date for final compliance as provided in this subparagraph. The local fire official shall send a copy of the document to the Agency for Health Care Administration.

m. Except in cases of life-threatening fire hazards, if an existing facility experiences a change in the evacuation capability, or if the local authority having jurisdiction identifies a construction-type restriction, such that an automatic fire sprinkler system is required, it shall be afforded time for installation as provided in this subparagraph.

Facilities that are fully sprinkled and in compliance with other firesafety standards are not required to conduct more than one of the required fire drills between the hours of 11 p.m. and 7 a.m., per year. In lieu of the remaining drills, staff responsible for residents during such hours may be required to participate in a mock drill that includes a review of evacuation procedures. Such standards must be included or referenced in the rules adopted by the State Fire Marshal. Pursuant to s. 633.022(1)(b), the State Fire Marshal is the final administrative authority for firesafety standards established and enforced pursuant to this section. All licensed facilities must have an annual fire inspection conducted by the local fire marshal or authority having jurisdiction.

Section 16. Paragraphs (b) and (c) of subsection (1) of section 458.3115, Florida Statutes, 1998 Supplement, are amended to read:

458.3115 Restricted license; certain foreign-licensed physicians; United States Medical Licensing Examination (USMLE) or agency-developed examination; restrictions on practice; full licensure.—

(1)

(b) A person who is eligible to take and elects to take the USMLE who has previously passed part 1 or part 2 of the previously administered FLEX shall not be required to retake or pass the equivalent parts of the USMLE up to the year 2002 ~~2000~~.

(c) A person shall be eligible to take such examination for restricted licensure if the person:

1. Has taken, upon approval by the board, and completed, in November 1990 or November 1992, one of the special preparatory medical update courses authorized by the board and the University of Miami Medical School and subsequently passed the final course examination; upon approval by the board to take the course completed in 1990 or in 1992, has a certificate of successful completion of that course from the University of Miami or the Stanley H. Kaplan course; or can document to the department that he or she was one of the persons who took and successfully completed the Stanley H. Kaplan course that was approved by the Board of Medicine and supervised by the University of Miami. At a minimum, the documentation must include class attendance records and the test score on the final course examination;

2. Applies to the agency and submits an application fee that is nonrefundable and equivalent to the fee required for full licensure;
3. Documents no less than 2 years of the active practice of medicine in any another jurisdiction;
4. Submits an examination fee that is nonrefundable and equivalent to the fee required for full licensure plus the actual per-applicant cost to the agency to provide either examination described in this section;
5. Has not committed any act or offense in this or any other jurisdiction that would constitute a substantial basis for disciplining a physician under this chapter or part II of chapter 455; and
6. Is not under discipline, investigation, or prosecution in this or any other jurisdiction for an act that would constitute a violation of this chapter or part II of chapter 455 and that substantially threatened or threatens the public health, safety, or welfare.

Section 17. Subsection (2) of section 458.3124, Florida Statutes, 1998 Supplement, is amended to read:

458.3124 Restricted license; certain experienced foreign-trained physicians.—

(2) A person applying for licensure under this section must submit to the Department of Health on or before December 31, 2000 ~~1998~~:

(a) A completed application and documentation required by the Board of Medicine to prove compliance with subsection (1); and

(b) A nonrefundable application fee not to exceed \$500 and a nonrefundable examination fee not to exceed \$300 plus the actual cost to purchase and administer the examination.

Section 18. Effective upon this act becoming a law, section 301 of chapter 98-166, Laws of Florida, is amended to read:

Section 301. The sum of \$1.2 million from the unallocated balance in the Medical Quality Assurance Trust Fund is appropriated to the Department of Health to allow the department to develop the examination required for foreign licensed physicians in section 458.3115(1)(a), Florida Statutes, through a contract with the University of South Florida. The department shall charge examinees a fee not to exceed 25 percent of the cost of the actual costs of the first examination administered pursuant to section 458.3115, Florida Statutes, 1998 Supplement, and a fee not to exceed 75 percent of the actual costs for any subsequent examination administered pursuant to that section.

Section 19. This act shall take effect October 1, 1999.

Approved by the Governor June 11, 1999.

Filed in Office Secretary of State June 11, 1999.