

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Health Policy

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BILL: CS/SB 700

INTRODUCER: Health Policy Committee and Senator Burgess

SUBJECT: Delegation of Medication Administration

DATE: February 10, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Vanwinkle	Brown	HP	Fav/CS
2.	_____	_____	JU	_____
3.	_____	_____	RC	_____

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**Please see Section IX. for Additional Information:**

PLEASE MAKE SELECTION

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**I. Summary:**

CS/SB 700 authorizes a registered nurse (RN) to delegate to a certified nursing assistant (CNA) or a home health (HH) aide the administration of certain types of prescription medications to a patient of a nurse registry or patient in a county detention facility if the CNA or HH aide meets certain requirements in current law. The bill authorizes a CNA to administer such prescription medications to a patient of a nurse registry or patient in a county detention facility if so delegated by a RN and if the CNA meets certain requirements in current law. The bill also requires a nurse registry that authorizes a RN to delegate tasks, including medication administration, to a CNA or a HH aide, to ensure that such delegation meets certain requirements in statute and rule.

The bill has an effective date of July 1, 2022.

**II. Present Situation:**

**Nurse Practice Act**

Florida's Nurse Practice Act is found in Part I of ch. 464, F.S. The purpose of the Nurse Practice Act is to ensure that every nurse practicing in this state meets minimum requirements for safe practice. It is legislative intent that nurses who fall below minimum competency or who otherwise present a danger to the public are prohibited from practicing in this state.<sup>1</sup>

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<sup>1</sup> Section 464.002, F.S.

### *Certified Nursing Assistants*

Florida's statutory governance for CNAs is found in Part II of ch. 464, F.S. Section 464.201(5), F.S., defines the practice of a CNA as providing care and assisting persons with tasks relating to the activities of daily living. Activities of daily living include tasks associated with: personal care, maintaining mobility, nutrition and hydration, toileting and elimination, assistive devices, safety and cleanliness, data gathering, reporting abnormal signs and symptoms, postmortem care, patient socialization and reality orientation, end-of-life care, cardiopulmonary resuscitation (CPR) and emergency care, patients' rights, documentation of nursing-assistant services, and other tasks that a CNA may perform after training.<sup>2</sup>

A CNA can work in nursing homes, assisted living facilities, other community-based settings, hospitals, or private homes under general supervision.<sup>3</sup> The Florida Board of Nursing (BON), within the Department of Health (DOH), certifies CNAs, who must, among other qualifications, hold a high school diploma or equivalent, complete a 120-hour BON-approved training program, and pass a nursing assistant competency exam, which includes written and practical portions.<sup>4</sup> A CNA must biennially complete 24 hours of in-service training to maintain certification.<sup>5</sup>

The BON establishes the general scope of practice for CNAs. A CNA performs services under the general supervision<sup>6</sup> of a RN or licensed practical nurse (LPN).<sup>7</sup> A CNA may perform the following:

- Personal care services, such as bathing, dressing grooming, and light housekeeping;
- Tasks associated with maintaining mobility, such as ambulating, transferring, positioning, lifting, and performing range of motion exercises;
- Nutrition and hydration tasks, such a feeding or assisting with eating and drinking;
- Tasks associated with elimination, such as toileting, providing catheter care, and emptying or changing ostomy bags;
- Tasks associated with using assistive devices;
- Maintaining the environment and resident safety;
- Taking measurements and gathering data, i.e. pulse, blood, pressure, height, and weight;
- Reporting abnormal resident findings, signs, and symptoms;
- Post mortem care;
- Tasks associated with end of life care;
- Tasks associated with resident socialization, leisure activities, reality orientation, and validation techniques;
- Performing basic first aid, CPR, and emergency care; and
- Documentation of CNA services provided to the resident.

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<sup>2</sup> Section 464.201, F.S.

<sup>3</sup> Paraprofessional Healthcare Institute, *Who Are Direct-Care Workers?*, (Feb. 2011), available at <https://phinational.org/wp-content/uploads/legacy/clearinghouse/NCDCW%20Fact%20Sheet-1.pdf> (last visited Feb. 3, 2022).

<sup>4</sup> Section 464.203, F.S., and Fla. Admin. code r. 64B9-15.006. Eighty hours must be classroom instruction and 40 hours must be clinical instruction, 20 of which must be in long term care clinical instruction in a licensed nursing home. 42 C.F.R. § 483.95 requires 75 hours of training; Florida training requirements exceed the federal minimum training requirements.

<sup>5</sup> Section 464.203(7), F.S.

<sup>6</sup> Under general supervision, the registered nurse or licensed practical nurse does not need to be present but must be available for consultation and advice, either in person or by a communication device. Fla. Admin. Code R. 64B9-15.001(5).

<sup>7</sup> Fla. Admin. Code R. 64B9-15.002.

A CNA may not work independently and may not perform any tasks that require specialized nursing knowledge, judgment, or skills.

### **Agency for Health Care Administration**

The Agency for Health Care Administration (AHCA) is responsible for, among other duties, health facility licensure, inspection, and regulatory enforcement; investigation of consumer complaints related to health care facilities and managed care plans; the administration of the Medicaid program; the administration of the contracts with the Florida Healthy Kids Corporation; and the certification of health maintenance organizations and prepaid health clinics. The AHCA is the lead agency responsible for the regulation of hospices, assisted living facilities, adult day care centers, and adult family-care homes.<sup>8</sup> HH agencies and nurse registries are also both required to be licensed by the AHCA to operate in Florida.<sup>9</sup>

### ***Home Health Aides***

HH aides provide essentially the same care and services as nursing assistants, but they assist people in their homes or in community settings under the supervision of a nurse or a physical, speech, occupational, or respiratory therapist.<sup>10</sup> In Florida, HH aides are not licensed or certified.

### **Home Health Aide Training**

For every CNA employee, an HH agency must have on file a copy of the person's Florida CNA certificate.<sup>11</sup> For every HH aide, the HH agency must maintain documentation of successful completion of at least 40 hours of training in the following subjects or the successful passage of the AHCA HH aide competency test:

- Communication skills;
- Observation, reporting, and documentation of patient status and the care provided;
- Reading and recording temperature, pulse, and respiration;
- Basic infection control procedures;
- Basic elements of body functions that must be reported to the RN supervisor;
- Maintenance of a clean and safe environment;
- Recognition of emergencies and applicable follow-up within the HH aide's scope of performance;
- Physical, emotional, and developmental characteristics of the populations served by the HH agency, including respect of the patient's privacy and property;
- Appropriate and safe techniques in personal hygiene and grooming;
- Safe transfer techniques, including use of appropriate equipment, and ambulation;
- Normal range of motion and positioning;
- Nutrition and fluid intake;

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<sup>8</sup> Section 20.42, F.S.

<sup>9</sup> Sections 400.464 and 400.506, F.S.

<sup>10</sup> If the only service the home health agency provides, is physical, speech, or occupational therapy, in addition to the home health aide or CNA services, the licensed therapist may provide supervision.

<sup>11</sup> Fla. Admin. Code R. 59A-8.0095(5)(c). A copy of the DOH website CNA information that shows the person's name, address, certificate number, original issue date, expire date, and status meet this requirement.

- Cultural differences in families;
- Food preparation and household chores; and
- Assistance with self-administered medication.

### ***Home Health Aide Competency Test***

The AHCA is required to create the HH aide competency test and establish the curriculum and instructor qualifications for HH aide training. Licensed HH agencies may provide this training and must furnish documentation of this training to other licensed HH agencies upon request.<sup>12</sup> HH agencies that teach the HH aide course, but who are not an approved nonpublic post-secondary career school, cannot charge a fee for the training and cannot issue a document of completion with the words “diploma,” “certificate,” “certification of completion,” or “transcript.” The HH agency is limited to advertising in the “Help Wanted” section of newspapers. The HH agency cannot lawfully advertise that it is offering “training for HH aides.” The HH agency can indicate that it is hiring HH aides and will train.<sup>13</sup>

Successful passage of the competency test by HH aides may be substituted for the training required under s. 400.497, F.S.<sup>14</sup>

However, the AHCA licenses HH agencies and establishes training requirements for HH aides employed by an agency. HH aides must complete at least 75 hours of training and/or successfully pass a competency evaluation by the employing agency.<sup>15</sup> HH aides who work for a HH agency that is not certified by Medicare or Medicaid, or who work for a nurse registry, must complete 40 hours of training or pass an AHCA-developed competency examination.<sup>16</sup>

The AHCA establishes the scope of practice for HH aides performing services under a licensed HH agency. A HH aide performs services delegated by and under the supervision of a RN, which include:<sup>17</sup>

- Assisting the patient or client with personal hygiene, ambulation, eating, dressing, shaving, physical transfer, and other personal care activities;
- Maintaining a clean, safe, and healthy environment, including light housekeeping;
- Activities taught by a licensed health professional for a specific patient or client and restricted to:
  - Toileting;
  - Assisting with tasks related to elimination;
  - Assisting with the use of devices to aid daily living, such as a wheelchair;
  - Assisting with prescribed range of motion exercises;
  - Assisting with prescribed ice cap or collar;
  - Doing simple urine tests for sugar, acetone, or albumin;

<sup>12</sup> Section 400.497, F.S.

<sup>13</sup> Fla. Admin. Code R. 59A-8.0095(5)(h).

<sup>14</sup> Section 400.497, F.S.

<sup>15</sup> Agency for Health Care Administration, *Home Health Aides*, available at [https://ahca.myflorida.com/MCHQ/Health\\_Facility\\_Regulation/Lab\\_HomeServ/HHA/Home\\_health\\_aides.shtml](https://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Lab_HomeServ/HHA/Home_health_aides.shtml) (last visited Feb. 2, 2022).

<sup>16</sup> Fla. Admin. Code R. 59A-8.0095(5).

<sup>17</sup> *Id.*, and Fla. Admin. Code R. 64B9-15.002.

- Measuring and preparing special diets; and
- Assisting with self-administration of medication.

A HH aide may not change sterile dressings, irrigate body cavities, irrigate a colostomy or wound, perform gastric irrigation or enteral feeding, catheterize a patient, administer medication, apply heat by any method, care for a tracheotomy tube, or any other services that has not been included in the patient's plan of care.<sup>18</sup>

### **Home Health Agencies**

A HH agency is defined as a person that provides one or more HH services.<sup>19</sup> HH services include health and medical services and medical supplies furnished to an individual in the individual's home or place of residence. The term includes the following:<sup>20</sup>

- Nursing care;
- Physical, occupational, respiratory, or speech therapy;
- HH aide services;
- Medical social services;
- Dietetics and nutrition practice and nutrition counseling;
- Medical equipment and supplies, including drugs and biologicals prescribed by a physician; and
- Homemaker and companion services.

### ***Home Health Agency Licensure***

The licensure process for a HH agency is based upon the applicant's compliance with Part III of ch. 400, F.S.; Part II of ch. 408, F.S.; Florida Administrative Code Rules 59A-8 and 59A-35b; and an inspection by the AHCA.<sup>21</sup> To be a licensed HH agency a person must submit to the AHCA, an application for one or more counties within a geographic service area,<sup>22</sup> an appropriate fee for the application, background checks, and inspection. An application is considered complete upon the AHCA's receipt of proof of the following:<sup>23</sup>

- Financial ability to operate, prepared in accordance with generally accepted accounting principles and signed by a certified public accountant,<sup>24</sup> which must include:
  - A pro forma balance sheet, pro forma cash flow statement, and a pro forma income and expense statement for the first two years of operation which provide evidence of sufficient assets, credit, and projected revenues to cover liabilities and expenses; and

<sup>18</sup> Fla. Admin. Code R. 59A-8.0095(5)(p).

<sup>19</sup> Section 400.462 (12), F.S.

<sup>20</sup> Section 400.462 (15), F.S. *See also* FloridaHealthFinder.gov, a service of the Agency for Health Care Administration, Consumer Guides, *Home Health Care in Florida*, available at <https://www.floridahealthfinder.gov/reports-guides/home-health.aspx> (last visited Feb. 8, 2022).

<sup>21</sup> Fla. Admin. Code R. 59A-8.003(1), *See also* ss. 400.471(2) and 408.806(7), F.S.

<sup>22</sup> Fla. Admin. Code R. 59A-8.003 and 59A-8.002 (12).

<sup>23</sup> Fla. Admin. Code R. 59A-35.060.

<sup>24</sup> *see* Section 408.8065,(2), F.S. Applicants and controlling interests who are nonimmigrant aliens, as described in 8 U.S.C. s. 1101, must file a surety bond of at least \$500,000, payable to the agency, which guarantees that the home health agency, home medical equipment provider, or health care clinic will act in full conformity with all legal requirements for operation.

- A prospective income and expense statement for the next two years of operation which provide evidence of sufficient assets, credit, and projected revenues to cover liabilities and expenses;<sup>25</sup>
- All required Level II background screening results for the licensee, administrator, financial officer, any person with controlling interest, and all persons providing personal care to clients;<sup>26</sup>
- Liability and malpractice insurance with limits of not less than \$250,000 per claim;<sup>27</sup>
- A certificate of occupancy;<sup>28</sup>
- List of all satellite offices and staff at those locations;
- A business plan signed by the applicant, including a plan to obtain patients and to maintain staff; and
- Completion of a satisfactory inspection, if required.<sup>29</sup>

A HH agency's license is only valid for the licensee, provider, and the location for which the license is issued.<sup>30</sup>

### ***Home Health Agencies Responsibilities to Patients***

A licensed HH agency has the following responsibility to its patients during hours of operation:<sup>31</sup>

- The HH agency's administrator and director of nursing, or their alternates, must be available to the public<sup>32</sup> for eight consecutive hours between 7:00 a.m. and 6:00 p.m., Monday through Friday, every week, excluding legal and religious holidays;
- When the administrator and the director of nursing are not on the premises during designated business hours, a staff member must be available to answer the phone and the door and must be able to contact the administrator and the director of nursing by telecommunications;
- If an AHCA surveyor<sup>33</sup> arrives on the HH agency premises to conduct an unannounced survey and the administrator, the director of nursing, or a person authorized to give access to patient records are not on the premises, they, or the designated alternate, must be available on the premises within an hour of the arrival of the surveyor;
- A list of current patients must be provided to the surveyor within two hours of arrival if requested; and
- The HH agency must have written policies and procedures governing 24-hour availability to licensed professional nursing staff by active patients receiving skilled care. A HH agency that

<sup>25</sup> Fla. Admin. Code R. 59A-35.062.

<sup>26</sup> Section 408.809, F.S.

<sup>27</sup> Section 400.471(3), F.S.

<sup>28</sup> A Certificate of occupancy is a document indicating that a building complies with zoning and building laws. This document is often required before title can be transferred and the building occupied. Certificates of occupancy are required for new construction, for a building built for one use is to be used for another and when occupancy of a commercial or industrial building changes, or ownership of a commercial, industrial, or multiple-family residential building changes. Certificate of occupancy are issued by a local governments and certify the building is in a livable condition for intended purpose. USLegal.com, Legal Definitions, *Certificate of Occupancy*, available at <https://definitions.uslegal.com/c/certificate-of-occupancy/> (last viewed Feb. 7, 2022).

<sup>29</sup> Fla. Admin. Code Chapters 59A-35 and 59A-8.

<sup>30</sup> Fla. Admin. Code R. 59A-35.040(1).

<sup>31</sup> Fla. Admin. Code R. 59A-8.003(9).

<sup>32</sup> *Available to the public* means being readily available on the premises or by telecommunications.

<sup>33</sup> Fla. Admin. Code R. 59A-8.003(2).

does not provide skilled care must have written policies and procedures which address the availability of a RN supervisor during hours of patient service.

The failure of the HH agency to be available or to respond during a survey or inspection is grounds for denial or revocation of the HH agency license.<sup>34</sup>

### ***Home Health Agency Personnel***

A HH agency must have an administrator and a director of nursing. An administrator of a HH agency may be a Florida-licensed physician, physician assistant, or RN, and may also be the director of nursing for the agency. A director of nursing may be the director of nursing for up to two licensed HH agencies if the HH agencies have identical controlling interests<sup>35</sup> that are located within one geographic service area or within an immediately contiguous county. The director of nursing may be the director of nursing for up to five licensed HH agencies if the HH agency also has a RN who meets the qualifications of a director of nursing and who has a written delegation from the director of nursing to serve as the director of nursing for that HH agency when the director of nursing is not present.<sup>36</sup> All staff must be able to pass a level two criminal background check.<sup>37</sup>

### ***Certified Nursing Assistants and Home Health Aides***

A HH agency must ensure that each CNA and HH aide the agency employs is adequately trained to perform the tasks assigned to be performed in the home setting or it could be subject to administrative penalties.<sup>38</sup>

### ***Medication Administration by Home Health Care Agencies***

If a licensed HH agency authorizes a RN to delegate tasks, including medication administration, to a CNA pursuant to Part II, ch. 464, F.S., or to a HH aide pursuant to s. 400.490, F.S., the licensed HH agency must ensure that such delegation meets the requirements of chs. 400 and 464, F.S.<sup>39,40</sup>

### ***Patient Assisted Self-Administration of Medications by HH Aides***

Successful passage of the AHCA HH aide competency test alone does not authorize a HH aide to assist with self-administration of medication.<sup>41</sup> For HH aides and CNAs to assist with a patient's self-administration of medications, the individual must have had a minimum of two hours of training prior to assuming this responsibility. Training must include:<sup>42</sup>

- State law and rules relating to the assistance with self-administration of medications in the home;
- Procedures for assisting with self-administration of medication;

<sup>34</sup> Section 408.806(7), F.S.

<sup>35</sup> See s. 408.803, F.S., for the definition of controlling interests.

<sup>36</sup> Section 400.476(2), F.S.

<sup>37</sup> Section 400.512, F.S.

<sup>38</sup> Section 400.474(3), F.S.

<sup>39</sup> Section 400.464,(5) F.S.

<sup>40</sup> Section 400.490, F.S.

<sup>41</sup> Section 400.488, F.S.; Fla. Admin. Code R. 59A-8.0095(5),(d),15 and 59A-8.0095(5),(j),1.,b.

<sup>42</sup> Fla. Admin. Code R. 59A-8.0095(5),(c),15.

- Common medications;
- Recognizing the side effects and adverse reactions;
- Procedures to follow when patients appear to be experiencing side effects and adverse reactions; and
- Verification that each CNA and HH aide can read the prescription label and instructions.

### ***Medication Administration Delegated to HH Aides***

A CNA and HH aide may also administer oral, transdermal, ophthalmic, otic, rectal, inhaled, enteral, or topical prescription medications if the CNA and HH aide have been delegated such task by a licensed RN.<sup>43</sup> The HH aide must have satisfactorily completed an initial six-hour training course approved by the AHCA, and have been found competent to administer medication to a patient in a safe and sanitary manner. The training, determination of competency, and initial and annual validations required must be conducted by a licensed RN or physician licensed under chs. 458 or 459, F.S.<sup>44</sup>

Such HH aide must also annually complete two hours of approved in-service training approved by the AHCA in medication administration and medication error prevention. The in-service training is in addition to the annual in-service training hours required by AHCA rules. The AHCA, in consultation with the BON, must establish standards and procedures that a HH aide must follow when administering medications. Such rules must, at a minimum, address qualification requirements for trainers, requirements for labeling medication, documentation and recordkeeping, the storage and disposal of medication, instructions concerning the safe administration of medication, informed-consent requirements and records, and the training curriculum and validation procedures.<sup>45</sup> HH aides and CNA's must receive in-service training every year. Training must be provided to obtain and maintain a certificate in CPR.<sup>46</sup>

### **Nurse Registries**

A nurse registry is define as any person that procures, offers, promises, or attempts to secure health-care-related contracts for RNs, LPNs, CNAs, HH aides, companions, or homemakers, who are compensated by fees as independent contractors,<sup>47</sup> including, but not limited to, contracts for the provision of services to patients and contracts to provide private duty or staffing services to health care facilities licensed under chs. 395, 400, or 429, F.S., or other business entities.<sup>48</sup> Nurse registries arrange for nurses, CNAs, HH aides, and homemakers or companions to provide services to patients in their own homes or places of residence.<sup>49</sup>

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<sup>43</sup> Sections 464.2035 and 400.489, F.S.; Fla. Admin. Code R. 59A-8.0095(5),(d),15 and 59A-8.0095(5)(j)1.b.

<sup>44</sup> Section 400.489, F.S.; Fla. Admin. Code R. 59A-8.0095(5),(d),15 and 59A-8.0095(5)(j)1.b.

<sup>45</sup> *Id.*

<sup>46</sup> Fla. Admin. Code R. 59A-8.0095(5)(k).

<sup>47</sup> Fla. Admin. Code R. 59A-18.002(7). An "independent contractor" is a person who contracts through a referral from a nurse registry. The independent contractor maintains control over the method and means of delivering the services provided, and is responsible for the performance of such services. An independent contractor is not an employee of the nurse registry.

<sup>48</sup> Section 400.462(21), F.S.

<sup>49</sup> Fla. Admin. Code R. 59A-8.0095(5).



### *Nurse Registry Licensure*

A nurse registry must be licensed by the AHCA.<sup>50</sup> Each applicant for licensure as a nurse registry must be 18 years of age and submit the following to the AHCA:<sup>51</sup>

- An application and an appropriate fee;
- Evidence of the financial ability to operate prepared in accordance with generally accepted accounting principles and signed by a certified public accountant, and including the following documents:
  - A pro forma balance sheet, pro forma cash flow statement, and a pro forma income and expense statement for the first two years of operation which provide evidence of having sufficient assets, credit, and projected revenues to cover liabilities and expenses; and
  - Prospective income and expense statement for the next two years of operation which provide evidence of having sufficient assets, credit, and projected revenues to cover liabilities and expenses;<sup>52</sup>
- The locations of all satellite offices that share administration, fiscal management, and services with the main operational site;<sup>53</sup>
- Evidence of compliance with local zoning authorities for the main operational site of the nurse registry and any satellite offices;
- The geographic service area the nurse registry intends to serve which may encompass one or more of the counties within the health services planning district, in which the main operational site is located.<sup>54</sup>

A licensed nurse registry must ensure that each CNA and HH aide referred for contract have credentials demonstrating that he or she is adequately trained to perform the tasks of a HH aide in the home setting.<sup>55</sup> Each nurse registry must also establish written procedures for the selection, documentation, screening and verification of credentials for each independent contractor referred by the registry which must include:<sup>56</sup>

- Confirmation of a new independent contractor's licensure or certification with the issuing board or the DOH;<sup>57</sup>
- Confirmation of the identity of the independent contractor prior to referral;<sup>58</sup> and
- A statement from the independent contractor, prior to contacting with patients or clients, that the contractor is free from communicable diseases.

<sup>50</sup> Section 400.506, F.S., Part II of ch. 408, F.S.

<sup>51</sup> Section 408.805, F.S.

<sup>52</sup> Fla. Admin. Code R. 59A-35.062 (2021).

<sup>53</sup> Fla. Admin. Code R. 59A-18.004 (2021). A nurse registry that operates a satellite office must: Maintain a system of communication and integration of services between the nurse registry operational site and the satellite office; provide access to patient records at the satellite office; ensure periodic onsite visits to each satellite office by the nurse registry's administrator; and make the satellite office's hours of operation available to the public if different than the hours of operation maintained by the nurse registry operational site.

<sup>54</sup> See ss. 408.032(5) and 400.497(9), F.S.

<sup>55</sup> Section 400.506(6)(b) - (e), F.S.

<sup>56</sup> Fla. Admin. Code R. 59A-18.005(2021).

<sup>57</sup> Fla. Admin. Code R. 59A-18.005(3)(2021). A screen print from the DOH website that shows a clear and active license or certification for each nurse and CNA is sufficient for documentation.

<sup>58</sup> Fla. Admin. Code R. 59A-18.005(5), (2021). The independent contractor's identity must be verified by using the individual's current driver's license or other photo identification, including the professional license or certificate.

A nurse registry must maintain folders on each independent contractor that must contain the following information:<sup>59</sup>

- The name, address, date of birth, and social security number of the applicant;
- The educational background and employment history of the applicant;
- The number and date of the applicable license or certification;
- Information concerning the renewal of the applicable license, registration, or certification;
- A copy of the licensee's application;
- Proof of completion of continuing educational (CE) courses on modes of transmission, infection control procedures, clinical management, and prevention of human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) with an emphasis on appropriate behavior and attitude change. Such instruction must include information on current Florida law and its effect on testing, confidentiality of test results, and treatment of patients and any protocols and procedures applicable to HIV counseling and testing, reporting, offering HIV testing to pregnant women, and partner notification issues;<sup>60</sup>
- For HH aides, evidence of completion of a HH aide training course;
- For CNAs, certification from the DOH;
- Evidence of a contract with the nurse registry;
- Evidence of a satisfactory level two background screening;<sup>61</sup> and
- A copy of the certificate or other documentation of successful completion of at least 40 hours of HH aide training.<sup>62</sup>

Each nurse registry must establish a system for the recording complaints involving individuals they refer.<sup>63</sup> However, a nurse registry may not monitor, supervise, manage, or train a RN, LPN, CNA, HH aide, companion or homemaker, referred for contract.<sup>64</sup> In the event of a violation of law by a referred RN, LPN, CNA, HH aide, companion or homemaker, or a deficiency in credentials which comes to the attention of the nurse registry, the nurse registry must advise the patient to terminate the referred person's contract, provide the reason for the suggested termination, cease referring that individual to other patients, and, if practice violations are involved, notify the appropriate licensing board. Records of complaints and actions taken by the nurse registry must be kept in the individual's registration file or retained in the central files of the nurse registry.<sup>65</sup>

A CNA or HH aide may be referred for a contract to provide care to a patient in his or her home only if that patient is under a physician's care. A CNA or HH aid aide referred for contract in a private residence must be limited to assisting a patient with bathing, dressing, toileting, grooming, eating, physical transfer, and those normal daily routines the patient could perform for himself or herself were he or she physically capable. A CNA or HH aide may not provide

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<sup>59</sup> Section 400.506(8) and (9), F.S. and Fla. Admin. Code R. 59A-18.005(2) - (7).

<sup>60</sup> See ss. 381.004 and 384.25, F.S.

<sup>61</sup> Section 408.809, F.S.

<sup>62</sup> See s 400.506(6)(a), F.S. The training must have been from a public vocational technical school or a non-public postsecondary career school licensed by the Commission on Independent Education, Florida Department of Education.

<sup>63</sup> Fla. Admin. Code R. 59A-18.005,(8).

<sup>64</sup> Section 400.506 (19), F.S.

<sup>65</sup> Fla. Admin. Code R. 59A-18.005.

medical or other health care services that require specialized training and that may be performed only by licensed health care professionals.<sup>66</sup>

The nurse registry must obtain the name and address of the attending physician and send written notification to the physician within 48 hours after a contract is concluded that a CNA or HH aide will be providing care for his or her patient.<sup>67</sup>

A RN, LPN, CNA, HH aide, or companion or homemaker, referred for contract by a nurse registry is deemed an independent contractor and not an employee of the nurse registry,<sup>68</sup> and the nurse registry must advise the patient, the patient's family, or any other person acting on behalf of the patient, at the time of contracting, that the caregiver referred by the nurse registry is an independent contractor, not an employee of the nurse registry, and that the nurse registry may not monitor, supervise, manage, or train the caregiver referred for contract.<sup>69</sup>

All persons referred for contract in private residences by a nurse registry, and licensed under Part I of ch. 464, F.S., must deliver patient care according to a plan of treatment under the direction or supervision of a physician.<sup>70</sup> A person who is referred by a nurse registry for a contract in private residence, who is not a nurse licensed under Part I of ch. 464, F.S., may perform only those services or care that the person has been certified or trained to perform as prescribed by law, or rules of the AHCA or the Department of Business and Professional Regulation.<sup>71</sup>

#### ***Scope of Practice - Nurse Registry Referral of HH Aides and CNAs***

When a CNA or HH aide is referred to a patient's home by a nurse registry, the nurse registry must advise the patient, the patient's family, or any other person acting on behalf of the patient at the time of the contract, that RNs are available to make visits to the patient's home for an additional cost.<sup>72</sup>

#### ***Certified Nursing Assistants and Home Health Aides***

A CNA or HH aide referred to a patient's home by a nurse registry for a contract to provide care to a patient in his or her home is responsible for:<sup>73</sup>

- Documenting services provided to the patient and for filing said documentation with the nurse registry on a regular basis;
- Observing the appearance and behavioral changes of the patient and reporting these changes to the patient's health care surrogate or other person designated by the patient and the nurse registry or to the responsible facility employee if staffing in a facility;
- Maintaining a clean, safe, and healthy environment;

<sup>66</sup> Section 400.506(6)(a), F.S.

<sup>67</sup> Section 400.506(6)(b), F.S.

<sup>68</sup> Section 400.506(6)(d), F.S.

<sup>69</sup> Section 400.506(6)(e), F.S.

<sup>70</sup> Section 400.506(13)(a), F.S.

<sup>71</sup> Section 400.506(7), F.S. Providing services beyond the scope authorized by law constitutes the unauthorized practice of medicine or a violation of the Nurse Practice Act and is punishable as provided under chs. 458, and 459, or Part I of ch. 464.

<sup>72</sup> Section 400.506(6)(c), F.S.

<sup>73</sup> Fla. Admin. Code R. 59A-18.0081.

- Performing other activities as are taught and documented by a RN, concerning activities for a specific patient and restricted to the following:
  - Assisting with the change of a colostomy bag, and reinforcement of dressings;
  - Assisting with the use of devices for aid to daily living such as a wheelchair or walker;
  - Assisting with prescribed range of motion exercises;
  - Assisting with prescribed ice cap or collar;
  - Doing simple urine tests for sugar, acetone or albumin;
  - Measuring and preparing special diets;
  - Measuring intake and output of fluids; and
  - Measuring temperature, pulse, respiration or blood pressure.

CNAs and HH aides referred by nurse registries must maintain a current CPR certification from an instructor or training provider that is approved to provide training by the American Heart Association, the American Red Cross, or the Health and Safety Institute.<sup>74</sup>

#### ***Medication Administration by CNAs and HH Aides - Nurse Registry Referred***

CNAs and HH aides referred by nurse registries may assist with self-administration of medication if the individual has received a minimum of two hours of training covering the following:<sup>75</sup>

- State laws and rules with respect to the assistance with self-administration of medications in the home;
- Procedures for assisting a patient with self-administration of medication;
- Common medications;
- Recognition of side effects and adverse reactions; and
- Procedures to follow when patients appear to be experiencing side effects and adverse reactions.

The trained CNAs and HH aides may also provide the following assistance with self-administered medication, as needed by the patient:<sup>76</sup>

- Prepare necessary items such as juice, water, cups, or spoons to assist the patient in the self-administration of medication;
- Open and close the medication container or tear the foil of prepackaged medications,
- Assist the resident in the self-administration process. Examples of such assistance include the steadying of the arm, hand, or other parts of the patient's body so as to allow the self-administration of medication; and
- Assist the patient by placing unused doses of solid medication back into the medication container.

Documentation of the training must be maintained in the file of each CNA and HH aide who assists patients with self-administered medication. In cases where a CNA or HH aide will provide assistance with self-administered medications, a review of the medications with the CNA or HH aide must be conducted by a RN or LPN to ensure the CNA and HH aide are able to

<sup>74</sup> Fla. Admin. Code R. 59A-18.0081(11).

<sup>75</sup> Fla. Admin. Code R. 59A-18.0081(14)(a).

<sup>76</sup> Fla. Admin. Code R. 59A-18.0081(14)(e).

assist in accordance with their training and that the medication is not required to be administered by a nurse. If the patient will not consent to a visit by a nurse, and the additional cost associated, for a medication review, then a written list of the medications with the dosage, frequency and route of administration must be provided by the patient or the patient's health care surrogate, family member, or person designated by the patient to the CNA or HH aide to have it reviewed by a nurse. The patient or the patient's surrogate, guardian, or attorney in fact must give written consent for a CNA or HH aide to provide assistance with self-administered medications.<sup>77</sup>

A CNA or HH aide referred to a patient's home by a nurse registry is prohibited from performing any of the following:<sup>78</sup>

- Changing sterile dressings;
- Irrigating body cavities such as giving an enema;
- Irrigating a colostomy or wound;
- Performing gastric irrigation or enteral feeding;
- Catheterizing a patient;
- Administering medications;
- Applying heat by any method; or
- Caring for a tracheotomy tube.

### **County Detention Facilities**

Persons convicted of felonies or misdemeanors whose sentences do not exceed one year may be incarcerated in county detention facilities.<sup>79</sup> Section 951.23(1), F.S., defines a county detention facility as a county jail, county stockade, county work camp, county residential probation center,<sup>80</sup> and any other place, except a municipal detention facility,<sup>81</sup> that is used by a county or county officer for the detention of persons charged with, or the convicted of, a felony or misdemeanor. A county detention facility or municipal detention facility incurs expenses in providing medical care, treatment, hospitalization, or transportation to incarcerated persons and may seek reimbursement for those expenses from the incarcerated individual.<sup>82</sup>

### **III. Effect of Proposed Changes:**

CS/SB 700 amends s. 464.0156(2), F.S., to authorize a RN to delegate to a CNA or a HH aide the administration of oral, transdermal, ophthalmic, otic, rectal, inhaled, enteral, or topical prescription medications to a patient of a nurse registry or a county detention facility as defined in s. 951.23(1), F.S., if the CNA or HH aide meets the requirements of ss. 464.2035 or 400.489, F.S., respectively. The bill amends s. 464.2035(1), F.S., to authorize a CNA to administer such

<sup>77</sup> Section 400.488, F.S.; Fla. Admin. Code R. 59A-18.0081(14).

<sup>78</sup> Fla. Admin. Code R. 59A-18.0081(6).

<sup>79</sup> Sections 775.08 and 775.081, F.S.

<sup>80</sup> Section 951.23(1), (b), F.S., defines a "county residential probation center" as a county-operated facility housing offenders serving misdemeanor sentences or first-time felony sentences. Such facilities shall provide or contract for the provision of the programs established under s. 951.231.

<sup>81</sup> Section 951.23(1)(d), F.S. defines a "municipal detention facility" as a city jail, a city stockade, a city prison camp, and any other place except a county detention facility used by a municipality or municipal officer for the detention of persons charged with or convicted of violation of municipal laws or ordinances.

<sup>82</sup> Section 951.032, F.S.

prescription medications to a patient of a nurse registry or in a county detention facility if so delegated by a RN and if the CNA has satisfactorily completed an initial BON-approved six-hour training course and has been found competent to administer medication to a patient in a safe and sanitary manner. The bill also amends s. 400.506(7), F.S., to require a nurse registry that authorizes a RN to delegate tasks, including medication administration, to a CNA or a HH aide, to ensure that such delegation meets the requirements of chs. 400 and 464, F.S., and the rules adopted thereunder.

The bill has an effective date of July 1, 2022.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 400.506, 464.0156, and 464.2035.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Health Policy on February 10, 2022:**

The CS authorizes a RN to delegate to a CNA or a HH aide the administration of oral, transdermal, ophthalmic, otic, rectal, inhaled, enteral, or topical prescription medications to a patient in a county detention facility.

**B. Amendments:**

None.