

## CHAPTER 2013-133

### Committee Substitute for Committee Substitute for Senate Bill No. 1094

An act relating to home health agencies; amending s. 400.474, F.S.; revising the requirements for the quarterly reporting by a home health agency of certain data submitted to the Agency for Health Care Administration; imposing a fine for failure to timely submit the quarterly report; providing an exemption to the submission of the report and imposition of the fine; providing an effective date.

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

Section 1. Present subsection (7) of section 400.474, Florida Statutes, is renumbered as subsection (8), a new subsection (7) is added to that section, and subsection (6) of that section is amended, to read:

400.474 Administrative penalties.—

(6) The agency may deny, revoke, or suspend the license of a home health agency and shall impose a fine of \$5,000 against a home health agency that:

(a) Gives remuneration for staffing services to:

1. Another home health agency with which it has formal or informal patient-referral transactions or arrangements; or

2. A health services pool with which it has formal or informal patient-referral transactions or arrangements,

unless the home health agency has activated its comprehensive emergency management plan in accordance with s. 400.492. This paragraph does not apply to a Medicare-certified home health agency that provides fair market value remuneration for staffing services to a non-Medicare-certified home health agency that is part of a continuing care facility licensed under chapter 651 for providing services to its own residents if each resident receiving home health services pursuant to this arrangement attests in writing that he or she made a decision without influence from staff of the facility to select, from a list of Medicare-certified home health agencies provided by the facility, that Medicare-certified home health agency to provide the services.

(b) Provides services to residents in an assisted living facility for which the home health agency does not receive fair market value remuneration.

(c) Provides staffing to an assisted living facility for which the home health agency does not receive fair market value remuneration.

(d) Fails to provide the agency, upon request, with copies of all contracts with assisted living facilities which were executed within 5 years before the request.

(e) Gives remuneration to a case manager, discharge planner, facility-based staff member, or third-party vendor who is involved in the discharge planning process of a facility licensed under chapter 395, chapter 429, or this chapter from whom the home health agency receives referrals.

~~(f) Fails to submit to the agency, within 15 days after the end of each calendar quarter, a written report that includes the following data based on data as it existed on the last day of the quarter:~~

~~1. The number of insulin-dependent diabetic patients receiving insulin-injection services from the home health agency;~~

~~2. The number of patients receiving both home health services from the home health agency and hospice services;~~

~~3. The number of patients receiving home health services from that home health agency; and~~

~~4. The names and license numbers of nurses whose primary job responsibility is to provide home health services to patients and who received remuneration from the home health agency in excess of \$25,000 during the calendar quarter.~~

(f)(g) Gives cash, or its equivalent, to a Medicare or Medicaid beneficiary.

(g)(h) Has more than one medical director contract in effect at one time or more than one medical director contract and one contract with a physician-specialist whose services are mandated for the home health agency in order to qualify to participate in a federal or state health care program at one time.

(h)(i) Gives remuneration to a physician without a medical director contract being in effect. The contract must:

1. Be in writing and signed by both parties;

2. Provide for remuneration that is at fair market value for an hourly rate, which must be supported by invoices submitted by the medical director describing the work performed, the dates on which that work was performed, and the duration of that work; and

3. Be for a term of at least 1 year.

The hourly rate specified in the contract may not be increased during the term of the contract. The home health agency may not execute a subsequent contract with that physician which has an increased hourly rate and covers any portion of the term that was in the original contract.

(i)(j) Gives remuneration to:

- 1. A physician, and the home health agency is in violation of paragraph ~~(g)(h)~~ or paragraph ~~(h)(i)~~;
- 2. A member of the physician’s office staff; or
- 3. An immediate family member of the physician,

if the home health agency has received a patient referral in the preceding 12 months from that physician or physician’s office staff.

~~(j)(k)~~ Fails to provide to the agency, upon request, copies of all contracts with a medical director which were executed within 5 years before the request.

~~(k)(l)~~ Demonstrates a pattern of billing the Medicaid program for services to Medicaid recipients which are medically unnecessary as determined by a final order. A pattern may be demonstrated by a showing of at least two such medically unnecessary services within one Medicaid program integrity audit period.

Nothing in paragraph (e) or paragraph ~~(i)(j)~~ shall be interpreted as applying to or precluding any discount, compensation, waiver of payment, or payment practice permitted by 42 U.S.C. s. 1320a-7(b) or regulations adopted thereunder, including 42 C.F.R. s. 1001.952 or s. 1395nn or regulations adopted thereunder.

(7) A home health agency shall submit to the agency, within 15 days after the end of each calendar quarter, a written report that includes the following data as they existed on the last day of the quarter:

(a) The number of insulin-dependent diabetic patients who receive insulin-injection services from the home health agency.

(b) The number of patients who receive both home health services from the home health agency and hospice services.

(c) The number of patients who receive home health services from the home health agency.

(d) The name and license number of each nurse whose primary job responsibility is to provide home health services to patients and who received remuneration from the home health agency in excess of \$25,000 during the calendar quarter.

If the home health agency fails to submit the written quarterly report within 15 days after the end of each calendar quarter, the Agency for Health Care Administration shall impose a fine against the home health agency in the amount of \$200 per day until the Agency for Health Care Administration receives the report, except that the total fine imposed pursuant to this subsection may not exceed \$5,000 per quarter. A home health agency is exempt from submission of the report and the imposition of the fine if it is not

a Medicaid or Medicare provider or if it does not share a controlling interest with a licensee, as defined in s. 408.803, which bills the Florida Medicaid program or the Medicare program.

Section 2. This act shall take effect July 1, 2013.

Approved by the Governor June 7, 2013.

Filed in Office Secretary of State June 7, 2013.