

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: CS/SM 152

INTRODUCER: Health Regulation Committee and Senator Aronberg

SUBJECT: Memorial urging increase in federal funding

DATE: April 7, 2009

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Wilson	HR	Fav/CS
2.				
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | ☒ | Statement of Substantial Changes |
| B. AMENDMENTS..... | ☐ | Technical amendments were recommended |
| | ☐ | Amendments were recommended |
| | ☐ | Significant amendments were recommended |

I. Summary:

This memorial urges the United States Congress to increase federal funding and encourage states to increase funding for home and community-based services for elders and individuals with disabilities and to implement on the federal and state level more unified training and supervision standards for certified nurse assistants and home health aides.

This committee substitute does not amend, create, or repeal any provisions of the Florida Statutes.

II. Present Situation:

Florida faces a growing demand for community-based long-term care alternatives to nursing homes as its elderly population increases. In 2004, Florida led the nation with 16.8 percent of its population (2.9 million individuals) age 65 and older. By 2010, Florida's elder population is

expected to reach nearly 3.5 million. The largest increase will be in the category of seniors age 85 and older.¹

Home Health Services

Home health services are health and medical services and medical supplies furnished to an individual in the individual's home or place of residence. The services include:

- Nursing care;
- Physical, occupational, respiratory, or speech therapy;
- Home health aide services, including:
 - Personal care services involving assistance with daily living such as bathing, dressing, eating, personal hygiene, and ambulation,
 - Simple procedures as an extension of therapy or nursing services, and
 - Assisting the patient with exercises;
- Dietetics and nutrition practice and nutrition counseling; and
- Medical supplies, restricted to drugs and biologicals prescribed by a physician.²

Home health services may be required by persons of any age and generally are accessed by persons on a short-term basis while recovering from illness or injury and elderly or disabled persons. Home care services generally are available 24 hours a day, 7 days a week. Depending on the patient's needs, these services may be provided by an individual or a team on a part-time, intermittent, hourly, or shift basis. Aside from services provided by family members or friends, home health services are obtained from home health agencies, nurse registries, properly licensed persons acting independently, and home medical equipment providers.

Home health agencies and nurse registries are licensed and regulated under part II of ch. 408, F.S., and part III of ch. 400, F.S., by the Agency for Health Care Administration (AHCA). A home health agency provides home health services as well as staffing services to a health care facility or other business entity on a temporary basis. Nurse registries secure health-care related contracts for registered nurses, licensed practical nurses, certified nursing assistants (CNAs), home health aides, companions, or homemakers, who are compensated by fees as independent contractors.

Skilled health care services must be performed by an appropriately licensed health care professional. A CNA or home health aide may not provide medical or other health care services that require specialized training and that may be performed only by licensed health care professionals. A CNA or home health aide who is employed by or under contract with a home health agency or is referred through a nurse registry, and who has received training with respect to assisting with self-administration of medication may assist a patient with self-administration of medication.

¹ The Nursing Home Diversion Program Has Successfully Delayed Nursing Home Entry (Report No. 06-45, May 2006) prepared by The Office of Program Policy Analysis and Government Accountability. Found at: <<http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0645rpt.pdf>> (Last visited on April 3, 2009).

² s. 400.462(13), F.S.

Homemaker and companion services might also be performed in a person's home, however, these services are not considered home health services. A *homemaker* is a person who performs household chores that include housekeeping, meal planning and preparation, shopping assistance and routine household activities for an elderly, handicapped, or convalescent individual.³ A *companion/sitter* is a person who spends time with or cares for an elderly, handicapped, or convalescent individual and accompanies such individual on trips and outings and may prepare and serve meals to such individual.⁴ Homemakers and companions cannot provide hands-on personal care such as bathing, dressing, personal hygiene, ambulation, or the administering of medication to a client.⁵

Certified Nursing Assistants

CNAs are certified and regulated under part II of ch. 464, F.S. A CNA provides care and assists persons with tasks relating to the activities of daily living, such as those associated with personal care, maintaining mobility, nutrition and hydration, toileting and elimination, assistive devices, safety, and cleanliness. CNAs may be responsible for 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 nursing-assistant services, and other tasks that may be performed after training beyond that required for initial certification and upon validation of competence in that skill by a registered nurse. The Board of Nursing maintains a state registry of CNAs.⁶

In order to become a CNA, the person must complete the application process and have demonstrated a minimum competency to read and write, successfully passed a Level I or Level II background screening, and met one of the following requirements:

- Completed an approved training program and passed the nursing assistant competency examination,
- Passed the nursing assistant competency examination and, has a high school diploma or its equivalent or is at least 18 years of age,
- Is currently certified in another state, is listed on that state's CNA registry, and has not been found to have committed abuse, neglect, or exploitation in that state, or
- Completed the curriculum developed under the Enterprise Florida Jobs and Education Partnership Grant and passed the nursing assistant competency examination.

Unless the CNA is listed on another state's CNA registry, all CNAs must pass the nursing assistant competency examination which consists of a written portion and skills-demonstration portion. The approved training program is conducted by a public or private sector educational center or a licensed nursing home that has been awarded a Gold Seal (nursing home that has demonstrated excellence in long-term care over a sustained period) authorized by the Department of Education to implement the basic curriculum for nursing assistants.

³ s. 400.462(16), F.S.

⁴ s. 400.462(7), F.S.

⁵ *Ibid.*

⁶ s. 464.201(5), F.S.

A CNA must complete 12 hours of in-service training during each calendar year⁷ and additional training, such as training in HIV/AIDS, cardiopulmonary resuscitation, Alzheimer's disease and dementia-related disorders or assistance with the self-administration of medicine, as applicable to assigned duties. The certification must be renewed biennially.

Home Health Aides

There is no state licensing or certification of home health aides in Florida. To work as a home health aide for a home health agency that is not Medicare or Medicaid certified or through a nurse registry, a person must either pass the home health aide competency test that was developed by the AHCA or successfully complete at least 40 hours of training in the following subject areas:⁸

- Communication skills;
- Observation, reporting and documentation of patient or client status and the care or services provided;
- Reading and recording temperature, pulse and respiration;
- Basic infection control procedures;
- Basic elements of body functions that must be reported to the registered nurse supervisor;
- Maintenance of a clean and safe environment;
- Recognition of emergencies and applicable follow-up within the home health aide scope of performance;
- Physical, emotional, and developmental characteristics of the populations served by the agency, including the need for respect for the patient or client, his privacy, and his property;
- Appropriate and safe techniques in personal hygiene and grooming, including bed bath, sponge, tub, or shower bath; sink, tub, or bed shampoo; nail and skin care; oral hygiene; and care of dentures;
- Safe transfer techniques, including use of appropriate equipment, and ambulation;
- Normal range of motion and positioning;
- Nutrition and fluid intake;
- Cultural differences in families;
- Food preparation and household chores;
- Assistance with self-administered medication; and
- Other topics pertinent to home health aide services.

Training may be provided by a public vocational technical school, private school approved by the Department of Education, or home health agency. The training must be performed under the general supervision of a registered nurse.

To work for a home health agency that is a certified Medicare or Medicaid provider, a home health aide must successfully pass a competency based evaluation, or complete at least 75 hours of training, including supervised practical training, in similar subject areas to those listed above and pass a competency based evaluation.⁹ The competency evaluation must be performed by a registered nurse and training must be performed under the general supervision of a registered

⁷ s. 464.203, F.S.

⁸ Rule 59A-8.0095, Florida Administrative Code (F.A.C.).

⁹ 42 Code of Federal Regulations (C.F.R.) §§ 484.4 and 484.36.

nurse. Under the federal regulations, an individual employed by a home health agency exclusively to furnish personal care services, need only demonstrate competency in those areas related to personal care services.

A home health aide working for a home health agency that is a certified Medicare or Medicaid provider must complete 12 hours of in-service training during each calendar year. Additional training, such as training in HIV/AIDS, cardiopulmonary resuscitation, Alzheimer's disease and dementia-related disorders or assistance with the self-administration of medicine, as applicable to assigned duties, is required of all home health aides.

Supervision over Home Health Services

A home health agency providing skilled services is required to employ a director of nursing who is a Florida licensed registered nurse with at least 1 year of supervisory experience as a registered nurse.¹⁰ The director of nursing is responsible for overseeing the delivery of professional nursing and home health aide services. The director of nursing is also responsible for establishing and conducting an ongoing quality assurance program for services provided by the home health agency.¹¹ A home health agency that offers only home health aide and homemaker/companion services and which is not a certified Medicare or Medicaid provider, is not required to have a director of nursing.¹²

A certified Medicare or Medicaid home health agency must provide supervisory visits by a registered nurse to the patient's home while a home health aide is providing patient care at least every 60 days.¹³ However, if the home health agency is not a certified provider, a home health agency must only arrange for supervisory visits by a registered nurse to the home of a patient receiving home health aide services in accordance with the patient's direction, approval, and agreement to pay the charge for the visits.¹⁴

Payment Options

Home health services can be paid for directly by the patient and his or her family members, or through public and private sources. Third party payers include private insurance, Medicare, Medicaid, the Veteran's Administration, and additional funding sources available through the Area Agencies on Aging.

Medicare and Medicaid are the primary providers of public funds for home health services. A person over the age of 65 is eligible for the federal Medicare program. If the individual is homebound, under a physician's care, and requires medically necessary skilled nursing or therapy services, he or she may be eligible for services provided by a Medicare-certified home health agency. Medicare pays for home health services under a prospective payment system based on a 60-day episode of care. Multiple episodes of care may be authorized and additional payments, referred to as outlier payments, are available for patients with more significant home

¹⁰ s. 400.462(10), F.S.

¹¹ Rule 59A-8.0095(2), F.A.C., and s. 400.497(5), F.S.

¹² s. 400.476(2)(c), F.S., and Rule 59A-8.0095(5), F.A.C.

¹³ 42 C.F.R. §484.36.

¹⁴ s. 400.487(3), F.S.

health needs. In 2006, Medicare paid approximately \$1.53 billion for home health services in Florida.¹⁵

Medicaid is a joint federal-state medical assistance program, primarily for low-income individuals. Medicaid pays for medically necessary home health services that are provided to Medicaid recipients by qualified health care professionals who are directly employed by or under contract with a home health agency that is enrolled in the Medicaid home health program. Medicaid reimburses home health agencies a fixed amount per visit. Home health visits are limited to four visits per day. Any Medicaid recipient requiring more than 60 visits in a lifetime must have the additional visits authorized in a precertification process through the AHCA. In 2006, Medicaid paid approximately \$73.3 million for home health services in Florida.¹⁶

The state operates several Medicaid home and community-based programs that help frail elders remain in their own homes or other less restrictive settings for as long as possible, thereby avoiding or delaying unnecessary and costly nursing home placement and enhancing quality of life. Federal Medicaid waiver program policies are overseen by the AHCA and administered by the Department of Elderly Affairs. In fiscal year 2008-09, the Legislature appropriated approximately \$443 million in state and federal funds for Home and Community Based services to fund these waivers.¹⁷ These waiver programs differ in the breadth of services covered, criteria for enrollment, and forms of reimbursement. The Florida Legislature also appropriated approximately \$159.7 million non-Medicaid dollars for other Home and Community Based services, which includes approximately \$90 million from the federal Older Americans Act. Older Americans Act services include congregate meals, home delivered meals, family caregiver support services, elder abuse prevention, and others.¹⁸

III. Effect of Proposed Changes:

This memorial urges the United States Congress to increase federal funding and encourage states to increase funding for home and community-based services for elders and individuals with disabilities.

The memorial also urges the Congress of the United States to implement on the federal and state level more unified training and supervision standards for certified nurse assistants and home health aides.

The memorial is to be sent to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and to each member of the Florida Delegation to the United States Congress.

¹⁵ Presentation by the AHCA to the Florida House of Representatives Committee on Healthy Seniors on February 19, 2008.

¹⁶ *Ibid.*

¹⁷ House of Representatives Staff Analysis for HM 131 (2009). These waivers include Adult Day Health Care and Channeling waivers, Aged and Disabled Adult, Alzheimer's Disease, Assisted Living for the Elderly, and Nursing Home Diversions waivers.

¹⁸ *Ibid.*

Other Potential Implications:

In a recent report by the United States Government Accountability Office (GAO), Florida was identified as one of the states experiencing the highest growth in Medicare home health spending and utilization, specifically in home health services.¹⁹ Medicare spending on home health totaled \$12.9 billion in 2006, up 44 percent from 2002. The report concluded that gaps in the Centers for Medicare and Medicaid Service's (CMS) administration of the \$12.9 billion Medicare home health benefit have left the agency vulnerable to improper payments, including payments for claims resulting from fraudulent and abusive practices. While we [GAO] have reported for more than two decades about the lack of controls over the Medicare home health benefit, CMS's administration of the benefit continues to be unable to prevent home health agencies from billing for services that are not medically necessary or that are not rendered. Likewise, the Review of Regulatory Requirements for Home Health Agencies (Interim Project Report 2008-135)²⁰ reported on Medicaid fraud and abuse by home health agencies, primarily in south Florida. In 2008, the Legislature passed CS/HB 7083, substantially increasing the regulatory provisions governing home health agencies, nurse registries, and home medical equipment providers to reduce Medicaid fraud and improve the quality of services delivered to Florida residents.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

¹⁹ Medicare, Improvements Needed to Address Improper Payments in Home Health, U.S. Government Accountability Office. Found at: <<http://www.gao.gov/new.items/d09185.pdf>> (Last visited April 3, 2009).

²⁰ Prepared by The Senate Health Regulation Committee, November 2007. Found at: <http://www.flsenate.gov/data/Publications/2008/Senate/reports/interim_reports/pdf/2008-135hr.pdf> (Last visited on April 3, 2009).

B. Private Sector Impact:

None.

C. Government Sector Impact:

This Senate Memorial urges the Federal Government to increase federal financial assistance and to encourage states to increase funding for home and community-based services.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Regulation Committee on April 6, 2009:

This committee substitute expands the request for an increase in federal financial assistance to individuals with disabilities and further expands the request to home and community-based services rather than home health services. It also urges the U.S. Congress to implement unified supervision standards for CNAs and home health aides.

B. Amendments:

None.