

# Florida Rules and Statutes

## Homemakers and Companions

### **59A-18.009 Homemakers or Companions.**

- (1) The homemaker or companion shall have evidence of training in topics related to human development and interpersonal relationships, nutrition, shopping, food storage, use of equipment and supplies, planning and organizing of household tasks and principles of cleanliness and safety:
- (2) The homemaker shall have the following responsibilities:
  - (a) To maintain the home in the optimum state of cleanliness and safety depending upon the client's and the caregiver's resources;
  - (b) To perform the functions generally undertaken by the natural homemaker, including such duties as preparation of meals, laundry, and shopping;
  - (c) To perform casual, cosmetic assistance, such as brushing the client's hair, assisting with make-up, filing and polishing nails, with the exception of clipping nails for diabetic patients;
  - (d) To stabilize the client when walking, as needed, by holding the client's arm or hand; and
  - (e) To report any unusual incidents or changes in the patient's or client's behavior to the nurse registry administration and to the caregiver.
- (3) The companion shall have the following responsibilities:
  - (a) To provide companionship for the patient or client;
  - (b) To provide escort services such as taking the patient or client to the doctor;
  - (c) To provide light housekeeping tasks such as preparation of a meal or laundering the client's personal garments;
  - (d) To perform casual, cosmetic assistance, such as brushing the client's hair, assisting with make-up, filing and polishing nails, with the exception of clipping nails for diabetic patients; and
  - (e) To stabilize the client when walking, as needed, by holding the client's arm or hand; and
  - (f) To report any unusual incidents or changes in the patient's or client's behavior to the nurse registry administration and to the caregiver.
- (4) Each nurse registry shall ensure that homemakers and companions understand the needs of the patients or clients to whom they are referred and are able to recognize those conditions that need to be reported to the nurse registry office.
- (5) Homemakers and companions shall be responsible for providing to patient and nurse registry copies of any documentation which reflects the services provided. This will be stored by the nurse registry in the client's file.

*Specific Authority 400.497, 400.506 FS. Law Implemented 400.478, 400.497, 400.506 FS. History--New 2-9-93, Amended 1-27-94, 12-24-00.*

### **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 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.

(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 procedures set forth in s. 400.512 for maintaining records of the work 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.

(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 Department of Community Affairs.

(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.
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.

(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.

**History.**--ss. 2, 4, ch. 90-101; s. 27, ch. 91-57; ss. 13, 23, ch. 93-214; s. 51, ch. 94-218; s. 1056, ch. 95-148; ss. 49, 71, ch. 98-171; s. 10, ch. 99-332; s. 14, ch. 2000-140; s. 21, ch. 2000-153; ss. 104, 161, ch. 2000-318; s. 80, ch. 2000-349; s. 25, ch. 2001-53; s. 2, ch. 2001-67; s. 148, ch. 2001-277; s. 48, ch. 2004-

267; s. 1, ch. 2005-170; s. 1, ch. 2005-172; s. 8, ch. 2005-243; s. 23, ch. 2006-71; s. 79, ch. 2007-5; s. 80, ch. 2007-230; s. 103, ch. 2008-4; s. 2, ch. 2008-103; s. 9, ch. 2008-246.

**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.

(1)(a) The Agency for Health Care Administration may, upon request, grant exemptions from disqualification from employment or contracting under this section as provided in s. 435.07, except for health care practitioners licensed by the Department of Health or a regulatory board within that department.

(b) The appropriate regulatory board within the Department of Health, or that department itself when there is no board, may, upon request of the licensed health care practitioner, grant exemptions from disqualification from employment or contracting under this section as provided in s. 435.07.

(2) The administrator of each home health agency, the managing employee of each nurse registry, and the managing employee of each 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, who enter the home of a patient or client in their service capacity have been screened.

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

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

(5) There is no monetary liability on the part of, and no cause of action for damages arises against, a licensed home health agency, licensed nurse registry, or companion or homemaker service registered under s. 400.509, that, upon notice that the employee or contractor has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under s. 435.03 or under any similar statute of another jurisdiction, terminates the

employee or contractor, whether or not the employee or contractor has filed for an exemption with the agency in accordance with chapter 435 and whether or not the time for filing has expired.

(6) The costs of processing the statewide correspondence criminal records checks must be borne by the home health agency; the nurse registry; or the companion or homemaker service registered under s. 400.509, or by the person being screened, at the discretion of the home health agency, nurse registry, or s. 400.509 registrant.

**History.**--s. 14, ch. 93-214; s. 21, ch. 94-134; s. 21, ch. 94-135; s. 1057, ch. 95-148; s. 17, ch. 95-152; s. 14, ch. 95-158; s. 1, ch. 95-201; s. 40, ch. 95-228; s. 128, ch. 95-418; s. 11, ch. 96-268; ss. 230, 231, ch. 96-406; s. 12, ch. 99-332; ss. 105, 163, ch. 2000-318; s. 82, ch. 2000-349; s. 24, ch. 2004-267; s. 9, ch. 2005-243; s. 82, ch. 2007-230.

#### **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.

**History.**--s. 45, ch. 75-233; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181; ss. 8, 23, ch. 93-214; s. 5, ch. 99-332; s. 158, ch. 2000-318; s. 77, ch. 2007-230; s. 6, ch. 2008-246.

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

- (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) "Agency" means the Agency for Health Care Administration.
- (5) "Certified nursing assistant" means any person who has been issued a certificate under part II of chapter 464.
- (6) "Client" means an elderly, handicapped, or convalescent individual who receives companion services or homemaker services in the individual's home or place of residence.
- (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.
- (8) "Department" means the Department of Children and Family Services.
- (11) "Fair market value" means the value in arms length transactions, consistent with the price that an asset would bring as the result of bona fide bargaining between well-informed buyers and sellers who are not otherwise in a position to generate business for the other party, or the compensation that would be included in a service agreement as the result of bona fide bargaining between well-informed parties to the agreement who are not otherwise in a position to generate business for the other party, on the date of acquisition of the asset or at the time of the service agreement.
- (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.
- (17) "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.
- (18) "Home infusion therapy" means the administration of intravenous pharmacological or nutritional products to a patient in his or her home.
- (19) "Immediate family member" means a husband or wife; a birth or adoptive parent, child, or sibling; a stepparent, stepchild, stepbrother, or stepsister; a father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; a grandparent or grandchild; or a spouse of a grandparent or grandchild.
- (21) "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, this chapter, or chapter 429 or other business entities.
- (22) "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; 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.

(23) "Patient" means any person who receives home health services in his or her home or place of residence.

(24) "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.

(25) "Physician" means a person licensed under chapter 458, chapter 459, chapter 460, or chapter 461.

(26) "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.

(27) "Remuneration" means any payment or other benefit made directly or indirectly, overtly or covertly, in cash or in kind.

(28) "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.

(29) "Staffing services" means services provided to a health care facility, school, or other business entity on a temporary or school-year basis pursuant to a written contract by licensed health care personnel and by 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.

**400.495 Notice of toll-free telephone number for central abuse hotline.**--On or before the first day home health services are provided to a patient, any home health agency or nurse registry licensed under this part must inform the patient and his or her immediate family, if appropriate, of the right to report abusive, neglectful, or exploitative practices. The statewide toll-free telephone number for the central abuse hotline must be provided to patients in a manner that is clearly legible and must include the words: "To report abuse, neglect, or exploitation, please call toll-free ( **1-800-962-2873** )." The Agency for Health Care Administration shall adopt rules that provide for 90 days' advance notice of a change in the toll-free telephone number and that outline due process procedures, as provided under chapter 120, for home health agency personnel and nurse registry personnel who are reported to the central abuse hotline. Home health agencies and nurse registries shall establish appropriate policies and procedures for providing such notice to patients.