

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 485 Personal Care Attendants

**SPONSOR(S):** Health & Human Services Committee, Finance & Facilities Subcommittee, Garrison and others

**TIED BILLS:** IDEN./SIM. BILLS: CS/SB 1132

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Facilities Subcommittee	18 Y, 0 N, As CS	Guzzo	Lloyd
2) Health & Human Services Committee	21 Y, 0 N, As CS	Guzzo	Calamas

### SUMMARY ANALYSIS

Certified Nursing Assistants (CNAs) provide care and assist individuals with tasks relating to the activities of daily living, such as those associated with personal care, nutrition and hydration, maintaining mobility, toileting, safety and cleaning, end-of-life care, cardiopulmonary resuscitation and emergency care. A CNA must work under the general supervision of a registered nurse or a licensed practical nurse. CNAs generally work in nursing homes, although some work in assisted living facilities, other community based settings, or hospitals.

The Florida Board of Nursing within the Department of Health, certifies CNAs, who must pass a nursing assistant competency exam which includes written and practical portions. An individual may choose to complete a 120-hour board-approved training program, but completion of a training program is not a prerequisite to taking the competency exam.

Florida nursing homes must meet minimum staffing requirements of a weekly average of 3.6 hours of direct care per resident per day provided by a combination of CNAs and licensed nursing staff, as follows:

- 2.5 hours of direct care per resident per day provided by CNAs; and
- 1 hour of direct care per resident per day provided by licensed nursing staff.

Current law authorizes a nursing home to employ CNA program students as noncertified nursing assistants for up to four months. Such an employee must receive at least 16 hours of classroom instruction prior to having direct contact with a resident. A nursing home may include a noncertified nursing assistant when computing their staffing ratio as described above.

The Agency for Health Care Administration recently implemented a temporary personal care attendant (PCA) training program in response to the COVID-19 pandemic to expand the long-term care workforce by creating a pathway for individuals to develop the skills to become a CNA while receiving on the job experience.

The bill codifies the temporary PCA training program, with modifications. Specifically, the bill requires AHCA to develop a PCA training program, which must consist of 16 hours of training in the content areas specified in a program curriculum developed by AHCA. To ensure that a PCA has at least the same amount of training as a noncertified nursing assistant prior to having direct contact with a resident, the bill requires a PCA to complete the 16 hours of training prior to having direct contact with a resident. Just as for a noncertified nursing assistant, the bill authorizes a PCA who has completed 16 hours of training to be included in computing the staffing ratio as a nursing assistant.

The bill has no fiscal impact on state or local government.

The bill is effective upon becoming a law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Certified Nursing Assistants

Nursing assistants generally work in nursing homes, although some work in assisted living facilities, other community based settings, or hospitals. The Florida Board of Nursing, within the Department of Health, certifies nursing assistants (CNAs). To become certified, an individual must pass the nursing assistant competency exam.<sup>1</sup> They may also choose to complete a board approved training program.<sup>2</sup> However, the training program is optional and anyone who is at least 18 years old and has a high school diploma or its equivalent may take the nursing assistant competency exam.<sup>3</sup>

The CNA training program utilizes a standardized curriculum established by the Department of Education and consists 120 total hours, with 80 classroom hours and 40 hours of clinical instruction.<sup>4</sup> The clinical instruction must include 20 hours of long-term care clinical instruction in a nursing home. Prior to having direct contact with a resident of a nursing home, a student must receive at least 16 hours of classroom instruction.<sup>5</sup>

Section 400.211(2), F.S., authorizes a nursing home to employ certain individuals for up to four months as a nursing assistant who have not received certification as a CNA, including an individual who is enrolled in a CNA program, but has not yet passed the nursing assistant competency exam.<sup>6</sup> Such an employee must receive at least 16 hours of classroom instruction prior to having direct contact with a resident.

A CNA may provide care and assist residents with the following tasks related to the activities of daily living under the general supervision<sup>7</sup> of a registered nurse or a licensed practical nurse:

- Personal care services, such as bathing, dressing, grooming, and light housekeeping;
- Tasks associated with maintaining mobility, such as ambulating, transferring, positioning, lifting, and performing range of motion exercises;
- Nutrition and hydration tasks, such as feeding or assisting with eating and drinking;
- Tasks associated with elimination, such as toileting, providing catheter care, and emptying or changing ostomy bags;
- Tasks associated with using assistive devices, such as dentures, eyeglasses, hearing aids, wheelchairs, walkers, crutches, and restraints;
- Maintaining the facility environment and resident safety;
- Taking measurements and gathering data, i.e. pulse, blood pressure, height, and weight;
- Reporting abnormal resident findings, signs, and symptoms;
- Post mortem care;
- Tasks associated with end of life care;
- Tasks associated with resident socialization, leisure activities, and reality orientation;
- Performing basic first aid, CPR, and emergency care; and

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<sup>1</sup> S. 464.203(1)(b), F.S.

<sup>2</sup> S. 464.203(1)(a), F.S.

<sup>3</sup> S. 464.203(1), F.S.

<sup>4</sup> Rule 64B9-15.006(2), F.A.C.

<sup>5</sup> Rule 64B9-15.006(3), F.A.C.

<sup>6</sup> Other noncertified individuals who may work for up to four months as a nursing assistant without certification in Florida include persons who have been positively verified as actively certified and on the registry in another state with no findings of abuse, neglect, or exploitation in that state, and persons who have preliminarily passed the state's certification exam.

<sup>7</sup> "General supervision" means a registered nurse or a licensed practical nurse authorizing procedures being carried out by a CNA, but who need not be present when such procedures are performed. The CNA must be able to contact the registered nurse or licensed practical nurse when needed for consultation and advice either in person or by communication devices. Rule 64B9-15.001(6), F.A.C.

- Documentation of CNA services provided to the resident.<sup>8</sup>

### Nursing Homes

The Agency for Health Care Administration (AHCA) licenses nursing homes under part II of ch. 400, F.S. Nursing homes must meet the following minimum staffing requirements:

- 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 minimum of 2.5 hours of direct care per resident per day provided by CNAs.
- A minimum of 1.0 hour of direct care per resident per day provided by licensed nursing staff.<sup>9</sup>

Additionally, a facility may not staff at a ratio of less than:

- One CNA per 20 residents.
- One licensed nurse per 40 residents.

When computing the staffing ratio for CNAs, a nursing home facility is allowed to include certain noncertified nursing assistants, including individuals enrolled in CNA training programs.<sup>10</sup>

### Personal Care Attendant Training Program

In the initial stages of the COVID-19 pandemic, nursing homes struggled to maintain adequate staffing levels.<sup>11</sup> To address the staffing challenges caused by the pandemic, AHCA temporarily approved the creation of the personal care attendant (PCA) training program, which will remain in effect until AHCA determines it is no longer necessary.<sup>12</sup>

Under the PCA program, a nursing home can employ an individual to assist with resident care for up to four months as a noncertified nursing assistant if they receive eight hours of pre-service training.<sup>13</sup> The goal of the program is to provide nursing homes with additional staff to care for residents during the State of Emergency and allow PCAs to receive on the job training to obtain the skills necessary to pass the exam and become a CNA.<sup>14</sup> A candidate for PCA training must be at least 18 years old, but there are no minimum educational requirements.

The PCA training course must be taught by a registered nurse and must consist of five hours of classroom instruction and three hours of supervised simulation in which the PCA candidate must exhibit competency in all areas of training.<sup>15</sup> Upon completion of the eight hours of training, a PCA may work under the direct supervision<sup>16</sup> of the nursing staff and in collaboration with CNAs in assisting residents with certain tasks, which must be limited to the required areas of instruction and competency included in the 8-hour training course.<sup>17</sup>

The PCA training course requires an individual to receive training and demonstrate competency in the following areas:

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<sup>8</sup> Rule 64B9-15.002(1), F.A.C.

<sup>9</sup> S. 400.23(3), F.S.

<sup>10</sup> S. 429.23(3)(a), F.S. Other noncertified nursing assistants include: persons who have been positively verified as actively certified and on the registry in another state with no findings of abuse, neglect, or exploitation in that state; and persons who have preliminarily passed the state's certification exam.

<sup>11</sup> Noelle Denny-Brown, Denise Stone, Burke Hays, and Dayna Gallaghe/U.S. Department of Health & Human Services, Office of the Assistant Secretary for Planning and Evaluation, *COVID-19 Intensifies Nursing Home Workforce Challenges* (Oct. 19, 2020), available at <https://aspe.hhs.gov/basic-report/covid-19-intensifies-nursing-home-workforce-challenges> (last visited Mar. 23, 2021).

<sup>12</sup> Memorandum from the Agency for Health Care Administration to the Florida Health Care Association and Florida Leading Age (Mar. 28, 2020), available at [https://www.fhca.org/images/uploads/pdf/Personal\\_Care\\_Attendant.pdf](https://www.fhca.org/images/uploads/pdf/Personal_Care_Attendant.pdf) (last visited Mar. 21, 2021).

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> "Direct supervision" means the physical presence within the patient care unit of a healthcare facility of a program instructor who assumes responsibility for the practice of the CNA. 64B9-15.001(7), F.A.C.

<sup>17</sup> Supra note 11.

- Resident rights, the Health Insurance Portability and Accountability Act,<sup>18</sup> and abuse and neglect;
- Infection control including how infection is spread, hand hygiene, standard precautions and personal protection equipment, handling of clean and soiled linens, and disinfection of common use equipment and high touch objects and areas;
- Emergency procedures including the Heimlich maneuver and how to help a fallen resident;
- Skin care and pressure sore prevention including observations that should be reported to the supervising nurse;
- Oxygen use and safety;
- Nutrition and hydration including handling of food trays and water, and food storage safety;
- Dementia care including the stages of dementia, tips on communicating with cognitively impaired residents; and recognition of when to seek additional staff assistance;
- Mental health and challenging behaviors including responding to a challenging behavior, recognizing when to seek additional staff assistance, and reporting a challenging behavior to the supervising nurse;
- Abuse and neglect reporting; and
- Activities of daily living, including:
  - Initial steps to responding to a call light;
  - Obtaining a resident's temperature;
  - Making an occupied bed and an unoccupied bed and the handling of linens;
  - Turning and repositioning the resident while in bed;
  - Transfer from a bed to a chair, wheelchair, or partial bath and the use of a gait belt;
  - Assistance with dressing and undressing;
  - Incontinence and perineal care and assisting with toileting;
  - Oral care;
  - Using and storing devices such as hearing aids, eyeglasses, and dentures.<sup>19</sup>

As of December 18, 2020, 1,178 individuals have joined the nursing home workforce under the PCA program and 191 of those individuals have gone on to become CNAs by passing the nursing assistant competency exam.<sup>20</sup>

### Effect of the Bill

The bill codifies the temporary PCA training program, with modifications to align it with current practice for CNAs. Specifically, the bill requires AHCA to develop a PCA training program, which must consist of 16 hours of training in the content areas specified in the program curriculum developed by AHCA. To ensure that a PCA has at least the same amount of training as a noncertified nursing assistant prior to having direct contact with a resident, the bill requires a PCA to complete the 16 hours of training prior to having direct contact with a resident (rather than the eight hours authorized by AHCA in the temporary program). Similarly, just as for a noncertified nursing assistant, the bill authorizes a PCA who has completed 16 hours of training to be included in computing the staffing ratio as a nursing assistant.<sup>21</sup>

	Current Law					Effect of the Bill
	CNA	CNA from another		Current Temporary	Student nurse assistant enrolled in CNA school	

<sup>18</sup> United States. 2004. *The Health Insurance Portability and Accountability Act (HIPAA)*. [Washington, D.C.]: U.S. Dept. of Labor, Employee Benefits Security Administration. <http://purl.fdlp.gov/GPO/gpo10291> .

<sup>19</sup> Supra note 11.

<sup>20</sup> Florida Health Care Association, *Address the Long-term Care Workforce Shortage Make the Personal Care Attendant Program Permanent* (Dec. 18, 2020), (on file with Finance & Facilities Subcommittee staff).

<sup>21</sup> S. 400.23(3)(a), F.S., allows noncertified nursing assistants employed under s. 400.211(2), F.S., to be included in computing the staffing-ratio for CNAs if their job responsibilities include only nursing assistant related duties. By virtue of the bill authorizing individuals who have completed the personal care attendant training program to be employed by a nursing facility under s. 400.211(2), F.S., the bill allows PCAs to be included in computing the staffing-ratio for CNAs.

		state awaiting FL CNA license	Preliminary Passage of CNA test	PCA Program	Unemployed or employed somewhere other than a nursing home	Employed by a nursing home while in school	Personal Care Attendant
<b>Counted as CNA hours in staff ratio</b>	Yes	Yes	Yes	Yes	N/A	Yes	Yes
<b>Source of income</b>	Nursing Home	Nursing Home	Nursing Home	Nursing Home	None or unknown	Nursing Home	Nursing Home
<b>Remaining Expense</b>	None, already licensed	License fee	License fee	Exam Fee License Fee	CNA School Tuition Exam fee? License fee	CNA School Tuition Exam fee? License fee	Exam fee License fee
<b>Source of skill development</b>	CNA school, PCA program, Personal Experience or None, if they challenged the CNA Exam	N/A	N/A	On the job training in the nursing home	CNA School	CNA School and on the job in the nursing home	On the job training in the nursing home
<b>Minimum training required to hire</b>	None	None	None	None	N/A	None	None
<b>Minimum training before providing direct care to residents</b>	None, begins upon hiring	None, begins upon hiring	None, begins upon hiring	8 hrs clinical training	N/A	16 hrs of clinical training	16 hrs of clinical training
<b>Additional training received</b>	N/A	N/A	N/A	Est. 624 hrs on the job	40 hrs clinical 80 hrs class	24 hrs clinical 80 hrs class Est. 624 hrs on the job	Est. 624 hrs on the job
<b>Maximum period of nursing home employment</b>	N/A	4 months	4 months	4 months	N/A	4 months	4 months

AHCA has existing rule-making authority to develop rules governing the regulation of nursing homes. The bill provides new rule-making authority to AHCA and the Board of Nursing to allow them to effectively develop a personal care attendant training program in accordance with certain federal requirements.<sup>22</sup> Further, the bill requires AHCA to adopt rules necessary to ensure continuation of the temporary PCA program currently in operation if the state of emergency is terminated prior to AHCA adopting rules to implement the PCA training program.

The bill is effective upon becoming a law.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 400.141, F.S., relating to administration and management of nursing home facilities.

**Section 2:** Amends s. 400.211, F.S., relating to persons employed as nursing assistants; certification requirement.

**Section 3:** Provides an effective date of upon becoming a law.

<sup>22</sup> 42 C.F.R., ss. 483.151-483.15 provide requirements for state review and approval of nurse aide training and competency evaluation programs which require a program to: consist of at least 75 clock hours of training; include at least 16 hours of supervised training; ensure that students do not perform a service for which they have not been trained and found proficient; work under the general supervision of a licensed nurse or registered nurse; and include a competency evaluation which must include a skills demonstration.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The bill provides sufficient rule-making authority to AHCA and the Board of Nursing to allow them to implement the bill's provisions.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 17, 2021, the Finance & Facilities Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Requires the PCA training program to comply with certain federal requirements.
- Increases the required hours of training from eight hours to 16 hours to align with current training requirements for noncertified nursing assistants.

- Prohibits a PCA from having direct contact with a nursing home resident prior to completing the 16 hours of training.
- Prevents a PCA trainee from using the training program more than once.
- Authorizes AHCA to adopt rules to implement the PCA training program.
- Requires AHCA to authorize the continuation of the temporary PCA program currently in operation if the state of emergency is terminated prior to AHCA adopting rules to implement the PCA training program.

On March 24, 2021, the Health & Human Services Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment changes the rule-making authority from permissive to mandatory as necessary for AHCA to develop the PCA training program.

The analysis is drafted to the committee substitute as passed by the Health & Human Services Committee.