

By the Committee on Fiscal Policy; the Appropriations Committee on Health and Human Services; and Senators Harrell and Avila

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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 delegation of tasks
6 to home health aides for medically fragile children
7 meets specified requirements; amending s. 400.476,
8 F.S.; requiring home health agencies to ensure that
9 home health aides for medically fragile children
10 employed by or under contract with the home health
11 agency are adequately trained to perform the tasks
12 that will be delegated to them; exempting certain
13 individuals from costs associated with specified
14 training; creating s. 400.4765, F.S.; establishing the
15 home health aides for medically fragile children
16 program for specified purposes; requiring the Agency
17 for Health Care Administration, in consultation with
18 the Board of Nursing, to approve training programs for
19 home health aides for medically fragile children;
20 specifying minimum requirements for the training
21 programs; authorizing home health agencies to employ
22 certain persons as home health aides for medically
23 fragile children if they meet specified criteria;
24 requiring home health aides for medically fragile
25 children to complete an approved training program
26 again under certain circumstances; requiring home
27 health aides for medically fragile children to
28 complete additional training in HIV/AIDS and maintain
29 a current certificate in cardiopulmonary

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30 resuscitation; requiring home health agencies to
31 ensure that home health aides for medically fragile
32 children whom they employ complete certain inservice
33 training during each 12-month period as a condition of
34 employment; providing that certain training may count
35 toward meeting the inservice training requirement;
36 requiring home health agencies to maintain
37 documentation demonstrating compliance with such
38 training requirements; exempting home health agencies
39 from civil and monetary liability for terminating or
40 denying employment to a home health aide for medically
41 fragile children under certain circumstances;
42 extending the exemption to certain agents of the home
43 health agencies; prohibiting home health agencies and
44 their agents from using certain criminal records or
45 juvenile records other than for a specified purpose;
46 requiring the agency to maintain the confidentiality
47 of certain confidential and exempt records; providing
48 that services provided by a home health aide for
49 medically fragile children reduce an eligible
50 relative's private duty nursing hours; providing that
51 such services may not be provided concurrently;
52 authorizing the agency, in consultation with the
53 board, to adopt rules; amending s. 400.489, F.S.;
54 authorizing home health aides for medically fragile
55 children to administer certain medications under
56 certain circumstances; requiring such home health
57 aides for medically fragile children to complete
58 additional inservice training annually to continue

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59 administering such medications; requiring the agency,
60 in consultation with the board, to establish certain
61 standards and procedures by rule for home health aides
62 for medically fragile children who administer
63 medications to patients; amending s. 400.490, F.S.;
64 authorizing home health aides for medically fragile
65 children to perform certain tasks delegated by a
66 registered nurse; creating s. 400.54, F.S.; requiring
67 the agency to conduct an annual assessment of the home
68 health aides for medically fragile children program;
69 specifying requirements for the assessment; requiring
70 the agency to annually submit a report to the Governor
71 and the Legislature by a specified date, beginning on
72 a specified date; directing the agency to modify any
73 state Medicaid plans and implement any federal waivers
74 necessary to implement the act; directing the agency
75 to establish a certain Medicaid fee schedule at a
76 specified rate and subject to a specified utilization
77 cap; amending ss. 768.38 and 768.381, F.S.; conforming
78 cross-references; providing appropriations and
79 authorizing positions; providing an effective date.

80
81 Be It Enacted by the Legislature of the State of Florida:

82
83 Section 1. Present subsections (5) through (10), (11),
84 (12), (13), (14), and (15) through (29) of section 400.462,
85 Florida Statutes, are redesignated as subsections (6) through
86 (11), (13), (15), (16), (17), and (19) through (33),
87 respectively, new subsections (5), (12), (14), and (18) are

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88 added to that section, and subsection (1) and present subsection
89 (10) of that section are amended, to read:

90 400.462 Definitions.—As used in this part, the term:

91 (1) "Administrator" means a direct employee, as defined in
92 subsection (10) ~~(9)~~, who is a licensed physician, physician
93 assistant, or registered nurse licensed to practice in this
94 state or an individual having at least 1 year of supervisory or
95 administrative experience in home health care or in a facility
96 licensed under chapter 395, under part II of this chapter, or
97 under part I of chapter 429.

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

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

109 (12) "Eligible relative" means, with respect to the home
110 health aide for medically fragile children program under s.
111 400.4765, a person 21 years of age or younger who is eligible to
112 receive continuous skilled nursing or skilled nursing respite
113 care services under the Medicaid program and is a relative of a
114 home health aide for medically fragile children.

115 (14) "Family caregiver" means a person providing or
116 intending to provide significant personal care and assistance to

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117 an eligible relative 21 years of age or younger who has an
118 underlying physical or cognitive condition that prevents him or
119 her from safely living independently.

120 (18) "Home health aide for medically fragile children"
121 means a family caregiver who meets the qualifications specified
122 in s. 400.4765; performs tasks delegated to him or her under
123 chapter 464 while caring for an eligible relative; and provides
124 care and assistance to an eligible relative relating to:

125 (a) Activities of daily living, such as those associated
126 with personal care, maintaining mobility, nutrition and
127 hydration, toileting and elimination, assistive devices, and
128 safety and cleanliness.

129 (b) Data gathering.

130 (c) Reporting abnormal signs and symptoms.

131 (d) Patient socialization and reality orientation.

132 (e) Cardiopulmonary resuscitation and emergency care.

133 (f) Residents' or patients' rights.

134 (g) Documentation of services.

135 (h) End-of-life care.

136 (i) Postmortem care.

137 (j) Infection control.

138 (k) Safety and emergency procedures.

139 (l) Hygiene, grooming, and toileting.

140 (m) Skin care and pressure sore prevention.

141 (n) Nutrition and hydration.

142 (o) Wound care.

143 (p) Portable oxygen use and safety and other respiratory
144 procedures.

145 (q) Tracheostomy care.

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146 (r) Enteral care and therapy.

147 (s) Peripheral intravenous assistive activities and
148 alternative feeding methods.

149 (t) Tasks delegated to the family caregiver under chapter
150 464.

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

153 400.464 Home health agencies to be licensed; expiration of
154 license; exemptions; unlawful acts; penalties.—

155 (5) If a licensed home health agency authorizes a
156 registered nurse to delegate tasks, including medication
157 administration, to a certified nursing assistant pursuant to
158 chapter 464 or to a home health aide or a home health aide for
159 medically fragile children pursuant to s. 400.490, the licensed
160 home health agency must ensure that such delegation meets the
161 requirements of this chapter and chapter 464 and the rules
162 adopted thereunder.

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

165 400.476 Staffing requirements; notifications; limitations
166 on staffing services.—

167 (3) TRAINING.—A home health agency shall ensure that each
168 certified nursing assistant employed by or under contract with
169 the home health agency and each home health aide and home health
170 aide for medically fragile children employed by or under
171 contract with the home health agency is adequately trained to
172 perform the tasks of a home health aide in the home setting. A
173 parent, guardian, or family member who seeks the training
174 required under s. 464.4765 to become a home health aide for

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175 medically fragile children may not be required to repay or
176 reimburse the home health agency for the costs associated with
177 the training program.

178 Section 4. Section 400.4765, Florida Statutes, is created
179 to read:

180 400.4765 Home health aides for medically fragile children
181 program.—The home health aides for medically fragile children
182 program is hereby established in response to the shortage of
183 health care workers in this state and the impact that the
184 shortage has on medically fragile children and their caregivers.
185 The program is designed to decrease hospitalization and
186 institutionalization of medically fragile children, reduce state
187 expenditures, and provide an opportunity for affected family
188 caregivers to receive training and gainful employment.

189 (1) The agency, in consultation with the Board of Nursing,
190 shall approve a training program created by a home health agency
191 in accordance with 42 C.F.R. ss. 483.151-483.154 and 484.80 to
192 train family caregivers as home health aides for medically
193 fragile children to increase the health care workforce in this
194 state and to authorize persons to provide trained nursing
195 services to eligible relatives. The program must consist of at
196 least 85 hours of training, including, but not limited to, all
197 of the following:

198 (a) A minimum of 40 hours of theoretical instruction in
199 nursing, including, but not limited to, instruction on all of
200 the following:

- 201 1. Person-centered care.
- 202 2. Communication and interpersonal skills.
- 203 3. Infection control.

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- 204 4. Safety and emergency procedures.
205 5. Assistance with activities of daily living.
206 6. Mental health and social service needs.
207 7. Care of cognitively impaired individuals.
208 8. Basic restorative care and rehabilitation.
209 9. Patient rights and confidentiality of personal
210 information and medical records.
211 10. Relevant legal and ethical issues.
212

213 Such instruction must be offered in various formats, and any
214 interactive instruction must be provided during various times of
215 the day.

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

- 218 1. Hygiene, grooming, and toileting.
219 2. Skin care and pressure sore prevention.
220 3. Nutrition and hydration.
221 4. Measuring vital signs, height, and weight.
222 5. Safe lifting, positioning, and moving of patients.
223 6. Wound care.
224 7. Portable oxygen use and safety and other respiratory
225 procedures.
226 8. Tracheostomy care.
227 9. Enteral care and therapy.
228 10. Peripheral intravenous assistive activities and
229 alternative feeding methods.
230 11. Urinary catheterization and ostomy care.

231 (c) At least 16 hours of clinical training under direct
232 supervision of a licensed registered nurse.

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233 (2) A home health agency may employ as a home health aide
234 for medically fragile children any person 18 years of age or
235 older who meets all of the following criteria:

236 (a) Is a family caregiver of an eligible relative who is 21
237 years of age or younger and is eligible to receive continuous
238 skilled nursing or skilled nursing respite care services under
239 the Medicaid program.

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

241 (c) Completes a training program approved under this
242 section or has graduated from an accredited school of nursing
243 and has not yet taken the state exam for licensure in this
244 state.

245 (d) Successfully passes the required background screening
246 pursuant to s. 400.512. If the person has successfully passed
247 the required background screening pursuant to s. 400.512 or s.
248 408.809 within 90 days before applying for a certificate to
249 practice and the person's background screening results are not
250 retained in the clearinghouse created under s. 435.12, the
251 agency must waive the requirement that the applicant
252 successfully pass an additional background screening pursuant to
253 s. 400.512.

254 (3) If a home health aide for medically fragile children
255 allows 24 consecutive months to pass without performing any
256 nursing-related services for an eligible relative, the family
257 caregiver must again complete an approved training program
258 before serving as a home health aide for medically fragile
259 children.

260 (4) All home health aides for medically fragile children
261 must complete an HIV/AIDS training course and are required to

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262 obtain and maintain a current certificate in cardiopulmonary
263 resuscitation.

264 (5) A home health agency that employs a home health aide
265 for medically fragile children must ensure that the aide
266 completes 12 hours of inservice training during each 12-month
267 period as a condition of employment. The HIV/AIDS training and
268 cardiopulmonary training required under subsection (4) may count
269 toward meeting the 12 hours of inservice training. The home
270 health agency shall maintain documentation demonstrating
271 compliance with this subsection.

272 (6) If a home health agency terminates or denies employment
273 to a home health aide for medically fragile children who fails
274 to maintain the requirements of this section or whose name
275 appears on a criminal screening report of the Department of Law
276 Enforcement, the home health agency is not civilly liable for
277 such termination and a cause of action may not be brought
278 against the home health agency for damages. There may not be any
279 monetary liability on the part of, and a cause of action for
280 damages may not arise against, any licensed facility or its
281 governing board or members thereof, medical staff, disciplinary
282 board, agents, investigators, witnesses, employees, or any other
283 person for any action taken in good faith, without intentional
284 fraud, to comply with this section.

285 (7) A home health agency, or an agent thereof, may not use
286 criminal records or juvenile records relating to vulnerable
287 adults for any purpose other than determining if the person
288 meets the requirements of this section. The agency shall
289 maintain the confidentiality of any such records and information
290 it obtains which are confidential and exempt from s. 119.07(1)

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291 and s. 24(a), Art. I of the State Constitution.

292 (8) The provision of services by a home health aide for
293 medically fragile children reduces the eligible relative's
294 private duty nursing service hours covered by the Medicaid
295 program and may not be provided concurrently with any private
296 duty nursing services.

297 (9) The agency, in consultation with the Board of Nursing,
298 may adopt rules to implement this section.

299 Section 5. Section 400.489, Florida Statutes, is amended to
300 read:

301 400.489 Administration of medication by a home health aide
302 or home health aide for medically fragile children; staff
303 training requirements.-

304 (1) A home health aide or home health aide for medically
305 fragile children may administer oral, transdermal, ophthalmic,
306 otic, rectal, inhaled, enteral, or topical prescription
307 medications if the home health aide or home health aide for
308 medically fragile children has been delegated such task by a
309 registered nurse licensed under chapter 464, has satisfactorily
310 completed an initial 6-hour training course approved by the
311 agency, and has been found competent to administer medication to
312 a patient in a safe and sanitary manner. The training,
313 determination of competency, and initial and annual validations
314 required in this section shall be conducted by a registered
315 nurse licensed under chapter 464 or a physician licensed under
316 chapter 458 or chapter 459.

317 (2) ~~A Home health aides and home health aides for medically~~
318 fragile children ~~aid~~ must annually and satisfactorily complete
319 a 2-hour inservice training course approved by the agency in

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320 medication administration and medication error prevention. The
321 inservice training course is ~~shall be~~ in addition to the annual
322 inservice training hours required by agency rules.

323 (3) The agency, in consultation with the Board of Nursing,
324 shall establish by rule standards and procedures that a home
325 health aide and home health aide for medically fragile children
326 must follow when administering medication to a patient. Such
327 rules must, at a minimum, address qualification requirements for
328 trainers, requirements for labeling medication, documentation
329 and recordkeeping, the storage and disposal of medication,
330 instructions concerning the safe administration of medication,
331 informed-consent requirements and records, and the training
332 curriculum and validation procedures.

333 Section 6. Section 400.490, Florida Statutes, is amended to
334 read:

335 400.490 Nurse-delegated tasks.—A certified nursing
336 assistant, ~~or~~ home health aide, or home health aide for
337 medically fragile children may perform any task delegated by a
338 registered nurse as authorized in this part and in chapter 464,
339 including, but not limited to, medication administration.

340 Section 7. Section 400.54, Florida Statutes, is created to
341 read:

342 400.54 Annual assessment of home health aides for medically
343 fragile children program.—The agency shall conduct an annual
344 assessment of the home health aides for medically fragile
345 children program established under s. 400.4765. The assessment
346 must report caregiver satisfaction with the program, identify
347 additional supports that may be needed by home health aides for
348 medically fragile children, and assess the rate and extent of

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349 hospitalization of children in home health services who are
350 attended by a home health aide for medically fragile children
351 compared to those in home health services without a home health
352 aide for medically fragile children. By January 1 of each year,
353 beginning January 1, 2025, the agency shall report its findings
354 to the Governor, the President of the Senate, and the Speaker of
355 the House of Representatives.

356 Section 8. The Agency for Health Care Administration shall
357 modify any state Medicaid plans and implement any federal
358 waivers necessary to implement this act. The agency shall
359 establish a Medicaid fee schedule for home health agencies
360 employing a home health aide for medically fragile children at
361 \$25 per hour with a utilization cap of no more than 8 hours per
362 day.

363 Section 9. Paragraph (e) of subsection (2) of section
364 768.38, Florida Statutes, is amended to read:

365 768.38 Liability protections for COVID-19-related claims.-

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

367 (e) "Health care provider" means:

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

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

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

377 4. Any site providing health care services which was

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378 established for the purpose of responding to the COVID-19
379 pandemic pursuant to any federal or state order, declaration, or
380 waiver.

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

382 6. A health care professional licensed under part IV of
383 chapter 468.

384 7. A home health aide as defined in s. 400.462 ~~s.~~
385 ~~400.462(15)~~.

386 8. A provider licensed under chapter 394 or chapter 397 and
387 its clinical and nonclinical staff providing inpatient or
388 outpatient services.

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

390 10. A pharmacy permitted under chapter 465.

391 Section 10. Paragraph (f) of subsection (1) of section
392 768.381, Florida Statutes, is amended to read:

393 768.381 COVID-19-related claims against health care
394 providers.—

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

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

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

398 2. A clinical laboratory providing services in this state
399 or services to health care providers in this state, if the
400 clinical laboratory is certified by the Centers for Medicare and
401 Medicaid Services under the federal Clinical Laboratory
402 Improvement Amendments and the federal rules adopted thereunder.

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

406 4. Any site providing health care services which was

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407 established for the purpose of responding to the COVID-19
408 pandemic pursuant to any federal or state order, declaration, or
409 waiver.

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

411 6. A health care professional licensed under part IV of
412 chapter 468.

413 7. A home health aide as defined in s. 400.462 ~~s.~~
414 ~~400.462(15)~~.

415 8. A provider licensed under chapter 394 or chapter 397 and
416 its clinical and nonclinical staff providing inpatient or
417 outpatient services.

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

419 10. A pharmacy permitted under chapter 465.

420 Section 11. For the 2023-2024 fiscal year, four full-time
421 equivalent positions with associated salary rate of 186,483 are
422 authorized, and the sums of \$353,589 in recurring funds and
423 \$118,728 in nonrecurring funds are appropriated from the Health
424 Care Trust Fund to the Agency for Health Care Administration,
425 for the purpose of implementing this act.

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