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DATE: March 23, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
ELDER & LONG TERM CARE
ANALYSIS**

BILL #: HB 0997
RELATING TO: Personal Care Attendant Pilot Program
SPONSOR(S): Representative(s) Littlefield
TIED BILL(S): SB 1608 by Senator Mitchell

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) ELDER & LONG TERM CARE
 - (2) HEALTH & HUMAN SERVICES APPROPRIATIONS
 - (3) HEALTHY COMMUNITIES COUNCIL
 - (4)
 - (5)
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I. SUMMARY:

This bill provides for the development and implementation of a pilot program to train individuals to become personal care attendants for persons with brain or spinal cord injuries, and to train those injured individuals to work with a personal care attendant. Individuals with disabilities identified to participate in the pilot program will be between the ages of 18-55, are severely disabled, live in a nursing home, have a desire to live more independently, and who could, with training, function in a more integrated residential environment and be employed. Funding would be provided through the collection by the Department of Revenue of a percentage of delinquent sales tax revenues.

This is a collaborative effort among the Department of Health/Brain and Spinal Cord Injury Program, the Department of Education, Division of Vocational Rehabilitation, the Department of Revenue, and Florida's non-profit Centers for Independent Living. This bill will increase revenues for the Brain and Spinal Cord Injury Rehabilitation Trust Fund.

According to the department's analysis, the bill will have an undetermined fiscal impact on the Department of Revenue.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Less Government: rule making authority is granted to the Department of Revenue and to the Department of Children & Family Services.

B. PRESENT SITUATION:

Section 381.7395, F.S., provides that the intent of the Legislature is that individuals who have moderate-to-severe brain or spinal cord injuries are referred to the brain and spinal cord injury program that is administered by the Department of Health (DOH). The program is to provide the rehabilitative services necessary for the person to benefit from the vocational rehabilitation program or return to the community at an appropriate functional level.

The Brain and Spinal Cord Injury Program (BSCIP) provides for acute care, inpatient and outpatient rehabilitation, home and vehicle modification, and adaptive technology by a network of designated trauma, rehabilitation, and transitional living centers. The program is funded through the BSCIP Rehabilitation Trust Fund from fines levied for speeding, driving or boating under the influence, and surcharges on temporary license plates. The BSCIP acts as a "payer of last resort," and relies heavily on third party payments and comparable benefits for provision of rehabilitation services. A16 member Advisory Council provides oversight to the program.

Section 381.77, F.S., requires DOH to conduct an annual survey of nursing homes to determine the number of persons 55 years of age and younger who are in the facility because of a brain or spinal cord injury. The statute further provides that all persons identified in that survey be evaluated and any person who might benefit from rehabilitation be given an opportunity to participate in any appropriate rehabilitation program for which she or he may be eligible.

The American's with Disabilities Act

Signed into law on July 26 1990, the Americans with Disabilities Act has been described by advocates as, "a wide-ranging legislation intended to make American society more accessible to people with disabilities."

Olmstead and the Medicaid Program

The *L.C. and E.W. v. Olmstead* case was brought in 1995 by the Atlanta Legal Aid Society on behalf of two women with mental retardation as well as psychiatric conditions who were patients in a state psychiatric hospital against Tommy Olmstead, the Georgia Commissioner of Human Services. The treating professionals in the hospital all agreed that they were appropriate for discharge into community programs, but *slots* were not made available. While the case worked its way through the courts, both women were placed in the community, where they have been doing very well. The case continued because the situation could arise again. The court issued its final order on July 11, 2000.

The women alleged that the failure to receive services in a community-based setting violated Title II of the ADA and its implementing regulation. Title II and its implementing regulation require public entities to administer their programs "in the most integrated setting appropriate to the needs of qualified individuals with disabilities," that is, a setting which "enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible."

On June 22, 1999, the Supreme Court issued its ruling. The Court held that unjustified institutionalization of people with disabilities is prohibited discrimination under the Americans with Disabilities Act (ADA). However, the Court further clarified that Title II does not require measures that would "fundamentally alter" the nature of a public entity's programs. "Fundamental alteration" is the concept under the ADA which governs the extent to which a public entity must modify its program to meet its obligations under the Act. Costs may bear on that determination. The decision also makes clear, however, that the right of people with disabilities to receive services in the "most integrated setting" is not absolute.

In *Olmstead*, the Supreme Court indicated that, in evaluating a state's "fundamental alteration" defense, courts are to consider not only the cost of providing community-based care to individuals, but also the range of services the state provides to others with disabilities and the state's obligation to mete out those services in an equitable manner.¹

The federal Health Care Financing Administration (HCFA), which operates the Medicaid and Medicare programs, has issued a series of letters and memos designed to clarify how HCFA is responding to the challenges presented by the *Olmstead* decision.

HCFA has recently provided technical assistance and clarification about how to use existing services and options to help people transition from an institutional setting to the community.

First, case management services assist individuals in gaining access to needed medical, social, educational, and other services. Case management services are often used to foster the transitioning of a person from institutional care to a more integrated setting or to help maintain a person in the community. There are several ways that case management services may be furnished under the Medicaid program:

- (1) Targeted case management (TCM), defined in section 1915(g) of the Act, may be furnished as a service to institutionalized persons who are about to leave the institution, to facilitate the process of transition to community services and to enable the person to gain access to needed medical, social, educational and other services in the community.

¹ Internet citation: <http://www.hhs.gov/ocr/olmintro.htm>

- (2) HCBS Case Management may be furnished as a service under the authority of section 1915(c) when this service is included in an approved HCBS waiver. Persons served under the waiver may receive case management services while they are still institutionalized, for up to 180 consecutive days prior to discharge.
- (3) Administrative Case Management may be furnished as an administrative activity, necessary for the proper and efficient administration of the State Medicaid plan.

Second, HCFA advised that states may assess the accessibility and need for modification in a person's home or vehicle at any time. Medicaid matching dollars may be available to cover these costs.

Third, in some cases it may be necessary to make environmental modifications to an individual's home before individual transitions from an institution to the community. HCFA has authorized states to claim Medicaid reimbursement for home modifications (including actual construction costs) furnished as a waiver service for up to 180 days prior to discharge.

Personal Care Attendants

Disabled persons and other advocates have developed a strong sense of what a Personal Care Attendant (PCA) is and how it is different from the personal care services available from home health agencies or even the informal assistance available from family and friends. One resource put it this way:

"Personal" assistance means that users exercise the maximum control over how services are organized and custom-design their services according to their individual needs, capabilities, life circumstances and aspirations. In particular, personal assistance requires that the individual user decides:

- who is to work,
- with which tasks,
- at which times,
- where and
- how.

Thus, the individual user must be able to recruit, train, schedule, supervise, and, if necessary, fire his or her own assistants. Simply put, "personal assistance" means that the user is the boss.

The state of Pennsylvania began a demonstration project to prove that greater independence for people with disabilities can be achieved by receiving assistance in the home with a state law enacted in 1986. Currently, there are more than 400 highly qualified, trained personal care attendants employed by over 405 people with physical disabilities. In Pennsylvania, the Attendant Care Program receives state and federal funds. Consumers, who do not receive benefits from social security or the state's medical assistance program, pay for a portion of their attendant care service. The amount is based on a sliding fee scale to accommodate an individual's ability to pay.

Currently, Florida does not have any programs to train personal care attendants or to subsidize attendant care services for individuals who are gainfully employed and do not qualify for Medicaid or Vocational Rehabilitation.

C. EFFECT OF PROPOSED CHANGES:

This bill will require the Department of Health, Brain and Spinal Cord Injury Program to develop and implement a pilot program that will allow persons in nursing homes who have a brain or spinal cord disability and who with a personal care attendant, and in some instances job training, can live in the community with a degree of independence. The Centers for Independent Living (CILs) will select the participants, train them and train the PCAs. The Department of Revenue will work with state attorneys to collect sales tax revenue that persons have not remitted to the state as required. The Vocational Rehabilitation program in the Department of Education will be responsible for providing training to the new personal care attendants.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 amends section 381.79, F.S., related to the Brain and Spinal Cord Injury Program Trust Fund. This section provides that moneys in the fund are to be appropriated to the Department of Health (DOH) for implementation of a personal care attendant pilot program.

Section 2 creates section 381.798, F.S., the Personal Care Attendant Pilot Program. The Department of Children & Family Services (DCFS) is directed to develop an "ongoing pilot program to provide personal care attendants to individuals who are between the ages of 18 and 55, and who wish to live independently, who could live independently, and who with training be employed. The department is to prepare a census of these individual who are living in nursing homes every year.

DCFS and the brain and spinal cord injury program (BSCIP) of the DOH are to work in coordination with the Division of Vocational Rehabilitation (VR) and the centers for independent living to establish four or five pilot sites among the state's twenty judicial circuits. In developing the pilots and selecting the sites, consideration is to be given to small, medium, and large population bases.

The centers for independent living (CILs) will be responsible for developing a selection process for choosing persons to participate. Participants are required to be trained in the management of a personal care attendant and must be willing to be trained for work in an occupation for which jobs exist.

The CILs and VR will be responsible for training the participants and the personal care attendants and will assign the attendants to as many participants as practical. The CILs and VR will coordinate the placement of the participants into competitive employment or into specialized job training.

This section provides that DOH is to fund training from funds collected by the Department of Revenue (DOR) under the tax collection enforcement diversion program. DOR is directed to develop and implement a tax collection enforcement diversion program in coordination with the judicial circuits in which the pilots are located. Ten percent of the funds collected are to be deposited in the BSCIP trust fund. Further, sufficient funds are to be provided to the state attorney's office in each pilot judicial circuit for a professional staff person to manage and collect the diversion funds. The bill directs that consideration be given to selecting a candidate who has a disability or disabilities for that position. Funds remaining after these obligations are met are to be deposited in the General Revenue fund.

Every year the revenue estimating conference will project the amount of money likely to be generated from the tax collection enforcement diversion program.

The Department of Children & Family Services and DOR are authorized to adopt administrative rules to implement this section.

No later than March 1 of every year, the BSCI program must submit to the President of the Senate and the Speaker of the House a report that evaluates the personal care attendant pilot program.

Section 3 provides that this act will take effect on July 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Department of Revenue is directed to develop and implement a tax collection enforcement diversion program for the collection of revenue from individuals who have not remitted the sales tax they are required to collect and send to the Department of Revenue.

2. Expenditures:

Expenditures will be made from the trust fund for training of selected participants and for payment to the PCAs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The impact of the tax collection enforcement diversion program will fall only on those persons who fail to remit collected sales tax revenues.

D. FISCAL COMMENTS:

This proposal is to be funded solely with state dollars. There may be options available for Medicaid funding, which would bring approximately 56 cents of federal dollars into the state for every 44 cents of state money, expended.

The Department of Health, Brain and Spinal Cord Injury Program will require additional budget authority to accommodate additional revenue generated by this project. The Department of Health, Bureau of Brain and Spinal Cord Injury Program reports that they will be able to handle the contractual and administrative duties and responsibilities without any additional staff. Discussions with staff from DOR would suggest that realistic estimates for collections in each judicial circuit are less than \$500,000 per year. The bill directs that ten percent of these revenues would be deposited

into the Brain and Spinal Cord Injury Rehabilitation Trust Fund for the development, administration, and contractual responsibilities of the personal care attendance pilot project.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The mandates provision of Article VII, Section 18 of the state constitution does not apply.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

No reduction of the authority of counties and municipalities to raise revenue.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

No reduction of state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None/

B. RULE-MAKING AUTHORITY:

Rule making authority is granted to the Department of Children & Family Services and to the Department of Revenue.

C. OTHER COMMENTS:

A technical amendment is available to correct a reference to the Department of Children & Family Services that should be the Department of Health.

The bill does not provide any eligibility standards and does not provide a grievance procedure, and does not specify if a participant, or applicant, would have rights to an administrative hearing under chapter 120, F.S.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

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VII. SIGNATURES:

COMMITTEE ON ELDER & LONG TERM CARE:

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