

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: CS/SB 1676

INTRODUCER: Health Policy Committee and Senator Albritton

SUBJECT: Direct Care Workers

DATE: February 17, 2020

REVISED: 2/18/20

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Rossitto-Van Winkle</u>	<u>Brown</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>McKnight</u>	<u>Kidd</u>	<u>AHS</u>	<u>Pre-meeting</u>
3.	<u></u>	<u></u>	<u>AP</u>	<u></u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

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 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.
- 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, created by the AHCA, to be completed and submitted at license renewal (every two years) for over 6,000 providers¹, including: nursing

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).

homes, assisted living facilities, home health agencies, nurse registries, and homemaker and companion services providers.

- Requires the ACHA to analyze the results of the Direct Care Workforce Survey and publish the information monthly on its website.
- Creates the Excellence in Home Health Program within the AHCA for the purpose of awarding designations to home health agencies that meet specified criteria. The AHCA is required to adopt rules establishing criteria for the program and annually evaluate home health agencies that apply for program designation.

The AHCA estimates that CS/SB 1676 will have a significant fiscal impact to expenditures. The AHCA estimates the need for five full-time equivalent (FTE) positions, three other personal services (OPS) positions, and \$981,210 in Fiscal Year 2020-2021, of which \$563,855 is recurring, to manage stakeholder input and develop rules related to expansion of HHA and CNA duties, and create and implement the Direct Care Workforce Survey and Excellence in Home Health Program.² See Section V.

The bill takes effect upon becoming a law.

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.³

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.⁴ 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).⁵

² *Supra* note 1.

³ Agency for Health Care Administration, *Division of Health Quality Assurance* <http://ahca.myflorida.com/MCHQ/index.shtml> (last visited Jan. 26, 2020).

⁴ 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_LTTCU.shtml (last visited Jan. 26, 2020).

⁵ 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).

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.⁶
- Appoint a physician medical director.⁷
- 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.
- 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 Disabilities;
 - 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:

⁶ 59A-4.103(4)(b), F.A.C.

⁷ 59A-4.1075, F.A.C.

- 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.⁸

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.
- 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.

⁸ Section 400.141, F.S.

- 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.⁹

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.

A professional nurse is responsible and accountable for making decisions that are based upon the individual's educational preparation and experience in nursing.¹⁰

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.¹¹ 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

⁹ Section 464.002, F.S.

¹⁰ Section 464.003, F.S.

¹¹ Section 464.003(14), F.S.

nursing students. A practical nurse is responsible and accountable for making decisions based on the individual's educational preparation and experience in nursing.¹²

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.¹³

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).¹⁴

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.¹⁵

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

¹² Section 464.003(17), F.S.

¹³ Section 464.201, F.S.

¹⁴ 42 CFR s. 483.70(q)(1)

¹⁵ 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).

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.¹⁶

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.¹⁷

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.¹⁸ 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.
- 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,

¹⁶ 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)

¹⁷ 42 CFR s. 483.95

¹⁸ 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.

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.¹⁹

The Home Health Consumer Assessment of Healthcare Providers & Systems (HHCAPHS) star ratings provide a snapshot of the four measures of patient experience of care. In addition, the HHCAPHS summary star rating combines all four HHCAPHS star ratings into a single, comprehensive metric. If a home health agency does not have an HHCAPHS 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 HHCAPHS star ratings summarize patient experience, which is one aspect of home health agency quality.²⁰

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.

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.

¹⁹ 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).

²⁰ 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).

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.

Sections 3 through 8 of the bill amend or create statutes within part III of ch. 400, F.S., relating to home health agencies.

Section 3 amends s. 400.462, F.S., to redefine "HHA" to provide that, in addition to the definition's other provisions, a HHA may include a person who performs tasks delegated to him or her pursuant to ch. 464, F.S.

Section 4 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 5 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's 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 6 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 7 creates s. 400.490, F.S., to authorize a CNA or HHA to perform any task delegated by an RN as authorized under ch. 464, F.S., including, but not limited to, medication authorization.

Section 8 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 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 seeking program designation. To receive program designation, a home health agency 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 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 as a result of the relicensure.

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

- 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.

Section 9 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, a nurse registry, 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 10 and 11 of the bill amend or create statutes within part I of ch. 464, F.S., relating to the Nurse Practice Act.

Section 10 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:

- 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, except controlled substances,²¹ by the following routes: oral, transdermal,²² ophthalmic, otic, rectal, inhaled, enteral,²³ or topical.

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

Section 11 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 12 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.

²¹ Controlled substance listed in Schedule II, Schedule III, or Schedule IV of s. 893.03 or 21 U.S.C. s. 812.

²² 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.

²³ 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.

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.

Section 13 provides that the bill takes 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.

C. Government Sector Impact:

The AHCA estimates that CS/SB 1676 will have a significant fiscal impact to expenditures. The AHCA estimates the need for five full-time equivalent (FTE) positions, three other personal services (OPS) positions, and \$981,210 in Fiscal Year 2020-2021, of which \$563,855 is recurring, to manage stakeholder input and develop rules related to expansion of HHA and CNA duties, and create and implement the Direct Care Workforce Survey (survey) and Excellence in Home Health Program.²⁴

- Expansion of HHA and CNA duties
 - One OPS staff for one year to manage stakeholder input and develop rules.
- Direct Care Workforce Survey
 - \$424,000 in development costs (for year 1) to build the survey through modifications to the AHCA's existing systems and \$200,000 in recurring funding to support maintenance and enhancements.
 - One FTE and one OPS (for one year) to develop and manage the workforce survey and analyze the results.

The system is expected to be available summer 2022.
- Excellence in Home Care Program
 - Two FTEs to manage applications and inquiries, one OPS (for one year) to handle all rules, and two additional FTE (senior attorneys) to handle litigation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 400.141, 400.23, 400.462, 400.464, 400.488, and 464.018.

This bill creates the following sections of the Florida Statutes: 400.489, 400.490, 400.52, 408.822, 464.0156, and 464.2035.

²⁴ *Supra* note 1.

IX. 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 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.