

By Senator Albritton

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1 A bill to be entitled
2 An act relating to direct care workers; amending s.
3 400.141, F.S.; requiring a nursing home facility that
4 authorizes a registered nurse to delegate tasks to a
5 certified nursing assistant to ensure that certain
6 requirements are met; creating s. 400.212, F.S.;
7 authorizing a certified nursing assistant to perform
8 tasks delegated by a registered nurse; amending s.
9 400.23, F.S.; authorizing certain nonnursing staff to
10 count toward compliance with staffing standards;
11 amending s. 400.462, F.S.; revising the definition of
12 the term "home health aide"; amending s. 400.464,
13 F.S.; requiring a licensed home health agency that
14 authorizes a registered nurse to delegate tasks to a
15 certified nursing assistant to ensure that certain
16 requirements are met; amending s. 400.488, F.S.;
17 authorizing an unlicensed person to assist with self-
18 administration of certain treatments; revising the
19 requirements for such assistance; creating s. 400.489,
20 F.S.; authorizing a home health aide to administer
21 certain prescription medications under certain
22 conditions; requiring the home health aide to meet
23 certain training and competency requirements;
24 requiring the training, determination of competency,
25 and annual validations of home health aides to be
26 conducted by a registered nurse or a physician;
27 requiring a home health aide to complete annual
28 inservice training in medication administration and
29 medication error prevention, in addition to existing

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30 annual inservice training requirements; requiring the
31 Agency for Health Care Administration, in consultation
32 with the Board of Nursing, to adopt rules for
33 medication administration by home health aides;
34 creating s. 400.490, F.S.; authorizing a certified
35 nursing assistant or home health aide to perform tasks
36 delegated by a registered nurse; creating s. 400.52,
37 F.S.; creating the Excellence in Home Health Program
38 within the agency; requiring the agency to adopt rules
39 establishing program criteria; requiring the agency to
40 annually evaluate certain home health agencies that
41 apply for a program designation; providing program
42 designation eligibility requirements; providing that a
43 program designation is not transferrable, with an
44 exception; providing for the expiration of awarded
45 designations; requiring home health agencies to
46 reapply biennially to renew the awarded program
47 designation; authorizing a program designation award
48 recipient to use the designation in advertising and
49 marketing; prohibiting a home health agency from using
50 a program designation in any advertising or marketing,
51 under certain circumstances; creating s. 408.064,
52 F.S.; defining the terms "home care services provider"
53 and "home care worker"; requiring the agency to
54 develop and maintain a voluntary registry of home care
55 workers; requiring the agency to display a link to the
56 registry on its website homepage; providing
57 requirements for the registry; requiring a home care
58 worker to apply to the agency to be included in the

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59 registry; requiring the agency to develop a process by
60 which a home care services provider may include its
61 employees on the registry; requiring certain home care
62 workers to undergo background screening and training;
63 requiring each page of the registry website to contain
64 a specified notice; requiring the agency to adopt
65 rules; creating s. 408.822, F.S.; defining the term
66 "direct care worker"; requiring certain licensees to
67 provide specified information about their employees in
68 a survey beginning on a specified date; requiring that
69 the survey be completed on a form with a specified
70 attestation adopted by the agency by rule; requiring
71 licensees to submit such survey before the agency
72 renews their licenses; requiring the agency to
73 continually analyze the results of such surveys and
74 publish their results on the agency's website;
75 requiring the agency to update such information
76 monthly; creating s. 464.0156, F.S.; authorizing a
77 registered nurse to delegate certain tasks to a
78 certified nursing assistant or home health aide under
79 certain conditions; providing the criteria that a
80 registered nurse must consider in determining if a
81 task may be delegated; authorizing a registered nurse
82 to delegate medication administration to a certified
83 nursing assistant or home health aide, subject to
84 certain requirements; providing an exception for
85 certain controlled substances; requiring the Board of
86 Nursing, in consultation with the agency, to adopt
87 rules; amending s. 464.018, F.S.; subjecting a

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88 registered nurse to disciplinary action for delegating
89 certain tasks to a person who the registered nurse
90 knows or has reason to know is unqualified to perform
91 such tasks; creating s. 464.2035, F.S.; authorizing
92 certified nursing assistants to administer certain
93 prescription medications under certain conditions;
94 requiring the certified nursing assistants to meet
95 certain training and competency requirements;
96 requiring the training, determination of competency,
97 and annual validations of certified nursing assistants
98 to be conducted by a registered nurse or a physician;
99 requiring a certified nursing assistant to complete
100 annual inservice training in medication administration
101 and medication error prevention in addition to
102 existing annual inservice training requirements;
103 requiring the board, in consultation with the agency,
104 to adopt rules for medication administration by
105 certified nursing assistants; providing an effective
106 date.

107
108 Be It Enacted by the Legislature of the State of Florida:

109
110 Section 1. Paragraph (v) is added to subsection (1) of
111 section 400.141, Florida Statutes, to read:

112 400.141 Administration and management of nursing home
113 facilities.—

114 (1) Every licensed facility shall comply with all
115 applicable standards and rules of the agency and shall:

116 (v) Ensure that a certified nursing assistant meets the

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117 requirements of chapter 464 and the rules adopted thereunder, if
118 the facility authorizes a registered nurse to delegate tasks,
119 including medication administration, to the certified nursing
120 assistant.

121 Section 2. Section 400.212, Florida Statutes, is created to
122 read:

123 400.212 Nurse-delegated tasks.—A certified nursing
124 assistant may perform any task delegated to him or her by a
125 registered nurse as authorized in chapter 464, including, but
126 not limited to, medication administration.

127 Section 3. Paragraph (b) of subsection (3) of section
128 400.23, Florida Statutes, is amended to read:

129 400.23 Rules; evaluation and deficiencies; licensure
130 status.—

131 (3)

132 (b) Nonnursing staff providing eating assistance to
133 residents may ~~shall not~~ count toward compliance with minimum
134 staffing standards.

135 Section 4. Subsection (15) of section 400.462, Florida
136 Statutes, is amended to read:

137 400.462 Definitions.—As used in this part, the term:

138 (15) "Home health aide" means a person who is trained or
139 qualified, as provided by rule, and who provides hands-on
140 personal care, performs simple procedures as an extension of
141 therapy or nursing services, assists in ambulation or exercises,
142 or assists in administering medications as permitted in rule and
143 for which the person has received training established by the
144 agency under this part or a person who performs tasks delegated
145 to him or her pursuant to chapter 464 s. 400.497(1).

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146 Section 5. Present subsections (5) and (6) of section
147 400.464, Florida Statutes, are redesignated as subsections (6)
148 and (7), respectively, a new subsection (5) is added to that
149 section, and present subsection (6) of that section is amended,
150 to read:

151 400.464 Home health agencies to be licensed; expiration of
152 license; exemptions; unlawful acts; penalties.-

153 (5) If a licensed home health agency authorizes a
154 registered nurse to delegate tasks, including medication
155 administration, to a certified nursing assistant pursuant to
156 chapter 464 or to a home health aide pursuant to s. 400.490, the
157 licensed home health agency must ensure that such delegation
158 meets the requirements of this chapter and chapter 464, and the
159 rules adopted thereunder.

160 (7)~~(6)~~ Any person, entity, or organization providing home
161 health services which is exempt from licensure under subsection
162 (6) ~~subsection (5)~~ may voluntarily apply for a certificate of
163 exemption from licensure under its exempt status with the agency
164 on a form that specifies its name or names and addresses, a
165 statement of the reasons why it is exempt from licensure as a
166 home health agency, and other information deemed necessary by
167 the agency. A certificate of exemption is valid for a period of
168 not more than 2 years and is not transferable. The agency may
169 charge an applicant \$100 for a certificate of exemption or
170 charge the actual cost of processing the certificate.

171 Section 6. Subsections (2) and (3) of section 400.488,
172 Florida Statutes, are amended to read:

173 400.488 Assistance with self-administration of medication.-

174 (2) Patients who are capable of self-administering their

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175 own medications without assistance shall be encouraged and
176 allowed to do so. However, an unlicensed person may, consistent
177 with a dispensed prescription's label or the package directions
178 of an over-the-counter medication, assist a patient whose
179 condition is medically stable with the self-administration of
180 routine, regularly scheduled medications that are intended to be
181 self-administered. Assistance with self-medication by an
182 unlicensed person may occur only upon a documented request by,
183 and the written informed consent of, a patient or the patient's
184 surrogate, guardian, or attorney in fact. For purposes of this
185 section, self-administered medications include both legend and
186 over-the-counter oral dosage forms, topical dosage forms, and
187 topical ophthalmic, otic, and nasal dosage forms, including
188 solutions, suspensions, sprays, ~~and~~ inhalers, intermittent
189 positive pressure breathing treatments, and nebulizer
190 treatments.

191 (3) Assistance with self-administration of medication
192 includes:

193 (a) Taking the medication, in its previously dispensed,
194 properly labeled container, from where it is stored and bringing
195 it to the patient.

196 (b) In the presence of the patient, confirming that the
197 medication is intended for that patient, orally advising the
198 patient of the medication name and purpose ~~reading the label,~~
199 opening the container, removing a prescribed amount of
200 medication from the container, and closing the container.

201 (c) Placing an oral dosage in the patient's hand or placing
202 the dosage in another container and helping the patient by
203 lifting the container to his or her mouth.

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204 (d) Applying topical medications, including providing
205 routine preventative skin care and basic wound care.

206 (e) Returning the medication container to proper storage.

207 (f) For intermittent positive pressure breathing treatments
208 or for nebulizer treatments, assisting with setting up and
209 cleaning the device in the presence of the patient, confirming
210 that the medication is intended for that patient, orally
211 advising the patient of the medication name and purpose, opening
212 the container, removing the prescribed amount for a single
213 treatment dose from a properly labeled container, and assisting
214 the patient with placing the dose into the medicine receptacle
215 or mouthpiece.

216 (g) ~~(f)~~ Keeping a record of when a patient receives
217 assistance with self-administration under this section.

218 Section 7. Section 400.489, Florida Statutes, is created to
219 read:

220 400.489 Administration of medication by a home health aide;
221 staff training requirements.—

222 (1) A home health aide may administer oral, transdermal,
223 ophthalmic, otic, rectal, inhaled, enteral, or topical
224 prescription medications if the home health aide has been
225 delegated such task by a registered nurse licensed under chapter
226 464; has satisfactorily completed an initial 6-hour training
227 course approved by the agency; and has been found competent to
228 administer medication to a patient in a safe and sanitary
229 manner. The training, determination of competency, and initial
230 and annual validations required in this section shall be
231 conducted by a registered nurse licensed under chapter 464 or a
232 physician licensed under chapter 458 or chapter 459.

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233 (2) A home health aide must annually and satisfactorily
234 complete a 2-hour inservice training course in medication
235 administration and medication error prevention approved by the
236 agency. The inservice training course shall be in addition to
237 the annual inservice training hours required by agency rules.

238 (3) The agency, in consultation with the Board of Nursing,
239 shall establish by rule standards and procedures that a home
240 health aide must follow when administering medication to a
241 patient. Such rules must, at a minimum, address qualification
242 requirements for trainers, requirements for labeling medication,
243 documentation and recordkeeping, the storage and disposal of
244 medication, instructions concerning the safe administration of
245 medication, informed-consent requirements and records, and the
246 training curriculum and validation procedures.

247 Section 8. Section 400.490, Florida Statutes, is created to
248 read:

249 400.490 Nurse-delegated tasks.—A certified nursing
250 assistant or home health aide may perform any task delegated by
251 a registered nurse as authorized in chapter 464, including, but
252 not limited to, medication administration.

253 Section 9. Section 400.52, Florida Statutes, is created to
254 read:

255 400.52 Excellence in Home Health Program.—

256 (1) There is created within the agency the Excellence in
257 Home Health Program for the purpose of awarding program
258 designations to home health agencies that meet the criteria
259 specified in this section.

260 (2) (a) The agency shall adopt rules establishing criteria
261 for the program which must include, at a minimum, meeting

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262 standards relating to:

263 1. Patient satisfaction.

264 2. Patients requiring emergency care for wound infections.

265 3. Patients admitted or readmitted to an acute care
266 hospital.

267 4. Patient improvement in the activities of daily living.

268 5. Employee satisfaction.

269 6. Quality of employee training.

270 7. Employee retention rates.

271 (b) The agency shall annually evaluate home health agencies
272 seeking the program designation which apply on a form and in the
273 manner designated by rule.

274 (3) To receive a program designation, the home health
275 agency must:

276 (a) Be actively licensed and have been operating for at
277 least 24 months before applying for the program designation. A
278 designation awarded under the program is not transferrable to
279 another licensee, unless the existing home health agency is
280 being relicensed in the name of an entity related to the current
281 licenseholder by common control or ownership, and there will be
282 no change in the management, operation, or programs of the home
283 health agency as a result of the relicensure.

284 (b) Have not had any licensure denials, revocations, or
285 Class I, Class II, or uncorrected Class III deficiencies within
286 the 24 months before the application for the program
287 designation.

288 (4) The program designation expires on the same date as the
289 home health agency's license. A home health agency must reapply
290 and be approved for the program designation to continue using

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291 the program designation in the manner authorized under
292 subsection (5).

293 (5) A home health agency that is awarded a designation
294 under the program may use the designation in advertising and
295 marketing. A home health agency may not use the program
296 designation in any advertising or marketing if the home health
297 agency:

298 (a) Has not been awarded the designation;

299 (b) Fails to renew the designation upon expiration of the
300 awarded designation;

301 (c) Has undergone a change in ownership that does not
302 qualify for an exception under paragraph (3) (a); or

303 (d) Has been notified that it no longer meets the criteria
304 for the award upon reapplication after expiration of the awarded
305 designation.

306 Section 10. Section 408.064, Florida Statutes, is created
307 to read:

308 408.064 Home Care Services Registry.—

309 (1) As used in this section, the term:

310 (a) "Home care services provider" means a home health
311 agency licensed under part III of chapter 400 or a nurse
312 registry licensed under part III of chapter 400.

313 (b) "Home care worker" means a home health aide as defined
314 in s. 400.462 or a certified nursing assistant certified under
315 part II of chapter 464.

316 (2) The agency shall develop and maintain a voluntary
317 registry of home care workers. The agency shall display a link
318 to the registry on its website homepage.

319 (3) The registry must include, at a minimum:

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320 (a) Each home care worker's full name, date of birth,
321 social security number, and a fullface, passport-type, color
322 photograph of the home care worker. The home care worker's date
323 of birth and social security number may not be publicly
324 displayed on the website.

325 (b) Each home care worker's contact information, including,
326 but not limited to, his or her address and phone number. If
327 employed by a home care services provider, the home care worker
328 may use the provider's contact information.

329 (c) Any other identifying information of the home care
330 worker, as determined by the agency.

331 (d) The name of the state-approved training program
332 successfully completed by the home care worker and the date on
333 which such training was completed.

334 (e) The number of years the home care worker has provided
335 home health care services for compensation. The agency may
336 automatically populate employment history as provided by current
337 and previous employers of the home care worker. The agency shall
338 provide a method for a home care worker to correct inaccuracies
339 and supplement the automatically populated employment history.

340 (f) For a certified nursing assistant, any disciplinary
341 action taken or pending against the nursing assistant's
342 certification by the Department of Health. The agency may enter
343 into an agreement with the Department of Health to obtain
344 disciplinary history.

345 (g) Whether the home care worker provides services to
346 special populations and, if so, the special populations served.

347 (4) A home care worker must submit an application on a form
348 adopted by the agency to be included in the registry. The agency

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349 shall develop a process by which a home care services provider
350 may include its employees in the registry by providing the
351 information specified in subsection (3).

352 (5) A home care worker who is not employed by a home care
353 services provider must meet the background screening
354 requirements under s. 408.809 and chapter 435 and the training
355 requirements of part III of chapter 400 or part II of chapter
356 464, as applicable, the results of which must be included in the
357 registry.

358 (6) Each page of the registry website must contain the
359 following notice in at least 14-point boldfaced type:

361 NOTICE

362
363 The Home Care Services Registry provides limited
364 information about home care workers. Information
365 contained in the registry is provided by third
366 parties. The Agency for Health Care Administration
367 does not guarantee the accuracy of such third-party
368 information and does not endorse any individual listed
369 in the registry. In particular, the information in the
370 registry may be outdated or the individuals listed in
371 the registry may have lapsed certifications or may
372 have been denied employment approval due to the
373 results of a background screening. It is the
374 responsibility of those accessing this registry to
375 verify the credentials, suitability, and competency of
376 any individual listed in the registry.
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378 (7) The agency shall adopt rules necessary to implement the
379 requirements of this section.

380 Section 11. Section 408.822, Florida Statutes, is created
381 to read:

382 408.822 Direct care workforce survey.-

383 (1) For purposes of this section, the term "direct care
384 worker" means a certified nursing assistant, a home health aide,
385 a personal care assistant, a companion services or homemaker
386 services provider, or another individual who provides personal
387 care as defined in s. 400.462 to individuals who are elderly,
388 developmentally disabled, or chronically ill.

389 (2) Beginning January 1, 2021, each licensee that applies
390 for licensure renewal as a nursing home facility licensed under
391 part II of chapter 400; an assisted living facility licensed
392 under part I of chapter 429; or a home health agency, nurse
393 registry, or companion services or homemaker services provider
394 licensed under part III of chapter 400 shall furnish the
395 following information to the agency in a survey on the direct
396 care workforce:

397 (a) The number of direct care workers employed by the
398 licensee.

399 (b) The turnover and vacancy rates of direct care workers
400 and contributing factors to these rates.

401 (c) The average employee wage for each category of direct
402 care worker.

403 (d) Employment benefits for direct care workers and the
404 average cost of such benefits to the employer and the employee.

405 (e) Type and availability of training for direct care
406 workers.

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407 (3) An administrator or designee shall include the
408 information required in subsection (2) on a survey form
409 developed by the agency by rule which must contain an
410 attestation that the information provided is true and accurate
411 to the best of his or her knowledge.

412 (4) The licensee must submit the completed survey prior to
413 the agency issuing the license renewal.

414 (5) The agency shall continually analyze the results of the
415 surveys and publish the results on its website. The agency shall
416 update the information published on its website monthly.

417 Section 12. Section 464.0156, Florida Statutes, is created
418 to read:

419 464.0156 Delegation of duties.—

420 (1) A registered nurse may delegate a task to a certified
421 nursing assistant certified under part II of this chapter or a
422 home health aide as defined in s. 400.462, if the registered
423 nurse determines that the certified nursing assistant or the
424 home health aide is competent to perform the task, the task is
425 delegable under federal law, and the task:

426 (a) Is within the nurse's scope of practice.

427 (b) Frequently recurs in the routine care of a patient or
428 group of patients.

429 (c) Is performed according to an established sequence of
430 steps.

431 (d) Involves little or no modification from one patient to
432 another.

433 (e) May be performed with a predictable outcome.

434 (f) Does not inherently involve ongoing assessment,
435 interpretation, or clinical judgment.

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436 (g) Does not endanger a patient's life or well-being.

437 (2) A registered nurse may delegate to a certified nursing
438 assistant or a home health aide the administration of oral,
439 transdermal, ophthalmic, otic, rectal, inhaled, enteral, or
440 topical prescription medications, if the certified nursing
441 assistant or home health aide meets the requirements of s.
442 464.2035 or s. 400.489, respectively. A registered nurse may not
443 delegate the administration of any controlled substance listed
444 in Schedule II, Schedule III, or Schedule IV of s. 893.03 or 21
445 U.S.C. s. 812.

446 (3) The board, in consultation with the Agency for Health
447 Care Administration, may adopt rules to implement this section.

448 Section 13. Paragraph (r) is added to subsection (1) of
449 section 464.018, Florida Statutes, to read:

450 464.018 Disciplinary actions.—

451 (1) The following acts constitute grounds for denial of a
452 license or disciplinary action, as specified in ss. 456.072(2)
453 and 464.0095:

454 (r) Delegating professional responsibilities to a person
455 when the nurse delegating such responsibilities knows or has
456 reason to know that such person is not qualified by training,
457 experience, certification, or licensure to perform them.

458 Section 14. Section 464.2035, Florida Statutes, is created
459 to read:

460 464.2035 Administration of medication.—

461 (1) A certified nursing assistant may administer oral,
462 transdermal, ophthalmic, otic, rectal, inhaled, enteral, or
463 topical prescription medication to a resident of a nursing home
464 or a patient of a home health agency if the certified nursing

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465 assistant has been delegated such task by a registered nurse
466 licensed under part I of this chapter, has satisfactorily
467 completed an initial 6-hour training course approved by the
468 board, and has been found competent to administer medication to
469 a resident or patient in a safe and sanitary manner. The
470 training, determination of competency, and initial and annual
471 validations required under this section must be conducted by a
472 registered nurse licensed under this chapter or a physician
473 licensed under chapter 458 or chapter 459.

474 (2) A certified nursing assistant shall annually and
475 satisfactorily complete 2 hours of inservice training in
476 medication administration and medication error prevention
477 approved by the board, in consultation with the Agency for
478 Health Care Administration. The inservice training is in
479 addition to the other annual inservice training hours required
480 under this part.

481 (3) The board, in consultation with the Agency for Health
482 Care Administration, shall establish by rule standards and
483 procedures that a certified nursing assistant must follow when
484 administering medication to a resident or patient. Such rules
485 must, at a minimum, address qualification requirements for
486 trainers, requirements for labeling medication, documentation
487 and recordkeeping, the storage and disposal of medication,
488 instructions concerning the safe administration of medication,
489 informed-consent requirements and records, and the training
490 curriculum and validation procedures.

491 Section 15. This act shall take effect upon becoming a law.