

CHAPTER 2023-183

Committee Substitute for Committee Substitute for Committee Substitute for House Bill No. 391

An act relating to home health aides for medically fragile children; amending s. 400.462, F.S.; providing definitions; amending s. 400.464, F.S.; requiring home health agencies to ensure that any tasks delegated to home health aides for medically fragile children meet specified requirements; amending s. 400.476, F.S.; requiring that home health aides for medically fragile children employed by or under contract with home health agencies be adequately trained to perform delegated tasks; providing certain individuals an exemption from costs associated with specified training; creating s. 400.4765, F.S.; providing legislative findings and intent; providing requirements for a family caregiver to be employed as a home health aide for medically fragile children; requiring the Agency for Health Care Administration, in consultation with the Board of Nursing, to develop a home health aide for medically fragile children training programs; providing requirements for the program; requiring home health aides for medically fragile children to complete inservice training as a condition of employment; requiring home health aides for medically fragile children to maintain documentation demonstrating compliance with such training requirements; exempting home health agencies from civil liability for terminating or denying employment to a home health aide for medically fragile children under certain circumstances; extending the exemption to certain agents of the home health agencies; prohibiting home health agencies or their agents from using certain criminal records or juvenile records other than for a specified purpose; requiring the agency to maintain confidentiality of certain confidential and exempt records; providing requirements for services provided by a home health aide for medically fragile children; authorizing the agency, in consultation with the board, to adopt rules to implement the act; requiring the agency to modify any state Medicaid plans and implement any federal waivers necessary to implement this act and establish a specified Medicaid fee schedule for home health agencies employing a home health aide for medically fragile children; ss. 400.489 and 400.490, F.S.; conforming provisions to changes made by the act; amending; creating s. 400.54, F.S.; requiring the Agency for Health Care Administration to conduct an annual assessment related to the certified health aide program; providing requirements for the assessment; requiring the agency to submit a report to the Governor and the Legislature annually, by and beginning on a specified date; amending s. 408.822, F.S.; conforming a provision to changes made by the act; amending s. 464.0156, F.S.; conforming provisions to changes made by the act; providing appropriations; providing an effective date.

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

Section 1. Subsections (5) through (10) of section 400.462, Florida Statutes, are renumbered as subsections (6) through (11), present subsection (11) is renumbered as subsection (13), present subsections (12), (13), and (14) are renumbered as subsections (15), (16), and (17), and present subsections (15) through (29) are renumbered as subsections (19) through (33), respectively, subsection (1) and present subsection (10) are amended, and new subsections (5), (12), (14), and (18), are added to that section, to read:

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

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

(5) “Approved training program” means a course of training approved by the agency, in consultation with the Board of Nursing, to train a family caregiver as a home health aide for medically fragile children.

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

(12) “Eligible relative” means a patient 21 years of age or younger who has an underlying physical, mental, or cognitive impairment that prevents him or her from safely living independently, is eligible to receive skilled care or respite care services under the Medicaid program, and is related to his or her family caregiver.

(14) “Family caregiver” means a person who provides or intends to provide significant personal care to an eligible relative.

(18) “Home health aide for medically fragile children” means a family caregiver who meets the qualifications specified in this part and who performs tasks delegated to him or her under chapter 464 while caring for an eligible relative, and provides care relating to activities of daily living, including those associated with personal care; maintaining mobility; nutrition and hydration; toileting and elimination; assistive devices; safety and cleanliness; data gathering; reporting abnormal signs and symptoms; postmortem care; patient socialization and reality orientation; end-of-life care; cardiopulmonary resuscitation and emergency care; residents’ or patients’ rights; documentation of services performed; infection control; safety and emergency procedures; hygiene, grooming, skin care, and pressure sore prevention; wound care; portable oxygen use and safety and other respiratory procedures; tracheostomy care; enteral care and therapy;

peripheral intravenous assistive activities and alternative feeding methods; and any other tasks delegated to the family caregiver under chapter 464.

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

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

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

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

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

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

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

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

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

400.4765 Home health aide for medically fragile children program.—

(1) LEGISLATIVE FINDINGS AND INTENT.—The home health aide for medically fragile children program is hereby established in response to the existing national health care provider shortage and the impact that the shortage has on medically fragile children and the family caregivers. This program is created to decrease the hospitalization and institutionalization of

medically fragile children, reduce state expenditures, and provide an opportunity for a family caregiver to receive training and gainful employment.

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

(a) Be a family caregiver of an eligible relative.

(b) Demonstrate a minimum competency to read and write.

(c) Complete an approved training program as set forth in this section or have graduated from an accredited prelicensure nursing education program and are waiting to take the state licensing exam.

(d) Successfully pass the required background screening pursuant to s. 400.215. If the person has successfully passed the required background screening pursuant to s. 400.215 or s. 408.809 within 90 days before applying for a certificate to practice and the person's background screening results are not retained in the clearinghouse created under s. 435.12, the agency shall waive the requirement that the applicant successfully pass an additional background screening pursuant to s. 400.215.

(3) TRAINING.—

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

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

a. Person-centered care.

b. Communication and interpersonal skills.

c. Infection control.

d. Safety and emergency procedures.

e. Assistance with activities of daily living.

f. Mental health and social service needs.

g. Care of cognitively impaired individuals.

- h. Basic restorative care and rehabilitation.
- i. Patient rights and confidentiality of personal information and medical records.
- j. Relevant legal and ethical issues.

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

2. A minimum of 20 hours of skills training on basic nursing skills, including, but not limited to:

- a. Hygiene, grooming, and toileting.
- b. Skin care and pressure sore prevention.
- c. Nutrition and hydration.
- d. Measuring vital signs, height, and weight.
- e. Safe lifting, positioning, and moving of patients.
- f. Wound care.
- g. Portable oxygen use and safety and other respiratory procedures.
- h. Tracheostomy care.
- i. Enteral care and therapy.
- j. Peripheral intravenous assistive activities and alternative feeding methods.
- k. Urinary catheterization and ostomy care.

3. At least 16 hours of clinical training under direct supervision of a licensed registered nurse.

4. Training concerning HIV infections and AIDS and is required to obtain and maintain a current certificate in cardiopulmonary resuscitation.

(b) If a home health aide for medically fragile children allows 24 consecutive months to pass without providing any personal care related services for an eligible relative, the family caregiver must complete an approved training program before providing personal care related services as a home health aide for medically fragile children.

(4) EMPLOYMENT.—A home health agency that employs a home health aide for medically fragile children must ensure that the home health aide for medically fragile children completes 12 hours of inservice training during each 12-month period as a condition of employment. The training concerning HIV infections and AIDS and the cardiopulmonary training may

count toward meeting the 12 hours of inservice training. The home health agency shall maintain documentation demonstrating compliance with this subsection.

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

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

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

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

(9) FEE SCHEDULE.—The agency shall modify any state Medicaid plans and implement any federal waivers necessary to implement this section and shall establish a Medicaid fee schedule for home health agencies employing a home health aide for medically fragile children at \$25 per hour with a utilization cap of no more than 8 hours per day.

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

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

(1) A home health aide or home health aide for medically fragile children may administer oral, transdermal, ophthalmic, otic, rectal, inhaled, enteral, or topical prescription medications if the home health aide or home health aide for medically fragile children has been delegated such task by a registered nurse licensed under chapter 464, has satisfactorily completed an initial 6-hour training course approved by the agency, and has been found competent to administer medication to a patient in a safe and sanitary manner. The training, determination of competency, and initial and annual

validations required in this section shall be conducted by a registered nurse licensed under chapter 464 or a physician licensed under chapter 458 or chapter 459.

(2) A home health aide or home health aide for medically fragile children must annually and satisfactorily complete a 2-hour inservice training course approved by the agency in medication administration and medication error prevention. The inservice training course shall be in addition to the annual inservice training hours required by agency rules.

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

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

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

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

400.54 Annual assessment of the home health aide for medically fragile children program.—The agency shall conduct an annual assessment of the home health aide for medically fragile children program. The assessment must report caregiver satisfaction with the program, identify additional support that may be needed by the home health aide for medically fragile children, and assess the rate and extent of hospitalization of children in home health services who are attended by a home health aide for medically fragile children compared to those in home health services without a home health aide for medically fragile children. By January 1 of each year, beginning January 1, 2025, the agency shall report its findings to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

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

408.822 Direct care workforce survey.—

(1) For purposes of this section, the term “direct care worker” means a certified nursing assistant, a home health aide, a home health aide for medically fragile children a personal care assistant, a companion services or homemaker services provider, a paid feeding assistant trained under s.

400.141(1)(v), or another individual who provides personal care as defined in s. 400.462 to individuals who are elderly, developmentally disabled, or chronically ill.

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

464.0156 Delegation of duties.—

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

- (a) Is within the nurse's scope of practice.
- (b) Frequently recurs in the routine care of a patient or group of patients.
- (c) Is performed according to an established sequence of steps.
- (d) Involves little or no modification from one patient to another.
- (e) May be performed with a predictable outcome.
- (f) Does not inherently involve ongoing assessment, interpretation, or clinical judgment.
- (g) Does not endanger a patient's life or well-being.

(2) A registered nurse may delegate to a certified nursing assistant, ~~or a home health aide, or a~~ home health aide for medically fragile children the administration of oral, transdermal, ophthalmic, otic, rectal, inhaled, enteral, or topical prescription medications to a patient of a home health agency or in a local county detention facility as defined in s. 951.23(1), if the certified nursing assistant or home health aide meets the requirements of s. 464.2035 or s. 400.489, respectively. A registered nurse may not delegate the administration of any controlled substance listed in Schedule II, Schedule III, or Schedule IV of s. 893.03 or 21 U.S.C. s. 812, except for the administration of an insulin syringe that is prefilled with the proper dosage by a pharmacist or an insulin pen that is prefilled by the manufacturer.

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

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

Approved by the Governor June 2, 2023.

Filed in Office Secretary of State June 2, 2023.