

By Senator Harrell

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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.; defining
4 terms; 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 home health agencies to ensure that home
9 health aides for medically fragile children employed
10 by or under contract with them are adequately trained
11 to perform the tasks they will be delegated; providing
12 certain individuals an exemption from costs associated
13 with specified training; creating s. 400.4765, F.S.;
14 establishing the home health aides for medically
15 fragile children program for specified purposes;
16 requiring the Agency for Health Care Administration,
17 in consultation with the Board of Nursing, to approve
18 training programs for home health aides for medically
19 fragile children; specifying minimum requirements for
20 the training programs; authorizing home health
21 agencies to employ certain persons as home health
22 aides for medically fragile children if they meet
23 specified criteria; requiring home health aides for
24 medically fragile children to complete an approved
25 training program again under certain circumstances;
26 requiring home health aides for medically fragile
27 children to complete additional training in HIV/AIDS
28 and maintain a certificate in cardiopulmonary
29 resuscitation; requiring home health agencies to

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30 ensure that home health aides for medically fragile
31 children whom they employ complete certain inservice
32 training during each 12-month period; requiring home
33 health agencies to maintain documentation
34 demonstrating compliance with such training
35 requirements; exempting home health agencies from
36 civil liability for terminating or denying employment
37 to a home health aide for medically fragile children
38 under certain circumstances; extending the exemption
39 to certain agents of the home health agencies;
40 prohibiting home health agencies and their agents from
41 using certain criminal records or juvenile records
42 other than for a specified purpose; requiring the
43 agency to maintain confidentiality of certain
44 confidential and exempt records; authorizing the
45 agency, in consultation with the board, to adopt
46 rules; amending s. 400.489, F.S.; authorizing home
47 health aides for medically fragile children to
48 administer certain medications under certain
49 circumstances; requiring such home health aides for
50 medically fragile children to complete additional
51 inservice training annually to continue administering
52 such medications; requiring the agency, in
53 consultation with the board, to establish certain
54 standards and procedures by rule for home health aides
55 for medically fragile children who administer
56 medications to patients; amending s. 400.490, F.S.;
57 authorizing home health aides for medically fragile
58 children to perform certain tasks delegated by a

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59 registered nurse; creating s. 400.54, F.S.; requiring
60 the agency to conduct an annual assessment related to
61 the home health aides for medically fragile children
62 program; specifying requirements for the assessment;
63 requiring the agency to submit a report to the
64 Governor and the Legislature by a specified date each
65 year, beginning on a specified date; directing the
66 agency to modify any state Medicaid plans and
67 implement any federal waivers necessary to implement
68 the act; directing the agency to establish a certain
69 Medicaid fee schedule at a specified rate and subject
70 to a specified utilization cap; amending ss. 768.38
71 and 768.381, F.S.; conforming cross-references;
72 providing an effective date.

73

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

75

76 Section 1. Present subsections (5) through (10), (11),
77 (12), (13), (14), and (15) through (29) of section 400.462,
78 Florida Statutes, are redesignated as subsections (6) through
79 (11), (13), (15), (16), (17), and (19) through (33),
80 respectively, new subsections (5), (12), (14), and (18) are
81 added to that section, and subsection (1) and present subsection
82 (10) of that section are amended, to read:

83 400.462 Definitions.—As used in this part, the term:

84 (1) "Administrator" means a direct employee, as defined in
85 subsection (10) ~~(9)~~, who is a licensed physician, physician
86 assistant, or registered nurse licensed to practice in this
87 state or an individual having at least 1 year of supervisory or

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88 administrative experience in home health care or in a facility
89 licensed under chapter 395, under part II of this chapter, or
90 under part I of chapter 429.

91 (5) "Approved training program" means a course of training
92 approved by the agency, in consultation with the Board of
93 Nursing, under s. 400.4765 to train family caregivers as home
94 health aides for medically fragile children.

95 (11)~~(10)~~ "Director of nursing" means a registered nurse who
96 is a direct employee, as defined in subsection (10) ~~(9)~~, of the
97 agency and who is a graduate of an approved school of nursing
98 and is licensed in this state; who has at least 1 year of
99 supervisory experience as a registered nurse; and who is
100 responsible for overseeing the professional nursing and home
101 health aid delivery of services of the agency.

102 (12) "Eligible relative" means, with respect to the home
103 health aide for medically fragile children program under s.
104 400.4765, a person 21 years of age or younger who is eligible to
105 receive continuous skilled nursing or skilled nursing respite
106 care services under the Medicaid program and is a relative of a
107 home health aide for medically fragile children.

108 (14) "Family caregiver" means a person providing or
109 intending to provide significant personal care and assistance to
110 an eligible relative 21 years of age or younger who has an
111 underlying physical or cognitive condition that prevents him or
112 her from safely living independently.

113 (18) "Home health aide for medically fragile children"
114 means a family caregiver who meets the qualifications specified
115 in s. 400.4765; performs tasks delegated to him or her under
116 chapter 464 while caring for an eligible relative; and provides

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117 care and assistance to an eligible relative relating to:

118 (a) Activities of daily living, such as those associated
119 with personal care, maintaining mobility, nutrition and
120 hydration, toileting and elimination, assistive devices, and
121 safety and cleanliness.

122 (b) Data gathering.

123 (c) Reporting abnormal signs and symptoms.

124 (d) Patient socialization and reality orientation.

125 (e) Cardiopulmonary resuscitation and emergency care.

126 (f) Residents' or patients' rights.

127 (g) Documentation of services.

128 (h) End-of-life care.

129 (i) Postmortem care.

130 Section 2. Subsection (5) of section 400.464, Florida
131 Statutes, is amended to read:

132 400.464 Home health agencies to be licensed; expiration of
133 license; exemptions; unlawful acts; penalties.—

134 (5) If a licensed home health agency authorizes a
135 registered nurse to delegate tasks, including medication
136 administration, to a certified nursing assistant pursuant to
137 chapter 464 or to a home health aide or a home health aide for
138 medically fragile children pursuant to s. 400.490, the licensed
139 home health agency must ensure that such delegation meets the
140 requirements of this chapter and chapter 464 and the rules
141 adopted thereunder.

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

144 400.476 Staffing requirements; notifications; limitations
145 on staffing services.—

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146 (3) TRAINING.—A home health agency shall ensure that each
147 certified nursing assistant employed by or under contract with
148 the home health agency and each home health aide and home health
149 aide for medically fragile children employed by or under
150 contract with the home health agency is adequately trained to
151 perform the tasks of a home health aide in the home setting. A
152 parent, guardian, or family member who seeks the training
153 required under s. 464.4765 to become a home health aide for
154 medically fragile children may not be required to repay or
155 reimburse the home health agency for the costs associated with
156 the training program.

157 Section 4. Section 400.4765, Florida Statutes, is created
158 to read:

159 400.4765 Home health aides for medically fragile children
160 program.—The home health aides for medically fragile children
161 program is hereby established in response to the shortage of
162 health care workers in this state and the impact that the
163 shortage has on medically fragile children and their caregivers.
164 The program is designed to decrease hospitalization and
165 institutionalization of medically fragile children, reduce state
166 expenditures, and provide an opportunity for affected family
167 caregivers to receive training and gainful employment.

168 (1) The agency, in consultation with the Board of Nursing,
169 shall approve a training program created by a home health agency
170 in accordance with 42 C.F.R. ss. 483.151-483.154 and 484.80 to
171 train family caregivers as home health aides for medically
172 fragile children to increase the health care workforce in this
173 state and to authorize persons to provide trained nursing
174 services to eligible relatives. The program must consist of at

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175 least 85 hours of training, including, but not limited to, all
176 of the following:

177 (a) A minimum of 40 hours of theoretical instruction in
178 nursing, including, but not limited to, instruction on all of
179 the following:

- 180 1. Person-centered care.
- 181 2. Communication and interpersonal skills.
- 182 3. Infection control.
- 183 4. Safety and emergency procedures.
- 184 5. Assistance with activities of daily living.
- 185 6. Mental health and social service needs.
- 186 7. Care of cognitively impaired individuals.
- 187 8. Basic restorative care and rehabilitation.
- 188 9. Patient rights and confidentiality of personal
189 information and medical records.
- 190 10. Relevant legal and ethical issues.

191
192 Such instruction must be offered in various formats, and any
193 interactive instruction must be provided during various times of
194 the day.

195 (b) A minimum of 20 hours of skills training on basic
196 nursing skills, including, but not limited to:

- 197 1. Hygiene, grooming, and toileting.
- 198 2. Skin care and pressure sore prevention.
- 199 3. Nutrition and hydration.
- 200 4. Measuring vital signs, height, and weight.
- 201 5. Safe lifting, positioning, and moving of patients.
- 202 6. Wound care.
- 203 7. Portable oxygen use and safety and other respiratory

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204 procedures.

205 8. Tracheostomy care.

206 9. Enteral care and therapy.

207 10. Peripheral intravenous assistive activities and

208 alternative feeding methods.

209 11. Urinary catheterization and ostomy care.

210 (c) At least 16 hours of clinical training under direct

211 supervision of a licensed registered nurse.

212 (2) A home health agency may employ as a home health aide

213 for medically fragile children any person 18 years of age or

214 older who meets all of the following criteria:

215 (a) Is a family caregiver of an eligible relative who is 21

216 years of age or younger and is eligible to receive continuous

217 skilled nursing or skilled nursing respite care services under

218 the Medicaid program.

219 (b) Demonstrates a minimum competency to read and write.

220 (c) Completes a training program approved under this

221 section or has graduated from an accredited school of nursing

222 and has not yet taken the state exam for licensure in this

223 state.

224 (d) Successfully passes the required background screening

225 pursuant to s. 400.215. If the person has successfully passed

226 the required background screening pursuant to s. 400.215 or s.

227 408.809 within 90 days before applying for a certificate to

228 practice and the person's background screening results are not

229 retained in the clearinghouse created under s. 435.12, the

230 agency must waive the requirement that the applicant

231 successfully pass an additional background screening pursuant to

232 s. 400.215.

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233 (3) If a home health aide for medically fragile children
234 allows 24 consecutive months to pass without performing any
235 nursing-related services for an eligible relative, the family
236 caregiver must again complete an approved training program
237 before serving as a home health aide for medically fragile
238 children.

239 (4) All home health aides for medically fragile children
240 must complete an HIV/AIDS training course and are required to
241 obtain and maintain a current certificate in cardiopulmonary
242 resuscitation.

243 (5) A home health agency that employs a home health aide
244 for medically fragile children must ensure that the aide
245 completes 12 hours of inservice training during each 12-month
246 period as a condition of employment. The HIV/AIDS training and
247 cardiopulmonary training required under subsection (4) may count
248 toward meeting the 12 hours of inservice training. The home
249 health agency shall maintain documentation demonstrating
250 compliance with this subsection.

251 (6) If a home health agency terminates or denies employment
252 to a home health aide for medically fragile children who fails
253 to maintain the requirements of this section or whose name
254 appears on a criminal screening report of the Department of Law
255 Enforcement, the home health agency is not civilly liable for
256 such termination and a cause of action may not be brought
257 against the home health agency for damages. There may not be any
258 monetary liability on the part of, and a cause of action for
259 damages may not arise against, any licensed facility or its
260 governing board or members thereof, medical staff, disciplinary
261 board, agents, investigators, witnesses, employees, or any other

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262 person for any action taken in good faith, without intentional
263 fraud, to comply with this section.

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

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

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

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291 (2) ~~A Home health aides and home health aides for medically~~
292 fragile children aide must annually and satisfactorily complete
293 a 2-hour inservice training course approved by the agency in
294 medication administration and medication error prevention. The
295 inservice training course is ~~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 and 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 to
308 read:

309 400.490 Nurse-delegated tasks.—A certified nursing
310 assistant, ~~or~~ home health aide, or home health aide for
311 medically fragile children may perform any task delegated by a
312 registered nurse as authorized in this part and in chapter 464,
313 including, 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 home health aides for medically
317 fragile children program.—The agency shall conduct an annual
318 assessment of the home health aides for medically fragile
319 children program established under s. 400.4765. The assessment

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320 must report caregiver satisfaction with the program, identify
321 additional supports that may be needed by home health aides for
322 medically fragile children, and assess the rate and extent of
323 hospitalization of children in home health services who are
324 attended by a home health aide for medically fragile children
325 compared to those in home health services without a home health
326 aide for medically fragile children. By January 1 of each year,
327 beginning January 1, 2025, the agency shall report its findings
328 to the Governor, the President of the Senate, and the Speaker of
329 the House of Representatives.

330 Section 8. The Agency for Health Care Administration shall
331 modify any state Medicaid plans and implement any federal
332 waivers necessary to implement this act. The agency shall
333 establish a Medicaid fee schedule for home health agencies
334 employing a home health aide for medically fragile children at
335 \$25 per hour with a utilization cap of no more than 8 hours per
336 day.

337 Section 9. Paragraph (e) of subsection (2) of section
338 768.38, Florida Statutes, is amended to read:

339 768.38 Liability protections for COVID-19-related claims.—

340 (2) As used in this section, the term:

341 (e) "Health care provider" means:

342 1. A provider as defined in s. 408.803.

343 2. A clinical laboratory providing services in this state
344 or services to health care providers in this state, if the
345 clinical laboratory is certified by the Centers for Medicare and
346 Medicaid Services under the federal Clinical Laboratory
347 Improvement Amendments and the federal rules adopted thereunder.

348 3. A federally qualified health center as defined in 42

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349 U.S.C. s. 1396d(1)(2)(B), as that definition exists on the
350 effective date of this act.

351 4. Any site providing health care services which was
352 established for the purpose of responding to the COVID-19
353 pandemic pursuant to any federal or state order, declaration, or
354 waiver.

355 5. A health care practitioner as defined in s. 456.001.

356 6. A health care professional licensed under part IV of
357 chapter 468.

358 7. A home health aide as defined in s. 400.462 ~~s.~~
359 ~~400.462(15)~~.

360 8. A provider licensed under chapter 394 or chapter 397 and
361 its clinical and nonclinical staff providing inpatient or
362 outpatient services.

363 9. A continuing care facility licensed under chapter 651.

364 10. A pharmacy permitted under chapter 465.

365 Section 10. Paragraph (f) of subsection (1) of section
366 768.381, Florida Statutes, is amended to read:

367 768.381 COVID-19-related claims against health care
368 providers.—

369 (1) DEFINITIONS.—As used in this section, the term:

370 (f) "Health care provider" means any of the following:

371 1. A provider as defined in s. 408.803.

372 2. A clinical laboratory providing services in this state
373 or services to health care providers in this state, if the
374 clinical laboratory is certified by the Centers for Medicare and
375 Medicaid Services under the federal Clinical Laboratory
376 Improvement Amendments and the federal rules adopted thereunder.

377 3. A federally qualified health center as defined in 42

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378 U.S.C. s. 1396d(1)(2)(B), as that definition existed on the
379 effective date of this act.

380 4. Any site providing health care services which was
381 established for the purpose of responding to the COVID-19
382 pandemic pursuant to any federal or state order, declaration, or
383 waiver.

384 5. A health care practitioner as defined in s. 456.001.

385 6. A health care professional licensed under part IV of
386 chapter 468.

387 7. A home health aide as defined in s. 400.462 ~~s.~~
388 ~~400.462(15)~~.

389 8. A provider licensed under chapter 394 or chapter 397 and
390 its clinical and nonclinical staff providing inpatient or
391 outpatient services.

392 9. A continuing care facility licensed under chapter 651.

393 10. A pharmacy permitted under chapter 465.

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