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1
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

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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

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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

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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 aid ~~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 chapter 464 while caring for an eligible relative, and

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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; 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; documentation of services performed; infection
 109 control; safety and emergency procedures; hygiene, grooming,
 110 skin care, and pressure sore prevention; wound care; portable
 111 oxygen use and safety and other respiratory procedures;
 112 tracheostomy care; enteral care and therapy; peripheral
 113 intravenous assistive activities and alternative feeding
 114 methods; and any other tasks delegated to the family caregiver
 115 under chapter 464.

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

118 400.464 Home health agencies to be licensed; expiration of
 119 license; exemptions; unlawful acts; penalties.—

120 (5) If a licensed home health agency authorizes a
 121 registered nurse to delegate tasks, including medication
 122 administration, to a certified nursing assistant pursuant to
 123 chapter 464 or to a home health aide or a home health aide for
 124 medically fragile children pursuant to s. 400.490, the licensed
 125 home health agency must ensure that such delegation meets the

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126 requirements of this chapter and chapter 464 and the rules
 127 adopted thereunder.

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

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

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

137 400.476 Staffing requirements; notifications; limitations
 138 on staffing services.—

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

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151 Section 4. Section 400.4765, Florida Statutes, is created
 152 to read:

153 400.4765 Home health aide for medically fragile children
 154 program.—

155 (1) LEGISLATIVE FINDINGS AND INTENT.—The home health aide
 156 for medically fragile children program is hereby established in
 157 response to the existing national health care provider shortage
 158 and the impact that the shortage has on medically fragile
 159 children and the family caregivers. This program is created to
 160 decrease the hospitalization and institutionalization of
 161 medically fragile children, reduce state expenditures, and
 162 provide an opportunity for a family caregiver to receive
 163 training and gainful employment.

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

- 168 (a) Be a family caregiver of an eligible relative.
- 169 (b) Demonstrate a minimum competency to read and write.
- 170 (c) Complete an approved training program as set forth in
 171 this section or have graduated from an accredited prelicensure
 172 nursing education program and are waiting to take the state
 173 licensing exam.
- 174 (d) Successfully pass the required background screening
 175 pursuant to s. 400.215. If the person has successfully passed

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176 the required background screening pursuant to s. 400.215 or s.
177 408.809 within 90 days before applying for a certificate to
178 practice and the person's background screening results are not
179 retained in the clearinghouse created under s. 435.12, the
180 agency shall waive the requirement that the applicant
181 successfully pass an additional background screening pursuant to
182 s. 400.215.

183 (3) TRAINING.—

184 (a) The agency, in consultation with the Board of Nursing,
185 shall approve home health aide for medically fragile children
186 training programs developed by home health agencies in
187 accordance with 42 C.F.R. ss. 483.151-483.154 and 484.80 to
188 train family caregivers as home health aides for medically
189 fragile children to increase the health care provider workforce
190 and to authorize persons to provide trained nursing services as
191 delegated by a registered nurse to eligible relatives. The
192 program must consist of at least 85 hours of training,
193 including, but not limited to, all of the following:

194 1. A minimum of 40 hours of theoretical instruction in
195 nursing, including, but not limited to, instruction on all of
196 the following:

- 197 a. Person-centered care.
198 b. Communication and interpersonal skills.
199 c. Infection control.
200 d. Safety and emergency procedures.

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- 201 e. Assistance with activities of daily living.
- 202 f. Mental health and social service needs.
- 203 g. Care of cognitively impaired individuals.
- 204 h. Basic restorative care and rehabilitation.
- 205 i. Patient rights and confidentiality of personal
- 206 information and medical records.
- 207 j. Relevant legal and ethical issues.

208

209 Such instruction must be offered in various formats, and any

210 interactive instruction must be provided during various times of

211 the day.

212 2. A minimum of 20 hours of skills training on basic

213 nursing skills, including, but not limited to:

- 214 a. Hygiene, grooming, and toileting.
- 215 b. Skin care and pressure sore prevention.
- 216 c. Nutrition and hydration.
- 217 d. Measuring vital signs, height, and weight.
- 218 e. Safe lifting, positioning, and moving of patients.
- 219 f. Wound care.
- 220 g. Portable oxygen use and safety and other respiratory
- 221 procedures.
- 222 h. Tracheostomy care.
- 223 i. Enteral care and therapy.
- 224 j. Peripheral intravenous assistive activities and
- 225 alternative feeding methods.

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226 k. Urinary catheterization and ostomy care.
 227 3. At least 16 hours of clinical training under direct
 228 supervision of a licensed registered nurse.
 229 4. Training concerning HIV infections and AIDS and is
 230 required to obtain and maintain a current certificate in
 231 cardiopulmonary resuscitation.
 232 (b) If a home health aide for medically fragile children
 233 allows 24 consecutive months to pass without providing any
 234 personal care related services for an eligible relative, the
 235 family caregiver must complete an approved training program
 236 before providing personal care related services as a home health
 237 aid for medically fragile children.
 238 (4) EMPLOYMENT.—A home health agency that employs a home
 239 health aide for medically fragile children must ensure that the
 240 home health aide for medically fragile children completes 12
 241 hours of inservice training during each 12-month period as a
 242 condition of employment. The training concerning HIV infections
 243 and AIDS and the cardiopulmonary training may count toward
 244 meeting the 12 hours of inservice training. The home health
 245 agency shall maintain documentation demonstrating compliance
 246 with this subsection.
 247 (5) LIABILITY.—If a home health agency terminates or
 248 denies employment to a home health aide for medically fragile
 249 children who fails to maintain the requirements of this part or
 250 whose name appears on a criminal screening report of the

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251 Department of Law Enforcement, the home health agency is not
 252 civilly liable for such termination and a cause of action may
 253 not be brought against the home health agency for damages. There
 254 may not be any monetary liability on the part of, and a cause of
 255 action for damages may not arise against, any licensed facility
 256 or its governing board or members thereof, medical staff,
 257 disciplinary board, agents, investigators, witnesses, employees,
 258 or any other person for any action taken in good faith, without
 259 intentional fraud, to comply with this part.

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

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

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

274 (9) FEE SCHEDULE.—The agency shall modify any state
 275 Medicaid plans and implement any federal waivers necessary to

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276 implement this section and shall establish a Medicaid fee
 277 schedule for home health agencies employing a home health aide
 278 for medically fragile children at \$25 per hour with a
 279 utilization cap of no more than 8 hours per day.

280 Section 5. Section 400.489, Florida Statutes, is amended
 281 to read:

282 400.489 Administration of medication by a home health aide
 283 or home health aide for medically fragile children; staff
 284 training requirements.—

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

298 (2) A home health aide or home health aide for medically
 299 fragile children must annually and satisfactorily complete a 2-
 300 hour inservice training course approved by the agency in

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301 medication administration and medication error prevention. The
 302 inservice training course shall be in addition to the annual
 303 inservice training hours required by agency rules.

304 (3) The agency, in consultation with the Board of Nursing,
 305 shall establish by rule standards and procedures that a home
 306 health aide or home health aide for medically fragile children
 307 must follow when administering medication to a patient. Such
 308 rules must, at a minimum, address qualification requirements for
 309 trainers, requirements for labeling medication, documentation
 310 and recordkeeping, the storage and disposal of medication,
 311 instructions concerning the safe administration of medication,
 312 informed-consent requirements and records, and the training
 313 curriculum and validation procedures.

314 Section 6. Section 400.490, Florida Statutes, is amended
 315 to read:

316 400.490 Nurse-delegated tasks.—A certified nursing
 317 assistant, home health aide for medically fragile children, or
 318 home health aide may perform any task delegated by a registered
 319 nurse as authorized in this part and in chapter 464, including,
 320 but not limited to, medication administration.

321 Section 7. Section 400.54, Florida Statutes, is created to
 322 read:

323 400.54 Annual assessment of the home health aide for
 324 medically fragile children program.—The agency shall conduct an
 325 annual assessment of the home health aide for medically fragile

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326 | children program. The assessment must report caregiver
 327 | satisfaction with the program, identify additional support that
 328 | may be needed by the home health aide for medically fragile
 329 | children, and assess the rate and extent of hospitalization of
 330 | children in home health services who are attended by a home
 331 | health aide for medically fragile children compared to those in
 332 | home health services without a home health aide for medically
 333 | fragile children. By January 1 of each year, beginning January
 334 | 1, 2025, the agency shall report its findings to the Governor,
 335 | the President of the Senate, and the Speaker of the House of
 336 | Representatives.

337 | Section 8. Subsection (1) of section 408.822, Florida
 338 | Statutes, is amended to read:

339 | 408.822 Direct care workforce survey.—

340 | (1) For purposes of this section, the term "direct care
 341 | worker" means a certified nursing assistant, a home health aide,
 342 | a home health aide for medically fragile children a personal
 343 | care assistant, a companion services or homemaker services
 344 | provider, a paid feeding assistant trained under s.
 345 | 400.141(1)(v), or another individual who provides personal care
 346 | as defined in s. 400.462 to individuals who are elderly,
 347 | developmentally disabled, or chronically ill.

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

350 | 464.0156 Delegation of duties.—

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351 (1) A registered nurse may delegate a task to a certified
 352 nursing assistant certified under part II of this chapter or a
 353 home health aide or a home health aide for medically fragile
 354 children as defined in s. 400.462 if the registered nurse
 355 determines that the certified nursing assistant or the home
 356 health aide is competent to perform the task, the task is
 357 delegable under federal law, and the task meets all of the
 358 following criteria:

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

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

362 (c) Is performed according to an established sequence of
 363 steps.

364 (d) Involves little or no modification from one patient to
 365 another.

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

367 (f) Does not inherently involve ongoing assessment,
 368 interpretation, or clinical judgment.

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

370 (2) A registered nurse may delegate to a certified nursing
 371 assistant, ~~or a home health aide,~~ or a home health aide for
 372 medically fragile children the administration of oral,
 373 transdermal, ophthalmic, otic, rectal, inhaled, enteral, or
 374 topical prescription medications to a patient of a home health
 375 agency or in a local county detention facility as defined in s.

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376 951.23(1), if the certified nursing assistant or home health
377 aide meets the requirements of s. 464.2035 or s. 400.489,
378 respectively. A registered nurse may not delegate the
379 administration of any controlled substance listed in Schedule
380 II, Schedule III, or Schedule IV of s. 893.03 or 21 U.S.C. s.
381 812, except for the administration of an insulin syringe that is
382 prefilled with the proper dosage by a pharmacist or an insulin
383 pen that is prefilled by the manufacturer.

384 Section 10. For the 2023-2024 fiscal year, four full-time
385 equivalent positions, with associated salary rate of 186,483,
386 are authorized and the sums of \$353,589 in recurring funds and
387 \$118,728 in nonrecurring funds from the Health Care Trust Fund
388 are appropriated to the Agency for Health Care Administration
389 for the purpose of implementing this act.

390 Section 11. This act shall take effect upon becoming a
391 law.