

Committee Substitute for Senate Bill No. 484

An act relating to health care; amending s. 400.461, F.S.; revising the purpose of part IV of ch. 400, F.S., to include the licensure of nurse registries; amending s. 400.462, F.S.; revising definitions; defining the terms “admission,” “advanced registered nurse practitioner,” “direct employee,” and “physician assistant” for purposes of part IV of ch. 400, F.S.; amending s. 400.464, F.S., relating to licensure of home health agencies; revising the licensure period; revising and providing additional administrative, civil, and criminal penalties, sanctions, and fines; amending s. 400.471, F.S.; revising requirements for license application by a home health agency; authorizing the Agency for Health Care Administration to revoke a license under certain circumstances; authorizing administrative fines; amending s. 400.487, F.S.; revising requirements for home health agency service agreements and treatment orders; amending s. 400.491, F.S., relating to clinical records; changing the timeframe for a home health agency to retain patient records; changing a reference; amending s. 400.494, F.S.; providing for the continued confidentiality of patient information in compliance with federal law; providing for disclosure in accordance with certain specified state laws; deleting a requirement for written consent of the patient or the patient’s guardian for disclosure of confidential patient information; amending s. 400.506, F.S.; revising requirements governing nurse registries; increasing license fee; increasing the period of licensure; authorizing administrative penalties; revising criminal penalties and sanctions; revising certain requirements pertaining to health care professionals that provide services on behalf of a nurse registry; amending s. 400.512, F.S., relating to employment screening; revising the date on which an annual affidavit must be signed which verifies that certain personnel of a home health agency, a nurse registry, or homemaker service have been screened; amending s. 400.515, F.S.; providing additional circumstances under which the agency may petition for an injunction; providing an effective date.

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

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

400.461 Short title; purpose.—

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

Section 2. 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, as defined in subsection (9) 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 this chapter. 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 this chapter 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) “Admission” means a decision by the home health agency, during or after an evaluation visit to the patient’s home, that there is reasonable expectation that the patient’s medical, nursing, and social needs for skilled care can be adequately met by the agency in the patient’s place of residence. Admission includes completion of an agreement with the patient or the patient’s legal representative to provide home health services as required in s. 400.487(1).

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

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

(5)(3) “Certified nursing assistant” means any person who has been issued a certificate under part II of chapter 464. 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.

(6)(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.

(7)(5) “Companion” or “sitter” means a person who spends time with or 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.

(8)(6) “Department” means the Department of Children and Family Services.

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

~~(10)(7) “Director of nursing” means a registered nurse who is a~~ and direct employee, as defined in subsection (9), of the agency ~~and 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 this chapter; and who is responsible for overseeing the professional nursing and home health aid delivery of services of the agency. A director of nursing ~~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 this chapter 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.~~

~~(11)(8) “Home health agency” means an organization that provides home health services and staffing services.~~

~~(12)(9) “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.~~

~~(13)(10) “Home health services” means health and medical services and medical supplies furnished by an organization to an individual in the individual’s home or place of residence. The term includes organizations that provide one or more of 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.~~
- ~~(e) Medical supplies, restricted to drugs and biologicals prescribed by a physician.~~

~~(14)(11) “Home health aide” means a person who is trained or qualified, as provided by rule, and 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). The licensed home health agency or licensed nurse registry shall ensure that the home health aide 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.

(15)(12) “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.

(16)(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.

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

(18)(15) “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, 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.

(19)(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; more than one home health aide; more than one certified nursing assistant; or a home health aide and a 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.

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

(21)(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.

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

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

(24)(20) “Skilled care” means nursing services or therapeutic services required by law to be delivered by a health care professional who is licensed under part I of 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.

(25)(21) “Staffing services” means services provided to a health care facility or other business entity on a temporary basis by licensed health care personnel and by, 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. Staffing services may be provided anywhere within the state.

Section 3. Subsections (1) and (4) of section 400.464, Florida Statutes, are 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 to operate in this state. A license issued to a home health agency, unless sooner suspended or revoked, expires 2 years ~~1 year~~ after its date of issuance.

(4)(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 registration 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 fine for a second or subsequent offense is \$500. 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) The operation or maintenance of an unlicensed home health agency or the performance of any home health services in violation of this part is declared a nuisance, inimical to the public health, welfare, and safety. The agency or any state attorney may, in addition to other remedies provided in this part, bring an action for an injunction to restrain such violation, or to enjoin the future operation or maintenance of the home health agency or the provision of home health services in violation of this part, until compliance with this part or the rules adopted under this part has been demonstrated to the satisfaction of the agency.

(c)(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 under part II of chapter 501.

~~(d)~~(e) 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.

(e) Any person who owns, operates, or maintains an unlicensed home health agency and who, within 10 working days after receiving notification from the agency, fails to cease operation and apply for a license under this part commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Each day of continued operation is a separate offense.

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

Section 4. Section 400.471, Florida Statutes, 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 on forms furnished by it and must be accompanied by the appropriate license fee as provided in subsection ~~(10)~~ (8). The agency must take final action on an initial licensure application within 60 days after receipt of all required documentation.

(2) The initial 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.

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

(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

must be compiled ~~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 Financial Services Commission and the Office of Insurance Regulation 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 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 agency may deny or revoke licensure if the applicant has falsely represented a material fact, or has omitted any material fact, from the application required by this section.

~~(6)~~(5) The home health agency must also obtain and maintain the following insurance coverage coverages in an amount of not 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).

(7)(6) ~~Sixty~~ Ninety days before the expiration date, an application for renewal must be submitted to the agency 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. The agency shall impose an administrative fine of \$50 per day for each day the home health agency fails to file an application within the timeframe specified in this subsection. Each day of continuing violation is a separate violation; however, the aggregate of such fines may not exceed \$500.

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

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

(10)(8) The license fee and ~~annual~~ renewal fee required of a home health agency are nonrefundable. The agency shall set the license fees in an amount that is sufficient to cover its costs in carrying out its responsibilities under this part, but not to exceed ~~\$2,000~~ \$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.

(11)(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.

(12)(10) A home health agency against whom a revocation or suspension proceeding is pending at the time of license renewal may be issued a provisional license effective until final disposition by the agency 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.

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

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

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

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

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

(2) When required by the provisions of chapter 464; part I, part III, or part V of chapter 468; or chapter 486, the attending physician, physician assistant, or advanced registered nurse practitioner, acting within his or her respective scope of practice, shall for a patient who is to receive skilled care must establish treatment orders for a patient who is to receive skilled care. The treatment orders must be signed by the physician, physician assistant, or advanced registered nurse practitioner before a claim for payment for the skilled services is submitted by the home health agency. If the claim is submitted to a managed care organization, the treatment orders must be signed within the time allowed under the provider agreement. The treatment orders shall within 30 days after the start of care and must be reviewed, as frequently as the patient's illness requires, by the physician, physician assistant, or advanced registered nurse practitioner in consultation with the home health agency personnel that provide services to the patient.

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

(4) Each patient 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 established and maintained for that patient by the home health agency.

(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 a direct employee 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. Services provided by others under contractual arrangements to a home health agency must be monitored and managed by the admitting home health agency. The admitting home health agency is fully responsible for ensuring that all care pro-

vided 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.

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

Section 6. Subsection (1) of section 400.491, Florida Statutes, 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 pertinent past and current medical, nursing, social and other therapeutic information, the 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. 400.494 ~~s. 456.057~~, and must be maintained by the home health agency for 6 ~~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.

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

400.494 Information about patients confidential.—

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

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

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

400.506 Licensure of nurse registries; requirements; penalties.—

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

(5) A license issued for the operation of a nurse registry, unless sooner suspended or revoked, expires 2 years ~~1 year~~ after its date of issuance. Sixty days before the expiration date, an application for renewal must be submitted to the Agency for Health Care Administration on forms furnished by it. The Agency for Health Care Administration shall renew the license if the applicant has met the requirements of this section and applicable rules. A nurse registry against which a revocation or suspension proceeding is pending at the time of license renewal may be issued a conditional 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 having jurisdiction may issue a conditional license for the duration of the judicial proceeding.

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

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

(b) 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. Each day of continuing violation is a separate offense.

(c) Any person who owns, operates, or maintains an unlicensed nurse registry and who, within 10 working days after receiving notification from the agency, fails to cease operation and apply for a license under this part commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Each day of continued operation is a separate offense.

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

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

completion of the training required by rule of the agency, and 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) When a certified nursing assistant or home health aide is referred to a patient's home by a nurse registry, the nurse registry shall advise the patient, the patient's family, or any other person acting on behalf of the patient at the time the contract for services is made that registered nurses are available to make visits to the patient's home for an additional cost. 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. A record of the nurse's visit ~~The assessment~~ shall become a part of the patient's file with the nurse registry and may be reviewed by the agency during their survey procedure.

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

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

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

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

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

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

400.512 Screening of home health agency personnel; nurse registry personnel; and companions and homemakers.—The agency 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 companion or homemaker services registered under s. 400.509.

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

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

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

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

Approved by the Governor June 17, 2005.

Filed in Office Secretary of State June 17, 2005.