

By the Committee on Health Policy; and Senator Albritton

588-03099-20

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A bill to be entitled
An act relating to direct care workers; amending s.
400.141, F.S.; authorizing a nursing home facility to
use paid feeding assistants in accordance with
specified federal law under certain circumstances;
providing training program requirements; authorizing
the Agency for Health Care Administration to adopt
rules; amending s. 400.23, F.S.; prohibiting paid
feeding assistants from counting toward compliance
with minimum staffing standards; amending s. 400.462,
F.S.; revising the definition of the term "home health
aide"; amending s. 400.464, F.S.; requiring a licensed
home health agency that authorizes a registered nurse
to delegate tasks to a certified nursing assistant to
ensure that certain requirements are met; amending s.
400.488, F.S.; authorizing an unlicensed person to
assist with self-administration of certain treatments;
revising the requirements for such assistance;
creating s. 400.489, F.S.; authorizing a home health
aide to administer certain prescription medications
under certain conditions; requiring the home health
aide to meet certain training and competency
requirements; requiring the training, determination of
competency, and annual validations of home health
aides to be conducted by a registered nurse or a
physician; requiring a home health aide to complete
annual inservice training in medication administration
and medication error prevention, in addition to
existing annual inservice training requirements;

588-03099-20

20201676c1

30 requiring the Agency for Health Care Administration,
31 in consultation with the Board of Nursing, to
32 establish by rule standards and procedures for
33 medication administration by home health aides;
34 creating s. 400.490, F.S.; authorizing a certified
35 nursing assistant or home health aide to perform tasks
36 delegated by a registered nurse; creating s. 400.52,
37 F.S.; creating the Excellence in Home Health Program
38 within the agency; requiring the agency to adopt rules
39 establishing program criteria; requiring the agency to
40 annually evaluate certain home health agencies that
41 apply for a program designation; providing program
42 designation eligibility requirements; providing that a
43 program designation is not transferrable, with an
44 exception; providing for the expiration of awarded
45 designations; requiring home health agencies to
46 reapply biennially to renew the awarded program
47 designation; authorizing a program designation award
48 recipient to use the designation in advertising and
49 marketing; prohibiting a home health agency from using
50 a program designation in advertising or marketing
51 under certain circumstances; creating s. 408.822,
52 F.S.; defining the term "direct care worker";
53 requiring certain licensees to provide specified
54 information about their employees in a survey
55 beginning on a specified date; requiring that the
56 survey be completed on a form adopted by the agency by
57 rule and include a specified attestation; requiring
58 licensees to submit such survey before the agency

588-03099-20

20201676c1

renews their licenses; requiring the agency to
continually analyze the results of such surveys and
publish the results on the agency's website; requiring
the agency to update such information monthly;
creating s. 464.0156, F.S.; authorizing a registered
nurse to delegate certain tasks to a certified nursing
assistant or home health aide under certain
conditions; providing the criteria that a registered
nurse must consider in determining if a task may be
delegated to a certified nursing assistant or a home
health aide; authorizing a registered nurse to
delegate prescription medication administration to a
certified nursing assistant or home health aide,
subject to certain requirements; providing an
exception for certain controlled substances; requiring
the Board of Nursing, in consultation with the agency,
to adopt rules; amending s. 464.018, F.S.; subjecting
a registered nurse to disciplinary action for
delegating certain tasks to a person the registered
nurse knows or has reason to know is unqualified to
perform such tasks; creating s. 464.2035, F.S.;
authorizing certified nursing assistants to administer
certain prescription medications under certain
conditions; requiring the certified nursing assistants
to meet certain training and competency requirements;
requiring the training, determination of competency,
and annual validations of certified nursing assistants
to be conducted by a registered nurse or a physician;
requiring a certified nursing assistant to complete

588-03099-20

20201676c1

annual inservice training in medication administration and medication error prevention in addition to existing annual inservice training requirements; requiring the board, in consultation with the agency, to adopt rules for medication administration by certified nursing assistants; providing an effective date.

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) Be allowed to use paid feeding assistants as defined in 42 C.F.R. s. 488.301, and in accordance with 42 C.F.R. s. 483.60, if the paid feeding assistant has successfully completed a feeding assistant training program developed by the agency.

1. The feeding assistant training program must consist of a minimum of 12 hours of education and training and must include all of the topics and lessons specified in the program curriculum.

2. The program curriculum must include, but need not be limited to, training in all of the following content areas:

a. Feeding techniques.

b. Assistance with feeding and hydration.

c. Communication and interpersonal skills.

588-03099-20

20201676c1

117 d. Appropriate responses to resident behavior.

118 e. Safety and emergency procedures, including the first aid
119 procedure used to treat upper airway obstructions.

120 f. Infection control.

121 g. Residents' rights.

122 h. Recognizing changes in residents which are inconsistent
123 with their normal behavior, and the importance of reporting
124 those changes to the supervisory nurse.

125
126 The agency may adopt rules to implement this paragraph.

127 Section 2. Paragraph (b) of subsection (3) of section
128 400.23, Florida Statutes, is amended to read:

129 400.23 Rules; evaluation and deficiencies; licensure
130 status.—

131 (3)

132 (b) Paid feeding assistants and nonnursing staff providing
133 eating assistance to residents shall not count toward compliance
134 with minimum staffing standards.

135 Section 3. Subsection (15) of section 400.462, Florida
136 Statutes, is amended to read:

137 400.462 Definitions.—As used in this part, the term:

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

588-03099-20

20201676c1

Section 4. Present subsections (5) and (6) of section 400.464, Florida Statutes, are redesignated as subsections (6) and (7), respectively, a new subsection (5) is added to that section, and present subsection (6) of that section is 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 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.

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

Section 5. Subsections (2) and (3) of section 400.488, Florida Statutes, are amended to read:

400.488 Assistance with self-administration of medication.—

(2) Patients who are capable of self-administering their

588-03099-20

20201676c1

own medications without assistance shall be encouraged and allowed to do so. However, an unlicensed person may, consistent with a dispensed prescription's label or the package directions of an over-the-counter medication, assist a patient whose condition is medically stable with the self-administration of routine, regularly scheduled medications that are intended to be self-administered. Assistance with self-medication by an unlicensed person may occur only upon a documented request by, and the written informed consent of, a patient or the patient's surrogate, guardian, or attorney in fact. For purposes of this section, self-administered medications include both legend and over-the-counter oral dosage forms, topical dosage forms, and topical ophthalmic, otic, and nasal dosage forms, including solutions, suspensions, sprays, ~~and~~ inhalers, intermittent positive pressure breathing treatments, and nebulizer treatments.

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

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

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

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

588-03099-20

20201676c1

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

(e) Returning the medication container to proper storage.

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

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

Section 6. Section 400.489, Florida Statutes, is created to read:

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

(1) A home health aide may administer oral, transdermal, ophthalmic, otic, rectal, inhaled, enteral, or topical prescription medications if the home health aide 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.

588-03099-20

20201676c1

(2) A home health aide 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 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 7. Section 400.490, Florida Statutes, is created to read:

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

Section 8. Section 400.52, Florida Statutes, is created to read:

400.52 Excellence in Home Health Program.—

(1) There is created within the agency the Excellence in Home Health Program for the purpose of awarding program designations to home health agencies that meet the criteria specified in this section.

(2) (a) The agency shall adopt rules establishing criteria for the program which must include, at a minimum, meeting

588-03099-20

20201676c1

standards relating to:

1. Patient satisfaction.

2. Patients requiring emergency care for wound infections.

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

4. Patient improvement in the activities of daily living.

5. Employee satisfaction.

6. Quality of employee training.

7. Employee retention rates.

(b) The agency shall annually evaluate home health agencies seeking the program designation which apply on a form and in the manner designated by rule.

(3) To receive a program designation, the home health agency must:

(a) Be actively licensed and have been operating for at least 24 months before applying for the program designation. A designation awarded under the program is not transferrable to another licensee, unless the existing home health agency is being relicensed in the name of an entity related to the current licenseholder by common control or ownership and there will be no change in the management, operation, or programs of the home health agency as a result of the relicensure.

(b) Have not had any licensure denials, revocations, or Class I, Class II, or uncorrected Class III deficiencies within the 24 months before the application for the program designation.

(4) The program designation expires on the same date as the home health agency's license. A home health agency must reapply and be approved biennially for the program designation to

588-03099-20

20201676c1

291 continue using the program designation in the manner authorized
292 under subsection (5).

293 (5) A home health agency that is awarded a designation
294 under the program may use the designation in advertising and
295 marketing. A home health agency may not use the program
296 designation in any advertising or marketing if the home health
297 agency:

298 (a) Has not been awarded the designation;

299 (b) Fails to renew the designation upon expiration of the
300 awarded designation;

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

303 (d) Has been notified that it no longer meets the criteria
304 for the award upon reapplication after expiration of the awarded
305 designation.

306 Section 9. Section 408.822, Florida Statutes, is created to
307 read:

308 408.822 Direct care workforce survey.—

309 (1) For purposes of this section, the term "direct care
310 worker" means a certified nursing assistant, a home health aide,
311 a personal care assistant, a companion services or homemaker
312 services provider, a paid feeding assistant trained under s.
313 400.141(1) (v), or another individual who provides personal care
314 as defined in s. 400.462 to individuals who are elderly,
315 developmentally disabled, or chronically ill.

316 (2) Beginning January 1, 2021, each licensee that applies
317 for licensure renewal as a nursing home facility licensed under
318 part II of chapter 400; an assisted living facility licensed
319 under part I of chapter 429; or a home health agency, nurse

588-03099-20

20201676c1

registry, or companion services or homemaker services provider
licensed under part III of chapter 400 shall furnish the
following information to the agency in a survey on the direct
care workforce:

(a) The number of registered nurses and the number of
direct care workers by category employed by the licensee.

(b) The turnover and vacancy rates of registered nurses and
direct care workers and the contributing factors to these rates.

(c) The average employee wage for registered nurses and
each category of direct care worker.

(d) Employment benefits for registered nurses and direct
care workers and the average cost of such benefits to the
employer and the employee.

(e) Type and availability of training for registered nurses
and direct care workers.

(3) An administrator or designee shall include the
information required in subsection (2) on a survey form
developed by the agency by rule which must contain an
attestation that the information provided is true and accurate
to the best of his or her knowledge.

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

(5) The agency shall continually analyze the results of the
surveys and publish the results on its website. The agency shall
update the information published on its website monthly.

Section 10. Section 464.0156, Florida Statutes, is created
to read:

464.0156 Delegation of duties.—

(1) A registered nurse may delegate a task to a certified

588-03099-20

20201676c1

nursing assistant certified under part II of this chapter or a home health aide 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:

(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 the administration of oral, transdermal, ophthalmic, otic, rectal, inhaled, enteral, or topical prescription medications, 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.

(3) The board, in consultation with the Agency for Health Care Administration, shall adopt rules to implement this section.

Section 11. Paragraph (r) is added to subsection (1) of

588-03099-20

20201676c1

section 464.018, Florida Statutes, to read:

464.018 Disciplinary actions.—

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

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

Section 12. Section 464.2035, Florida Statutes, is created to read:

464.2035 Administration of medication.—

(1) A certified nursing assistant may administer oral, transdermal, ophthalmic, otic, rectal, inhaled, enteral, or topical prescription medication to a patient of a home health agency if the certified nursing assistant has been delegated such task by a registered nurse licensed under part I of this chapter, has satisfactorily completed an initial 6-hour training course approved by the board, 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 under this section must be conducted by a registered nurse licensed under this chapter or a physician licensed under chapter 458 or chapter 459.

(2) A certified nursing assistant shall annually and satisfactorily complete 2 hours of inservice training in medication administration and medication error prevention approved by the board, in consultation with the Agency for Health Care Administration. The inservice training is in

588-03099-20

20201676c1

407 addition to the other annual inservice training hours required
408 under this part.

409 (3) The board, in consultation with the Agency for Health
410 Care Administration, shall establish by rule standards and
411 procedures that a certified nursing assistant must follow when
412 administering medication to a patient. Such rules must, at a
413 minimum, address qualification requirements for trainers,
414 requirements for labeling medication, documentation and
415 recordkeeping, the storage and disposal of medication,
416 instructions concerning the safe administration of medication,
417 informed-consent requirements and records, and the training
418 curriculum and validation procedures.

419 Section 13. This act shall take effect upon becoming a law.