

By Senator Forman

32-170C-98

1 A bill to be entitled
2 An act relating to certified nursing
3 assistants; creating part XV of chapter 468,
4 F.S.; providing a short title; providing
5 definitions; providing duties and powers of the
6 Department of Health in regulating the practice
7 of certified nursing assistants; providing
8 requirements for a state registry of certified
9 nursing assistants; providing requirements for
10 obtaining certification as a certified nursing
11 assistant; authorizing the department to deny,
12 suspend, or revoke a person's certification
13 upon certain findings or reports of abuse,
14 neglect, or exploitation; authorizing the
15 department to exempt an applicant or
16 certificateholder from disqualification of
17 certification; specifying certain acts that
18 constitute grounds for disciplinary sanctions;
19 providing penalties; requiring that the
20 department maintain a registry of certified
21 nursing assistants; providing for renewal of
22 certification; exempting an employer from
23 liability for terminating a certified nursing
24 assistant under certain circumstances;
25 authorizing the department to contract for
26 examination services; providing penalties;
27 providing rulemaking authority; amending s.
28 400.211, F.S.; deleting obsolete provisions
29 with respect to the regulation of certified
30 nursing assistants by the Department of
31 Business and Professional Regulation; providing

1 for certain federal requirements to apply to
2 specified nursing home facilities under certain
3 circumstances; amending ss. 20.43, 400.4255,
4 400.462, 400.506, 455.667, F.S., relating to
5 the Department of Health, the use of licensed
6 personnel in assisted living facilities, the
7 regulation of home health agencies, nurse
8 registries, and the ownership and control of
9 patient records; conforming cross-references to
10 changes made by the act; providing for the
11 continued validity of certifications issued
12 before the effective date of the act; providing
13 an effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

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17 Section 1. Part XV of chapter 468, Florida Statutes,
18 consisting of sections 468.820, 468.821, 468.822, 468.823,
19 468.824, 468.825, 468.826, 468.827, and 468.828, Florida
20 Statutes, is created to read:

21 468.820 Short title.--This part may be cited as the
22 "Certified Nursing Assistant Practice Act."

23 468.821 Definitions.--As used in this part, the term:

24 (1) "Approved training program" means a course of
25 training conducted by a public or private educational center
26 licensed by the Department of Education to implement the basic
27 curriculum for certified nursing assistants which is approved
28 by the Department of Education.

29 (2) "Certified nursing assistant" means a person who
30 meets the qualifications specified in this part and who is
31 certified by the department as a certified nursing assistant.

1 (3) "Department" means the Department of Health.

2 (4) "Registry" means the listing of certified nursing
3 assistants maintained by the department.

4 468.822 Duties and powers of the department.--The
5 department shall regulate the practice of certified nursing
6 assistants in this state. The department shall maintain, or
7 contract with or approve another entity to maintain, a state
8 registry of certified nursing assistants. The registry must
9 consist of a database including the name of each certified
10 nursing assistant in this state who holds active
11 certification, the effective date of certification, and an
12 indication whether the certified nursing assistant was
13 reimbursed for the cost of training and testing. The registry
14 shall be accessible to individuals, employers, and other state
15 agencies. The department shall establish testing procedures
16 for use in certifying nursing assistants and shall adopt rules
17 regulating the practice of certified nursing assistants to
18 ensure public health, safety, and welfare.

19 468.823 Certified nursing assistants; certification
20 requirement.--

21 (1) Except as provided in subsection (2), a person may
22 not practice as a certified nursing assistant unless the
23 person is certified by the department under this part. A
24 person who is certified under this part may use the title
25 "Certified Nursing Assistant" and the abbreviation "C.N.A."

26 (2) A registered nurse or a practical nurse licensed
27 under chapter 464, or an applicant for licensure as a
28 registered nurse or a practical nurse who is permitted to
29 practice nursing in accordance with rules adopted by the Board
30 of Nursing, may practice as a certified nursing assistant and

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1 use the title "Certified Nursing Assistant" and the
2 abbreviation "C.N.A."

3 (3) The department shall issue a certificate to
4 practice as a certified nursing assistant to any person who
5 demonstrates an ability to read and write the English language
6 and meets the requirements of level 1 screening as provided in
7 s. 435.03, including a search for any report of abuse,
8 neglect, or exploitation of an adult. A person who has not
9 maintained continuous residency within the state for the 5
10 years immediately preceding the date of application must
11 comply with the requirements for level 2 screening as provided
12 in s. 435.04 and may be granted conditional certification for
13 up to 180 days pending the receipt of written findings
14 evidencing completion of level 2 screening. Level 2 screening
15 is not required if an applicant attests in writing, under
16 penalty of perjury, that he or she meets the residency
17 requirement. An applicant must supply any missing criminal
18 history information or other necessary information to the
19 department within 30 days after the department requests the
20 information or be subject to automatic disqualification of
21 eligibility for certification. In addition, an applicant must
22 meet one of the following requirements:

23 (a) Has successfully completed an approved training
24 program and achieved a minimum score, established by rule of
25 the department, on the Florida Nursing Assistant Competency
26 Evaluation, which consists of a written portion and skills
27 demonstration portion approved by the department and
28 administered at a site and by personnel approved by the
29 department.

30 (b) Has achieved a minimum score, established by rule
31 of the department, on the Florida Nursing Assistant Competency

1 Evaluation, which consists of a written portion and skills
2 demonstration portion, approved by the department and
3 administered at a site and by personnel approved by the
4 department and:
5 1. Has a high school diploma, or its equivalent; or
6 2. Is at least 18 years of age.
7 (c) Is currently certified in another state; is listed
8 on that state's certified nursing assistant registry; has not
9 been found to have committed abuse, neglect, or exploitation
10 in that state; and has successfully completed a national
11 nursing assistant evaluation in order to receive certification
12 in that state.
13 (4) If an applicant fails to pass the Florida Nursing
14 Assistant Competency Evaluation in three attempts, the
15 applicant is not eligible for reexamination unless the
16 applicant completes an approved training program.
17 (5) An oral examination shall be administered as a
18 substitute for the written portion of the examination upon
19 request.
20 468.824 Denial, suspension, or revocation of
21 certification; certified nursing assistant registry.--
22 (1) The department may deny, suspend, or revoke the
23 certification of any certified nursing assistant, based upon
24 written notification from a court of competent jurisdiction,
25 law enforcement agency, or administrative agency of any
26 finding of guilt of, regardless of adjudication, or a plea of
27 nolo contendere or guilty to, any offense set forth in the
28 level 1 screening standards of chapter 435 or any confirmed
29 report of abuse, neglect, or exploitation. However, the
30 department may, upon the request of an applicant or a
31 certificateholder, exempt the applicant or certificateholder

1 from disqualification of certification under this subsection
2 and issue a letter of exemption.

3 (2) The following acts constitute grounds for which
4 the department may impose disciplinary sanctions as specified
5 in subsection (3):

6 (a) Making misleading, deceptive, or fraudulent
7 representations on an application for certification.

8 (b) Obtaining or renewing, or attempting to obtain or
9 renew, a certificate by bribery, by fraudulent
10 misrepresentation, or through an error of the department.

11 (c) Intentionally violating any rule of the
12 department.

13 (d) Failing to report to the department any person
14 whom the certificateholder knows to be in violation of this
15 part or failing to report a violation involving abuse to the
16 Department of Children and Family Services.

17 (e) Making or filing a report that the
18 certificateholder knows to be false.

19 (f) Exercising influence on the patient or client in
20 such a manner as to exploit the patient or client for the
21 financial gain of the certificateholder or a third party.

22 (g) Improperly interfering with an investigation or
23 inspection authorized by law or with any disciplinary
24 proceeding.

25 (3) When the department finds any person guilty of any
26 of the grounds set forth in subsection (2), it may enter an
27 order imposing one or more of the following penalties:

28 (a) Denial, suspension, or revocation of
29 certification.

30 (b) Imposition of an administrative fine not to exceed
31 \$150 for each count or separate offense.

1 (4) The department shall, by rule, designate approved
2 treatment programs for impaired practitioners as provided in
3 s. 455.707(1).

4 (5)(a) The department shall maintain, or contract with
5 or approve another entity or organization to maintain, a
6 registry of certified nursing assistants which includes, but
7 need not be limited to, the name of each certified nursing
8 assistant; other identifying information; any information
9 required by state or federal law; and information regarding
10 any report of abuse, neglect, or exploitation as provided
11 under chapter 435.

12 (b) A certified nursing assistant shall notify the
13 department in writing of any change in name or address within
14 30 days after the change.

15 468.825 Renewal of certification.--

16 (1) A certified nursing assistant is eligible for
17 renewal of certification if the applicant has:

18 (a) Worked a minimum of 8 hours for monetary
19 compensation as a certified nursing assistant in a
20 nursing-related occupation during the 24 months immediately
21 preceding application for recertification, as provided in an
22 attestation submitted by the applicant; or

23 (b) Successfully completed the written portion and
24 skills demonstration portion of the Florida Nursing Assistant
25 Competency Evaluation.

26 (2) Based upon written notification of a court of
27 competent jurisdiction, law enforcement agency, or
28 administrative agency, any person who has been found guilty
29 of, regardless of adjudication, or pled nolo contendere or
30 guilty to, any offense set forth in the level 1 screening
31 standards of chapter 435, or who is a confirmed perpetrator of

1 any incident of abuse, neglect, or exploitation, may not be
2 recertified under this section unless the person receives an
3 exemption from the department under s. 468.824(1).

4 (4) The department may charge a fee determined by
5 rule, but which may not exceed \$35, for issuing a duplicate
6 certificate at the request of a certified nursing assistant.

7 468.826 Exemption from liability.--If an employer
8 terminates a certified nursing assistant whose name appears on
9 the central abuse registry and tracking system of the
10 Department of Children and Family Services or on a criminal
11 screening report of the Department of Law Enforcement, the
12 employer is not civilly liable for such termination and a
13 cause of action may not be brought against the employer for
14 damages, regardless of whether the employee has filed for an
15 exemption from the department under s. 468.824(1). There may
16 not be any monetary liability on the part of, and a cause of
17 action for damages may not arise against, any licensed
18 facility, its governing board or members thereof, medical
19 staff, disciplinary board, agents, investigators, witnesses,
20 employees, or any other person for any action taken in good
21 faith without intentional fraud in carrying out this section.

22 468.827 Duties of the department.--The department may
23 contract with or approve another entity or organization to
24 provide the examination services required under s. 468.823,
25 including development and administration of examinations. The
26 department may also contract with or approve another entity to
27 maintain the certified nursing assistant registry, which may
28 contain information necessary to determine compliance with
29 certification requirements. The provider shall pay all
30 reasonable costs and expenses incurred by the department in
31 evaluating the provider's application and the provider's

1 performance during the delivery of services, including
2 examination services and procedures for maintaining the
3 certified nursing assistant registry.

4 468.828 Penalties; rulemaking authority.--

5 (1) It is a misdemeanor of the first degree,
6 punishable as provided under s. 775.082 or s. 775.083, for any
7 person, knowingly or intentionally, to fail to disclose, by
8 false statement, misrepresentation, impersonation, or other
9 fraudulent means, in any application for voluntary or paid
10 employment or licensure regulated under this part, a material
11 fact used in making a determination as to such person's
12 qualifications to be an employee or licensee.

13 (2) It is a felony of the third degree, punishable as
14 provided under s. 775.082, s. 775.083, or s. 775.084, for a
15 person to falsely make, alter, forge, or counterfeit a
16 certified nursing assistant certificate or letter of exemption
17 authorized under s. 468.824(1). The department may deny,
18 suspend, or revoke the certification of any nursing assistant
19 found to possess a false, altered, forged, or counterfeit
20 certificate or who attempts to use such a certificate in an
21 attempt to gain employment.

22 (3) The department and the Agency for Health Care
23 Administration shall adopt rules to provide for the initial
24 certification and biennial renewal of certification of
25 certified nursing assistants. An application for certification
26 or renewal must be accompanied by a fee set by the department,
27 which may not exceed \$35 plus the cost of applicable
28 background screening. In addition, the department may charge a
29 fee to cover the department's cost of including the name of
30 the certified nursing assistant on the registry. The

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1 department may periodically audit the records of a certified
2 nursing assistant in accordance with department rules.

3 Section 2. Paragraph (g) of subsection (3) of section
4 20.43, Florida Statutes, is amended to read:

5 20.43 Department of Health.--There is created a
6 Department of Health.

7 (3) The following divisions of the Department of
8 Health are established:

9 (g) Division of Medical Quality Assurance, which is
10 responsible for the following boards and professions
11 established within the division:

12 1. Nursing assistants, as provided under part XV of
13 chapter 468 ~~s. 400.211~~.

14 2. Health care services pools, as provided under s.
15 402.48.

16 3. The Board of Acupuncture, created under chapter
17 457.

18 4. The Board of Medicine, created under chapter 458.

19 5. The Board of Osteopathic Medicine, created under
20 chapter 459.

21 6. The Board of Chiropractic, created under chapter
22 460.

23 7. The Board of Podiatric Medicine, created under
24 chapter 461.

25 8. Naturopathy, as provided under chapter 462.

26 9. The Board of Optometry, created under chapter 463.

27 10. The Board of Nursing, created under chapter 464.

28 11. The Board of Pharmacy, created under chapter 465.

29 12. The Board of Dentistry, created under chapter 466.

30 13. Midwifery, as provided under chapter 467.

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- 1 14. The Board of Speech-Language Pathology and
2 Audiology, created under part I of chapter 468.
- 3 15. The Board of Nursing Home Administrators, created
4 under part II of chapter 468.
- 5 16. Occupational therapy, as provided under part III
6 of chapter 468.
- 7 17. Respiratory therapy, as provided under part V of
8 chapter 468.
- 9 18. Dietetics and nutrition practice, as provided
10 under part X of chapter 468.
- 11 19. Athletic trainers, as provided under part XIV of
12 chapter 468.
- 13 20. Electrolysis, as provided under chapter 478.
- 14 21. The Board of Massage Therapy, created under
15 chapter 480.
- 16 22. The Board of Clinical Laboratory Personnel,
17 created under part III of chapter 483.
- 18 23. Medical physicists, as provided under part IV of
19 chapter 483.
- 20 24. The Board of Opticianry, created under part I of
21 chapter 484.
- 22 25. The Board of Hearing Aid Specialists, created
23 under part II of chapter 484.
- 24 26. The Board of Physical Therapy Practice, created
25 under chapter 486.
- 26 27. The Board of Psychology, created under chapter
27 490.
- 28 28. The Board of Clinical Social Work, Marriage and
29 Family Therapy, and Mental Health Counseling, created under
30 chapter 491.
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1 The department may contract with the Agency for Health Care
2 Administration who shall provide consumer complaint,
3 investigative, and prosecutorial services required by the
4 Division of Medical Quality Assurance, councils, or boards, as
5 appropriate.

6 Section 3. Section 400.211, Florida Statutes, is
7 amended to read:

8 400.211 Persons employed as nursing assistants in a
9 nursing home facility; ~~certification requirement.--~~

10 ~~(1) A person must be certified pursuant to this~~
11 ~~section, except a registered nurse or practical nurse licensed~~
12 ~~in accordance with the provisions of chapter 464 or an~~
13 ~~applicant for such licensure who is permitted to practice~~
14 ~~nursing in accordance with rules promulgated by the Board of~~
15 ~~Nursing pursuant to chapter 464, to serve as a nursing~~
16 ~~assistant in any nursing home. The Department of Business and~~
17 ~~Professional Regulation shall issue a certificate to any~~
18 ~~person who:~~

19 ~~(a) Has successfully completed a nursing assistant~~
20 ~~program in a state-approved school and has achieved a minimum~~
21 ~~score of 75 percent on the written portion of the Florida~~
22 ~~Nursing Assistant Certification Test approved by the~~
23 ~~Department of Business and Professional Regulation and~~
24 ~~administered by state-approved test site personnel;~~

25 ~~(b) Has achieved a minimum score of 75 percent on the~~
26 ~~written and performance portions of the Florida Nursing~~
27 ~~Assistant Certification Test approved by the Department of~~
28 ~~Business and Professional Regulation and administered by~~
29 ~~state-approved test site personnel; or~~

30 ~~(c) Is currently certified in another state, is on~~
31 ~~that state's registry, has no findings of abuse, and has~~

1 ~~achieved a minimum score of 75 percent on the written portion~~
2 ~~of the Florida Nursing Assistant Certification Test approved~~
3 ~~by the Department of Business and Professional Regulation and~~
4 ~~administered by state-approved test site personnel.~~

5
6 ~~An oral examination shall be administered upon request.~~

7 ~~(2) The agency may deny, suspend, or revoke the~~
8 ~~certification of any person to serve as a nursing assistant,~~
9 ~~based upon written notification from a court of competent~~
10 ~~jurisdiction, law enforcement agency, or administrative agency~~
11 ~~of any finding of guilt of, regardless of adjudication, or a~~
12 ~~plea of nolo contendere or guilty to, any offense set forth in~~
13 ~~the level 1 screening standards of chapter 435 or any~~
14 ~~confirmed report of abuse of a vulnerable adult.~~

15 ~~(1)(3)~~ The following categories of persons who are not
16 certified as nursing assistants under part XV of chapter 468
17 this part may be employed by a nursing facility for a period
18 of 4 months:

19 (a) Persons who are enrolled in a state-approved
20 nursing assistant program; or

21 (b) Persons who have been positively verified by a
22 state-approved test site as certified and on the registry in
23 another state with no findings of abuse, but who have not
24 completed the written examination required under s. 468.823
25 ~~this section.~~

26
27 The certification requirement must be met within 4 months
28 after of initial employment as a nursing assistant in a
29 licensed nursing facility.

30 ~~(4) A person certified under this section on or after~~
31 ~~September 30, 1990, who has not worked for pay as a nursing~~

1 ~~assistant in a nursing-related occupation for a period of time~~
2 ~~during a consecutive 24-month period must be recertified under~~
3 ~~this section to be eligible to work in a nursing facility.~~

4 ~~(5) Every certified nursing assistant hired by a~~
5 ~~nursing home facility on or after October 1, 1993, must,~~
6 ~~within 5 working days after starting employment at a nursing~~
7 ~~home facility, submit to the facility a complete set of~~
8 ~~information necessary to conduct a records check through the~~
9 ~~central abuse registry under chapter 415 and a statewide~~
10 ~~criminal records correspondence check through the Department~~
11 ~~of Law Enforcement. The facility shall submit the information~~
12 ~~provided by the employee, within 48 hours, to the Department~~
13 ~~of Health and Rehabilitative Services' central abuse registry~~
14 ~~and to the Department of Law Enforcement, which shall conduct~~
15 ~~a screening according to the provisions of s. 400.497(2).~~

16 ~~(6) Nursing homes shall require persons seeking~~
17 ~~employment as a certified nursing assistant to submit an~~
18 ~~employment history to the facility. The facility shall verify~~
19 ~~the employment history unless, through diligent efforts, such~~
20 ~~verification is not possible. There shall be no monetary~~
21 ~~liability on the part of, and no cause of action for damages~~
22 ~~shall arise against, a former employer who reasonably and in~~
23 ~~good faith communicates his or her honest opinion about a~~
24 ~~former employee's job performance.~~

25 ~~(2)(7)~~ If the requirements pursuant to the Omnibus
26 Budget Reconciliation Act of 1987, as amended, for the
27 certification of nursing assistants are in conflict with part
28 XV of chapter 468 ~~this section~~, the federal requirements shall
29 prevail for those nursing home facilities certified to provide
30 care under Title XVIII (Medicare) or Title XIX (Medicaid) of
31 the Social Security Act.

1 ~~(8) The Department of Business and Professional~~
2 ~~Regulation may adopt such rules as are necessary to carry out~~
3 ~~this section.~~

4 Section 4. Paragraph (a) of subsection (1) and
5 subsection (2) of section 400.4255, Florida Statutes, are
6 amended to read:

7 400.4255 Use of licensed personnel.--

8 (1)(a) Persons under contract to the facility,
9 facility staff, or volunteers, who are licensed according to
10 chapter 464, or those persons exempt under s. 464.022(1), and
11 others as defined by rule, may administer medications to
12 residents, take residents' vital signs, manage individual
13 weekly pill organizers for residents who self-administer
14 medication, give prepackaged enemas ordered by a physician,
15 observe residents, document observations on the appropriate
16 resident's record, report observations to the resident's
17 physician, and contract or allow residents or a resident's
18 representative, designee, surrogate, guardian, or attorney in
19 fact to contract with a third party, provided residents meet
20 the criteria for appropriate placement as defined in s.
21 400.426. Nursing assistants certified pursuant to part XV of
22 chapter 468 ~~s. 400.211~~ may take residents' vital signs as
23 directed by a licensed nurse or physician.

24 (2) In facilities licensed to provide extended
25 congregate care, persons under contract to the facility,
26 facility staff, or volunteers, who are licensed according to
27 chapter 464, or those persons exempt under s. 464.022(1), or
28 those persons certified as nursing assistants pursuant to part
29 XV of chapter 468 ~~s. 400.211~~, may also perform all duties
30 within the scope of their license or certification, as
31

1 approved by the facility administrator and pursuant to this
2 part.

3 Section 5. Subsection (1) of section 400.462, Florida
4 Statutes, is amended to read:

5 400.462 Definitions.--As used in this part, the term:

6 (1) "Certified nursing assistant" means any person who
7 has been issued a certificate after fulfilling the
8 requirements of part XV of chapter 468 ~~s. 400.211~~.

9 Section 6. Paragraph (a) of subsection (9) of section
10 400.506, Florida Statutes, is amended to read:

11 400.506 Licensure of nurse registries; requirements;
12 penalties.--

13 (9)(a) A nurse registry may refer for contract in
14 private residences registered nurses and licensed practical
15 nurses registered and licensed under chapter 464, certified
16 nursing assistants certified under part XV of chapter 468 ~~s.~~
17 ~~400.211~~, and sitters, companions, or homemakers for the
18 purposes of providing those services authorized under s.
19 400.509(1).

20 Section 7. Paragraph (a) of subsection (2) of section
21 455.667, Florida Statutes, is amended to read:

22 455.667 Ownership and control of patient records;
23 report or copies of records to be furnished.--

24 (2) As used in this section, the terms "records
25 owner," "health care practitioner," and "health care
26 practitioner's employer" do not include any of the following
27 persons or entities; furthermore, the following persons or
28 entities are not authorized to acquire or own medical records,
29 but are authorized to maintain those documents required by the
30 part or chapter under which they are licensed or regulated:

31

1 (a) Certified nursing assistants regulated under part
2 XV of chapter 468 s. ~~400.211~~.

3 Section 8. A certified nursing assistant who holds a
4 valid certification issued under section 400.211, Florida
5 Statutes, before October 1, 1998, is in compliance with this
6 act and is not subject to renewal of such certification until
7 October 1, 2000.

8 Section 9. This act shall take effect October 1, 1998.

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11 SENATE SUMMARY

12 Provides for the regulation of the practice of certified
13 nursing assistants in this state by the Department of
14 Health. Provides requirements for certification and for
15 renewal of certification. Provides fees for certification
16 renewal and issuance of a duplicate certificate. Provides
17 for the department to deny, suspend, or revoke a person's
18 certification following a finding or report that the
19 person has committed abuse, neglect, or exploitation.
20 Authorizes the department to issue a letter of exemption
21 from disqualification of certification. Requires that the
22 department maintain a registry of certified nursing
23 assistants. Provides that it is a first-degree
24 misdemeanor to make any false statement or fail to
25 disclose information with respect to any voluntary or
26 paid employment or licensure as a certified nursing
27 assistant. Provides that it is a third-degree felony to
28 falsify or alter a certified nursing assistant
29 certificate or letter of exemption. Authorizes the
30 department and the Agency for Health Care Administration
31 to adopt rules. (See bill for details.)