

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          "home health aide"; amending s. 400.464, F.S.;  
13          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 that the training, determination of  
25          competency, and annual validations be performed by a

26 registered nurse or a physician; requiring a home  
27 health aide to complete annual inservice training in  
28 medication administration and medication error  
29 prevention in addition to existing annual inservice  
30 training requirements; requiring the Agency for Health  
31 Care Administration, in consultation with the Board of  
32 Nursing, to adopt rules for medication administration;  
33 creating s. 400.490, F.S.; authorizing a certified  
34 nursing assistant or home health aide to perform tasks  
35 delegated by a registered nurse; creating s. 400.52,  
36 F.S.; creating the Excellence in Home Health Program  
37 within the agency; requiring the agency to adopt rules  
38 establishing program criteria; requiring the agency to  
39 annually evaluate certain home health agencies that  
40 apply for a program award; providing eligibility  
41 requirements; requiring an agency to reapply  
42 biennially for the award designation; authorizing an  
43 award recipient to use the designation in advertising  
44 and marketing; prohibiting a home health agency from  
45 using the award designation in any advertising or  
46 marketing under certain circumstances; providing that  
47 an application for an award designation under the  
48 program is not an application for licensure and such  
49 designation does not constitute final agency action  
50 subject to certain administrative procedures; creating

51 s. 408.064, F.S.; providing definitions; requiring the  
52 agency to develop and maintain a voluntary registry of  
53 home care workers; providing requirements for the  
54 registry; requiring a home care worker to apply to be  
55 included in the registry; requiring the agency to  
56 develop a process by which a home health services  
57 provider may include its employees on the registry;  
58 requiring certain home care workers to undergo  
59 background screening and training; requiring each page  
60 of the registry website to contain a specified notice;  
61 requiring the agency to adopt rules; creating s.  
62 408.822, F.S.; defining the term "direct care worker";  
63 requiring certain licensees to provide specified  
64 information about employees in a survey beginning on a  
65 specified date; requiring that the survey be completed  
66 on a form with a specified attestation adopted by the  
67 agency in rule; requiring a licensee to submit such  
68 survey before the agency renews its license; requiring  
69 the agency to analyze the results of such survey and  
70 publish its results on the agency's website; requiring  
71 the agency to update such information monthly;  
72 requiring the agency's analysis to include specified  
73 information; creating s. 464.0156, F.S.; authorizing a  
74 registered nurse to delegate tasks to a certified  
75 nursing assistant or home health aide under certain

76 conditions; providing the criteria that a registered  
77 nurse must consider in determining if a task may be  
78 delegated; authorizing a registered nurse to delegate  
79 medication administration to a certified nursing  
80 assistant or home health aide if certain requirements  
81 are met; requiring the Board of Nursing, in  
82 consultation with the agency, to adopt rules; amending  
83 s. 464.018, F.S.; providing that a registered nurse  
84 who delegates certain tasks to a person the registered  
85 nurse knows or has reason to know is unqualified is  
86 grounds for licensure denial or disciplinary action;  
87 creating s. 464.2035, F.S.; authorizing a certified  
88 nursing assistant to administer certain prescription  
89 medications under certain conditions; requiring the  
90 certified nursing assistant to meet certain training  
91 and competency requirements; requiring the training,  
92 determination of competency, and annual validations to  
93 be performed by a registered nurse or a physician;  
94 requiring a certified nursing assistant to complete  
95 annual inservice training in medication administration  
96 and medication error prevention in addition to  
97 existing annual inservice training requirements;  
98 requiring the board, in consultation with the agency,  
99 to adopt rules; providing an effective date.

100

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

102

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

105 400.141 Administration and management of nursing home  
106 facilities.—

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

109 (v) Ensure that a certified nursing assistant meets the  
110 requirements of chapter 464 and the rules adopted thereunder, if  
111 the facility authorizes a registered nurse to delegate tasks,  
112 including medication administration, to the certified nursing  
113 assistant.

114 Section 2. Section 400.212, Florida Statutes, is created  
115 to read:

116 400.212 Nurse delegated tasks.—A certified nursing  
117 assistant may perform any task delegated to him or her by a  
118 registered nurse as provided in chapter 464, including, but not  
119 limited to, medication administration.

120 Section 3. Paragraph (b) of subsection (3) of section  
121 400.23, Florida Statutes, is amended to read:

122 400.23 Rules; evaluation and deficiencies; licensure  
123 status.—

124 (3)

125 (b) Nonnursing staff providing eating assistance to

126 residents may ~~shall not~~ count toward compliance with minimum  
127 staffing standards.

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

130 400.462 Definitions.—As used in this part, the term:

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

139 Section 5. Subsections (5) and (6) of section 400.464,  
140 Florida Statutes, are renumbered as subsections (6) and (7),  
141 respectively, present subsection (6) is amended, and a new  
142 subsection (5) is added to that section, to read:

143 400.464 Home health agencies to be licensed; expiration of  
144 license; exemptions; unlawful acts; penalties.—

145 (5) If a licensed home health agency authorizes a  
146 registered nurse to delegate tasks, including medication  
147 administration, to a certified nursing assistant pursuant to  
148 chapter 464 or a home health aide pursuant to s. 400.490, the  
149 licensed home health agency must ensure that such delegation  
150 meets the requirements of this chapter, chapter 464, and the

151 rules adopted thereunder.

152 (7)~~(6)~~ Any person, entity, or organization providing home  
153 health services which is exempt from licensure under subsection  
154 (6) ~~(5)~~ may voluntarily apply for a certificate of exemption  
155 from licensure under its exempt status with the agency on a form  
156 that specifies its name or names and addresses, a statement of  
157 the reasons why it is exempt from licensure as a home health  
158 agency, and other information deemed necessary by the agency. A  
159 certificate of exemption is valid for a period of not more than  
160 2 years and is not transferable. The agency may charge an  
161 applicant \$100 for a certificate of exemption or charge the  
162 actual cost of processing the certificate.

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

165 400.488 Assistance with self-administration of  
166 medication.—

167 (2) Patients who are capable of self-administering their  
168 own medications without assistance shall be encouraged and  
169 allowed to do so. However, an unlicensed person may, consistent  
170 with a dispensed prescription's label or the package directions  
171 of an over-the-counter medication, assist a patient whose  
172 condition is medically stable with the self-administration of  
173 routine, regularly scheduled medications that are intended to be  
174 self-administered. Assistance with self-medication by an  
175 unlicensed person may occur only upon a documented request by,

176 and the written informed consent of, a patient or the patient's  
177 surrogate, guardian, or attorney in fact. For purposes of this  
178 section, self-administered medications include both legend and  
179 over-the-counter oral dosage forms, topical dosage forms, and  
180 topical ophthalmic, otic, and nasal dosage forms, including  
181 solutions, suspensions, sprays, ~~and~~ inhalers, intermittent  
182 positive pressure breathing treatments, and nebulizer  
183 treatments.

184 (3) Assistance with self-administration of medication  
185 includes:

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

189 (b) In the presence of the patient, confirming that the  
190 medication is intended for that patient, orally advising the  
191 patient of the medication name and purpose ~~reading the label,~~  
192 opening the container, removing a prescribed amount of  
193 medication from the container, and closing the container.

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

197 (d) Applying topical medications, including routine  
198 preventative skin care and basic wound care.

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

200 (f) For intermittent positive pressure breathing

201 treatments or nebulizer treatments, assisting with setting up  
202 and cleaning the device in the presence of the patient,  
203 confirming that the medication is intended for that patient,  
204 orally advising the patient of the medication name and purpose,  
205 opening the container, removing the prescribed amount for a  
206 single treatment dose from a properly labeled container, and  
207 assisting the patient with placing the dose into the medicine  
208 receptacle or mouthpiece.

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

211 Section 7. Section 400.489, Florida Statutes, is created  
212 to read:

213 400.489 Administration of medication by a home health  
214 aide; staff training requirements.—

215 (1) A home health aide may administer oral, transdermal,  
216 ophthalmic, otic, rectal, inhaled, enteral, or topical  
217 prescription medications if the home health aide has been  
218 delegated such task by a registered nurse licensed under chapter  
219 464; has satisfactorily completed an initial 6-hour training  
220 course approved by the agency; and has been found competent to  
221 administer medication to a patient in a safe and sanitary  
222 manner. The training, determination of competency, and initial  
223 and annual validations required in this section shall be  
224 conducted by a registered nurse licensed under chapter 464 or a  
225 physician licensed under chapter 458 or chapter 459.

226        (2) A home health aide must annually and satisfactorily  
227 complete a 2-hour inservice training course in medication  
228 administration and medication error prevention approved by the  
229 agency. The inservice training course shall be in addition to  
230 the annual inservice training hours required by agency rules.

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

240        Section 8. Section 400.490, Florida Statutes, is created  
241 to read:

242        400.490 Nurse delegated tasks.—A certified nursing  
243 assistant or home health aide may perform any task delegated by  
244 a registered nurse as provided in chapter 464, including, but  
245 not limited to, medication administration.

246        Section 9. Section 400.52, Florida Statutes, is created to  
247 read:

248        400.52 Excellence in Home Health Program.—

249        (1) There is created within the agency the Excellence in  
250 Home Health Program for the purpose of awarding home health

251 agencies that meet the criteria specified in this section.

252 (2) (a) The agency shall adopt rules establishing criteria  
253 for the program which must include, at a minimum, meeting  
254 standards relating to:

255 1. Patient satisfaction.

256 2. Patients requiring emergency care for wound infections.

257 3. Patients admitted or readmitted to an acute care  
258 hospital.

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

260 5. Employee satisfaction.

261 6. Quality of employee training.

262 7. Employee retention rates.

263 (b) The agency must annually evaluate home health agencies  
264 seeking the award to apply on a form and in the manner  
265 designated by rule.

266 (3) The home health agency must:

267 (a) Be actively licensed and operating for at least 24  
268 months to be eligible to apply for a program award. An award  
269 under the program is not transferrable to another license,  
270 except when the existing home health agency is being relicensed  
271 in the name of an entity related to the current licenseholder by  
272 common control or ownership, and there will be no change in the  
273 management, operation, or programs of the home health agency as  
274 a result of the relicensure.

275 (b) Have had no licensure denials, revocations, or any

276 Class I, Class II, or uncorrected Class III deficiencies within  
277 the 24 months preceding the application for the program award.

278 (4) The award designation shall expire on the same date as  
279 the home health agency's license. A home health agency must  
280 reapply and be approved for the award designation to continue  
281 using the award designation in the manner authorized under  
282 subsection (5).

283 (5) A home health agency that is awarded under the program  
284 may use the designation in advertising and marketing. A home  
285 health agency may not use the award designation in any  
286 advertising or marketing if the home health agency:

287 (a) Has not been awarded the designation;

288 (b) Fails to renew the award upon expiration of the award  
289 designation;

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

292 (d) Has been notified that it no longer meets the criteria  
293 for the award upon reapplication after expiration of the award  
294 designation.

295 (6) An application for an award designation under the  
296 program is not an application for licensure. A designation  
297 awarded by the agency under this section does not constitute  
298 final agency action subject to chapter 120.

299 Section 10. Section 408.064, Florida Statutes, is created  
300 to read:

301        408.064 Home Care Services Registry.-  
 302        (1) As used in this section, the term:  
 303        (a) "Home care services provider" means a home health  
 304 agency licensed under part III of chapter 400 or a nurse  
 305 registry licensed under part III of chapter 400.  
 306        (b) "Home care worker" means a home health aide as defined  
 307 in s. 400.462 or a certified nursing assistant certified under  
 308 part II of chapter 464.  
 309        (2) The agency shall develop and maintain a voluntary  
 310 registry of home care workers. The agency shall display a link  
 311 to the registry on its website homepage.  
 312        (3) The registry shall include, at a minimum:  
 313        (a) Each home care worker's full name, date of birth,  
 314 social security number, and a full face, passport-type, color  
 315 photograph of the home care worker. The home care worker's date  
 316 of birth and social security number may not be publicly  
 317 displayed on the website.  
 318        (b) Each home care worker's contact information, including  
 319 but not limited to, his or her city, county, and phone number.  
 320 If employed by a home care services provider, the home care  
 321 worker may use the provider's contact information.  
 322        (c) Any other identifying information of the home care  
 323 worker, as determined by the agency.  
 324        (d) The name of the state-approved training program  
 325 successfully completed by the home care worker and the date on

326 which such training was completed.

327 (e) The number of years the home care worker has provided  
328 home health care services for compensation. The agency may  
329 automatically populate employment history as provided by current  
330 and previous employers of the home care worker. The agency must  
331 provide a method for a home care worker to correct inaccuracies  
332 and supplement the automatically populated employment history.

333 (f) For a certified nursing assistant, any disciplinary  
334 action taken or pending against the nursing assistant's  
335 certification by the Department of Health. The agency may enter  
336 into an agreement with the Department of Health to obtain  
337 disciplinary history.

338 (g) Whether the home care worker provides services to  
339 special populations and the identities of such populations.

340 (4) A health care worker must submit an application on a  
341 form adopted by the agency to be included in the registry. The  
342 agency shall develop a process by which a home health services  
343 provider may include its employees in the registry by providing  
344 the information listed in subsection (3).

345 (5) A home care worker who is not employed by a home care  
346 services provider must meet the background screening  
347 requirements under s. 408.809 and chapter 435 and the training  
348 requirements of part III of chapter 400 or part II of chapter  
349 464, as applicable, which must be included in the registry.

350 (6) Each page of the registry website shall contain the

351 following notice in at least 14-point boldfaced type:

352  
353 NOTICE

354  
355 The Home Care Services Registry provides limited  
356 information about home care workers. Information  
357 contained in the registry is provided by third  
358 parties. The Agency for Health Care Administration  
359 does not guarantee the accuracy of such third-party  
360 information and does not endorse any individual listed  
361 in the registry. In particular, the information in the  
362 registry may be outdated or the individuals listed in  
363 the registry may have lapsed certifications or may  
364 have been denied employment approval due to the  
365 results of a background screening. It is the  
366 responsibility of those accessing this registry to  
367 verify the credentials, suitability, and competency of  
368 any individual listed in the registry.

369  
370 (7) The agency shall develop rules necessary to implement  
371 the requirements of this section.

372 Section 11. Section 408.822, Florida Statutes, is created  
373 to read:

374 408.822 Direct care workforce survey.—

375 (1) For purposes of this section, the term "direct care

376 worker" means a certified nursing assistant, home health aide,  
377 personal care assistant, companion services or homemaker  
378 services provider, or other individuals who provide personal  
379 care as defined in s. 400.462 to individuals who are elderly,  
380 developmentally disabled, or chronically ill.

381 (2) Beginning January 1, 2021, each licensee that applies  
382 for licensure renewal as a nursing home facility licensed under  
383 part II of chapter 400; an assisted living facility licensed  
384 under part I of chapter 429; or a home health agency, nurse  
385 registry, or a companion services or homemaker services provider  
386 licensed under part III of chapter 400 must furnish the  
387 following information to the agency in a survey on the direct  
388 care workforce:

389 (a) The number of direct care workers employed by the  
390 licensee.

391 (b) The turnover and vacancy rates of direct care workers  
392 and contributing factors to the rates.

393 (c) Average employee wage for each category of direct care  
394 workers.

395 (d) Employment benefits for direct care workers and  
396 average cost to the employer and employee.

397 (e) Type and availability of training for direct care  
398 workers.

399 (3) An administrator or designee shall include the  
400 information required in subsection (2) on a survey form

401 developed by the agency in rule which must contain an  
402 attestation that the information provided is true and accurate  
403 to the best of his or her knowledge.

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

406 (5) The agency shall continually analyze the results of  
407 the survey and publish the results on its website. The agency  
408 must update the information published on its website monthly.

409 The analysis must include the:

410 (a) Number of direct workers in the state, including the  
411 number of full-time workers and the number of part-time workers.

412 (b) Turnover rate and causes of turnover.

413 (c) Vacancy rate.

414 (d) Average hourly wage.

415 (e) Benefits offered.

416 (f) Availability of post-employment training.

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 home  
424 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 judgement.
- 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 medication  
439 of oral, transdermal, ophthalmic, otic, rectal, inhaled,  
440 enteral, or topical prescription medications if the certified  
441 nursing assistant or home health aide meets the requirements of  
442 s. 464.2035 or s. 400.489, respectively. A registered nurse may  
443 not delegate the administration of any controlled substance  
444 listed in Schedule II, Schedule III, or Schedule IV of s. 893.03  
445 or 21 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  
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 in this section shall 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 must 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 annual inservice training hours required under  
480 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  
492 law.