

**59A-18.005 Registration Policies.**

(1) Each nurse registry shall disseminate the following rules and statutes to each applicable independent contractor at the time of registration. The rules and statutes may be provided by paper copy, by email or other means of electronic communication.

(a) Registered nurses and licensed practical nurses shall receive for their use and reference:

1. Rule 59A-18.005, F.A.C., Registration Policies.
2. Rule 59A-18.007, F.A.C., Registered Nurses and Licensed Practical Nurses.
3. Rule 59A-18.011, F.A.C., Medical Plan of Treatment.
4. Rule 59A-18.012, F.A.C., Clinical Records.
5. Rule 59A-18.013, F.A.C., Administration of Biologicals.
6. Sections 400.506, 408.809, 400.484, 400.462, 400.488 and 408.810(5), F.S., with the telephone numbers referred to in the law.
7. Rule 59A-18.018, F.A.C., Emergency Management Plans.

(b) Certified nursing assistants and home health aides shall receive for their use and reference:

1. Rule 59A-18.005, F.A.C., Registration Policies.
2. Rule 59A-18.0081, F.A.C., Certified Nursing Assistant and Home Health Aide.
3. Sections 400.506, 408.809, 400.484, 400.462, 400.488 and 408.810(5), F.S., with the telephone numbers referred to in the law.
4. Rule 59A-18.018, F.A.C., Emergency Management Plans.

(c) Homemakers and Companions shall receive for their use and reference:

1. Rule 59A-18.009, F.A.C., Homemakers or Companions.
2. Sections 400.506, 408.809, 400.484, 400.462 and 408.810(5), F.S., with the telephone numbers referred to in the law.
3. Rule 59A-18.018, F.A.C., Emergency Management Plans.
4. Rule 59A-18.005, F.A.C., Registration Policies.

(2) Each nurse registry shall establish written procedures for the selection, documentation, screening and verification of credentials for each independent contractor referred by the registry.

(3) Each nurse registry shall confirm a new independent contractor's licensure or certification with the issuing board or department. A screen print from the Department of Health web site that shows a clear and active license or certification for each nurse and certified nursing assistant is sufficient for documentation.

(4) Each nurse registry shall, at least annually, reconfirm the licensure or certification of all of its independent contractors who are licensed or certified. If the nurse registry cannot confirm the licensure of any registered nurse, licensed practical nurse or certification of any certified nursing assistant, the nurse registry shall take the actions specified in Section 400.506(19), F.S. This includes reporting the individual to the Florida Board of Nursing, Department of Health as specified at its web site: <http://www.floridahealth.gov/licensing-and-regulation/enforcement/report-unlicensed-activity/file-a-complaint.html>.

(5) Each nurse registry shall confirm the identity of the independent contractor prior to referral. Identification shall be verified by using the individual's current driver's license or other photo identification, including the professional license or certificate.

(6) Prior to contact with patients or clients, each independent contractor referred for client care must furnish to the registry a statement from a health care professional licensed under Chapters 458 or 459, F.S., a physician's assistant, or an advanced registered nurse practitioner (ARNP) or a registered nurse licensed under Chapter 464, F.S., under the supervision of a licensed physician, or acting pursuant to an established protocol signed by a licensed physician, dated within the last six months, that the contractor is free from communicable diseases. The independent contractor will provide this statement to the nurse registry when first referred.

(7) Registration folders on each independent contractor must contain the information required in Section 400.506(8), F.S., and the following:

(a) For home health aides, evidence of completion of a home health aide training course or certification from the Florida Board of Nursing, Department of Health as a certified nursing assistant;

(b) Evidence of a contract with the nurse registry;

(c) Evidence of background screening that meets the requirements in Section 408.809(4), F.S.; and,

(8) Each nurse registry shall establish a system for the recording complaints involving individuals they refer. If the complaints are violations of state law, the nurse registry shall take the actions specified in Section 400.506(19), F.S. Records of complaints and actions taken by the nurse registry shall be kept in the individual's registration file or retained in the central files of the nurse registry.

**59A-18.0081 Certified Nursing Assistant and Home Health Aide.**

The certified nursing assistant (C.N.A.) and the home health aide shall:

- (1) Be limited to assisting a patient in accordance with Section 400.506(6)(b), F.S.;
- (2) Be responsible for documenting services provided to the patient or client and for filing said documentation with the nurse registry on a regular basis. These service logs will be stored by the nurse registry in the client's file. The service logs shall include the name of the patient or client and a listing of the services provided;
- (3) Be responsible for observing appearance and gross behavioral changes in the patient and reporting these changes to the patient's health care surrogate or other person designated by the patient and the nurse registry or to the responsible facility employee if staffing in a facility;
- (4) Be responsible to maintain a clean, safe and healthy environment, which may include light cleaning and straightening of the bathroom, straightening the sleeping and living areas, washing the patient's dishes or laundry, and such tasks to maintain cleanliness and safety for the patient;
- (5) Perform other activities as taught and documented by a registered nurse, concerning activities for a specific patient and restricted to the following:
  - (a) Assisting with the change of a colostomy bag, reinforcement of dressing;
  - (b) Assisting with the use of devices for aid to daily living such as a wheelchair or walker;
  - (c) Assisting with prescribed range of motion exercises;
  - (d) Assisting with prescribed ice cap or collar;
  - (e) Doing simple urine tests for sugar, acetone or albumin;
  - (f) Measuring and preparing special diets;
  - (g) Measuring intake and output of fluids; and,
  - (h) Measuring temperature, pulse, respiration or blood pressure.
- (6) Be prohibited from changing sterile dressings, irrigating body cavities such as giving an enema, irrigating a colostomy or wound, performing gastric irrigation or enteral feeding, catheterizing a patient, administering medications, applying heat by any method, or caring for a tracheotomy tube.
- (7) For every CNA, a nurse registry shall have on file a copy of the person's State of Florida certification.
- (8) For every home health aide registered with the nurse registry since May 4, 2015, a nurse registry shall have on file a certificate or documentation of successful completion of at least forty hours of home health aide training, pursuant to Section 400.506(6)(a), F.S., from a public vocational technical school or a non-public postsecondary career school licensed by the Commission on Independent Education, Florida Department of Education.
- (9) Individuals who earn their CNA certificate in another state must contact the Florida Certified Nursing Assistant office at the Department of Health to inquire about taking the written examination prior to working as a CNA in Florida, pursuant to Chapter 464, Part II, F.S.
- (10) Home health aides registered with the nurse registry since the effective date of this rule who complete their training in another state must provide a certificate of completion of home health aide training from a public vocational technical school or a career education school that is licensed in that state.
- (11) CNAs and home health aides referred by nurse registries must maintain a current CPR certification from an instructor that is approved to provide training by the American Heart Association or the American Red Cross.
- (12) Licensed practical nurses and registered nurses that are licensed in Florida or another state may work as home health aides. Also, persons who have completed the licensed practical nurse or registered nurse training from a public school, college, or university or a licensed nonpublic career education school or college in Florida who are not yet licensed may work as home health aides.
- (13) A certified nursing assistant may work as a home health aide.
- (14) C.N.A.s and home health aides referred by nurse registries may assist with self-administration of medication as described in Section 400.488, F.S.
  - (a) Home health aides and C.N.A.s assisting with self-administered medication, as described in Section 400.488, F.S., shall have received a minimum of 2 hours of training covering the following content:
    1. Training shall cover state law and rule requirements with respect to the assistance with self-administration of medications in the home, procedures for assisting the resident with self-administration of medication, common medications, recognition of side effects and adverse reactions and procedures to follow when patients appear to be experiencing side effects and adverse reactions. Training must include verification that each C.N.A. and home health aide can read the prescription label and any instructions.
    2. Individuals who cannot read shall not be permitted to assist with prescription medications.
  - (b) Documentation of training on assistance with self-administered medication from one of the following sources is acceptable:

1. Documentation of 2 hours of training in compliance with subsection 59A-8.0095(5), F.A.C., from a home health agency if the home health aide or C.N.A. previously worked for the home health agency;
2. A training certificate for 4 hours of training for assisted living facility staff in compliance with subsection 58A-5.0191(5), F.A.C.
3. A training certificate for at least 2 hours of training from a career education school licensed pursuant to Chapter 1005, F.S., and Rule Division 6E, F.A.C., by the Department of Education, Commission for Independent Education.
4. Documentation of at least 2 hours of training by a provider approved by the Florida Board of Nursing, Department of Health.

(c) Documentation of the training must be maintained in the file of each home health aide and C.N.A. who assists patients with self-administered medication.

(d) In cases where a home health aide or a C.N.A. will provide assistance with self-administered medications as described in Section 400.488, F.S., and paragraph (e) below, a review of the medications for which assistance is to be provided shall be conducted by a registered nurse or licensed practical nurse to ensure the C.N.A. and home health aide are able to assist in accordance with their training and with the medication prescription and the medication is not required to be administered by a nurse. If the patient will not consent to a visit by the nurse to review the medications, a written list with the dosage, frequency and route of administration shall be provided by the patient or the patient's health care surrogate, family member, or person designated by the patient to the home health aide or CNA to have reviewed by the nurse. The patient or the patient's surrogate, guardian, or attorney in fact must give written consent for a home health aide or C.N.A. to provide assistance with self-administered medications, as required in Section 400.488(2), F.S.

(e) The trained home health aide and C.N.A. may also provide the following assistance with self-administered medication, as needed by the patient and as described in Section 400.488, F.S.:

1. Prepare necessary items such as juice, water, cups, or spoons to assist the patient in the self-administration of medication;
2. Open and close the medication container or tear the foil of prepackaged medications;
3. Assist the resident in the self-administration process. Examples of such assistance include the steadying of the arm, hand, or other parts of the patient's body so as to allow the self-administration of medication;
4. Assist the patient by placing unused doses of solid medication back into the medication container.

(15) The nurse registry is not obligated to monitor, manage or supervise a certified nursing assistant or home health aide pursuant to Section 400.506(19), F.S. The nurse registry is not obligated to review patient or client records per Section 400.506(20), F.S., but the nurse registry is not prohibited from reviewing records and may do so. In the event of violation of Section 400.488, F.S., or other state laws that comes to the attention of the nurse registry, the nurse registry shall take the actions specified in Section 400.506(19), F.S.

*Rulemaking Authority 400.488, 400.497, 400.506 FS. Law Implemented 400.488, 400.497, 400.506 FS. History—New 1-27-94, Amended 12-24-00, 8-10-06, 3-15-07, 5-4-15.*

#### **59A-18.018 Emergency Management Plans.**

(1) Pursuant to Section 400.506(12), F.S., each nurse registry shall prepare and maintain a written comprehensive emergency management plan, in accordance with the Comprehensive Emergency Management Plan for Nurse Registries, AHCA Form 3110-1017, May 2015, incorporated by reference and available at <https://www.flrules.org/Gateway/reference.asp?No=Ref-05234>. This document is available from the Agency for Health Care Administration at [http://ahca.myflorida.com/MCHQ/Emergency\\_Activities/index.shtml](http://ahca.myflorida.com/MCHQ/Emergency_Activities/index.shtml). The plan shall describe how the nurse registry establishes and maintains an effective response to emergencies and disasters. The plan, once completed, will be sent electronically to the contact designated by the Department of Health as required in Section 400.506(12), F.S.

(2) The nurse registry shall review its emergency management plan on an annual basis and make any substantive changes. Plans with any substantive changes will be forwarded for review to the entities identified in subsection (1).

(3) Changes in the telephone numbers of those administrative staff who are coordinating the nurse registry's emergency response must be reported to the county emergency management office and to the county health department. For nurse registries with multiple counties on their license, the changes must be reported to each county health department and each county emergency management office. The telephone numbers must include numbers where the coordinating staff can be contacted outside of the nurse registry's regular office hours. All nurse registries must report these changes, whether their plan has been previously reviewed or not, as defined in subsection (1).

(4) When a nurse registry goes through a change of ownership, the new owner shall review the registry's emergency management plan and make any substantive changes, including changes noted in subsection (3). Those nurse registries will need to report any substantive changes in their plans to the reviewing entity in subsection (1).

(5) In the event of an emergency, the nurse registry shall implement the nurse registry's emergency management plan pursuant to Section 400.506(12), F.S. Also, the registry must meet the following requirements:

- (a) All administrative staff shall be informed of responsibilities for implementing the emergency management plan.

(b) If telephone service is not available during an emergency, the registry shall have a contingency plan to support communication, pursuant to Section 400.506(12)(f), F.S. A contingency plan may include cell phones, contact with a community based ham radio group, public announcements through radio or television stations, driving directly to the patient's home, and, in medical emergency situations, contact with police or emergency rescue services.

(6) Nurse registries shall assist patients who would need assistance and sheltering during evacuations because of physical, mental, or sensory disabilities in registering with the local emergency management agency, as required in Section 400.506(11), F.S.

(a) Upon initial contract for services, and at a minimum on an annual basis, each nurse registry shall, pursuant to Sections 400.506(12) and 252.355, F.S., inform the patient and the patient's family member or other person acting on behalf of the patient, by the best method possible as it pertains to the person's disability, of the special needs registry and procedures for registration at the special needs registry maintained by their county emergency management office.

(b) If the patient is to be registered at the special needs registry, the nurse registry shall assist the patient with registering, pursuant to Sections 400.506(12), F.S., and must document in the patient's file if the patient plans to evacuate or remain at home; if the patient's family or other person that provides care to the patient can take responsibility during the emergency for services normally provided by independent contractors referred by the registry; or if the registry needs to make referrals in order for services to continue. If the patient has a case manager through the Community Care for the Elderly or the Medicaid Waiver programs or any other state funded program designated in law to help patients and clients register with the special needs registry, then the nurse registry will check with the case manager to verify if the patient has already been registered. If so, a note will be made in the patient's file by the nurse registry that the patient's need for registration has already been reviewed and handled by the other program's case manager.

(c) The independent contractors referred by the nurse registry, or registry staff, shall inform patients registered with the special needs registry that special needs shelters are an option of last resort and that services may not be equal to what they have received in their homes.

(d) This registration information, when collected, shall be submitted, pursuant to Section 400.506(12), F.S., to the county emergency management office.

(7) The person referred for contract to a patient registered with the special needs registry, which shall include special needs registry patients being served in assisted living facilities and adult family care homes, shall ensure that the same type and quantity of continuous care is provided in the special needs shelter that was provided prior to the emergency as specified in Section 400.506(12), F.S., unless circumstances beyond the control of the independent contractor as described in Section 400.506(12)(d), F.S., make it impossible to continue services.

(8) When a nurse registry is unable to continue services to special needs patients registered under Section 252.355, F.S., that patient's record must contain documentation of the efforts made by the registry to comply with their emergency management plan in accordance with Section 400.506(12), F.S. Documentation includes but is not limited to contacts made to the patient's family or other person that provides care, if applicable, contacts made to the assisted living facility and adult family care home if applicable; contacts made to local emergency operation centers to obtain assistance in reaching patients and contacts made to other agencies which may be able to provide temporary services.

(9) When a state of emergency has been declared by executive order or proclamation of the Governor, pursuant to Section 252.36(2), F.S., the nurse registry must contact those patients needing ongoing services pursuant to Section 400.506(12)(a), F.S., and confirm each patient's plan during and immediately following an emergency. The nurse registry shall contact the assisted living facility and adult family care home patients and confirm their plans during and immediately following an emergency.

(10) If the independent contractor is unable to provide services to special needs registry patients, including any assisted living facility and adult family care home special needs registry patients, due to circumstances beyond their control pursuant to Section 400.506(12)(d), F.S., then the nurse registry will contact the independent contractors it has available for referral to find another independent contractor for the patient, pursuant to Section 400.506(12), F.S.

(11) During emergency situations, when there is not a mandatory evacuation order issued by the local county emergency management office, some patients, registered pursuant to Section 252.355, F.S., may decide not to evacuate and will stay in their homes. The nurse registry must establish procedures, prior to the time of an emergency, which will delineate to what extent the registry will continue to arrange for care during and immediately following an emergency pursuant to Section 400.506(12)(a), F.S. The registry shall also contact the patients who need continuing services by calling the patient at home or calling the assisted living facility or adult family care home the patient resides in to determine if the patient still needs services from the registry and which patients have plans to receive care from their family or other persons. If the assisted living facility or adult family care home does relocate the residents to another assisted living facility or adult family care home in the geographic area served by the nurse registry, the registry will continue to provide services to the residents. If the patients relocated outside the area served by the registry, the registry will assist the assisted living facility and adult family care home in obtaining the services of another registry already licensed for that area until the patient returns back to their original location.

(12) The prioritized list of registered special needs patients maintained by the nurse registry shall be kept current and shall include information, as defined in Sections 400.506(12)(b) and (c), F.S. This list also shall be furnished to county health departments and to the county emergency management office, upon request.

(13) The independent contractor from the nurse registry is required to maintain in the home of the special needs patient a list of patient-specific medications, supplies and equipment required for continuing care and service should the patient be evacuated as per Section 400.506(12)(c), F.S. The list must include the names of all medications, their dose, frequency, route, time of day and any special considerations for administration. The list must also include any allergies; the name of the patient's physician, physician assistant, or advanced registered nurse practitioner and the physician, physician assistant or advanced registered nurse practitioner's phone number; and the name, phone number and address of the patient's pharmacy. If the patient permits, the list can also include the patient's diagnosis.

(14) The patient record for each person registered as a special needs patient shall include the list described in subsection (13) above, and information as listed in Sections 400.506(12)(a) and (b), F.S.

*Rulemaking Authority 400.506, 408.821(4) FS. Law Implemented 400.506 FS. History—New 8-10-06, Amended 3-15-07, 5-4-15.*

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400.506 Licensure of nurse registries; requirements; penalties.

400.497 Rules establishing minimum standards.—The agency shall adopt, publish, and enforce rules to implement part II of chapter 408 and this part, including, as applicable, ss. 400.506 and 400.509, which must provide reasonable and fair minimum standards relating to:

- (1) The home health aide competency test and home health aide training. The agency shall create the home health aide competency test and 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. Successful passage of the competency test by home health aides may be substituted for the training required under this section and any rule adopted pursuant thereto.
- (2) Shared staffing. 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 or chapter 429, and otherwise meets the requirements of law and rule.
- (3) The criteria for the frequency of onsite licensure surveys.
- (4) Licensure application and renewal.
- (5) Oversight by the director of nursing. The agency shall develop rules related to:
  - (a) Standards that address oversight responsibilities by the director of nursing of skilled nursing and personal care services provided by the home health agency's staff;
  - (b) Requirements for a director of nursing to provide to the agency, upon request, a certified daily report of the home health services provided by a specified direct employee or contracted staff member on behalf of the home health agency. The agency may request a certified daily report only for a period not to exceed 2 years prior to the date of the request; and
  - (c) A quality assurance program for home health services provided by the home health agency.
- (6) Conditions for using a recent unannounced licensure inspection for the inspection required in s. 408.806 related to a licensure application associated with a change in ownership of a licensed home health agency.
- (7) The requirements for onsite and electronic accessibility of supervisory personnel of home health agencies.
- (8) Information to be included in patients' records.
- (9) Geographic service areas.
- (10) Preparation of a comprehensive emergency management plan pursuant to s. 400.492.
  - (a) The Agency for Health Care Administration shall adopt rules establishing minimum criteria for the plan and plan updates, with the concurrence of the Department of Health and in consultation with the Division of Emergency Management.
  - (b) The rules must address the requirements in s. 400.492. In addition, the rules shall provide for the maintenance of patient-specific medication lists that can accompany patients who are transported from their homes.
  - (c) The plan is subject to review and approval by the county health department. During its review, the county health department shall contact state and local health and medical stakeholders when necessary. The county health department shall complete its review to ensure that the plan is in accordance with the criteria in the Agency for Health Care Administration rules within 90 days after receipt of the plan and shall approve the plan or advise the home health agency of necessary revisions. If the home health agency fails to submit a plan or fails to submit the requested information or revisions to the county health department within 30 days after written notification from the county health department, the county health department shall notify the Agency for Health Care Administration. The agency shall notify the home health agency that its failure constitutes a deficiency, subject to a fine of \$5,000 per occurrence. If the plan is not submitted, information is not provided, or revisions are not made as requested, the agency may impose the fine.

(d) For any home health agency that operates in more than one county, the Department of Health shall review the plan, after consulting with state and local health and medical stakeholders when necessary. The department shall complete its review within 90 days after receipt of the plan and shall approve the plan or advise the home health agency of necessary revisions. The department shall make every effort to avoid imposing differing requirements on a home health agency that operates in more than one county as a result of differing or conflicting comprehensive plan requirements of the counties in which the home health agency operates.

(e) The requirements in this subsection do not apply to:

1. A facility that is certified under chapter 651 and has a licensed home health agency used exclusively by residents of the facility; or
2. A retirement community that consists of residential units for independent living and either a licensed nursing home or an assisted living facility, and has a licensed home health agency used exclusively by the residents of the retirement community, provided the comprehensive emergency management plan for the facility or retirement community provides for continuous care of all residents with special needs during an emergency.

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. The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to ss. 400.506-400.518 and part II of chapter 408 and to entities licensed by or applying for such license from the Agency for Health Care Administration pursuant to ss. 400.506-400.518. A license issued by the agency is required for the operation of 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.

(2) Each applicant for licensure and each licensee must comply with all provisions of part II of chapter 408 and this section.

(3) In accordance with s. 408.805, an applicant or licensee shall pay a fee for each license application submitted under ss. 400.506-400.518, part II of chapter 408, and applicable rules. The amount of the fee shall be established by rule and may not exceed \$2,000 per biennium.

(4) A person that provides, offers, or advertises to the public 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.

(5)(a) In addition to the requirements of s. 408.812, 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.

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

(6)(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). A licensed nurse registry shall ensure that each certified nursing assistant referred for contract by the nurse registry and each home health aide referred for contract by the nurse registry has presented credentials demonstrating that he or she is adequately trained to perform the tasks of a home health aide in the home setting. 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.

(d) A registered nurse, licensed practical nurse, certified nursing assistant, companion or homemaker, or home health aide referred for contract under this chapter by a nurse registry is deemed an independent contractor and not an employee of the nurse registry regardless of the obligations imposed on a nurse registry under this chapter or chapter 408.

(e) Upon referral of a registered nurse, licensed practical nurse, certified nursing assistant, companion or homemaker, or home health aide for contract in a private residence or facility, the nurse registry shall advise the patient, the patient's family, or any other

person acting on behalf of the patient, at the time of the contract for services, that the caregiver referred by the nurse registry is an independent contractor and that it is not the obligation of a nurse registry to monitor, supervise, manage, or train a caregiver referred for contract under this chapter.

(7) A person who is referred by a nurse registry for contract in private residences and who is not a nurse licensed under part I of chapter 464 may perform only those services or care to clients that the person has been certified to perform or trained to perform as required by law or rules of the Agency for Health Care Administration or the Department of Business and Professional Regulation. Providing services beyond the scope authorized under this subsection constitutes the unauthorized practice of medicine or a violation of the Nurse Practice Act and is punishable as provided under chapter 458, chapter 459, or part I of chapter 464.

(8) Each nurse registry must require every applicant for contract to complete an application form providing the following information:

(a) The name, address, date of birth, and social security number of the applicant.

(b) The educational background and employment history of the applicant.

(c) The number and date of the applicable license or certification.

(d) When appropriate, information concerning the renewal of the applicable license, registration, or certification.

(e) Proof of completion of a continuing educational course on modes of transmission, infection control procedures, clinical management, and prevention of human immunodeficiency virus and acquired immune deficiency syndrome with an emphasis on appropriate behavior and attitude change. Such instruction shall include information on current Florida law and its effect on testing, confidentiality of test results, and treatment of patients and any protocols and procedures applicable to human immunodeficiency virus counseling and testing, reporting, offering HIV testing to pregnant women, and partner notification issues pursuant to ss. 381.004 and 384.25.

(9) Each nurse registry must comply with the background screening requirements in s. 400.512 for all persons referred for contract. However, an initial screening may not be required for persons who have been continuously registered with the nurse registry since October 1, 2000.

(10) 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 nurse registry personnel are referred 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.

(11) Nurse registries shall assist persons who would need assistance and sheltering during evacuations because of physical, mental, or sensory disabilities in registering with the appropriate local emergency management agency pursuant to s. 252.355.

(12) Each nurse registry shall prepare and maintain a comprehensive emergency management plan that is consistent with the criteria in this subsection and with the local special needs plan. The plan shall be updated annually. The plan shall include the means by which the nurse registry will continue to provide the same type and quantity of services to its patients who evacuate to special needs shelters which were being provided to those patients prior to evacuation. The plan shall specify how the nurse registry shall facilitate the provision of continuous care by persons referred for contract to persons who are registered pursuant to s. 252.355 during an emergency that interrupts the provision of care or services in private residences. Nurse registries may establish links to local emergency operations centers to determine a mechanism by which to approach specific areas within a disaster area in order for a provider to reach its clients. Nurse registries shall demonstrate a good faith effort to comply with the requirements of this subsection by documenting attempts of staff to follow procedures outlined in the nurse registry's comprehensive emergency management plan which support a finding that the provision of continuing care has been attempted for patients identified as needing care by the nurse registry and registered under s. 252.355 in the event of an emergency under this subsection.

(a) All persons referred for contract who care for persons registered pursuant to s. 252.355 must include in the patient record a description of how care will be continued during a disaster or emergency that interrupts the provision of care in the patient's home. It shall be the responsibility of the person referred for contract to ensure that continuous care is provided.

(b) Each nurse registry shall maintain a current prioritized list of patients in private residences who are registered pursuant to s. 252.355 and are under the care of persons referred for contract and who need continued services during an emergency. This list shall indicate, for each patient, if the client is to be transported to a special needs shelter and if the patient is receiving skilled nursing services. Nurse registries shall make this list available to county health departments and to local emergency management agencies upon request.

(c) Each person referred for contract who is caring for a patient who is registered pursuant to s. 252.355 shall provide a list of the patient's medication and equipment needs to the nurse registry. Each person referred for contract shall make this information available to county health departments and to local emergency management agencies upon request.

(d) Each person referred for contract shall not be required to continue to provide care to patients in emergency situations that are beyond the person's control and that make it impossible to provide services, such as when roads are impassable or when patients do not go to the location specified in their patient records.

(e) The comprehensive emergency management plan required by this subsection is subject to review and approval by the county health department. During its review, the county health department shall contact state and local health and medical stakeholders when necessary. The county health department shall complete its review to ensure that the plan complies with the criteria in the

Agency for Health Care Administration rules within 90 days after receipt of the plan and shall either approve the plan or advise the nurse registry of necessary revisions. If a nurse registry fails to submit a plan or fails to submit requested information or revisions to the county health department within 30 days after written notification from the county health department, the county health department shall notify the Agency for Health Care Administration. The agency shall notify the nurse registry that its failure constitutes a deficiency, subject to a fine of \$5,000 per occurrence. If the plan is not submitted, information is not provided, or revisions are not made as requested, the agency may impose the fine.

(f) The Agency for Health Care Administration shall adopt rules establishing minimum criteria for the comprehensive emergency management plan and plan updates required by this subsection, with the concurrence of the Department of Health and in consultation with the Division of Emergency Management.

(13) 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 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.

(14) The nurse registry must comply with the notice requirements of s. 408.810(5), relating to abuse reporting.

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

1. Provides services to residents in an assisted living facility for which the nurse registry does not receive fair market value remuneration.
2. Provides staffing to an assisted living facility for which the nurse registry does not receive fair market value remuneration.
3. Fails to provide the agency, upon request, with copies of all contracts with assisted living facilities which were executed within the last 5 years.
4. 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 or this chapter and from whom the nurse registry receives referrals. A nurse registry is exempt from this subparagraph if it does not bill the Florida Medicaid program or the Medicare program or share a controlling interest with any entity licensed, registered, or certified under part II of chapter 408 that bills the Florida Medicaid program or the Medicare program.
5. Gives remuneration to a physician, a member of the physician's office staff, or an immediate family member of the physician, and the nurse registry received a patient referral in the last 12 months from that physician or the physician's office staff. A nurse registry is exempt from this subparagraph if it does not bill the Florida Medicaid program or the Medicare program or share a controlling interest with any entity licensed, registered, or certified under part II of chapter 408 that bills the Florida Medicaid program or the Medicare program.

(b) The agency shall also impose an administrative fine of \$15,000 if the nurse registry refers nurses, certified nursing assistants, home health aides, or other staff without charge to a facility licensed under chapter 429 in return for patient referrals from the facility.

(c) The proceeds of all fines collected under this subsection shall be deposited into the Health Care Trust Fund.

(16) In addition to any other penalties imposed pursuant to this section or part, the agency may assess costs related to an investigation that results in a successful prosecution, excluding costs associated with an attorney's time.

(17) The Agency for Health Care Administration shall adopt rules to implement this section and part II of chapter 408.

(18) An administrator may manage only one nurse registry, except that an administrator may manage up to five registries if all five registries have identical controlling interests as defined in s. 408.803 and are located within one agency geographic service area or within an immediately contiguous county. An administrator shall designate, in writing, for each licensed entity, a qualified alternate administrator to serve during the administrator's absence.

(19) It is not the obligation of a nurse registry to monitor, supervise, manage, or train a registered nurse, licensed practical nurse, certified nursing assistant, companion or homemaker, or home health aide referred for contract under this chapter. In the event of a violation of this chapter or a violation of any other law of this state by a referred registered nurse, licensed practical nurse, certified nursing assistant, companion or homemaker, or home health aide, or a deficiency in credentials which comes to the attention of the nurse registry, the nurse registry shall advise the patient to terminate the referred person's contract, providing the reason for the suggested termination; cease referring the person to other patients or facilities; and, if practice violations are involved, notify the licensing board. This section does not affect or negate any other obligations imposed on a nurse registry under chapter 408.



(20) Records required to be filed under this chapter with the nurse registry as a repository of records must be kept in accordance with rules adopted by the agency. The nurse registry has no obligation to review or act upon such records except as specified in subsection (19).

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400.512 Screening of home health agency personnel; nurse registry personnel and contractors; and companions and homemakers.—The agency, registry, or service shall require level 2 background screening for employees or contractors as required in s. 408.809(1)(e) pursuant to chapter 435 and s. 408.809.

400.6065 Background screening.—The agency shall require level 2 background screening for personnel as required in s. 408.809(1)(e) pursuant to chapter 435 and s. 408.809.

(b) The agency shall require level 2 background screening for personnel as required in s. 408.809(1)(e) pursuant to chapter 435 and s. 408.809.

400.9065 Background screening.—The agency shall require level 2 background screening for personnel as required in s. 408.809(1)(e) pursuant to chapter 435 and s. 408.809.

(16) Establish procedures for maintaining a record of the employment history, including background screening as required by ss. 400.953 and 408.809(1) and chapter 435 of all home medical equipment provider personnel. A home medical equipment provider must require its personnel to submit an employment history to the home medical equipment provider and must verify the employment history for at least the previous 5 years, unless through diligent efforts such verification is not possible. There is no monetary liability on the part of, and no cause of action for damages arising against a former employer, a prospective employee, or a prospective independent contractor with a licensed home medical equipment provider, who reasonably and in good faith communicates his or her honest opinions about a former employee's job performance. This subsection does not affect the official immunity of an officer or employee of a public corporation.

400.953 Background screening of home medical equipment provider personnel.—The agency shall require level 2 background screening for personnel as required in s. 408.809(1)(e) pursuant to chapter 435 and s. 408.809.

400.964 Personnel screening requirement.—The agency shall require level 2 background screening for personnel as required in s. 408.809(1)(e) pursuant to chapter 435 and s. 408.809.

408.809 Background screening; prohibited offenses.—

(1) Level 2 background screening pursuant to chapter 435 must be conducted through the agency on each of the following persons, who are considered employees for the purposes of conducting screening under chapter 435:

(a) The licensee, if an individual.

(b) The administrator or a similarly titled person who is responsible for the day-to-day operation of the provider.

(c) The financial officer or similarly titled individual who is responsible for the financial operation of the licensee or provider.

(d) Any person who is a controlling interest if the agency has reason to believe that such person has been convicted of any offense prohibited by s. 435.04. For each controlling interest who has been convicted of any such offense, the licensee shall submit to the agency a description and explanation of the conviction at the time of license application.

(e) Any person, as required by authorizing statutes, seeking employment with a licensee or provider who is expected to, or whose responsibilities may require him or her to, provide personal care or services directly to clients or have access to client funds, personal property, or living areas; and any person, as required by authorizing statutes, contracting with a licensee or provider whose responsibilities require him or her to provide personal care or personal services directly to clients. Evidence of contractor screening may be retained by the contractor's employer or the licensee.

(2) Every 5 years following his or her licensure, employment, or entry into a contract in a capacity that under subsection (1) would require level 2 background screening under chapter 435, each such person must submit to level 2 background rescreening as a condition of retaining such license or continuing in such employment or contractual status. For any such rescreening, the agency shall request the Department of Law Enforcement to forward the person's fingerprints to the Federal Bureau of Investigation for a national criminal history record check unless the person's fingerprints are enrolled in the Federal Bureau of Investigation's national retained print arrest notification program. If the fingerprints of such a person are not retained by the Department of Law Enforcement under s. 943.05(2)(g) and (h), the person must submit fingerprints electronically to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The fingerprints shall be retained by the Department of Law Enforcement under s. 943.05(2)(g) and (h) and enrolled in the national retained print arrest notification program when the Department of Law Enforcement begins participation in the program. The cost of the state and national criminal history records checks required by level 2 screening may be borne by the licensee or the person fingerprinted. Until a specified agency is fully implemented in the

clearinghouse created under s. 435.12, the agency may accept as satisfying the requirements of this section proof of compliance with level 2 screening standards submitted within the previous 5 years to meet any provider or professional licensure requirements of the agency, the Department of Health, the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Children and Families, or the Department of Financial Services for an applicant for a certificate of authority or provisional certificate of authority to operate a continuing care retirement community under chapter 651, provided that:

- (a) The screening standards and disqualifying offenses for the prior screening are equivalent to those specified in s. 435.04 and this section;
  - (b) The person subject to screening has not had a break in service from a position that requires level 2 screening for more than 90 days; and
  - (c) Such proof is accompanied, under penalty of perjury, by an attestation of compliance with chapter 435 and this section using forms provided by the agency.
- (3) All fingerprints must be provided in electronic format. Screening results shall be reviewed by the agency with respect to the offenses specified in s. 435.04 and this section, and the qualifying or disqualifying status of the person named in the request shall be maintained in a database. The qualifying or disqualifying status of the person named in the request shall be posted on a secure website for retrieval by the licensee or designated agent on the licensee's behalf.
- (4) In addition to the offenses listed in s. 435.04, all persons required to undergo background screening pursuant to this part or authorizing statutes must not have an arrest awaiting final disposition for, must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, and must not have been adjudicated delinquent and the record not have been sealed or expunged for any of the following offenses or any similar offense of another jurisdiction:
- (a) Any authorizing statutes, if the offense was a felony.
  - (b) This chapter, if the offense was a felony.
  - (c) Section 409.920, relating to Medicaid provider fraud.
  - (d) Section 409.9201, relating to Medicaid fraud.
  - (e) Section 741.28, relating to domestic violence.
  - (f) Section 777.04, relating to attempts, solicitation, and conspiracy to commit an offense listed in this subsection.
  - (g) Section 817.034, relating to fraudulent acts through mail, wire, radio, electromagnetic, photoelectronic, or photooptical systems.
  - (h) Section 817.234, relating to false and fraudulent insurance claims.
  - (i) Section 817.481, relating to obtaining goods by using a false or expired credit card or other credit device, if the offense was a felony.
  - (j) Section 817.50, relating to fraudulently obtaining goods or services from a health care provider.
  - (k) Section 817.505, relating to patient brokering.
  - (l) Section 817.568, relating to criminal use of personal identification information.
  - (m) Section 817.60, relating to obtaining a credit card through fraudulent means.
  - (n) Section 817.61, relating to fraudulent use of credit cards, if the offense was a felony.
  - (o) Section 831.01, relating to forgery.
  - (p) Section 831.02, relating to uttering forged instruments.
  - (q) Section 831.07, relating to forging bank bills, checks, drafts, or promissory notes.
  - (r) Section 831.09, relating to uttering forged bank bills, checks, drafts, or promissory notes.
  - (s) Section 831.30, relating to fraud in obtaining medicinal drugs.
  - (t) Section 831.31, relating to the sale, manufacture, delivery, or possession with the intent to sell, manufacture, or deliver any counterfeit controlled substance, if the offense was a felony.
  - (u) Section 895.03, relating to racketeering and collection of unlawful debts.
  - (v) Section 896.101, relating to the Florida Money Laundering Act.

If, upon rescreening, a person who is currently employed or contracted with a licensee as of June 30, 2014, and was screened and qualified under ss. 435.03 and 435.04, has a disqualifying offense that was not a disqualifying offense at the time of the last screening, but is a current disqualifying offense and was committed before the last screening, he or she may apply for an exemption from the appropriate licensing agency and, if agreed to by the employer, may continue to perform his or her duties until the licensing agency renders a decision on the application for exemption if the person is eligible to apply for an exemption and the exemption request is received by the agency no later than 30 days after receipt of the rescreening results by the person.

(5) A person who serves as a controlling interest of, is employed by, or contracts with a licensee on July 31, 2010, who has been screened and qualified according to standards specified in s. 435.03 or s. 435.04 must be rescreened by July 31, 2015, in compliance with the following schedule. If, upon rescreening, such person has a disqualifying offense that was not a disqualifying offense at the time of the last screening, but is a current disqualifying offense and was committed before the last screening, he or she may apply for an exemption from the appropriate licensing agency and, if agreed to by the employer, may continue to perform his or her duties until the licensing agency renders a decision on the application for exemption if the person is eligible to apply for an exemption and

the exemption request is received by the agency within 30 days after receipt of the rescreening results by the person. The rescreening schedule shall be:

- (a) Individuals for whom the last screening was conducted on or before December 31, 2004, must be rescreened by July 31, 2013.
- (b) Individuals for whom the last screening conducted was between January 1, 2005, and December 31, 2008, must be rescreened by July 31, 2014.
- (c) Individuals for whom the last screening conducted was between January 1, 2009, through July 31, 2011, must be rescreened by July 31, 2015.
- (6) The costs associated with obtaining the required screening must be borne by the licensee or the person subject to screening. Licensees may reimburse persons for these costs. The Department of Law Enforcement shall charge the agency for screening pursuant to s. 943.053(3). The agency shall establish a schedule of fees to cover the costs of screening.
- (7)(a) As provided in chapter 435, the agency may grant an exemption from disqualification to a person who is subject to this section and who:
  1. Does not have an active professional license or certification from the Department of Health; or
  2. Has an active professional license or certification from the Department of Health but is not providing a service within the scope of that license or certification.
- (b) As provided in chapter 435, the appropriate regulatory board within the Department of Health, or the department itself if there is no board, may grant an exemption from disqualification to a person who is subject to this section and who has received a professional license or certification from the Department of Health or a regulatory board within that department and that person is providing a service within the scope of his or her licensed or certified practice.
- (8) The agency and the Department of Health may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section, chapter 435, and authorizing statutes requiring background screening and to implement and adopt criteria relating to retaining fingerprints pursuant to s. 943.05(2).
- (9) There is no reemployment assistance or other monetary liability on the part of, and no cause of action for damages arising against, an employer that, upon notice of a disqualifying offense listed under chapter 435 or this section, terminates the person against whom the report was issued, whether or not that person has filed for an exemption with the Department of Health or the agency.

History.—s. 5, ch. 2006-192; s. 50, ch. 2009-223; s. 21, ch. 2010-114; s. 61, ch. 2012-30; s. 2, ch. 2012-73; s. 166, ch. 2014-19; s. 3, ch. 2014-84.

408.810 Minimum licensure requirements.—In addition to the licensure requirements specified in this part, authorizing statutes, and applicable rules, each applicant and licensee must comply with the requirements of this section in order to obtain and maintain a license.

- (1) An applicant for licensure must comply with the background screening requirements of s. 408.809.

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400.484 Right of inspection; deficiencies; fines.

400.484 Right of inspection; deficiencies; fines.—

- (1) In addition to the requirements of s. 408.811, the agency may make such inspections and investigations as are necessary in order to determine the state of compliance with this part, part II of chapter 408, and applicable rules.
- (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 shall impose an administrative fine in the amount of \$15,000 for each occurrence and each day that the deficiency exists.
  - (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 shall impose an administrative fine in the amount of \$5,000 for each occurrence and each day that the deficiency exists.
  - (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 shall impose an administrative fine not to exceed \$1,000 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 shall impose an administrative fine not to exceed \$500 for each occurrence and each day that the uncorrected or repeated deficiency exists.
- (3) In addition to any other penalties imposed pursuant to this section or part, the agency may assess costs related to an investigation that results in a successful prosecution, excluding costs associated with an attorney's time.

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400.462 Definitions.

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

- (1) “Administrator” means a direct employee, as defined in subsection (9), who is 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, under part II of this chapter, or under part I of chapter 429.
- (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.
- (5) “Certified nursing assistant” means any person who has been issued a certificate under part II of chapter 464.
- (7) “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.
- (16) “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.

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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.

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(3) In addition to the requirements of s. 408.810, the home health agency must also obtain and maintain the following insurance coverage 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 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).

(4) 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.

(5) In accordance with s. 408.805, an applicant or licensee shall pay a fee for each license application submitted under this part, part II of chapter 408, and applicable rules. The amount of the fee shall be established by rule and shall be set at an amount that is sufficient to cover the agency's costs in carrying out its responsibilities under this part, but not to exceed \$2,000 per biennium. However, state, county, or municipal governments applying for licenses under this part are exempt from the payment of license fees.

(6) 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.

(7) The agency may not issue an initial license to an applicant for a home health agency license if the applicant shares common controlling interests with another licensed home health agency that is located within 10 miles of the applicant and is in the same county. The agency must return the application and fees to the applicant.

(8) An application for a home health agency license may not be transferred to another home health agency or controlling interest before issuance of the license.

(9) A licensed home health agency that seeks to relocate to a different geographic service area not listed on its license must submit an initial application for a home health agency license for the new location.

(10) The agency may not issue a renewal license for a home health agency in any county having at least one licensed home health agency and that has more than one home health agency per 5,000 persons, as indicated by the most recent population estimates published by the Legislature's Office of Economic and Demographic Research, if the applicant or any controlling interest has been administratively sanctioned by the agency during the 2 years prior to the submission of the licensure renewal application for one or more of the following acts:

- (a) An intentional or negligent act that materially affects the health or safety of a client of the provider;
- (b) 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;
- (c) Preparing or maintaining fraudulent patient records, such as, but not limited to, charting ahead, recording vital signs or symptoms which were not personally obtained or observed by the home health agency's staff at the time indicated, borrowing patients or patient records from other home health agencies to pass a survey or inspection, or falsifying signatures;
- (d) Failing to provide at least one service directly to a patient for a period of 60 days;
- (e) Demonstrating a pattern of falsifying documents relating to the training of home health aides or certified nursing assistants or demonstrating a pattern of falsifying health statements for staff who provide direct care to patients. A pattern may be demonstrated by a showing of at least three fraudulent entries or documents;
- (f) Demonstrating a pattern of billing any payor for services not provided. A pattern may be demonstrated by a showing of at least three billings for services not provided within a 12-month period;
- (g) Demonstrating a pattern of failing to provide a service specified in the home health agency's written agreement with a patient or the patient's legal representative, or the plan of care for that patient, unless a reduction in service is mandated by Medicare, Medicaid, or a state program or as provided in s. 400.492(3). A pattern may be demonstrated by a showing of at least three incidents, regardless of the patient or service, in which the home health agency did not provide a service specified in a written agreement or plan of care during a 3-month period;
- (h) Giving 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 or gives remuneration as prohibited in s. 400.474(6)(a);
- (i) Giving cash, or its equivalent, to a Medicare or Medicaid beneficiary;
- (j) Demonstrating 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;
- (k) Providing services to residents in an assisted living facility for which the home health agency does not receive fair market value remuneration; or



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

(14) The nurse registry must comply with the notice requirements of s. 408.810(5), relating to abuse reporting.

(c) Proof of financial ability to operate as required under s. 408.810(8). As an alternative to submitting proof of financial ability to operate as required under s. 408.810(8), the applicant may file a surety bond of at least \$500,000 which guarantees that the clinic will act in full conformity with all legal requirements for operating a clinic, payable to the agency. The agency may adopt rules to specify related requirements for such surety bond.