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 Appropriations Subcommittee on Health and Human Services

BILL:	PCS/CS/SB 1676 (281464)
INTRODUCER:	Appropriations Subcommittee on Health and Human Services; Health Policy Committee; and Senator Albritton
SUBJECT:	Direct Care Workers
DATE:	February 20, 2020 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	**Fav/CS**
2.	McKnight	Kidd	AHS	**Recommend: Fav/CS**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1676 expands the scope of practice and defines relevant terms for registered nurses (RNs), certified nursing assistants (CNAs), and home health aides (HHAs). The bill:

- Authorizes nursing home facilities to use paid feeding assistants if the assistant has completed a 12 hour program developed by the Agency for Health Care Administration (AHCA). The bill clarifies that paid feeding assistants do not count toward minimum staffing standards.
- Authorizes an RN to delegate any task, including the administration of medications, except controlled substances, to a CNA or HHA for a patient of a home health agency, if the RN determines that the CNA or the HHA is competent to perform the task, the task is delegable under federal law, and certain other requirements are met.
- Requires the AHCA, in consultation with the Board of Nursing, to establish standards and procedures by rule that a CNA and HHA must follow when administering medication to a patient of a home health agency.
- Establishes disciplinary actions for RNs that knowingly delegate responsibilities to a person that is not qualified by training, experience, certification, or licensure to perform them.

- Requires a Direct Care Workforce Survey (survey), created by the AHCA, to be completed and submitted at license renewal (every two years) for over 6,000 providers[1], including: nursing homes, assisted living facilities, home health agencies, and homemaker and companion services providers.
- Requires the ACHA to analyze the results of the survey and publish the information monthly on its website.
- Creates the Excellence in Home Health Program (program) within the AHCA for the purpose of awarding designations to home health agencies and nurse registries that meet specified criteria. The AHCA is required to adopt rules establishing criteria for the program and annually evaluate home health agencies or nurse registries that apply for program designation.
- Establishes a physician student loan repayment program within the Department of Health (DOH).
- Establishes the Patient Access to Primary Care Pilot Program within the DOH to provide primary health care services in "primary care health professional shortage areas" by allowing Advanced Practice Registered Nurses (APRN) who meet certain criteria to engage in the autonomous practice of advanced or specialized nursing without the supervision of a physician.

The bill appropriates three full-time equivalent (FTE) positions with an associated salary rate of 125,887, three other personal services (OPS) positions, and $400,764 in recurring funds and $408,731 in nonrecurring funds from the Health Care Trust Fund, in Fiscal Year 2020-2021 to the AHCA to manage stakeholder input and develop rules related to expansion of HHA and CNA duties, and create and implement the survey and program.

The bill's requirements to establish a physician student loan repayment program and the Patient Access to Primary Care Pilot Program has a significant negative fiscal impact on the Department of Health. See Section V.

The bill takes effect upon becoming a law, except as otherwise expressly provided in the bill.

II. Present Situation:

The Agency for Health Care Administration

The Agency for Health Care Administration (AHCA) is created in s. 20.42, F.S. The AHCA is the chief health policy and planning entity for the state and its Division of Health Quality Assurance (HQA) is responsible for, among other things, health facility licensure, inspection, and regulatory enforcement. The HQA is funded with more than $49 million in state and federal funds. It licenses or certifies and regulates 40 different types of health care providers, including hospitals, nursing homes, assisted living facilities (ALFs), and home health agencies. In total, the AHCA licenses, certifies, regulates, or provides exemptions for more than 48,000 providers. [2]

[1] Agency for Health Care Administration, *CS/SB 1676 Bill Analysis* (Feb. 14, 2020) (on file with the Senate Appropriations Subcommittee on Health and Human Services).
[2] Agency for Health Care Administration, *Division of Health Quality Assurance* http://ahca.myflorida.com/MCHQ/index.shtml (last visited Jan. 26, 2020).

Florida Nursing Homes

Nursing homes provide 24-hour-per-day nursing care, case management, health monitoring, personal care, nutritional meals and special diets, physical, occupational, and speech therapy, social activities, and respite care for those who are ill or physically infirm.[3] Nursing care is provided by licensed practical nurses (LPNs) and registered nurses (RNs). Personal care is provided by certified nursing assistants (CNAs) and can include help with bathing, dressing, eating, walking, and physical transfer (like moving from a bed to a chair).[4]

A nursing home may also provide services like dietary consultation, laboratory, X-ray, pharmacy services, laundry, and pet therapy visits. Some facilities may provide special services like dialysis, tracheotomy, or ventilator care as well as Alzheimer's or hospice care.

Pursuant to s. 400.141, F.S., every nursing home in Florida must comply with all administrative and care standards set out in the AHCA rules and must:

- Be under the administrative direction and charge of a licensed administrator.[5]
- Appoint a physician medical director.[6]
- Have available the regular, consultative, and emergency services of one or more physicians.
- Provide residents with the use of a community pharmacy of their choice.
- Provide access for residents to dental and other health-related services, recreational services, rehabilitative services, and social work services.
- Be permitted and encouraged by the AHCA to provide other needed services, including, but not limited to, respite, therapeutic spa, and adult day services to nonresidents of the facility.
- Maintain the facility premises and equipment and conduct its operations in a safe and sanitary manner.
- Provide a wholesome and nourishing diet, if the licensee furnishes food services, sufficient to meet generally accepted standards of proper nutrition for its residents and provide such therapeutic diets as may be prescribed by physicians if the nursing home furnishes food services.
- Keep records of:
  - Resident admissions and discharges;
  - Medical and general health status, including:
    - Medical records;
    - Personal and social history;
    - Identity and address of next of kin or other persons who may have responsibility for the affairs of the resident;
    - Individual resident care plans, including, but not limited to:
      - Prescribed services;
      - Service frequency and duration; and
      - Service goals.

[3] Agency for Health Care Administration, Division of Health Quality Assurance, Long Term Care Service Units, *Nursing Homes, available at* https://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Long_Term_Care/Index_LTCU.shtml (last visited Jan. 26, 2020).
[4] Agency for Health Care Administration, FloridaHealthFinder.gov; Consumer Guides, *Nursing Home Care In Florida, available at* https://www.floridahealthfinder.gov/reports-guides/NursingHomesFL.aspx# (Last visited Jan. 24, 2020).
[5] 59A-4.103(4)(b), F.A.C.
[6] 59A-4.1075, F.A.C.

- Keep fiscal records of its operations and conditions.
- Furnish copies of personnel records for employees affiliated with such facility, to any other facility licensed by this state requesting this information.
- Publicly display a poster provided by the AHCA containing information for the:
  - State's abuse hotline;
  - State Long-Term Care Ombudsman;
  - AHCA consumer hotline;
  - Advocacy Center for Persons with Disablities;
  - Florida Statewide Advocacy Council; and
  - Medicaid Fraud Control Unit.
- Comply with state minimum-staffing requirements, as set by AHCA rule, including the number and qualifications of all personnel having responsibility for resident care, such as:
  - Management;
  - Medical;
  - Nursing;
  - Other professional personnel;
  - Nursing assistants;
  - Orderlies; and
  - Other support personnel.
- Ensure that any program for dining and use of a hospitality attendant is developed and implemented under the supervision of the facility director of nursing.
- Maintain general and professional liability insurance coverage or proof of financial responsibility as required by statute.
- Require all CNAs to chart in a resident's medical records, by the end of his or her shift, all services provided, including:
  - Assistance with activities of daily living,
  - Eating,
  - Drinking, and
  - All offers to a resident for nutrition and hydration for those residents whose plan of care or assessment indicates a risk for malnutrition or dehydration.
- Provide to all consenting residents immunizations against influenza before November 30 each year.
- Assess each resident within five business days after admission for eligibility for pneumococcal vaccination or revaccination.
- Annually encourage all employees to receive immunizations against influenza viruses.[7]

Nursing Home Staffing Standards

Section 400.23(3), F.S., requires the AHCA to adopt rules providing minimum staffing requirements for nursing home facilities. The requirements must include:

- A minimum weekly average of 3.6 hours of direct care per resident per day provided by a combination of CNAs and licensed nursing staff. A week is defined as Sunday through Saturday.

[7] Section 400.141, F.S.

- A minimum of 2.5 hours of direct care per resident per day provided by CNAs. A facility may not staff at a ratio of less than one CNA per 20 residents.
- A minimum of 1.0 hour of direct care per resident per day provided by licensed nursing staff. A facility may not staff at a ratio of less than one licensed nurse per 40 residents.
- Nursing assistants employed under s. 400.211(2), F.S., may be included in computing the staffing ratio for CNAs if their job responsibilities include only nursing-assistant-related duties.
- Each nursing home facility must document compliance with staffing standards and post daily the names of staff on duty for the benefit of facility residents and the public.
- Licensed nurses may be used to meet staffing requirements for CNAs if the licensed nurses are performing the duties of a CNA and the facility otherwise meets minimum staffing requirements for licensed nurses.
- Non-nursing staff providing eating assistance to residents do not count toward compliance with minimum staffing standards.

Section 400.23(3), F.S., also provides that LPNs who are providing nursing services in nursing home facilities may supervise the activities of other LPNs, CNAs, and other unlicensed personnel providing services in such facilities in accordance with rules adopted by the Board of Nursing (BON).

Nurse Practice Act

Florida's Nurse Practice Act is found in Part I of ch. 464, F.S. The purpose of the Nurse Practice Act is to ensure that every nurse practicing in this state meets minimum requirements for safe practice. It is the legislative intent that nurses who fall below minimum competency or who otherwise present a danger to the public are prohibited from practicing in this state.[8]

Registered Nurses

A registered nurse is any person licensed in this state or holding an active multistate license under the Nurse Practice Act to practice professional nursing. The practice of professional nursing means performing acts requiring substantial specialized knowledge, judgment, and nursing skill based on applied principles of psychological, biological, physical, and social sciences and includes, but is not limited to:

- The observation, assessment, nursing diagnosis, planning, intervention, and evaluation of care; health teaching and counseling of the ill, injured, or infirm; and the promotion of wellness, maintenance of health, and prevention of illness of others.
- The administration of medications and treatments as prescribed or authorized by a duly licensed practitioner authorized by the laws of this state to prescribe such medications and treatments.
- The supervision and teaching of other personnel in the theory and performance of any of the acts described in this subsection.

[8] Section 464.002, F.S.

A professional nurse is responsible and accountable for making decisions that are based upon the individual's educational preparation and experience in nursing.[9]

Licensed Practical Nurses

A licensed practical nurse is any person licensed in this state or holding an active multistate license under the Nurse Practice Act to practice practical nursing.[10] The practice of practical nursing means performing selected acts, including the administration of treatments and medications, in the care of the ill, injured, or infirm; the promotion of wellness, maintenance of health, and prevention of illness of others under the direction of an RN, a licensed physician, a licensed osteopathic physician, a licensed podiatric physician, or a licensed dentist; and the teaching of general principles of health and wellness to the public and to students other than nursing students. A practical nurse is responsible and accountable for making decisions based on the individual's educational preparation and experience in nursing.[11]

Certified Nursing Assistants

Florida's statutory governance for CNAs is found in part II of ch. 464, F.S. Section 464.201(5), F.S., defines the practice of a CNA as providing care and assisting persons with tasks relating to the activities of daily living. Activities of daily living include tasks 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, patients' rights, documentation of nursing-assistant services, and other tasks that a CNA may perform after training.[12]

Direct Care Staff

Federal law defines "direct care staff" as those individuals who, through interpersonal contact with nursing home residents or resident care management, provide care and services to allow residents to attain or maintain the highest practicable physical, mental, and psychosocial well-being. Direct care staff does not include individuals whose primary duty is maintaining the physical environment of the long-term care facility (for example, housekeeping).[13]

Direct care staff are the primary providers of paid, hands-on care for more than 13 million elderly and disabled Americans. They assist individuals with a broad range of support, including preparing meals, helping with medications, bathing, dressing, getting about (mobility), and getting to planned activities on a daily basis.[14]

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[9] Section 464.003, F.S.
[10] Section 464.003(14), F.S.
[11] Section 464.003(17), F.S.
[12] Section 464.201, F.S.
[13] 42 CFR s. 483.70(q)(1)
[14] Understanding Direct Care Workers: a Snapshot of Two of America's Most Important Jobs, *Certified Nursing Assistants and Home Health Aides*, Khatutsky, et al., (March 2011), *available at* https://aspe.hhs.gov/basic-report/understanding-direct-care-workers-snapshot-two-americas-most-important-jobs-certified-nursing-assistants-and-home-health-aides#intro (last visited on Jan. 27, 2020).

Direct care staff fall into three main categories tracked by the U.S. Bureau of Labor Statistics: Nursing Assistants (usually known as CNAs), home health aides (HHAs), and Personal Care Aides:

- CNAs generally work in nursing homes, although some work in ALFs, other community-based settings, or hospitals. They assist residents with activities of daily living (ADLs) such as eating, dressing, bathing, and toileting. They also perform clinical tasks such as range-of motion exercises and blood pressure readings.
- HHAs provide essentially the same care and services as nursing assistants, but they assist people in their homes or in community settings under the supervision of a nurse or therapist. They may also perform light housekeeping tasks such as preparing food or changing linens.
- Personal Care Aides work in either private or group homes. They have many titles, including personal care attendant, home care worker, homemaker, and direct support professional. (The latter work with people with intellectual and developmental disabilities). In addition to providing assistance with ADLs, these aides often help with housekeeping chores, meal preparation, and medication management. They also help individuals go to work and remain engaged in their communities. A growing number of these workers are employed and supervised directly by consumers.[15]

The federal government requires training only for nursing assistants and HHAs who work in Medicare-certified and Medicaid-certified nursing homes and home health agencies. Such training includes training on residents' rights; abuse, neglect, and exploitation; quality assurance; infection control; and compliance and ethics; and specifies that direct care staff must be trained in effective communications.[16]

The Gold Seal Program

The Gold Seal Program (program) is a legislatively created award and recognition program, developed and implemented by the Governor's Panel on Excellence in Long-Term Care (Panel) for nursing facilities that demonstrate excellence in long-term care over a sustained period.[17] Facilities must meet the Panel's criteria for measuring quality of care and the following additional criteria to receive a program designation:

- No class I or class II deficiencies within the 30 months preceding application for the program.
- Evidence of financial soundness and stability according to standards adopted by the AHCA in rule.

[15] See *Who are Direct Care Workers?* available at https://phinational.org/wp-content/uploads/legacy/clearinghouse/NCDCW%20Fact%20Sheet-1.pdf (last visited Jan. 27, 2020)
[16] 42 CFR s. 483.95
[17] Section 400.235, F.S. The panel is composed of three persons appointed by the Governor, to include a consumer advocate for senior citizens and two persons with expertise in the fields of quality management, service delivery excellence, or public sector accountability; three persons appointed by the Secretary of the Department of Elder Affairs, to include an active member of a nursing facility family and resident care council and a member of the University Consortium on Aging; a representative of the State Long-Term Care Ombudsman Program; one person appointed by the Florida Life Care Residents Association; one person appointed by the State Surgeon General; two persons appointed by the Secretary of Health Care Administration; one person appointed by the Florida Association of Homes for the Aging; and one person appointed by the Florida Health Care Association. Vacancies on the panel shall be filled in the same manner as the original appointments.

- Participate in a consumer satisfaction process and demonstrate the facility's efforts to act on the information gathered.
- Evidence of the involvement of families and members of the community in the facility on a regular basis.
- Have a stable workforce as evidenced by a relatively low turnover rate among CNAs and RNs within the 30 months preceding application for the program.
- Evidence that any complaints submitted to the State Long-Term Care Ombudsman Program within the 30 months preceding application for the program did not result in a licensure citation.
- Provide targeted in-service training to meet training needs identified by internal or external quality assurance efforts.

Home Health Agencies and Home Health Aides

Home health agencies deliver health and medical services and medical supplies through visits to private homes, ALFs, and adult family care homes. Some of the services include nursing care, physical therapy, occupational therapy, respiratory therapy, speech therapy, HHA services, and nutritional guidance. Medical supplies are restricted to drugs and biologicals prescribed by a physician. Along with services in the home, a home health agency can also provide staffing services in nursing homes and hospitals. Home health agencies differ in the quality of care and services they provide to patients. Home health agencies are required to be licensed and inspected by the state of Florida.[18]

The Home Health Consumer Assessment of Healthcare Providers & Systems (HHCAHPS) star ratings provide a snapshot of the four measures of patient experience of care. In addition, the HHCAHPS summary star rating combines all four HHCAHPS star ratings into a single, comprehensive metric. If a home health agency does not have an HHCAHPS summary star rating, it means that the home health agency did not have enough surveys completed to have star ratings calculated in a meaningful way. In addition to the patient survey results, the HHCAHPS star ratings summarize patient experience, which is one aspect of home health agency quality.[19]

Section 400.462(15), F.S., defines a "home health aide" as a person who is trained or qualified, as provided by the AHCA rule, to:

- Provide hands-on personal care;
- Perform simple procedures as an extension of therapy or nursing services;
- Assist in ambulation or exercises; or
- Assist in administering medications for which the person has received training established by the AHCA.

[18] Agency for Health Care Administration, FloridaHealthFinder.gov, Alternative to Nursing Homes, *Home Health Agencies, available at* https://www.floridahealthfinder.gov/reports-guides/NursingHomesFL.aspx#NHStay (last visited Jan. 26, 2020).
[19] U.S. Centers for Medicare & Medicaid Services, Medicare.gov, Home Health Compare, *Patient Survey Star Ratings available at https://www*.medicare.gov/homehealthcompare/About/Patient-Survey-Star-Ratings.html (last visited Jan. 26, 2020).

Assistance with Administering Medications

Rule 59A-18.0081, F.A.C., provides that a CNA or HHA referred by a nurse registry may assist with self-administration of medication if they have received a minimum of two hours of training covering the following content:

- State law and rule requirements with respect to the assistance with self-administration of medications in the home;
- Procedures for assisting the resident with self-administration of medication;
- Common types of medication;
- Recognition of side effects and adverse reactions; and
- Procedures to follow when patients appear to be experiencing side effects and adverse reactions.

The training must include verification that, for prescription medications, each CNA and HHA can read the prescription label and any instructions for the prescription. The rule provides that individuals who cannot read are not allowed to assist with prescription medications.

Healthcare Professional Shortage

The U.S. has a current health care provider shortage. As of December 31, 2019, the U.S. Department of Health and Human Services has designated 7,655 Primary Medical Health Professional Shortage Areas (HPSAs) (requiring 14,392 additional primary care physicians to eliminate the shortage), 6,820 Dental HPSAs (requiring 10,258 additional dentists to eliminate the shortage), and 6,117 Mental Health HPSAs (requiring 6,335 additional psychiatrists to eliminate the shortage).[20]

In Florida, there are 754 HPSAs just for primary care, dental care, and mental health. It would take 1,636 primary care, 1,270 dental care, and 407 mental health practitioners to eliminate these shortage areas.[21]

Florida Advanced Practice Registered Nurses

In Florida, an advanced practice registered nurse (APRN)[22] can be licensed as one of the following:[23]

- Certified nurse practitioner (CNP);
- Certified nurse midwife (CNM);
- Clinical nurse specialist (CNS); or
- Certified registered nurse anesthetist (CRNA).

[20] U.S. Department of Health and Human Services, Health Resources and Services Administration, *Designated Health Professional Shortage Area Statistics, Fourth Quarter of Fiscal Year 2019 Designated HPSA Quarterly Summary*, (Sept. 30, 2019), available at https://data.hrsa.gov/topics/health-workforce/shortage-areas (last visited Feb. 18, 2020). Click on "Designated HPSA Quarterly Summary" to access the report.
[21] *Id.*
[22] Section 464.003(3), F.S.
[23] Section 464.012(4), F.S.

APRNs are regulated under part I of ch. 464, F.S., the Nurse Practice Act. The Board of Nursing (Board), provides by rule the eligibility criteria for applicants to be licensed as APRNs and the applicable regulatory standards for APRN nursing practices.[24] Additionally, the Board is responsible for administratively disciplining an APRN who commits prohibited acts. [25]

In Florida "advanced or specialized nursing practice" includes, in addition to practices of professional nursing that registered nurses are authorized to perform, advanced-level nursing acts approved by the Board as appropriate for APRNs to perform by virtue of their post-basic specialized education, training, and experience.[26] Advanced or specialized nursing acts may only be performed if authorized under a supervising physician's protocol.[27] In addition to advanced or specialized nursing practices, APRNs are authorized to practice certain medical acts, as opposed to nursing acts, as authorized within the framework of an established supervisory physician's protocol.[28]

To be eligible to be licensed as an APRN, an applicant must be licensed as a registered nurse, have a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills, and submit proof that the applicant holds a current national advanced practice certification from a board-approved nursing specialty board.[29] A nursing specialty board must:[30]

- Attest to the competency of nurses in a clinical specialty area;
- Require a written examination prior to certification;
- Require nurses to complete a formal program prior to eligibility for examination;
- Maintain program accreditation or review mechanism that adheres to criteria which are substantially equivalent to requirements in Florida; and
- Identify standards or scope of practice statements appropriate for each nursing specialty.

Pursuant to s. 456.048, F.S., all APRNs must carry malpractice insurance or demonstrate proof of financial responsibility. Any applicant for licensure must submit proof of coverage or financial responsibility within sixty days of licensure and prior to each biennial licensure renewal.[31] The APRN must have professional liability coverage of at least $100,000 per claim with a minimum annual aggregate of at least $300,000 or an unexpired irrevocable letter of credit in the amount of at least $100,000 per claim with a minimum aggregate availability of at least $300,000 and which is payable to the APRN as beneficiary.[32]

[24] *See* s. 464.004, F.S., and Rule 64B9-3, F.A.C.
[25] *See* ss. 464.018 and 456.072, F.S.
[26] Section 464.003(2), F.S.
[27] Section 464.012(3)-(4), F.S.
[28] *Id.*
[29] Section 464.012(1), F.S., and Rule 64B9-4.002, F.A.C.
[30] Rule 64B9-4.002(3), F.A.C.
[31] Rule 64B9-4.002, F.A.C. The DOH Form DH-MQA 1186, 01/09, "Financial Responsibility," is incorporated into the rule by reference. Certain licensees, such as those who practice exclusively for federal or state governments, only practice in conjunction with a teaching position, or can demonstrate no malpractice exposure in this state are exempt from the financial responsibility requirements.
[32] *Id.*

APRN Autonomy in Florida

Florida is a supervisory state. APRNs may perform only those nursing and medical practices delineated in a written physician protocol.[33] A physician providing primary health care services may supervise APRNs in up to four medical offices, in addition to the physician's primary practice location.

APRN Scope of Practice in Florida

Within the framework of the written protocol with a supervising physician, an APRN may:[34]

- Prescribe, dispense, administer, or order any drug;
- Initiate appropriate therapies for certain conditions;
- Perform additional functions as may be determined by Board rule;
- Order diagnostic tests and physical and occupational therapy; and
- Perform certain acts within his or her specialty.

Currently, APRNs in Florida are not authorized to sign certain documents such as a certificate to initiate the involuntary examination of a person under the Baker Act, the release of persons in receiving facilities under the Baker Act, or death certificates.[35]

III. Effect of Proposed Changes:

Sections 1 and 2 amend ss. 400.141 and 400.23, F.S., to provide that a licensed nursing home facility may use paid feeding assistants as defined in 42 C.F.R. s. 488.301, 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 AHCA. 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. The program curriculum must include training in all of the following content areas:

- Feeding techniques.
- Assistance with feeding and hydration.
- Communication and interpersonal skills.
- Appropriate responses to resident behavior.
- Safety and emergency procedures, including the first aid procedure used to treat upper airway obstructions.
- Infection control.
- Residents' rights.
- Recognizing changes in residents which are inconsistent with their normal behavior, and the importance of reporting those changes to the supervisory nurse.

The AHCA is authorized to adopt rules to implement these provisions.

Section 3 amends s. 400.461, F.S., to make conforming changes.

[33] Section 464.012(3), F.S.
[34] Section 464.012(3)-(4), F.S.
[35] *See* ss. 382.008, and 394.463, F.S.

Sections 4 through 9 of the bill amend or create statutes within part III of ch. 400, F.S., relating to home health agencies.

Section 4 amends s. 400.462, F.S., to redefine "home health aide" to provide that, in addition to the definition's other provisions, a home health aide (HHA) may include a person who performs tasks delegated to him or her pursuant to ch. 464, F.S.

Section 5 amends s. 400.464, F.S., to provide that if a home health agency authorizes an RN to delegate tasks, including medication administration, to a CNA pursuant to ch. 464, F.S., or to a HHA pursuant to s. 400.490, F.S., the home health agency must ensure that such delegation meets the requirements of chs. 400 and 464, F.S., and applicable rules adopted under those chapters.

Section 6 amends s. 400.488, F.S., relating to provisions under which an unlicensed person may assist a patient with the self-administration of medication under certain circumstances, to provide that such medications include intermittent positive pressure breathing treatments and nebulizer treatments. The bill also provides that assistance with self-administered medication includes:

- In the presence of the patient, confirming that the medication is intended for that patient and orally advising the patient of the medication's name and purpose.
- When applying topical medications, the provision of routine preventative skin care and basic wound care.
- 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.

Section 7 creates s. 400.489, F.S., to provide that a HHA may administer oral, transdermal, ophthalmic, otic, rectal, inhaled, enteral, or topical prescription medications if the HHA:

- Has been delegated such task by an RN licensed under ch. 464, F.S.
- Has satisfactorily completed an initial six-hour training course approved by the AHCA.
- Has been found competent to administer medication to a patient in a safe and sanitary manner.

To remain qualified to administer medications as provided above, the bill requires a HHA to annually and satisfactorily complete a two-hour inservice training course in medication administration and medication error prevention approved by the AHCA. This inservice training course must be in addition to the annual inservice training hours required by the AHCA rules under current law.

The bill requires the AHCA, in consultation with the Board of Nursing (BON), to establish by rule standards and procedures that a HHA must follow when administering medication to a patient.

The training, determination of competency, and initial and annual validations required under this new section of statute must be conducted by an RN or a physician licensed under chs. 458 or 459, F.S.

Section 8 creates s. 400.490, F.S., to authorize a CNA or HHA to perform any task delegated by an RN as authorized in this part and in ch. 464, F.S., including, but not limited to, medication authorization.

Section 9 creates s. 400.52, F.S., to establish the Excellence in Home Health Program (program) for the purpose of awarding designations to home health agencies or nurse registries that meet specified criteria.

The AHCA is directed to adopt rules establishing criteria for the program which must include, at a minimum, meeting standards relating to:

- Patient satisfaction.
- Patients requiring emergency care for wound infections.
- Patients admitted or readmitted to an acute care hospital.
- Patient improvement in the activities of daily living.
- Employee satisfaction.
- Quality of employee training.
- Employee retention rates.

The AHCA is directed to annually evaluate home health agencies and nurse registries seeking program designation. To receive program designation, a home health agency or nurse registry must:

- Apply on a form and in the manner designated by the AHCA rule;
- Be actively licensed and have been operating for at least 24 months before applying for program designation; and
- 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 program designation.

A designation awarded under the program is not transferrable to another licensee, unless the existing home health agency or nurse registry is being relicensed in the name of an entity related to the current license-holder by common control or ownership, and there will be no change in the management, operation, or programs of the home health agency or nurse registry as a result of the relicensure.

Program designation expires on the same date as the home health agency's or nurse registry's license. A home health agency or nurse registry must reapply and be approved for program designation to continue using the designation in advertising and marketing. A home health agency or nurse registry may not use program designation in any advertising or marketing if the home health agency or nurse registry:

- Has not been awarded the designation;
- Fails to renew the designation upon expiration of the awarded designation;
- Has undergone a change in ownership that does not qualify for a transfer of the designation as described above; or

- Has been notified that it no longer meets the criteria for the award upon reapplication after expiration of the awarded designation.

The bill clarifies that an application for an award designation is not an application for licensure and that an award designation or denial by the AHCA does not constitute final agency action subject to ch. 120, F.S.

Section 10 creates s. 408.822, F.S., to establish a Direct Care Workforce Survey (survey). The bill defines the term "direct care worker" for purposes of the survey to mean a:

- CNA;
- HHA;
- Personal care assistant;
- Companion services or homemaker services provider;
- Paid feeding assistant trained under s. 400.141(1)(v), F.S.; or
- Provider of personal care as defined in s. 400.462(24), F.S., to individuals who are elderly, developmentally disabled, or chronically ill.

Under the bill, beginning January 1, 2021, nursing home facilities, assisted living facilities, home health agencies, companion services providers, and homemaker services providers applying for licensure renewal (every two years), must furnish the following information to the AHCA before the license will be renewed:

- The number of registered nurses and the number of direct care workers by category employed.
- The turnover and vacancy rates of registered nurses and direct care workers and contributing factors to these rates.
- The average employee wage for registered nurses and each category of direct care worker.
- The employment benefits provided for registered nurses and direct care workers and the average cost of such benefits to the employer and the employee.
- The type and availability of training for registered nurses and direct care workers.

An administrator or designee must attest that the information provided in the survey is true and accurate to the best of his or her knowledge. In addition, the AHCA is required to analyze the results of the surveys, and publish the results on its website, as well as update the information monthly.

Sections 11 and 12 of the bill amend or create statutes within part I of ch. 464, F.S., relating to the Nurse Practice Act.

Section 11 creates s. 464.0156, F.S., to authorize RNs to delegate a task to a CNA or a HHA if the registered nurse determines that the CNA or HHA is competent to perform the task, the task is delegable under federal law, and the task meets all of the following criteria:

- Is within the nurse's scope of practice.
- Frequently recurs in the routine care of a patient or group of patients.
- Is performed according to an established sequence of steps.
- Involves little or no modification from one patient to another.
- May be performed with a predictable outcome.

- Does not inherently involve ongoing assessment, interpretation, or clinical judgment.
- Does not endanger a patient's life or well-being.

If a CNA or HHA satisfies the qualifications and training requirements of the bill's newly created ss. 464.2035 or 400.489, F.S., an RN may also delegate to a CNA or HHA the administration of prescription medications to a patient of a home health agency, except controlled substances,[36] by the following routes: oral, transdermal,[37] ophthalmic, otic, rectal, inhaled, enteral,[38] or topical.

The BON, in consultation with the AHCA, is required to adopt rules to implement this section of the bill.

Section 12 amends s. 464.018, F.S., to add an additional ground for nursing disciplinary action when a nurse knowingly delegates responsibilities to a person that is not qualified by training, experience, certification, or licensure to perform them.

Section 13 creates s. 464.2035, F.S., to provide that a CNA may administer oral, transdermal, ophthalmic, otic, rectal, inhaled, enteral, or topical prescription medication to a patient of a home health agency if the CNA has:

- Been delegated such task by an RN;
- Satisfactorily completed an initial six-hour training course approved by the BON; and
- Been found competent to administer medication to such a patient in a safe and sanitary manner.

The training, determination of competency, and initial and annual validations must be conducted by a licensed RN or a physician licensed under chapter 458 or 459, F.S.

To remain qualified to administer medications as provided above, a CNA must annually and satisfactorily complete two hours of inservice training in medication administration and medication error prevention approved by the BON, in consultation with the AHCA. The inservice training required under the bill is in addition to other annual inservice training hours required under current law.

The bill requires the BON, in consultation with the AHCA, to establish by rule standards and procedures that a CNA must follow when administering medication to a patient of a home health agency.

Section 14 creates s. 381.40185, F.S., to require the Department of Health (DOH) to establish a physician student loan repayment program for physicians licensed under ch. 458 and 459. The physician must provide primary care services in a public health program, an independent

[36] Controlled substance listed in Schedule II, Schedule III, or Schedule IV of s. 893.03 or 21 U.S.C. s. 812.
[37] *See* The Farlex Medical Dictionary, Transdermal, *available at* https://medical-dictionary.thefreedictionary.com/Transdermal (last visited Jan. 27, 2020). Transdermal means entering through the dermis, or skin, as in administration of a drug applied to the skin in ointment or patch form.
[38] *See* The Farlex Medical Dictionary, *Enteral, available at* https://medical-dictionary.thefreedictionary.com/enteral (last visited Jan. 27, 2020). Enteral means within, or by way of, the intestine or gastrointestinal tract, especially as distinguished from parenteral.

practice, or a group practice that serves low-income or Medicaid recipients and be located in a primary care health professional shortage area or medically underserved area. Implementation of the loan program is subject to legislative appropriation.

Section 15 amends the Nurse Practice Act to define an "advanced practice registered nurse - independent practitioner" or "APRN-IP" as an advanced practice registered nurse who is registered under s. 464.0123 to provide primary health care services without a protocol agreement or supervision in primary care health professional shortage areas.

The bill defines a "primary care health professional shortage area" as a geographic area, an area having a special population, or a facility with a score of at least 18, as designated and calculated by the Federal Health resources and Services Administration, and which is located in a rural area, as defined by the Federal Office of Rural Health Policy (see section 16).

Section 16 creates s. 464.0123, F.S., to establish the Patient Access to Primary Care Pilot Program (Pilot Program) within the Department of Health (DOH). The Pilot Program will provide primary health care services in "primary care health professional shortage areas" by allowing Advanced Practice Registered Nurses (APRN) who meet certain criteria to engage in the autonomous practice of advanced or specialized nursing without the supervision of a physician.

The bill creates a nine member Council on Advanced Practice Registered Nurse Independent Practice within the DOH and requires the council to make recommendations on the registration of APRN-IPs and develop proposed rules to regulate the practice of APRN-IPs. All recommendations made by the council must be made by a majority of the members present.

Primary Care Certification Examination

The bill requires the DOH to approve at least one third party credentialing entity to develop and administer a primary care certification examination for APRN-IPs.

Registration

The bill requires that APRNs who practice without the supervision of a physician to register with the DOH as an APRN-IP and provide the following:

- Proof of experience as an APRN under the direct or indirect supervision of a physician for at least 10,000 hours within the last 6 years;
- Certifications and designations recognized and approved by the Board of Nursing, Board of Medicine, Board of Osteopathic Medicine, or the DOH;
- APRN education, work, and license history;
- Address in which the application will conduct practice;
- Criminal and regulatory disciplinary history; and
- Proof of professional liability insurance;

An APRN-IP must be renew their registration every 2 years and provide proof of 40 hours of continuing medical education hours.

Scope of Practice

The Board of Medicine and the Board of Osteopathic Medicine must adopt by rule the scope of practice for an APRN-IP. An APRN-IP cannot practice in a hospital licensed under ch. 395, F.S., or a facility licensed under ch. 400, F.S., except under an established written protocol with a supervising physician.

The bill requires APRN-IPs to report all adverse incidents to the DOH. The Board of Medicine or the Board of Nursing is authorized to take disciplinary action under certain circumstances.

The Pilot Program is repealed, unless saved from repeal by the Legislature, on July 1, 2031.

Section 17 amends s. 464.015, F.S., to limit who can use the title "Advanced Practice Registered Nurse Practitioner – Independent Practitioner" and the abbreviation "APRN-IP."

Section 18 amends s. 464.018, F.S., to authorize the Board of Nursing to take administrative action against an APRN-IP for the following:

- Paying or receiving any commission, bonus, kickback, rebate, or engaging in a slit-fee arrangement with a health care practitioner, organization, agency, or person for patient referrals;
- Exercising influence over a patient for the purpose of engaging in sexual activity;
- Making deceptive, untrue, or fraudulent representation related to advanced or specialized nursing practice;
- Soliciting patients, personally or through an agent, using fraud, intimidation, undue influence, or overreaching or vexatious conduct;
- Failing to keep legible medical records;
- Performing professional services that have not been authorized by the patient or his or her representative, except as provided by the Medical Consent Law and the Good Samaritan Act;
- Performing any procedure or prescribing any medicinal drug that would constitute experimentation on a human subject, without full, informed, and written consent of the patient;
- Delegating professional responsibilities to an unqualified or unlicensed person;
- Conspiring with another person to commit an act or committing an act that would tend to coerce, intimidate, or preclude another APRN from advertising his or her services;
- Advertising or holding oneself out as having a certification in a specialty that the APRN has not received;
- Failing to inform patients about patient rights and how to file a patient complaint; and
- Providing deceptive or fraudulent expert witness testimony related to advanced or specialized nursing practice.

Section 19 amends s. 381.026, F.S., to expand the definition of a "health care provider" to include an APRN-IP.

Section 20 amends s. 382.008, F.S., to allow an APRN-IPs to certify the cause of death and to file death certificates in the absence of a funeral director.

Section 21 makes conforming changes.

Section 22 amends s. 394.463 F.S., the Baker Act, to allow an APRN-IP to initiate an involuntary examination under certain circumstances.

Section 23 amends s. 397.501, F.S., the Marchman Act, to conform to the provisions of the bill.

Section 24 amends s. 456.053, F.S., to expand the definition of a "health care provider" and "sole provider" to include an APRN-IP.

Section 25 amends s. 626.9707, F.S., to conform to the provisions of the bill.

Section 26, 27, and 31 creates ss. 627.64025, 627.6621, and 641.31075 F.S., to prohibit certain health insurers and health maintenance organizations from requiring an insured to receive services from an APRN-IP or an advanced practice registered nurse rather than a primary care physician.

Section 28 amends 627.6699, F.S. to prohibit certain health insurers from requiring an insured to receive services from an APRN-IP or an advanced practice registered nurse rather than a primary care physician.

Section 29 amends s. 627.736, F.S., to conform to the provisions of the bill.

Section 30 amends s. 633.412, F.S., to allow APRN-IPs to conduct certain medical evaluations for firefighters applying for certification as a firefighter.

Section 32 amends s. 641.495, F.S., to allow HMOs to provide certain services though an APRN-IP.

Section 33 amends s. 744.3675, F.S., to allow an APRN-IP to examine and report on a ward's condition current level of capacity.

Section 34 amends s. 766.118, F.S., to expand the definition of "practitioner" to include an APRN-IP. This section limits noneconomic damages[39] for medical negligence of practitioners, including APRN-IPs, under certain circumstances.

Section 35 amends s. 768.135, F.S., to provide immunity from civil liability for APRN-IPs acting in good faith when performing certain medical evaluations.

Section 36 amends s. 960.28, F.S., to conform to the provisions of the bill.

Section 37 requires the Office of Program Policy Analysis and Government Accountability to submit a report to the Governor, the President of the Senate and the Speaker of the House of

[39] Section 766.202(8), F.S., defines "noneconomic damages" as nonfinancial losses that would not have occurred but for the injury giving rise to the cause of action, including pain and suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of capacity for enjoyment of life, and other nonfinancial losses to the extent the claimant is entitled to recover such damages under general law, including the Wrongful Death Act.

Representatives by September 1, 2030. The report must include the impact of and recommendations regarding the continuance of the Pilot Program.

Section 38 provides that the Patient Access to Primary Care Pilot Program is repealed on July 1, 2031, unless reviewed and saved from repeal through reenactment by the Legislature. If the Legislature does not reenact the Pilot Program the text of the statutes that are amended in sections 15 and 17 through 36 of this bill will revert back to that in existence on the date this act became law (except that any other amendments to such text enacted other than by this bill must be preserved).

Section 39 appropriates three full-time equivalent (FTE) positions with an associated salary rate of 125,887, three other personal services (OPS) positions, and $400,764 in recurring funds and $408,731 in nonrecurring funds from the Health Care Trust Fund, in Fiscal Year 2020-2021 to the AHCA to manage stakeholder input and develop rules related to expansion of HHA and CNA duties, and create and implement the survey and program.

Section 40 provides that except as otherwise expressly provided in this act, the act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Home health agencies and nursing facilities may incur costs associated with the requirement to provide medication administration training to CNAs and HHAs. In addition, beginning in 2021, they may experience a workload increase associated with the bill's requirements related to survey reporting.

An APRN who applies for licensure as an APRN-IP to practice without the supervision of a physician will be able to provide primary care services in primary care health professional shortage areas. APRNs who have paid physicians for supervision will see cost savings if they register to practice autonomously.

C. Government Sector Impact:

The AHCA estimates the need for five additional full-time equivalent (FTE) positions, three other personal services (OPS) positions, and funding to manage stakeholder input and develop rules related to expansion of HHA and CNA duties, and create and implement the survey and program.[40] The bill appropriates three FTE positions with an associated salary rate of 125,887, three OPS positions, and $400,764 in recurring funds and $408,731 in nonrecurring funds from the Health Care Trust Fund, in Fiscal Year 2020-2021 to the AHCA to manage stakeholder input and develop rules related to expansion of HHA and CNA duties, and create and implement the survey and program.

CS/SB 1676 has a significant negative fiscal impact on the state expenditures. The bill will require the DOH to update information technology systems related to electronic death registrations to accept APRN-IPs as health care providers, and licensing of APRN-IPs. The DOH has estimated that the regulation of APRN-IPs will require an additional four FTE positions at a total cost of $226,291 ($202,019 recurring; $24,272 non-recurring) in the first year.[41]

The bill's requirement that the DOH establish a Physician Student Loan Repayment Program has a significant negative fiscal impact on state expenditures. The DOH estimates the additional need of two FTE to administer the loan program at a total cost of $143,173 ($131,037 recurring; $12,136 non-recurring) in the first year.[42] However, implementation of the loan program is subject to legislative appropriation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[40] *Supra* note 1.
[41] Florida Department of Health, *Senate Bill 1676 Fiscal Analysis* (February 18, 2020) (email on file with the Senate Subcommittee on Health and Human Services).
[42] *Id.*

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 381.026, 382.008, 382.011, 394.463, 397.501, 400.141, 400.23, 400.461, 400.462, 400.464, 400.488, 456.053, 464.003, 464.015, 464.018, 626.9707, 627.6699, 627.736, 633.412, 641.495, 744.3675, 766.118, 768.135, and 960.28

This bill creates the following sections of the Florida Statutes: 381.40185, 400.489, 400.490, 400.52, 408.822, 464.0123, 464.0156, 464.2035, 627.64025, 627.6621, and 641.31075.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by Appropriations Subcommittee on Health and Human Services on February 18, 2020:
The committee substitute:

- Makes conforming and technical changes.
- Authorizes nurse registries to be eligible to receive award designations under the Excellence in Home Health Program (program).
- Clarifies that an application for an award designation is not an application for licensure and that an award designation or denial by the AHCA does not constitute final agency action subject to ch. 120, F.S.
- Removes nurse registries from the requirements of the Direct Care Workforce Survey.
- Clarifies that an RN's delegation of prescription medications to a CNA or HHA is specific to patients of a home health agency.
- Authorizes positions and an appropriation to the AHCA.
- Establishes a physician student loan repayment program within the Department of Health (DOH).
- Establishes the Patient Access to Primary Care Pilot Program within the DOH to provide primary health care services in "primary care health professional shortage areas" by allowing Advanced Practice Registered Nurses (APRN) who meet certain criteria to engage in the autonomous practice of advanced or specialized nursing without the supervision of a physician.
- Appropriates three FTE positions with an associated salary rate of 125,887, three OPS positions, and $400,764 in recurring funds and $408,731 in nonrecurring funds from the Health Care Trust Fund, in Fiscal Year 2020-2021 to the AHCA to manage stakeholder input and develop rules related to expansion of HHA and CNA duties, and create and implement the survey and program.
- Amends the effective date to provide that except as otherwise expressly provided in the bill, the bill takes effect upon becoming a law.

CS by Health Policy on February 4, 2020:
The CS:

- Removes from the underlying bill a provision for non-nursing staff providing eating assistance to residents of a nursing home to count toward the nursing home's compliance with minimum staffing standards;
- Authorizes nursing home facilities to use paid feeding assistants as defined under federal law if the assistant has completed a 12-hour program developed by the AHCA;
- Removes from the underlying bill the specific authorization within nursing home statutes for a CNA to perform any task delegated to him or her by an RN, including, medication administration, in a nursing home setting;
- Removes from the underlying bill provisions to establish a Home Care Services Registry; and
- Removes from the underlying bill the specific authorization within CNA statutes for a CNA to administer medications to nursing home residents if delegated such a task by an RN.

B. Amendments:

None.