

1 A bill to be entitled

2 An act relating to home health aides for medically
3 fragile children; amending s. 400.462, F.S.; providing
4 definitions; amending s. 400.464, F.S.; requiring home
5 health agencies to ensure that any tasks delegated to
6 home health aides for medically fragile children meet
7 specified requirements; amending s. 400.476, F.S.;
8 requiring that home health aides for medically fragile
9 children employed by or under contract with home
10 health agencies be adequately trained to perform
11 delegated tasks; providing certain individuals an
12 exemption from costs associated with specified
13 training; creating s. 400.4765, F.S.; providing
14 legislative findings and intent; providing
15 requirements for a family caregiver to be employed as
16 a home health aide for medically fragile children;
17 requiring the Agency for Health Care Administration,
18 in consultation with the Board of Nursing, to develop
19 a home health aide for medically fragile children
20 training programs; providing requirements for the
21 program; requiring home health aides for medically
22 fragile children to complete inservice training as a
23 condition of employment; requiring home health aides
24 for medically fragile children to maintain
25 documentation demonstrating compliance with such

26 training requirements; exempting home health agencies
27 from civil liability for terminating or denying
28 employment to a home health aide for medically fragile
29 children under certain circumstances; extending the
30 exemption to certain agents of the home health
31 agencies; prohibiting home health agencies or their
32 agents from using certain criminal records or juvenile
33 records other than for a specified purpose; requiring
34 the agency to maintain confidentiality of certain
35 confidential and exempt records; authorizing the
36 agency, in consultation with the board, to adopt rules
37 to implement the act; ss. 400.489 and 400.490, F.S.;
38 conforming provisions to changes made by the act;
39 amending; creating s. 400.54, F.S.; requiring the
40 Agency for Health Care Administration to conduct an
41 annual assessment related to the certified health aide
42 program; providing requirements for the assessment;
43 requiring the agency to submit a report to the
44 Governor and the Legislature annually, by and
45 beginning on a specified date; amending s. 408.822,
46 F.S.; conforming a provision to changes made by the
47 act; amending s. 464.0156, F.S.; conforming provisions
48 to changes made by the act; requiring the agency to
49 modify any state Medicaid plans and implement any
50 federal waivers necessary to implement this act and

51 | establish a specified Medicaid fee schedule for home
 52 | health agencies employing a home health aide for
 53 | medically fragile children; providing an effective
 54 | date.

56 | Be It Enacted by the Legislature of the State of Florida:

58 | Section 1. Subsections (5) through (10) of section
 59 | 400.462, Florida Statutes, are renumbered as subsections (6)
 60 | through (11), present subsection (11) is renumbered as
 61 | subsection (13), present subsections (12), (13), and (14) are
 62 | renumbered as subsections (15), (16), and (17), and present
 63 | subsections (15) through (29) are renumbered as subsections (19)
 64 | through (33), respectively, subsection (1) and present
 65 | subsection (10) are amended, and new subsections (5), (12),
 66 | (14), and (18), are added to that section, to read:

67 | 400.462 Definitions.—As used in this part, the term:

68 | (1) "Administrator" means a direct employee, as defined in
 69 | subsection (10) ~~(9)~~, who is a licensed physician, physician
 70 | assistant, or registered nurse licensed to practice in this
 71 | state or an individual having at least 1 year of supervisory or
 72 | administrative experience in home health care or in a facility
 73 | licensed under chapter 395, under part II of this chapter, or
 74 | under part I of chapter 429.

75 | (5) "Approved training program" means a course of training

76 approved by the agency, in consultation with the Board of
 77 Nursing, to train a family caregiver as a home health aide for
 78 medically fragile children.

79 (11)~~(10)~~ "Director of nursing" means a registered nurse
 80 who is a direct employee, as defined in subsection (10) ~~(9)~~, of
 81 the agency and who is a graduate of an approved school of
 82 nursing and is licensed in this state; who has at least 1 year
 83 of supervisory experience as a registered nurse; and who is
 84 responsible for overseeing the delivery of professional nursing
 85 and home health aid ~~delivery of~~ services of the agency.

86 (12) "Eligible relative" means a patient 21 years of age
 87 or younger who has an underlying physical, mental, or cognitive
 88 impairment that prevents him or her from safely living
 89 independently, is eligible to receive skilled care or respite
 90 care services under the Medicaid program, and is related to his
 91 or her family caregiver.

92 (14) "Family caregiver" means a person who provides or
 93 intends to provide significant personal care to an eligible
 94 relative.

95 (18) "Home health aide for medically fragile children"
 96 means a family caregiver who meets the qualifications specified
 97 in this part and who performs tasks delegated to him or her
 98 under s. 400.4765 while caring for an eligible relative, and
 99 provides care relating to activities of daily living, including
 100 those associated with personal care; maintaining mobility;

101 nutrition and hydration; toileting and elimination; assistive
102 devices; and safety and cleanliness, data gathering, reporting
103 abnormal signs and symptoms, postmortem care, patient
104 socialization and reality orientation, end-of-life care,
105 cardiopulmonary resuscitation and emergency care, residents' or
106 patients' rights, and documentation of services performed.

107 Section 2. Subsection (5) and paragraph (d) of subsection
108 (6) of section 400.464, Florida Statutes, are amended to read:

109 400.464 Home health agencies to be licensed; expiration of
110 license; exemptions; unlawful acts; penalties.—

111 (5) If a licensed home health agency authorizes a
112 registered nurse to delegate tasks, including medication
113 administration, to a certified nursing assistant pursuant to
114 chapter 464 or to a home health aide or a home health aide for
115 medically fragile children pursuant to s. 400.490, the licensed
116 home health agency must ensure that such delegation meets the
117 requirements of this chapter and chapter 464 and the rules
118 adopted thereunder.

119 (6) The following are exempt from licensure as a home
120 health agency under this part:

121 (d) A home health aide, home health aide for medically
122 fragile children, or certified nursing assistant who is acting
123 in his or her individual capacity, within the definitions and
124 standards of his or her occupation, and who provides hands-on
125 care to patients in their homes.

126 Section 3. Subsection (3) of section 400.476, Florida
 127 Statutes, is amended to read:

128 400.476 Staffing requirements; notifications; limitations
 129 on staffing services.—

130 (3) TRAINING.—A home health agency shall ensure that each
 131 certified nursing assistant employed by or under contract with
 132 the home health agency and each home health aide or home health
 133 aide for medically fragile children employed by or under
 134 contract with the home health agency is adequately trained to
 135 perform the tasks of a home health aide or home health aide for
 136 medically fragile children in the home setting. A parent,
 137 guardian, or family member who is seeking training required
 138 under s. 400.4765 to become a home health aide for medically
 139 fragile children is not required to repay or reimburse the home
 140 health agency for the costs associated with the home health aide
 141 for medically fragile children training program.

142 Section 4. Section 400.4765, Florida Statutes, is created
 143 to read:

144 400.4765 Home health aide for medically fragile children
 145 program.—

146 (1) LEGISLATIVE FINDINGS AND INTENT.—The home health aide
 147 for medically fragile children program is hereby established in
 148 response to the existing national health care provider shortage
 149 and the impact that the shortage has on medically fragile
 150 children and the family caregivers. This program is created to

151 decrease the hospitalization and institutionalization of
152 medically fragile children, reduce state expenditures, and
153 provide an opportunity for a family caregiver to receive
154 training and gainful employment.

155 (2) ELIGIBILITY REQUIREMENTS.—A home health agency may
156 employ as a home health aide for medically fragile children any
157 person 18 years of age or older who meets all of the following
158 requirements. A person must:

159 (a) Be a family caregiver of an eligible relative.

160 (b) Demonstrate a minimum competency to read and write.

161 (c) Complete an approved training program as set forth in
162 this section or have graduated from an accredited prelicensure
163 nursing education program and are waiting to take the state
164 licensing exam.

165 (d) Successfully pass the required background screening
166 pursuant to s. 400.215. If the person has successfully passed
167 the required background screening pursuant to s. 400.215 or s.
168 408.809 within 90 days before applying for a certificate to
169 practice and the person's background screening results are not
170 retained in the clearinghouse created under s. 435.12, the
171 agency shall waive the requirement that the applicant
172 successfully pass an additional background screening pursuant to
173 s. 400.215.

174 (3) TRAINING.—

175 (a) The agency, in consultation with the Board of Nursing,

176 shall approve home health aide for medically fragile children
177 training programs developed by home health agencies in
178 accordance with 42 C.F.R. ss. 483.151-483.154 and 484.80 to
179 train family caregivers as home health aides for medically
180 fragile children to increase the health care provider workforce
181 and to authorize persons to provide trained nursing services as
182 delegated by a registered nurse to eligible relatives. The
183 program must consist of at least 85 hours of training,
184 including, but not limited to, all of the following:

185 1. A minimum of 40 hours of theoretical instruction in
186 nursing, including, but not limited to, instruction on all of
187 the following:

- 188 a. Person-centered care.
189 b. Communication and interpersonal skills.
190 c. Infection control.
191 d. Safety and emergency procedures.
192 e. Assistance with activities of daily living.
193 f. Mental health and social service needs.
194 g. Care of cognitively impaired individuals.
195 h. Basic restorative care and rehabilitation.
196 i. Patient rights and confidentiality of personal
197 information and medical records.
198 j. Relevant legal and ethical issues.

199
200 Such instruction must be offered in various formats, and any

201 interactive instruction must be provided during various times of
202 the day.

203 2. A minimum of 20 hours of skills training on basic
204 nursing skills, including, but not limited to:

205 a. Hygiene, grooming, and toileting.

206 b. Skin care and pressure sore prevention.

207 c. Nutrition and hydration.

208 d. Measuring vital signs, height, and weight.

209 e. Safe lifting, positioning, and moving of patients.

210 f. Wound care.

211 g. Portable oxygen use and safety and other respiratory
212 procedures.

213 h. Tracheostomy care.

214 i. Enteral care and therapy.

215 j. Peripheral intravenous assistive activities and
216 alternative feeding methods.

217 k. Urinary catheterization and ostomy care.

218 3. At least 16 hours of clinical training under direct
219 supervision of a licensed registered nurse.

220 4. Training concerning HIV infections and AIDS and is
221 required to obtain and maintain a current certificate in
222 cardiopulmonary resuscitation.

223 (b) If a home health aide for medically fragile children
224 allows 24 consecutive months to pass without providing any
225 personal care related services for an eligible relative, the

226 family caregiver must complete an approved training program
227 before providing personal care related services as a home health
228 aide for medically fragile children.

229 (4) EMPLOYMENT.—A home health agency that employs a home
230 health aide for medically fragile children must ensure that the
231 home health aide for medically fragile children completes 12
232 hours of inservice training during each 12-month period as a
233 condition of employment. The training concerning HIV infections
234 and AIDS and the cardiopulmonary training may count toward
235 meeting the 12 hours of inservice training. The home health
236 agency shall maintain documentation demonstrating compliance
237 with this subsection.

238 (5) LIABILITY.—If a home health agency terminates or
239 denies employment to a home health aide for medically fragile
240 children who fails to maintain the requirements of this part or
241 whose name appears on a criminal screening report of the
242 Department of Law Enforcement, the home health agency is not
243 civilly liable for such termination and a cause of action may
244 not be brought against the home health agency for damages. There
245 may not be any monetary liability on the part of, and a cause of
246 action for damages may not arise against, any licensed facility
247 or its governing board or members thereof, medical staff,
248 disciplinary board, agents, investigators, witnesses, employees,
249 or any other person for any action taken in good faith, without
250 intentional fraud, to comply with this part.

251 (6) CONFIDENTIALITY.—A home health agency, or an agent
252 thereof, may not use criminal records or juvenile records
253 relating to vulnerable adults for any purpose other than
254 determining if the person meets the requirements of this part.
255 The agency shall maintain the confidentiality of any such
256 records and information it obtains which are confidential and
257 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
258 Constitution.

259 (7) The agency, in consultation with the Board of Nursing,
260 may adopt rules to implement this section.

261 Section 5. Section 400.489, Florida Statutes, is amended
262 to read:

263 400.489 Administration of medication by a home health aide
264 or home health aide for medically fragile children; staff
265 training requirements.—

266 (1) A home health aide or home health aide for medically
267 fragile children may administer oral, transdermal, ophthalmic,
268 otic, rectal, inhaled, enteral, or topical prescription
269 medications if the home health aide or home health aide for
270 medically fragile children has been delegated such task by a
271 registered nurse licensed under chapter 464, has satisfactorily
272 completed an initial 6-hour training course approved by the
273 agency, and has been found competent to administer medication to
274 a patient in a safe and sanitary manner. The training,
275 determination of competency, and initial and annual validations

276 required in this section shall be conducted by a registered
277 nurse licensed under chapter 464 or a physician licensed under
278 chapter 458 or chapter 459.

279 (2) A home health aide or home health aide for medically
280 fragile children must annually and satisfactorily complete a 2-
281 hour inservice training course approved by the agency in
282 medication administration and medication error prevention. The
283 inservice training course shall be in addition to the annual
284 inservice training hours required by agency rules.

285 (3) The agency, in consultation with the Board of Nursing,
286 shall establish by rule standards and procedures that a home
287 health aide or home health aide for medically fragile children
288 must follow when administering medication to a patient. Such
289 rules must, at a minimum, address qualification requirements for
290 trainers, requirements for labeling medication, documentation
291 and recordkeeping, the storage and disposal of medication,
292 instructions concerning the safe administration of medication,
293 informed-consent requirements and records, and the training
294 curriculum and validation procedures.

295 Section 6. Section 400.490, Florida Statutes, is amended
296 to read:

297 400.490 Nurse-delegated tasks.—A certified nursing
298 assistant, home health aide for medically fragile children, or
299 home health aide may perform any task delegated by a registered
300 nurse as authorized in this part and in chapter 464, including,

301 but not limited to, medication administration.

302 Section 7. Section 400.54, Florida Statutes, is created to
303 read:

304 400.54 Annual assessment of the home health aide for
305 medically fragile children program.—The agency shall conduct an
306 annual assessment of the home health aide for medically fragile
307 children program. The assessment must report caregiver
308 satisfaction with the program, identify additional support that
309 may be needed by the home health aide for medically fragile
310 children, and assess the rate and extent of hospitalization of
311 children in home health services who are attended by a home
312 health aide for medically fragile children compared to those in
313 home health services without a home health aide for medically
314 fragile children. By January 1 of each year, beginning January
315 1, 2025, the agency shall report its findings to the Governor,
316 the President of the Senate, and the Speaker of the House of
317 Representatives.

318 Section 8. Subsection (1) of section 408.822, Florida
319 Statutes, is amended to read:

320 408.822 Direct care workforce survey.—

321 (1) For purposes of this section, the term "direct care
322 worker" means a certified nursing assistant, a home health aide,
323 a home health aide for medically fragile children a personal
324 care assistant, a companion services or homemaker services
325 provider, a paid feeding assistant trained under s.

326 400.141(1)(v), or another individual who provides personal care
327 as defined in s. 400.462 to individuals who are elderly,
328 developmentally disabled, or chronically ill.

329 Section 9. Subsections (1) and (2) of section 464.0156,
330 Florida Statutes, are amended to read:

331 464.0156 Delegation of duties.—

332 (1) A registered nurse may delegate a task to a certified
333 nursing assistant certified under part II of this chapter or a
334 home health aide or a home health aide for medically fragile
335 children as defined in s. 400.462 if the registered nurse
336 determines that the certified nursing assistant or the home
337 health aide is competent to perform the task, the task is
338 delegable under federal law, and the task meets all of the
339 following criteria:

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

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

343 (c) Is performed according to an established sequence of
344 steps.

345 (d) Involves little or no modification from one patient to
346 another.

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

348 (f) Does not inherently involve ongoing assessment,
349 interpretation, or clinical judgment.

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

351 (2) A registered nurse may delegate to a certified nursing
352 assistant, ~~or a home health aide,~~ or a home health aide for
353 medically fragile children the administration of oral,
354 transdermal, ophthalmic, otic, rectal, inhaled, enteral, or
355 topical prescription medications to a patient of a home health
356 agency or in a local county detention facility as defined in s.
357 951.23(1), if the certified nursing assistant or home health
358 aide meets the requirements of s. 464.2035 or s. 400.489,
359 respectively. A registered nurse may not delegate the
360 administration of any controlled substance listed in Schedule
361 II, Schedule III, or Schedule IV of s. 893.03 or 21 U.S.C. s.
362 812, except for the administration of an insulin syringe that is
363 prefilled with the proper dosage by a pharmacist or an insulin
364 pen that is prefilled by the manufacturer.

365 Section 10. The Agency for Health Care Administration
366 shall modify any state Medicaid plans and implement any federal
367 waivers necessary to implement this act and shall establish a
368 Medicaid fee schedule for home health agencies employing a home
369 health aide for medically fragile children at \$25 per hour with
370 a utilization cap of no more than 8 hours per day.

371 Section 11. This act shall take effect upon becoming a
372 law.