

Licensed nurses as ind. contractors in patients' homes

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Subject:

Licensed nurses as ind. contractors in patients' homes

Mr. Jerome Hoffman
General Counsel
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, Florida 32308-5403

Ms. Carolyn Pardue
Florida Nurses Association
Post Office Box 536985
Orlando, Florida 32853-6985

RE: NURSES--AGENCY FOR HEALTH CARE ADMINISTRATION--HOME HEALTH CARE--
licensed nurses providing nursing services as independent contractors in patients' homes. s.
400.464(5), Fla. Stat.

Dear Mr. Hoffman and Ms. Pardue:

You ask substantially the following question:

May a nurse, licensed pursuant to Chapter 464, Florida Statutes, directly contract with a patient to provide nursing services to such patient in the patient's private residence?

In sum:

A nurse, licensed pursuant to Chapter 464, Florida Statutes, may directly contract with a patient to provide nursing services to such patient in the patient's private residence.

You have informed this office that the American Home Health Industries of Florida, Inc., has advised that in order for a person to provide health or personal care in patient's homes, the person must either work for or be licensed as a home health agency by the Agency for Health Care Administration. Individual nurses have expressed concern that they may now be unable to contract with patients directly to provide nursing services to such patients in their homes unless they are licensed as a home health care agency or are employed by such an agency.

Section 400.464(5)(a), Florida Statutes, provides that it is unlawful to offer or advertise "home health services" to the public without a valid license. "Home health services" are defined as

"health and medical services and medical supplies furnished to an individual by home health

agency personnel or by others under arrangements with the agency, on a visiting basis, in the individual's home or place of residence. The term includes, but is not limited to, the following:

- (a) Nursing care.
- (b) Physical, occupational, respiratory, or speech therapy.
- (c) Home health aide services.
- (d) Nutritional guidance.
- (e) Medical supplies, restricted to drugs and biologicals prescribed by a physician."[1]

"Home health agency" is defined as "an organization that provides home health services and staffing services for health care facilities." [2] Rule 59A-8.002(15), Florida Administrative Code provides a definition for "organization." The rule states that an organization consists of "two or more persons or entities who as a course of business arranges [sic] for the delivery of home health services through others." [3] "Home health agency personnel" are defined as "persons who are employed by or under contract with a home health agency and enter the home or place of residence of patients[.]" [4]

Thus, the statutory provisions requiring licensure as home health services are not applicable to a nurse licensed pursuant to Chapter 464, Florida Statutes, who is directly contracting to provide nursing services to a patient in the patient's private residence. This office has been advised that the Agency for Health Care Administration has reached a similar conclusion on this issue. [5]

Sincerely,

Robert A. Butterworth
Attorney General

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[1] Section 400.462(6), Fla. Stat. (1993).

[2] Section 400.462(4), Fla. Stat. (1993).

[3] See generally *Daniel v. Florida State Turnpike Authority*, 213 So. 2d 585 (Fla. 1968) (the administrative construction of the agency charged with interpretation of a statute is controlling in the absence of clear reasons to the contrary).

[4] Section 400.462(5), Fla. Stat. (1993).

[5] See letter to Gene J. Tischer, Executive Director of Associated Home Health Industries of Florida, Inc., from Thomas Arnold, Chief of Health Facilities Regulation-Central Office, Agency for Health Care Administration, dated January 13, 1995.