

By the Committee on Health Policy; and 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.; authorizing a nursing home facility to
4 use paid feeding assistants in accordance with
5 specified federal law under certain circumstances;
6 providing training program requirements; authorizing
7 the Agency for Health Care Administration to adopt
8 rules; amending s. 400.23, F.S.; prohibiting paid
9 feeding assistants from counting toward compliance
10 with minimum staffing standards; amending s. 400.462,
11 F.S.; revising the definition of the term "home health
12 aide"; amending s. 400.464, F.S.; requiring a licensed
13 home health agency that authorizes a registered nurse
14 to delegate tasks to a certified nursing assistant to
15 ensure that certain requirements are met; amending s.
16 400.488, F.S.; authorizing an unlicensed person to
17 assist with self-administration of certain treatments;
18 revising the requirements for such assistance;
19 creating s. 400.489, F.S.; authorizing a home health
20 aide to administer certain prescription medications
21 under certain conditions; requiring the home health
22 aide to meet certain training and competency
23 requirements; requiring the training, determination of
24 competency, and annual validations of home health
25 aides to be conducted by a registered nurse or a
26 physician; requiring a home health aide to complete
27 annual inservice training in medication administration
28 and medication error prevention, in addition to
29 existing annual inservice training requirements;

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30 requiring the Agency for Health Care Administration,
31 in consultation with the Board of Nursing, to
32 establish by rule standards and procedures 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 advertising or marketing
51 under certain circumstances; creating s. 408.822,
52 F.S.; defining the term "direct care worker";
53 requiring certain licensees to provide specified
54 information about their employees in a survey
55 beginning on a specified date; requiring that the
56 survey be completed on a form adopted by the agency by
57 rule and include a specified attestation; requiring
58 licensees to submit such survey before the agency

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59 renews their licenses; requiring the agency to
60 continually analyze the results of such surveys and
61 publish the results on the agency's website; requiring
62 the agency to update such information monthly;
63 creating s. 464.0156, F.S.; authorizing a registered
64 nurse to delegate certain tasks to a certified nursing
65 assistant or home health aide under certain
66 conditions; providing the criteria that a registered
67 nurse must consider in determining if a task may be
68 delegated to a certified nursing assistant or a home
69 health aide; authorizing a registered nurse to
70 delegate prescription medication administration to a
71 certified nursing assistant or home health aide,
72 subject to certain requirements; providing an
73 exception for certain controlled substances; requiring
74 the Board of Nursing, in consultation with the agency,
75 to adopt rules; amending s. 464.018, F.S.; subjecting
76 a registered nurse to disciplinary action for
77 delegating certain tasks to a person the registered
78 nurse knows or has reason to know is unqualified to
79 perform such tasks; creating s. 464.2035, F.S.;
80 authorizing certified nursing assistants to administer
81 certain prescription medications under certain
82 conditions; requiring the certified nursing assistants
83 to meet certain training and competency requirements;
84 requiring the training, determination of competency,
85 and annual validations of certified nursing assistants
86 to be conducted by a registered nurse or a physician;
87 requiring a certified nursing assistant to complete

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88 annual inservice training in medication administration
89 and medication error prevention in addition to
90 existing annual inservice training requirements;
91 requiring the board, in consultation with the agency,
92 to adopt rules for medication administration by
93 certified nursing assistants; providing an effective
94 date.

95

96 Be It Enacted by the Legislature of the State of Florida:

97

98 Section 1. Paragraph (v) is added to subsection (1) of
99 section 400.141, Florida Statutes, to read:

100 400.141 Administration and management of nursing home
101 facilities.—

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

104 (v) Be allowed to use paid feeding assistants as defined in
105 42 C.F.R. s. 488.301, and in accordance with 42 C.F.R. s.
106 483.60, if the paid feeding assistant has successfully completed
107 a feeding assistant training program developed by the agency.

108 1. The feeding assistant training program must consist of a
109 minimum of 12 hours of education and training and must include
110 all of the topics and lessons specified in the program
111 curriculum.

112 2. The program curriculum must include, but need not be
113 limited to, training in all of the following content areas:

114 a. Feeding techniques.

115 b. Assistance with feeding and hydration.

116 c. Communication and interpersonal skills.

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117 d. Appropriate responses to resident behavior.

118 e. Safety and emergency procedures, including the first aid
 119 procedure used to treat upper airway obstructions.

120 f. Infection control.

121 g. Residents' rights.

122 h. Recognizing changes in residents which are inconsistent
 123 with their normal behavior, and the importance of reporting
 124 those changes to the supervisory nurse.

125
 126 The agency may adopt rules to implement this paragraph.

127 Section 2. 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) Paid feeding assistants and nonnursing staff providing
 133 eating assistance to residents shall not count toward compliance
 134 with minimum staffing standards.

135 Section 3. 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 performs tasks delegated to him or
 145 her under chapter 464 s. ~~400.497(1)~~.

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146 Section 4. 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 5. 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 6. 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 approved by the
235 agency in medication administration and medication error
236 prevention. The inservice training course shall be in addition
237 to 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 7. 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 8. 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 biennially for the program designation to

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291 continue using the program designation in the manner authorized
292 under 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 9. Section 408.822, Florida Statutes, is created to
307 read:

308 408.822 Direct care workforce survey.-

309 (1) For purposes of this section, the term "direct care
310 worker" means a certified nursing assistant, a home health aide,
311 a personal care assistant, a companion services or homemaker
312 services provider, a paid feeding assistant trained under s.
313 400.141(1) (v), or another individual who provides personal care
314 as defined in s. 400.462 to individuals who are elderly,
315 developmentally disabled, or chronically ill.

316 (2) Beginning January 1, 2021, each licensee that applies
317 for licensure renewal as a nursing home facility licensed under
318 part II of chapter 400; an assisted living facility licensed
319 under part I of chapter 429; or a home health agency, nurse

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320 registry, or companion services or homemaker services provider
321 licensed under part III of chapter 400 shall furnish the
322 following information to the agency in a survey on the direct
323 care workforce:

324 (a) The number of registered nurses and the number of
325 direct care workers by category employed by the licensee.

326 (b) The turnover and vacancy rates of registered nurses and
327 direct care workers and the contributing factors to these rates.

328 (c) The average employee wage for registered nurses and
329 each category of direct care worker.

330 (d) Employment benefits for registered nurses and direct
331 care workers and the average cost of such benefits to the
332 employer and the employee.

333 (e) Type and availability of training for registered nurses
334 and direct care workers.

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

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

342 (5) The agency shall continually analyze the results of the
343 surveys and publish the results on its website. The agency shall
344 update the information published on its website monthly.

345 Section 10. Section 464.0156, Florida Statutes, is created
346 to read:

347 464.0156 Delegation of duties.—

348 (1) A registered nurse may delegate a task to a certified

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349 nursing assistant certified under part II of this chapter or a
350 home health aide as defined in s. 400.462, if the registered
351 nurse determines that the certified nursing assistant or the
352 home health aide is competent to perform the task, the task is
353 delegable under federal law, and the task:

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

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

357 (c) Is performed according to an established sequence of
358 steps.

359 (d) Involves little or no modification from one patient to
360 another.

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

362 (f) Does not inherently involve ongoing assessment,
363 interpretation, or clinical judgment.

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

365 (2) A registered nurse may delegate to a certified nursing
366 assistant or a home health aide the administration of oral,
367 transdermal, ophthalmic, otic, rectal, inhaled, enteral, or
368 topical prescription medications, if the certified nursing
369 assistant or home health aide meets the requirements of s.
370 464.2035 or s. 400.489, respectively. A registered nurse may not
371 delegate the administration of any controlled substance listed
372 in Schedule II, Schedule III, or Schedule IV of s. 893.03 or 21
373 U.S.C. s. 812.

374 (3) The board, in consultation with the Agency for Health
375 Care Administration, shall adopt rules to implement this
376 section.

377 Section 11. Paragraph (r) is added to subsection (1) of

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378 section 464.018, Florida Statutes, to read:

379 464.018 Disciplinary actions.—

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

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

387 Section 12. Section 464.2035, Florida Statutes, is created
388 to read:

389 464.2035 Administration of medication.—

390 (1) A certified nursing assistant may administer oral,
391 transdermal, ophthalmic, otic, rectal, inhaled, enteral, or
392 topical prescription medication to a patient of a home health
393 agency if the certified nursing assistant has been delegated
394 such task by a registered nurse licensed under part I of this
395 chapter, has satisfactorily completed an initial 6-hour training
396 course approved by the board, and has been found competent to
397 administer medication to a patient in a safe and sanitary
398 manner. The training, determination of competency, and initial
399 and annual validations required under this section must be
400 conducted by a registered nurse licensed under this chapter or a
401 physician licensed under chapter 458 or chapter 459.

402 (2) A certified nursing assistant shall annually and
403 satisfactorily complete 2 hours of inservice training in
404 medication administration and medication error prevention
405 approved by the board, in consultation with the Agency for
406 Health Care Administration. The inservice training is in

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407 addition to the other annual inservice training hours required
408 under this part.

409 (3) The board, in consultation with the Agency for Health
410 Care Administration, shall establish by rule standards and
411 procedures that a certified nursing assistant must follow when
412 administering medication to a patient. Such rules must, at a
413 minimum, address qualification requirements for trainers,
414 requirements for labeling medication, documentation and
415 recordkeeping, the storage and disposal of medication,
416 instructions concerning the safe administration of medication,
417 informed-consent requirements and records, and the training
418 curriculum and validation procedures.

419 Section 13. This act shall take effect upon becoming a law.