

1 A bill to be entitled
2 An act relating to direct care workers; amending s.
3 400.141, F.S.; requiring a nursing home facility that
4 authorizes a registered nurse to delegate tasks to a
5 certified nursing assistant to ensure that certain
6 requirements are met; creating s. 400.212, F.S.;
7 authorizing a certified nursing assistant to perform
8 tasks delegated by a registered nurse; amending s.
9 400.23, F.S.; authorizing certain nonnursing staff to
10 count toward compliance with staffing standards;
11 amending s. 400.462, F.S.; revising the definition of
12 "home health aide"; amending s. 400.464, F.S.;
13 requiring a licensed home health agency that
14 authorizes a registered nurse to delegate tasks to a
15 certified nursing assistant to ensure that certain
16 requirements are met; amending s. 400.488, F.S.;
17 authorizing an unlicensed person to assist with self-
18 administration of certain treatments; revising the
19 requirements for such assistance; creating s. 400.489,
20 F.S.; authorizing a home health aide to administer
21 certain prescription medications under certain
22 conditions; requiring the home health aide to meet
23 certain training and competency requirements;
24 requiring that the training, determination of
25 competency, and annual validations be performed by a

26 registered nurse or a physician; requiring a home
27 health aide to complete annual inservice training in
28 medication administration and medication error
29 prevention in addition to existing annual inservice
30 training requirements; requiring the Agency for Health
31 Care Administration, in consultation with the Board of
32 Nursing, to adopt rules for medication administration;
33 creating s. 400.490, F.S.; authorizing a certified
34 nursing assistant or home health aide to perform tasks
35 delegated by a registered nurse; creating s. 400.52,
36 F.S.; creating the Excellence in Home Health Program
37 within the agency; requiring the agency to adopt rules
38 establishing program criteria; requiring the agency to
39 annually evaluate certain home health agencies that
40 apply for a program award; providing eligibility
41 requirements; requiring an agency to reapply
42 biennially for the award designation; authorizing an
43 award recipient to use the designation in advertising
44 and marketing; prohibiting a home health agency from
45 using the award designation in any advertising or
46 marketing under certain circumstances; providing that
47 an application for an award designation under the
48 program is not an application for licensure and such
49 designation does not constitute final agency action
50 subject to certain administrative procedures; creating

51 s. 408.064, F.S.; providing definitions; requiring the
52 agency to develop and maintain a voluntary registry of
53 home care workers; providing requirements for the
54 registry; requiring a home care worker to apply to be
55 included in the registry; requiring the agency to
56 develop a process by which a home health services
57 provider may include its employees on the registry;
58 requiring certain home care workers to undergo
59 background screening and training; requiring each page
60 of the registry website to contain a specified notice;
61 requiring the agency to adopt rules; creating s.
62 408.822, F.S.; defining the term "direct care worker";
63 requiring certain licensees to provide specified
64 information about employees in a survey beginning on a
65 specified date; requiring that the survey be completed
66 on a form with a specified attestation adopted by the
67 agency in rule; requiring a licensee to submit such
68 survey before the agency renews its license; requiring
69 the agency to analyze the results of such survey and
70 publish its results on the agency's website; requiring
71 the agency to update such information monthly;
72 requiring the agency's analysis to include specified
73 information; creating s. 464.0156, F.S.; authorizing a
74 registered nurse to delegate tasks to a certified
75 nursing assistant or home health aide under certain

76 conditions; providing the criteria that a registered
77 nurse must consider in determining if a task may be
78 delegated; authorizing a registered nurse to delegate
79 medication administration to a certified nursing
80 assistant or home health aide if certain requirements
81 are met; requiring the Board of Nursing, in
82 consultation with the agency, to adopt rules; amending
83 s. 464.018, F.S.; providing that a registered nurse
84 who delegates certain tasks to a person the registered
85 nurse knows or has reason to know is unqualified is
86 grounds for licensure denial or disciplinary action;
87 creating s. 464.2035, F.S.; authorizing a certified
88 nursing assistant to administer certain prescription
89 medications under certain conditions; requiring the
90 certified nursing assistant to meet certain training
91 and competency requirements; requiring the training,
92 determination of competency, and annual validations to
93 be performed by a registered nurse or a physician;
94 requiring a certified nursing assistant to complete
95 annual inservice training in medication administration
96 and medication error prevention in addition to
97 existing annual inservice training requirements;
98 requiring the board, in consultation with the agency,
99 to adopt rules; authorizing positions and providing
100 appropriations; providing an effective date.

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

Section 1. Paragraph (v) is added to subsection (1) of section 400.141, Florida Statutes, to read:

400.141 Administration and management of nursing home facilities.—

(1) Every licensed facility shall comply with all applicable standards and rules of the agency and shall:

(v) Ensure that a certified nursing assistant meets the requirements of chapter 464 and the rules adopted thereunder, if the facility authorizes a registered nurse to delegate tasks, including medication administration, to the certified nursing assistant.

Section 2. Section 400.212, Florida Statutes, is created to read:

400.212 Nurse delegated tasks.—A certified nursing assistant may perform any task delegated to him or her by a registered nurse as provided in chapter 464, including, but not limited to, medication administration.

Section 3. Paragraph (b) of subsection (3) of section 400.23, Florida Statutes, is amended to read:

400.23 Rules; evaluation and deficiencies; licensure status.—

(3)

126 (b) Nonnursing staff providing eating assistance to
127 residents may ~~shall not~~ count toward compliance with minimum
128 staffing standards.

129 Section 4. Subsection (15) of section 400.462, Florida
130 Statutes, is amended to read:

131 400.462 Definitions.—As used in this part, the term:

132 (15) "Home health aide" means a person who is trained or
133 qualified, as provided by rule, and who provides hands-on
134 personal care, performs simple procedures as an extension of
135 therapy or nursing services, assists in ambulation or exercises,
136 or assists in administering medications as permitted in rule and
137 for which the person has received training established by the
138 agency under this part or performs tasks delegated to him or her
139 pursuant to chapter 464 s. ~~400.497(1)~~.

140 Section 5. Subsections (5) and (6) of section 400.464,
141 Florida Statutes, are renumbered as subsections (6) and (7),
142 respectively, present subsection (6) is amended, and a new
143 subsection (5) is added to that section, to read:

144 400.464 Home health agencies to be licensed; expiration of
145 license; exemptions; unlawful acts; penalties.—

146 (5) If a licensed home health agency authorizes a
147 registered nurse to delegate tasks, including medication
148 administration, to a certified nursing assistant pursuant to
149 chapter 464 or a home health aide pursuant to s. 400.490, the
150 licensed home health agency must ensure that such delegation

151 meets the requirements of this chapter, chapter 464, and the
152 rules adopted thereunder.

153 (7)~~(6)~~ Any person, entity, or organization providing home
154 health services which is exempt from licensure under subsection
155 (6) ~~(5)~~ may voluntarily apply for a certificate of exemption
156 from licensure under its exempt status with the agency on a form
157 that specifies its name or names and addresses, a statement of
158 the reasons why it is exempt from licensure as a home health
159 agency, and other information deemed necessary by the agency. A
160 certificate of exemption is valid for a period of not more than
161 2 years and is not transferable. The agency may charge an
162 applicant \$100 for a certificate of exemption or charge the
163 actual cost of processing the certificate.

164 Section 6. Subsections (2) and (3) of section 400.488,
165 Florida Statutes, are amended to read:

166 400.488 Assistance with self-administration of
167 medication.—

168 (2) Patients who are capable of self-administering their
169 own medications without assistance shall be encouraged and
170 allowed to do so. However, an unlicensed person may, consistent
171 with a dispensed prescription's label or the package directions
172 of an over-the-counter medication, assist a patient whose
173 condition is medically stable with the self-administration of
174 routine, regularly scheduled medications that are intended to be
175 self-administered. Assistance with self-medication by an

176 unlicensed person may occur only upon a documented request by,
177 and the written informed consent of, a patient or the patient's
178 surrogate, guardian, or attorney in fact. For purposes of this
179 section, self-administered medications include both legend and
180 over-the-counter oral dosage forms, topical dosage forms, and
181 topical ophthalmic, otic, and nasal dosage forms, including
182 solutions, suspensions, sprays, ~~and~~ inhalers, intermittent
183 positive pressure breathing treatments, and nebulizer
184 treatments.

185 (3) Assistance with self-administration of medication
186 includes:

187 (a) Taking the medication, in its previously dispensed,
188 properly labeled container, from where it is stored and bringing
189 it to the patient.

190 (b) In the presence of the patient, confirming that the
191 medication is intended for that patient, orally advising the
192 patient of the medication name and purpose ~~reading the label,~~
193 opening the container, removing a prescribed amount of
194 medication from the container, and closing the container.

195 (c) Placing an oral dosage in the patient's hand or
196 placing the dosage in another container and helping the patient
197 by lifting the container to his or her mouth.

198 (d) Applying topical medications, including routine
199 preventative skin care and basic wound care.

200 (e) Returning the medication container to proper storage.

201 (f) For intermittent positive pressure breathing
202 treatments or nebulizer treatments, assisting with setting up
203 and cleaning the device in the presence of the patient,
204 confirming that the medication is intended for that patient,
205 orally advising the patient of the medication name and purpose,
206 opening the container, removing the prescribed amount for a
207 single treatment dose from a properly labeled container, and
208 assisting the patient with placing the dose into the medicine
209 receptacle or mouthpiece.

210 (g)~~(f)~~ Keeping a record of when a patient receives
211 assistance with self-administration under this section.

212 Section 7. Section 400.489, Florida Statutes, is created
213 to read:

214 400.489 Administration of medication by a home health
215 aide; staff training requirements.—

216 (1) A home health aide may administer oral, transdermal,
217 ophthalmic, otic, rectal, inhaled, enteral, or topical
218 prescription medications if the home health aide has been
219 delegated such task by a registered nurse licensed under chapter
220 464; has satisfactorily completed an initial 6-hour training
221 course approved by the agency; and has been found competent to
222 administer medication to a patient in a safe and sanitary
223 manner. The training, determination of competency, and initial
224 and annual validations required in this section shall be
225 conducted by a registered nurse licensed under chapter 464 or a

226 physician licensed under chapter 458 or chapter 459.

227 (2) A home health aide must annually and satisfactorily
228 complete a 2-hour inservice training course in medication
229 administration and medication error prevention approved by the
230 agency. The inservice training course shall be in addition to
231 the annual inservice training hours required by agency rules.

232 (3) The agency, in consultation with the Board of Nursing,
233 shall establish by rule standards and procedures that a home
234 health aide must follow when administering medication to a
235 patient. Such rules must, at a minimum, address qualification
236 requirements for trainers, requirements for labeling medication,
237 documentation and recordkeeping, the storage and disposal of
238 medication, instructions concerning the safe administration of
239 medication, informed-consent requirements and records, and the
240 training curriculum and validation procedures.

241 Section 8. Section 400.490, Florida Statutes, is created
242 to read:

243 400.490 Nurse delegated tasks.—A certified nursing
244 assistant or home health aide may perform any task delegated by
245 a registered nurse as provided in chapter 464, including, but
246 not limited to, medication administration.

247 Section 9. Section 400.52, Florida Statutes, is created to
248 read:

249 400.52 Excellence in Home Health Program.—

250 (1) There is created within the agency the Excellence in

251 Home Health Program for the purpose of awarding home health
252 agencies that meet the criteria specified in this section.

253 (2) (a) The agency shall adopt rules establishing criteria
254 for the program which must include, at a minimum, meeting
255 standards relating to:

256 1. Patient satisfaction.

257 2. Patients requiring emergency care for wound infections.

258 3. Patients admitted or readmitted to an acute care
259 hospital.

260 4. Patient improvement in the activities of daily living.

261 5. Employee satisfaction.

262 6. Quality of employee training.

263 7. Employee retention rates.

264 (b) The agency must annually evaluate home health agencies
265 seeking the award to apply on a form and in the manner
266 designated by rule.

267 (3) The home health agency must:

268 (a) Be actively licensed and operating for at least 24
269 months to be eligible to apply for a program award. An award
270 under the program is not transferrable to another license,
271 except when the existing home health agency is being relicensed
272 in the name of an entity related to the current licenseholder by
273 common control or ownership, and there will be no change in the
274 management, operation, or programs of the home health agency as
275 a result of the relicensure.

276 (b) Have had no licensure denials, revocations, or any
277 Class I, Class II, or uncorrected Class III deficiencies within
278 the 24 months preceding the application for the program award.

279 (4) The award designation shall expire on the same date as
280 the home health agency's license. A home health agency must
281 reapply and be approved for the award designation to continue
282 using the award designation in the manner authorized under
283 subsection (5).

284 (5) A home health agency that is awarded under the program
285 may use the designation in advertising and marketing. A home
286 health agency may not use the award designation in any
287 advertising or marketing if the home health agency:

288 (a) Has not been awarded the designation;

289 (b) Fails to renew the award upon expiration of the award
290 designation;

291 (c) Has undergone a change in ownership that does not
292 qualify for an exception under paragraph (3) (a); or

293 (d) Has been notified that it no longer meets the criteria
294 for the award upon reapplication after expiration of the award
295 designation.

296 (6) An application for an award designation under the
297 program is not an application for licensure. A designation
298 awarded by the agency under this section does not constitute
299 final agency action subject to chapter 120.

300 Section 10. Section 408.064, Florida Statutes, is created

301 to read:

302 408.064 Home Care Services Registry.-

303 (1) As used in this section, the term:

304 (a) "Home care services provider" means a home health
305 agency licensed under part III of chapter 400 or a nurse
306 registry licensed under part III of chapter 400.

307 (b) "Home care worker" means a home health aide as defined
308 in s. 400.462 or a certified nursing assistant certified under
309 part II of chapter 464.

310 (2) The agency shall develop and maintain a voluntary
311 registry of home care workers. The agency shall display a link
312 to the registry on its website homepage.

313 (3) The registry shall include, at a minimum:

314 (a) Each home care worker's full name, date of birth,
315 social security number, and a full face, passport-type, color
316 photograph of the home care worker. The home care worker's date
317 of birth and social security number may not be publicly
318 displayed on the website.

319 (b) Each home care worker's contact information, including
320 but not limited to, his or her city, county, and phone number.
321 If employed by a home care services provider, the home care
322 worker may use the provider's contact information.

323 (c) Any other identifying information of the home care
324 worker, as determined by the agency.

325 (d) The name of the state-approved training program

326 successfully completed by the home care worker and the date on
327 which such training was completed.

328 (e) The number of years the home care worker has provided
329 home health care services for compensation. The agency may
330 automatically populate employment history as provided by current
331 and previous employers of the home care worker. The agency must
332 provide a method for a home care worker to correct inaccuracies
333 and supplement the automatically populated employment history.

334 (f) For a certified nursing assistant, any disciplinary
335 action taken or pending against the nursing assistant's
336 certification by the Department of Health. The agency may enter
337 into an agreement with the Department of Health to obtain
338 disciplinary history.

339 (g) Whether the home care worker provides services to
340 special populations and the identities of such populations.

341 (4) A health care worker must submit an application on a
342 form adopted by the agency to be included in the registry. The
343 agency shall develop a process by which a home health services
344 provider may include its employees in the registry by providing
345 the information listed in subsection (3).

346 (5) A home care worker who is not employed by a home care
347 services provider must meet the background screening
348 requirements under s. 408.809 and chapter 435 and the training
349 requirements of part III of chapter 400 or part II of chapter
350 464, as applicable, which must be included in the registry.

351 (6) Each page of the registry website shall contain the
352 following notice in at least 14-point boldfaced type:

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354 NOTICE

355
356 The Home Care Services Registry provides limited
357 information about home care workers. Information
358 contained in the registry is provided by third
359 parties. The Agency for Health Care Administration
360 does not guarantee the accuracy of such third-party
361 information and does not endorse any individual listed
362 in the registry. In particular, the information in the
363 registry may be outdated or the individuals listed in
364 the registry may have lapsed certifications or may
365 have been denied employment approval due to the
366 results of a background screening. It is the
367 responsibility of those accessing this registry to
368 verify the credentials, suitability, and competency of
369 any individual listed in the registry.

370
371 (7) The agency shall develop rules necessary to implement
372 the requirements of this section.

373 Section 11. Section 408.822, Florida Statutes, is created
374 to read:

375 408.822 Direct care workforce survey.-

376 (1) For purposes of this section, the term "direct care
377 worker" means a certified nursing assistant, home health aide,
378 personal care assistant, companion services or homemaker
379 services provider, or other individuals who provide personal
380 care as defined in s. 400.462 to individuals who are elderly,
381 developmentally disabled, or chronically ill.

382 (2) Beginning January 1, 2021, each licensee that applies
383 for licensure renewal as a nursing home facility licensed under
384 part II of chapter 400; an assisted living facility licensed
385 under part I of chapter 429; or a home health agency, nurse
386 registry, or a companion services or homemaker services provider
387 licensed under part III of chapter 400 must furnish the
388 following information to the agency in a survey on the direct
389 care workforce:

390 (a) The number of direct care workers employed by the
391 licensee.

392 (b) The turnover and vacancy rates of direct care workers
393 and contributing factors to the rates.

394 (c) Average employee wage for each category of direct care
395 workers.

396 (d) Employment benefits for direct care workers and
397 average cost to the employer and employee.

398 (e) Type and availability of training for direct care
399 workers.

400 (3) An administrator or designee shall include the

401 information required in subsection (2) on a survey form
402 developed by the agency in rule which must contain an
403 attestation that the information provided is true and accurate
404 to the best of his or her knowledge.

405 (4) The licensee must submit the completed survey prior to
406 the agency issuing the license renewal.

407 (5) The agency shall continually analyze the results of
408 the survey and publish the results on its website. The agency
409 must update the information published on its website monthly.

410 The analysis must include the:

411 (a) Number of direct workers in the state, including the
412 number of full-time workers and the number of part-time workers.

413 (b) Turnover rate and causes of turnover.

414 (c) Vacancy rate.

415 (d) Average hourly wage.

416 (e) Benefits offered.

417 (f) Availability of post-employment training.

418 Section 12. Section 464.0156, Florida Statutes, is created
419 to read:

420 464.0156 Delegation of duties.—

421 (1) A registered nurse may delegate a task to a certified
422 nursing assistant certified under part II of this chapter or a
423 home health aide as defined in s. 400.462, if the registered
424 nurse determines that the certified nursing assistant or home
425 health aide is competent to perform the task, the task is

426 | delegable under federal law, and the task:

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

428 | (b) Frequently recurs in the routine care of a patient or

429 | group of patients.

430 | (c) Is performed according to an established sequence of

431 | steps.

432 | (d) Involves little or no modification from one patient to

433 | another.

434 | (e) May be performed with a predictable outcome.

435 | (f) Does not inherently involve ongoing assessment,

436 | interpretation, or clinical judgement.

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

438 | (2) A registered nurse may delegate to a certified nursing

439 | assistant or a home health aide the administration of medication

440 | of oral, transdermal, ophthalmic, otic, rectal, inhaled,

441 | enteral, or topical prescription medications if the certified

442 | nursing assistant or home health aide meets the requirements of

443 | s. 464.2035 or s. 400.489, respectively. A registered nurse may

444 | not delegate the administration of any controlled substance

445 | listed in Schedule II, Schedule III, or Schedule IV of s. 893.03

446 | or 21 U.S.C. s. 812.

447 | (3) The board, in consultation with the Agency for Health

448 | Care Administration, may adopt rules to implement this section.

449 | Section 13. Paragraph (r) is added to subsection (1) of

450 | section 464.018, Florida Statutes, to read:

451 464.018 Disciplinary actions.—

452 (1) The following acts constitute grounds for denial of a
453 license or disciplinary action, as specified in ss. 456.072(2)
454 and 464.0095:

455 (r) Delegating professional responsibilities to a person
456 when the nurse delegating such responsibilities knows or has
457 reason to know that such person is not qualified by training,
458 experience, certification, or licensure to perform them.

459 Section 14. Section 464.2035, Florida Statutes, is created
460 to read:

461 464.2035 Administration of medication.—

462 (1) A certified nursing assistant may administer oral,
463 transdermal, ophthalmic, otic, rectal, inhaled, enteral, or
464 topical prescription medication to a resident of a nursing home
465 or a patient of a home health agency if the certified nursing
466 assistant has been delegated such task by a registered nurse
467 licensed under part I of this chapter, has satisfactorily
468 completed an initial 6-hour training course approved by the
469 board, and has been found competent to administer medication to
470 a resident or patient in a safe and sanitary manner. The
471 training, determination of competency, and initial and annual
472 validations required in this section shall be conducted by a
473 registered nurse licensed under this chapter or a physician
474 licensed under chapter 458 or chapter 459.

475 (2) A certified nursing assistant must annually and

476 satisfactorily complete 2 hours of inservice training in
477 medication administration and medication error prevention
478 approved by the board, in consultation with the Agency for
479 Health Care Administration. The inservice training is in
480 addition to the annual inservice training hours required under
481 this part.

482 (3) The board, in consultation with the Agency for Health
483 Care Administration, shall establish by rule standards and
484 procedures that a certified nursing assistant must follow when
485 administering medication to a resident or patient. Such rules
486 must, at a minimum, address qualification requirements for
487 trainers, requirements for labeling medication, documentation
488 and recordkeeping, the storage and disposal of medication,
489 instructions concerning the safe administration of medication,
490 informed-consent requirements and records, and the training
491 curriculum and validation procedures.

492 Section 15. For the 2020-2021 fiscal year, four full-time
493 equivalent positions with associated salary rate of 166,992 are
494 authorized and the sums of \$643,659 in recurring and \$555,200 in
495 nonrecurring funds from the Health Care Trust Fund are
496 appropriated to the Agency for Health Care Administration for
497 the purpose of implementing this act.

498 Section 16. This act shall take effect upon becoming a
499 law.