

By the Appropriations Committee on Health and Human Services;
and Senator Harrell

603-02369-23

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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 appropriations and authorizing positions;
73 providing an effective date.

74

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

76

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

84 400.462 Definitions.—As used in this part, the term:

85 (1) "Administrator" means a direct employee, as defined in
86 subsection (10) ~~(9)~~, who is a licensed physician, physician
87 assistant, or registered nurse licensed to practice in this

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88 state or an individual having at least 1 year of supervisory or
89 administrative experience in home health care or in a facility
90 licensed under chapter 395, under part II of this chapter, or
91 under part I of chapter 429.

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

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

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

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

114 (18) "Home health aide for medically fragile children"
115 means a family caregiver who meets the qualifications specified
116 in s. 400.4765; performs tasks delegated to him or her under

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117 chapter 464 while caring for an eligible relative; and provides
118 care and assistance to an eligible relative relating to:

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

123 (b) Data gathering.

124 (c) Reporting abnormal signs and symptoms.

125 (d) Patient socialization and reality orientation.

126 (e) Cardiopulmonary resuscitation and emergency care.

127 (f) Residents' or patients' rights.

128 (g) Documentation of services.

129 (h) End-of-life care.

130 (i) Postmortem care.

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

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

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

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

145 400.476 Staffing requirements; notifications; limitations

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146 on staffing services.-

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

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

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

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

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175 services to eligible relatives. The program must consist of at
176 least 85 hours of training, including, but not limited to, all
177 of the following:

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

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

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

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

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

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- 204 7. Portable oxygen use and safety and other respiratory
205 procedures.
- 206 8. Tracheostomy care.
- 207 9. Enteral care and therapy.
- 208 10. Peripheral intravenous assistive activities and
209 alternative feeding methods.
- 210 11. Urinary catheterization and ostomy care.
- 211 (c) At least 16 hours of clinical training under direct
212 supervision of a licensed registered nurse.
- 213 (2) A home health agency may employ as a home health aide
214 for medically fragile children any person 18 years of age or
215 older who meets all of the following criteria:
- 216 (a) Is a family caregiver of an eligible relative who is 21
217 years of age or younger and is eligible to receive continuous
218 skilled nursing or skilled nursing respite care services under
219 the Medicaid program.
- 220 (b) Demonstrates a minimum competency to read and write.
- 221 (c) Completes a training program approved under this
222 section or has graduated from an accredited school of nursing
223 and has not yet taken the state exam for licensure in this
224 state.
- 225 (d) Successfully passes the required background screening
226 pursuant to s. 400.512. If the person has successfully passed
227 the required background screening pursuant to s. 400.512 or s.
228 408.809 within 90 days before applying for a certificate to
229 practice and the person's background screening results are not
230 retained in the clearinghouse created under s. 435.12, the
231 agency must waive the requirement that the applicant
232 successfully pass an additional background screening pursuant to

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233 s. 400.512.

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

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

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

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

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262 board, agents, investigators, witnesses, employees, or any other
263 person for any action taken in good faith, without intentional
264 fraud, to comply with this section.

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

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

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

276 400.489 Administration of medication by a home health aide
277 or home health aide for medically fragile children; staff
278 training requirements.-

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

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291 chapter 458 or chapter 459.

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

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

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

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

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

317 400.54 Annual assessment of home health aides for medically
318 fragile children program.—The agency shall conduct an annual
319 assessment of the home health aides for medically fragile

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320 children program established under s. 400.4765. The assessment
321 must report caregiver satisfaction with the program, identify
322 additional supports that may be needed by home health aides for
323 medically fragile children, and assess the rate and extent of
324 hospitalization of children in home health services who are
325 attended by a home health aide for medically fragile children
326 compared to those in home health services without a home health
327 aide for medically fragile children. By January 1 of each year,
328 beginning January 1, 2025, the agency shall report its findings
329 to the Governor, the President of the Senate, and the Speaker of
330 the House of Representatives.

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

338 Section 9. Paragraph (e) of subsection (2) of section
339 768.38, Florida Statutes, is amended to read:

340 768.38 Liability protections for COVID-19-related claims.-

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

342 (e) "Health care provider" means:

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

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

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349 3. A federally qualified health center as defined in 42
350 U.S.C. s. 1396d(1)(2)(B), as that definition exists on the
351 effective date of this act.

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

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

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

359 7. A home health aide as defined in s. 400.462 ~~s.~~
360 ~~400.462(15)~~.

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

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

365 10. A pharmacy permitted under chapter 465.

366 Section 10. Paragraph (f) of subsection (1) of section
367 768.381, Florida Statutes, is amended to read:

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

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

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

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

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

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378 3. A federally qualified health center as defined in 42
379 U.S.C. s. 1396d(1)(2)(B), as that definition existed on the
380 effective date of this act.

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

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

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

388 7. A home health aide as defined in s. 400.462 ~~s.~~
389 ~~400.462(15)~~.

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

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

394 10. A pharmacy permitted under chapter 465.

395 Section 11. For the 2023-2024 fiscal year, four full-time
396 equivalent positions with associated salary rate of 186,483 are
397 authorized, and the sums of \$353,589 in recurring funds and
398 \$118,728 in nonrecurring funds are appropriated from the Health
399 Care Trust Fund to the Agency for Health Care Administration,
400 for the purpose of implementing this act.

401 Section 12. This act shall take effect upon becoming a law.