

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; providing
36 requirements for services provided by a home health
37 aide for medically fragile children; authorizing the
38 agency, in consultation with the board, to adopt rules
39 to implement the act; requiring the agency to modify
40 any state Medicaid plans and implement any federal
41 waivers necessary to implement this act and establish
42 a specified Medicaid fee schedule for home health
43 agencies employing a home health aide for medically
44 fragile children; ss. 400.489 and 400.490, F.S.;

45 conforming provisions to changes made by the act;
46 amending; creating s. 400.54, F.S.; requiring the
47 Agency for Health Care Administration to conduct an
48 annual assessment related to the certified health aide
49 program; providing requirements for the assessment;
50 requiring the agency to submit a report to the

51 Governor and the Legislature annually, by and
 52 beginning on a specified date; amending s. 408.822,
 53 F.S.; conforming a provision to changes made by the
 54 act; amending s. 464.0156, F.S.; conforming provisions
 55 to changes made by the act; providing appropriations;
 56 providing an effective date.

57

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

59

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

69 400.462 Definitions.—As used in this part, the term:

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

76 | under part I of chapter 429.

77 | (5) "Approved training program" means a course of training
 78 | approved by the agency, in consultation with the Board of
 79 | Nursing, to train a family caregiver as a home health aide for
 80 | medically fragile children.

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

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

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

97 | (18) "Home health aide for medically fragile children"
 98 | means a family caregiver who meets the qualifications specified
 99 | in this part and who performs tasks delegated to him or her
 100 | under s. 400.4765 while caring for an eligible relative, and

101 provides care relating to activities of daily living, including
 102 those associated with personal care; maintaining mobility;
 103 nutrition and hydration; toileting and elimination; assistive
 104 devices; and safety and cleanliness, data gathering, reporting
 105 abnormal signs and symptoms, postmortem care, patient
 106 socialization and reality orientation, end-of-life care,
 107 cardiopulmonary resuscitation and emergency care, residents' or
 108 patients' rights, and documentation of services performed.

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

111 400.464 Home health agencies to be licensed; expiration of
 112 license; exemptions; unlawful acts; penalties.—

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

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

123 (d) A home health aide, home health aide for medically
 124 fragile children, or certified nursing assistant who is acting
 125 in his or her individual capacity, within the definitions and

126 standards of his or her occupation, and who provides hands-on
 127 care to patients in their homes.

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

130 400.476 Staffing requirements; notifications; limitations
 131 on staffing services.—

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

144 Section 4. Section 400.4765, Florida Statutes, is created
 145 to read:

146 400.4765 Home health aide for medically fragile children
 147 program.—

148 (1) LEGISLATIVE FINDINGS AND INTENT.—The home health aide
 149 for medically fragile children program is hereby established in
 150 response to the existing national health care provider shortage

151 and the impact that the shortage has on medically fragile
152 children and the family caregivers. This program is created to
153 decrease the hospitalization and institutionalization of
154 medically fragile children, reduce state expenditures, and
155 provide an opportunity for a family caregiver to receive
156 training and gainful employment.

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

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

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

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

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

176 (3) TRAINING.—
 177 (a) The agency, in consultation with the Board of Nursing,
 178 shall approve home health aide for medically fragile children
 179 training programs developed by home health agencies in
 180 accordance with 42 C.F.R. ss. 483.151-483.154 and 484.80 to
 181 train family caregivers as home health aides for medically
 182 fragile children to increase the health care provider workforce
 183 and to authorize persons to provide trained nursing services as
 184 delegated by a registered nurse to eligible relatives. The
 185 program must consist of at least 85 hours of training,
 186 including, but not limited to, all of the following:
 187 1. A minimum of 40 hours of theoretical instruction in
 188 nursing, including, but not limited to, instruction on all of
 189 the following:
 190 a. Person-centered care.
 191 b. Communication and interpersonal skills.
 192 c. Infection control.
 193 d. Safety and emergency procedures.
 194 e. Assistance with activities of daily living.
 195 f. Mental health and social service needs.
 196 g. Care of cognitively impaired individuals.
 197 h. Basic restorative care and rehabilitation.
 198 i. Patient rights and confidentiality of personal
 199 information and medical records.
 200 j. Relevant legal and ethical issues.

201
 202 Such instruction must be offered in various formats, and any
 203 interactive instruction must be provided during various times of
 204 the day.

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

- 207 a. Hygiene, grooming, and toileting.
- 208 b. Skin care and pressure sore prevention.
- 209 c. Nutrition and hydration.
- 210 d. Measuring vital signs, height, and weight.
- 211 e. Safe lifting, positioning, and moving of patients.
- 212 f. Wound care.
- 213 g. Portable oxygen use and safety and other respiratory
 214 procedures.
- 215 h. Tracheostomy care.
- 216 i. Enteral care and therapy.
- 217 j. Peripheral intravenous assistive activities and
 218 alternative feeding methods.
- 219 k. Urinary catheterization and ostomy care.

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

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

225 (b) If a home health aide for medically fragile children

226 allows 24 consecutive months to pass without providing any
227 personal care related services for an eligible relative, the
228 family caregiver must complete an approved training program
229 before providing personal care related services as a home health
230 aide for medically fragile children.

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

240 (5) LIABILITY.—If a home health agency terminates or
241 denies employment to a home health aide for medically fragile
242 children who fails to maintain the requirements of this part or
243 whose name appears on a criminal screening report of the
244 Department of Law Enforcement, the home health agency is not
245 civilly liable for such termination and a cause of action may
246 not be brought against the home health agency for damages. There
247 may not be any monetary liability on the part of, and a cause of
248 action for damages may not arise against, any licensed facility
249 or its governing board or members thereof, medical staff,
250 disciplinary board, agents, investigators, witnesses, employees,

251 or any other person for any action taken in good faith, without
 252 intentional fraud, to comply with this part.

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

261 (7) SERVICES.—Services provided by a home health aide for
 262 medically fragile children must reduce an eligible relative's
 263 private duty nursing service hours. Such services may not be
 264 provided concurrently with any private duty nursing service.

265 (8) RULES.—The agency, in consultation with the Board of
 266 Nursing, may adopt rules to implement this section.

267 (9) FEE SCHEDULE.—The agency shall modify any state
 268 Medicaid plans and implement any federal waivers necessary to
 269 implement this section and shall establish a Medicaid fee
 270 schedule for home health agencies employing a home health aide
 271 for medically fragile children at \$25 per hour with a
 272 utilization cap of no more than 8 hours per day.

273 Section 5. Section 400.489, Florida Statutes, is amended
 274 to read:

275 400.489 Administration of medication by a home health aide

276 or home health aide for medically fragile children; staff
277 training requirements.—

278 (1) A home health aide or home health aide for medically
279 fragile children may administer oral, transdermal, ophthalmic,
280 otic, rectal, inhaled, enteral, or topical prescription
281 medications if the home health aide or home health aide for
282 medically fragile children has been delegated such task by a
283 registered nurse licensed under chapter 464, has satisfactorily
284 completed an initial 6-hour training course approved by the
285 agency, and has been found competent to administer medication to
286 a patient in a safe and sanitary manner. The training,
287 determination of competency, and initial and annual validations
288 required in this section shall be conducted by a registered
289 nurse licensed under chapter 464 or a physician licensed under
290 chapter 458 or chapter 459.

291 (2) A home health aide or home health aide for medically
292 fragile children must annually and satisfactorily complete a 2-
293 hour inservice training course approved by the agency in
294 medication administration and medication error prevention. The
295 inservice training course shall be in addition to the annual
296 inservice training hours required by agency rules.

297 (3) The agency, in consultation with the Board of Nursing,
298 shall establish by rule standards and procedures that a home
299 health aide or home health aide for medically fragile children
300 must follow when administering medication to a patient. Such

301 rules must, at a minimum, address qualification requirements for
 302 trainers, requirements for labeling medication, documentation
 303 and recordkeeping, the storage and disposal of medication,
 304 instructions concerning the safe administration of medication,
 305 informed-consent requirements and records, and the training
 306 curriculum and validation procedures.

307 Section 6. Section 400.490, Florida Statutes, is amended
 308 to read:

309 400.490 Nurse-delegated tasks.—A certified nursing
 310 assistant, home health aide for medically fragile children, or
 311 home health aide may perform any task delegated by a registered
 312 nurse as authorized in this part and in chapter 464, including,
 313 but not limited to, medication administration.

314 Section 7. Section 400.54, Florida Statutes, is created to
 315 read:

316 400.54 Annual assessment of the home health aide for
 317 medically fragile children program.—The agency shall conduct an
 318 annual assessment of the home health aide for medically fragile
 319 children program. The assessment must report caregiver
 320 satisfaction with the program, identify additional support that
 321 may be needed by the home health aide for medically fragile
 322 children, and assess the rate and extent of hospitalization of
 323 children in home health services who are attended by a home
 324 health aide for medically fragile children compared to those in
 325 home health services without a home health aide for medically

326 fragile children. By January 1 of each year, beginning January
 327 1, 2025, the agency shall report its findings to the Governor,
 328 the President of the Senate, and the Speaker of the House of
 329 Representatives.

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

332 408.822 Direct care workforce survey.—

333 (1) For purposes of this section, the term "direct care
 334 worker" means a certified nursing assistant, a home health aide,
 335 a home health aide for medically fragile children a personal
 336 care assistant, a companion services or homemaker services
 337 provider, a paid feeding assistant trained under s.
 338 400.141(1)(v), or another individual who provides personal care
 339 as defined in s. 400.462 to individuals who are elderly,
 340 developmentally disabled, or chronically ill.

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

343 464.0156 Delegation of duties.—

344 (1) A registered nurse may delegate a task to a certified
 345 nursing assistant certified under part II of this chapter or a
 346 home health aide or a home health aide for medically fragile
 347 children as defined in s. 400.462 if the registered nurse
 348 determines that the certified nursing assistant or the home
 349 health aide is competent to perform the task, the task is
 350 delegable under federal law, and the task meets all of the

351 following criteria:

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

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

355 (c) Is performed according to an established sequence of
356 steps.

357 (d) Involves little or no modification from one patient to
358 another.

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

360 (f) Does not inherently involve ongoing assessment,
361 interpretation, or clinical judgment.

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

363 (2) A registered nurse may delegate to a certified nursing
364 assistant, ~~or~~ a home health aide, or a home health aide for
365 medically fragile children the administration of oral,
366 transdermal, ophthalmic, otic, rectal, inhaled, enteral, or
367 topical prescription medications to a patient of a home health
368 agency or in a local county detention facility as defined in s.
369 951.23(1), if the certified nursing assistant or home health
370 aide meets the requirements of s. 464.2035 or s. 400.489,
371 respectively. A registered nurse may not delegate the
372 administration of any controlled substance listed in Schedule
373 II, Schedule III, or Schedule IV of s. 893.03 or 21 U.S.C. s.
374 812, except for the administration of an insulin syringe that is
375 prefilled with the proper dosage by a pharmacist or an insulin

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376 | pen that is prefilled by the manufacturer.

377 | Section 10. For the 2023-2024 fiscal year, four full-time
378 | equivalent positions, with associated salary rate of 186,483,
379 | are authorized and the sums of \$353,589 in recurring funds and
380 | \$118,728 in nonrecurring funds from the Health Care Trust Fund
381 | are appropriated to the Agency for Health Care Administration
382 | for the purpose of implementing this act.

383 | Section 11. This act shall take effect upon becoming a
384 | law.