

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 469 Patient Care in Health Care Facilities

**SPONSOR(S):** Finance & Facilities Subcommittee, Trabulsy

**TIED BILLS:** IDEN./SIM. **BILLS:** SB 718

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Facilities Subcommittee	15 Y, 0 N, As CS	Guzzo	Lloyd
2) Professions & Public Health Subcommittee	15 Y, 0 N	Guzzo	McElroy
3) Health & Human Services Committee	20 Y, 0 N	Guzzo	Calamas

**SUMMARY ANALYSIS**

Under current law, home health aides and certified nursing assistants (CNAs) may assist a patient of a home health agency with self-administration of certain medications after completion of prescribed training.

Current law authorizes home health aides and CNAs to perform certain tasks in providing assistance to assisted living facility (ALF) residents with self-administration of medication that home health aides and CNAs are not currently authorized to provide if they work for a home health agency. Current law also authorizes an ALF to contract with a home health agency to employ home health aides and CNAs, which can cause confusion as to which tasks a home health aide or CNA may provide when they are employed by a home health agency but they are working in an ALF. The bill revises home health agency statutes to allow home health aides and CNAs to perform additional tasks in providing assistance to patients with self-administration of medication to create consistency.

In addition to assisting patients with self-administration of medication, current law also authorizes a home health aide or CNA to administer certain medications upon delegation of such authority by a registered nurse. The bill expands the duties a nurse may delegate to a home health aide or CNA to include administering an insulin syringe that is prefilled with the proper dosage by a pharmacist or an insulin pen that is prefilled by the manufacturer.

Current law requires an advanced life support ambulance transporting a patient between two facilities to be occupied by two people, including one patient attendant (who may be a paramedic, registered nurse, or a physician) and one qualified ambulance driver who is an EMT, paramedic, registered nurse, or physician. The bill removes the requirement for the driver to be an EMT, paramedic, registered nurse, or physician.

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

The bill provides an effective date of July 1, 2022.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### **Home Health Aides and Certified Nursing Assistants**

A home health agency is an organization that provides home health services.<sup>1</sup> Home health services are health and medical services and supplies furnished to an individual in the individual's home or place of residence.<sup>2</sup>

Home health aides<sup>3</sup> and certified nursing assistants<sup>4</sup> (CNAs) are unlicensed health care workers employed by a home health agency to provide personal care<sup>5</sup> to patients and assist them with the following activities of daily living:

- Ambulation;
- Bathing;
- Dressing;
- Eating;
- Personal hygiene;
- Toileting;
- Physical transferring;
- Assistance with self-administered medication; and
- Administering medications.<sup>6</sup>

#### Medication Administration and Assistance with Self-Administration

##### *Medication Administration*

Under certain conditions, home health aides and CNAs are authorized to administer certain types of medication to a patient of a home health agency, including oral, transdermal, ophthalmic, otic, rectal, inhaled, enteral, or topical prescription medications. Specifically, the home health aide or CNA must:

- Be delegated such task by a registered nurse;
- Complete an initial 6-hour training course approved by the Board of Nursing (Board) or the Agency for Health Care Administration (AHCA);
- Be found competent to administer medication to a patient in a safe and sanitary manner; and
- Complete two hours of annual inservice training in medication administration and medication error prevention approved by the Board.<sup>7</sup>

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<sup>1</sup> S. 400.462(12), F.S.

<sup>2</sup> S. 400.462(15), F.S., home health services include the following: nursing care; physical, occupational, respiratory, or speech therapy; home health aide services; dietetics and nutrition practice and nutrition counseling; and medical supplies, restricted to drugs and biologics prescribed by a physician.

<sup>3</sup> S. 400.462(14), F.S., a home health aide is a person who is trained or qualified, as provided by rule, and who provides hands-on personal care, performs simple procedures as an extension of therapy or nursing services, assists in ambulation or exercises, assists in administering medications as permitted in rule and for which the person has received training established by the agency, or performs tasks delegated to him or her under ch. 464, F.S.

<sup>4</sup> S. 464.201(3), F.S., a CNA is a person who meets the qualifications of part II of ch. 464, F.S., and who is certified by the Board of Nursing as a certified nursing assistant.

<sup>5</sup> S. 400.462(23), F.S., defines "personal care" as assistance to a patient in the activities of daily living, such as dressing, bathing, eating, or personal hygiene, and assistance in physical transfer, ambulation, and in administering medications as permitted by rule.

<sup>6</sup> Rule 59A-8.002(3), F.A.C.

<sup>7</sup> S. 464.2035, F.S., and s. 400.489, F.S.

Section 464.0156, F.S., prohibits a registered nurse from delegating to a home health aide or CNA the administration of a controlled substance listed in Schedule II, Schedule III, or Schedule IV of s. 893.03, F.S., or 21 U.S.C., s. 812. Controlled substances are classified by their acceptable medical use and propensity for abuse and dependency.<sup>8</sup>

As of 2018, 34.2 million Americans, or 10.5 percent of the population, had diabetes,<sup>9</sup> and 8.3 million of those people required insulin to regulate blood glucose levels.<sup>10</sup> There are different types of insulin that vary by how quickly they work, when they peak, and how long they last.<sup>11</sup> Although not specifically prohibited, current law does not expressly authorize a registered nurse to delegate the authority for a home health aide or CNA to administer insulin.

#### *Assistance with Self-Administration*

Patients are often capable of administering their own medication, but need assistance to ensure that they are taking the correct medication, at the proper dosage, and at the correct time. Under current law, home health aides and CNAs may assist with self-administration of medication after completion of required training.<sup>12</sup>

Home health aides and CNAs must complete two hours of training to assist with self-administration of medication.<sup>13</sup> The training must include state law and rule requirements for assistance with self-administration of medication in the home, procedures for assisting the patient with self-administration, common medications, recognition of side effects and adverse reactions, and procedures to follow if patients appear to be experiencing side effects or adverse reactions.<sup>14</sup> The training may be provided by a licensed home health agency or a vocational school approved by the Department of Education.<sup>15</sup>

Current law authorizes home health aides and CNAs to perform certain tasks in providing assistance to assisted living facility (ALF) residents with self-administration of medication that home health aides and CNAs are not currently authorized to provide if they work for a home health agency. Current law also authorizes an ALF to contract with a home health agency to employ home health aides and CNAs,<sup>16</sup> which can cause confusion as to which tasks a home health aide or CNA may provide when they are employed by a home health agency but they are working in an ALF.

For example, current law authorizes home health aides and CNAs employed by ALFs to assist a resident with the self-administration of insulin pens that are prefilled with the proper dosage by a pharmacist or the manufacturer. However, if a home health aide or CNA works in an ALF, but is employed by a home health agency, current law does not authorize them to provide such assistance to ALF residents.

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<sup>8</sup> U.S. Drug Enforcement Administration, *Drug Scheduling*, available at <https://www.dea.gov/drug-information/drug-scheduling> (last visited November 23, 2021).

<sup>9</sup> U.S. Department of Health and Human Services Centers for Disease Control and Prevention, *National Diabetes Statistics Report 2020 Estimates of Diabetes and its Burden in the United States*, available at <https://www.cdc.gov/diabetes/pdfs/data/statistics/national-diabetes-statistics-report.pdf> (last visited November 23, 2021).

<sup>10</sup> Tara O'Neill Hayes, *Understanding the Insulin Market*, American Action Forum (March 3, 2020), available at <https://www.americanactionforum.org/research/understanding-the-insulin-market/> (last visited November 23, 2021).

<sup>11</sup> American Diabetes Association, *Insulin & Other Injectables, Insulin Basics*, available at <https://www.diabetes.org/healthy-living/medication-treatments/insulin-other-injectables/insulin-basics> (last visited November 23, 2021). "Rapid-acting insulin" begins to work about 15 minutes after injection, peaks within one or two hours, and lasts between two to four hours. "Regular or short-acting insulin" usually reaches the bloodstream within 30 minutes after injection, peaks within two to three hours, and lasts for three to six hours. "Intermediate-acting insulin" reaches the bloodstream two to four hours after injection, peaks within four to 12 hours, and lasts for 12 to 18 hours.

<sup>12</sup> S. 400.488(1)(b), F.S.

<sup>13</sup> Rule 59A-8.0095(5), F.A.C.

<sup>14</sup> *Id.*

<sup>15</sup> Rule 59A-8.0095(5)(e)-(f), F.A.C.

<sup>16</sup> S. 429.256(1)(b), F.S.

The table below lists other tasks that a home health aide and a CNA in a home health agency<sup>17</sup> may assist a patient with compared to when they work in an ALF<sup>18</sup>.

Task	Home Health Agency	ALF
Using a glucometer to perform blood-glucose level checks.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Assisting with putting on and taking off antiembolism stockings.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Assisting with applying and removing an oxygen cannula but not with titrating the prescribed oxygen settings.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Assisting with the use of a continuous positive airway pressure device but not with titrating the prescribed setting of the device.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Assisting with measuring vital signs.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Assisting with colostomy bags.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Taking the medication, in its properly labeled container, from where it is stored to the patient.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Confirming that the medication is intended for that patient, orally advising the patient of the medication name and purpose, opening the container, removing a prescribed amount of medication from the container, and closing the container.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Placing an oral dose in the patient's hand or placing the dosage in another container and helping the patient by lifting the container to his or her mouth.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Returning the medication container to proper storage.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Keeping a record of when a patient receives assistance.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Applying topical medications, including routine preventative skin care and applying and replacing bandages for minor cuts and abrasions	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Assisting with nebulizer treatments.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Current law expressly prohibits home health aides and CNAs from performing certain in providing assistance with self-administration of medication and a home health aide or CNA within a home health agency<sup>19</sup> or ALF<sup>20</sup> may not perform those tasks, as follows:

- Mixing, compounding, converting, or calculating medication doses, except for measuring a prescribed amount of liquid medication or breaking a scored tablet or crushing a tablet as prescribed;
- Preparing syringes for injection or administering medications by any injectable route;
- Administering medications by way of a tube inserted in a cavity of the body;
- Administering parenteral preparations;<sup>21</sup>
- Irrigating or using debriding agents to treat a skin condition;
- Preparing rectal, urethral, or vaginal medications;

<sup>17</sup> S. 400.488(3), F.S.

<sup>18</sup> S. 429.256(3), F.S.

<sup>19</sup> S. 400.488(4), F.S.

<sup>20</sup> S. 429.256(4), F.S.

<sup>21</sup> Parenteral means administration of a medication by injection, infusion, or implantation. U.S. Food & Drug Administration, *Route of Administration*, available at <https://www.fda.gov/drugs/data-standards-manual-monographs/route-administration> (last visited November 29, 2021).

- Administering medications ordered by the physician or health care professional with prescriptive authority to be given “as needed,” unless the order is written with specific parameters that preclude independent judgment on the part of the home health aide or CNA, and at the request of a competent patient; or
- Administering medications for which the time of administration, the amount, the strength of dosage, the method of administration, or the reason for administration requires judgment or discretion on the part of the unlicensed person.

## Emergency Medical Transport Services

### Basic Life Support and Advanced Life Support Ambulance Services

Ambulances<sup>22</sup> are used to transport sick or injured people to or between medical facilities. Ambulances provide two types of services; basic life support services (BLS) and advanced life support services (ALS).

BLS ambulance services use only basic life support techniques<sup>23</sup> and transport patients who only require basic medical monitoring.<sup>24</sup> BLS services include the assessment or treatment by a person qualified under part III of ch. 401, F.S., through the use of techniques described in the EMT-Basic National Standard Curriculum or the National Emergency Medical Services (EMS) Education Standards of the U.S. Department of Transportation.<sup>25</sup> The term includes the administration of oxygen and other techniques that have been approved and are performed under specific conditions.<sup>26</sup> BLS services are usually performed by emergency medical technicians<sup>27</sup> (EMTs).<sup>28</sup>

ALS ambulance services transport patients who require a higher level of medical monitoring.<sup>29</sup> ALS services include patient assessment or treatment including the implementation of advanced medical skills such as endotracheal intubation, the administration of drugs or intravenous fluids, telemetry, cardiac monitoring, cardiac defibrillation, and other techniques described in the EMT-Paramedic National Standard Curriculum or the National EMS Education Standards.<sup>30</sup> ALS services are usually provided by paramedics.<sup>31</sup>

<sup>22</sup> S. 401.23(5), F.S., defines “ambulance” or “emergency medical services vehicle” as any privately or publicly owned land or water vehicle that is designed, constructed, reconstructed, maintained, equipped, or operated for, and is used for, or intended to be used for, land or water transportation of sick or injured persons requiring or likely to require medical attention during transport.

<sup>23</sup> S. 401.23(8), F.S.

<sup>24</sup> Johns Hopkins Medicine, *Lifeline: Basic and Advanced Life Support*, available at [https://www.hopkinsmedicine.org/lifeline/trans\\_services/life\\_support.html](https://www.hopkinsmedicine.org/lifeline/trans_services/life_support.html) (last visited November 23, 2021).

<sup>25</sup> United States Department of Transportation, National Highway Traffic Safety Administration, *National Emergency Medical Services Education Standards*, (January 2009), available at <https://www.ems.gov/pdf/National-EMS-Education-Standards-FINAL-Jan-2009.pdf> (last visited November 19, 2021).

<sup>26</sup> S. 401.23(7) and (8), F.S.

<sup>27</sup> Ss. 401.23(11) and 401.27, F.S. EMTs are licensed by DOH.

<sup>28</sup> Rynnanen, et. al, *Is advanced life support better than basic life support in prehospital care? A systematic review*, *Scand J Trauma Resusc. Emerg. Med.* 2010; 18: 62, (November 23, 2010), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3001418/> (last visited November 19, 2021).

<sup>29</sup> *Supra* note 25.

<sup>30</sup> Ss. 401.23(1) and (2), F.S.

<sup>31</sup> Rynnanen, et. al, *supra* note 29.

## Staffing Requirements

Staffing requirements differ between BLS and ALS ambulance services. They also differ depending on whether the ambulance is transporting a patient to the hospital in an emergency situation or if the ambulance is transferring a patient who is in stable condition to another facility.

A BLS ambulance transporting a patient to a hospital in an emergency situation must be occupied by at least two people, including one patient attendant who may be an EMT, paramedic, or physician, and one qualified ambulance driver.<sup>32</sup> The staffing requirements are the same, with one exception, for a BLS ambulance transporting a patient who is in stable condition between two facilities. The BLS ambulance transporting a patient who is in stable condition between two facilities can use a registered nurse in place of the EMT or paramedic.<sup>33</sup>

An ALS ambulance transporting a patient to a hospital in an emergency situation must be occupied by at least two people, including one patient attendant who may be a paramedic or a physician, and one qualified ambulance driver who may be an EMT, paramedic, or physician.<sup>34</sup> An ALS ambulance transporting a stable patient between two facilities can use a registered nurse in place of the EMT or paramedic.<sup>35</sup>

### Effect of the Bill

#### Assistance with Self-Administration of Medication and Other Tasks

The bill revises home health agency statutes to allow home health aides and CNAs to perform additional tasks in providing assistance to patients with self-administration of medication. This allows home health aides and CNAs to perform the same functions in home health settings as they can in ALF settings. Specifically, the bill allows a home health aide or CNA to provide assistance with transdermal patches, insulin syringes that are prefilled with the proper dosage by a pharmacist, and insulin pens that are prefilled by the manufacturer.

The bill also allows home health aides and CNAs in a home health setting to assist with the following tasks:

- Using glucometers to perform blood-glucose level checks;
- Putting on and taking off antiembolism stockings;
- Applying and removing oxygen cannulas;
- Using continuous positive airway pressure devices;
- Measuring vital signs; and
- Assisting with colostomy bags.

The bill makes conforming changes to the ALF statute to separate assistance with medications from assistance with tasks that do not involve medication.

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<sup>32</sup> S. 401.25(7)(a), F.S. S. 401.281, F.S., requires drivers to: be at least 18 years of age; certify under oath that they are not addicted to alcohol or any controlled substance; certify under oath that they are free from any physical or mental defect or disease that might impair their ability to drive an ambulance; not have been convicted, within the past three years, of driving under the influence of alcohol or controlled substances, and not had their driver license suspended due to excessive points; possess a valid driver license; be trained in the safe operation of emergency vehicles and complete an emergency vehicle operator's course; possess a valid American Red Cross or National Safety Council standard first aid course card or its equivalent; and possess a valid American Red Cross or American Heart Association cardiopulmonary resuscitation card.

<sup>33</sup> S. 401.252(1), F.S., authorizes a BLS or an ALS ambulance service to conduct an interfacility transfer using a registered nurse in place of an EMT or a paramedic, if: the registered nurse holds a current certificate of successful course completion in advanced cardiac life support; the physician in charge has granted permission for such a transfer, has designated the level of service required for such transfer, and has deemed the patient to be in such a condition appropriate for this type of ambulance staffing; and the registered nurse operates within the scope of part I of ch. 464, F.S.

<sup>34</sup> S. 401.25(7)(b), F.S.

<sup>35</sup> *Supra* note 33.

In 2020, the Legislature authorized home health aides and CNAs to provide assistance to patients of home health agencies with the use of a nebulizer.<sup>36</sup> However, the 2020 bill did not remove a provision prohibiting home health aides and CNAs from providing assistance with the administration of medications through nebulizers.<sup>37</sup> The bill removes this provision.

Current law prohibits a registered nurse from delegating to a home health aide or CNA the administration of a controlled substance listed in Schedule II, Schedule III, or Schedule IV of s. 893.03, F.S., or 21 U.S.C., s. 812.<sup>38</sup>

The bill amends s. 464.0156(2), F.S., to authorize a registered nurse to delegate to a home health aide or CNA the administration of an insulin syringe that is prefilled with the proper dosage by a pharmacist or an insulin pen that is prefilled by the manufacturer.

Current law authorizes CNAs to provide assistance to ALF residents with insulin syringes and pens. The bill amends s. 429.256, F.S., to provide consistency with provisions of the bill that provide the same authority for home health aides and CNAs employed by home health agencies.

### Emergency Medical Transport Staffing

An ALS ambulance transporting a patient between two facilities must be occupied by two people, including one patient attendant who may be a paramedic, registered nurse, or a physician, and one EMT, paramedic, registered nurse, or physician if they meet the requirements to be a driver. The bill retains the requirement for the patient attendant to be a paramedic, registered nurse, or a physician, but it removes the requirement for the driver to be an EMT, paramedic, registered nurse, or physician. This change aligns the staffing requirements for interfacility transfer by an ALS ambulance with the staffing requirements for an interfacility transfer by a BLS ambulance.

The bill provides an effective date of July 1, 2022.

#### B. SECTION DIRECTORY:

- Section 1:** Amends s. 400.488, F.S., relating to assistance with self-administration of medication.
- Section 2:** Amends s. 401.252, F.S., relating to interfacility transfer.
- Section 3:** Amends s. 464.0156, F.S., relating to delegation of duties.
- Section 4:** Amends s. 401.25, F.S., relating to licensure as a basic life support or an advanced life support service.
- Section 5:** Amends s. 401.27, F.S., relating to personnel; standards and certification.
- Section 6:** Amends s. 429.256, F.S., relating to assistance with self-administration of medication.
- Section 7:** Provides an effective date of July 1, 2022.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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<sup>36</sup> Ch. 2020-9, Laws of Fla.

<sup>37</sup> S. 400.488(4)(c), F.S.

<sup>38</sup> S. 464.0156(2), F.S.

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill creates staffing efficiencies for home health agencies and ALS ambulance services, which could have a positive, but indeterminate, fiscal impact on these providers.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Sufficient rule-making authority exists in current law for AHCA to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On December 2, 2021, the Finance & Facilities Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments restructure the proposed change to the home health agency statute and the current ALF statute to separate assisting with the administration of medication from assisting with the performance of tasks that do not involve medication.

This analysis is drafted to the committee substitute as passed by the Finance & Facilities Subcommittee.