

**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.)

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Prepared By: The Professional Staff of the Committee on Health Policy

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BILL: SB 718

INTRODUCER: Senator Bradley

SUBJECT: Patient Care in Health Care Facilities

DATE: January 18, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Brown	HP	<b>Pre-meeting</b>
2.			AP	
3.			RC	

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**I. Summary:**

SB 718 amends two sections of the Florida Statutes, regarding authorization for unlicensed persons to assist patients or residents in the self-administration of medication in home health settings and in assisted living facilities (ALF), respectively, to allow an unlicensed person in a home health setting to assist a patient with the same kinds of self-administration of medication tasks that are allowed in an ALF.

The bill also makes changes to several sections of the Florida Statutes regarding the treatment of prefilled insulin syringes or pens to allow unlicensed persons to bring such syringe or pen to a patient or resident from where it is stored in a home health setting or in an ALF, and to allow registered nurses to delegate the administration of insulin which is prefilled into such syringe or pen to a certified nursing assistant or home health aide.

The bill also amends several sections of the Florida Statutes relating to the transport of patients by Basic (BLS) and Advanced Life Support (ALS) services to require that permitted ALS ambulances be occupied by at least two specified medical personnel when conducting interfacility transfers of patients and to make conforming changes.

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

## II. Present Situation:

### Home Health Agencies

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>

### *Assisting with the Self-Administration of Medication in a Home Health Setting*

Section 400.488, F.S., allows an unlicensed person, defined as an individual not currently licensed to practice nursing or medicine who is employed by or under contract to a home health agency and who has received training with respect to assisting with the self-administration of medication as provided by AHCA rule,<sup>7</sup> to assist a patient with the self-administration of his or her medications. The assistance with self-medication by an unlicensed person may occur only upon a documented request by, and the written informed consent of, a patient or the patient's surrogate, guardian, or attorney in fact and includes:

- Taking the medication, in its previously dispensed, properly labeled container, from where it is stored and bringing it to the patient.

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

<sup>2</sup> Section 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> Section 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> Section 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> Section 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> Rule 59A-8.0095, F.A.C., requires CNA’s and home health aides to receive 2 hours of training prior to assisting with the self-administration of medication.

- 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 a prescribed amount of medication from the container, and closing the container.
- Placing an oral dosage 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.
- Applying topical medications, including routine preventive skin care and applying and replacing bandages for minor cuts and abrasions as provided by the AHCA in rule.
- Returning the medication container to proper storage.
- 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.
- Keeping a record of when a patient receives assistance with self-administration under this section.

The section specifies that assistance with the self-administration of medications does not include:

- 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.
- The preparation of syringes for injection or the administration of medications by any injectable route.
- Administration of medications through intermittent positive pressure breathing machines or a nebulizer.
- Administration of medications by way of a tube inserted in a cavity of the body.
- Administration of parenteral preparations.
- Irrigations or debriding agents used in the treatment of a skin condition.
- Rectal, urethral, or vaginal preparations.
- 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 unlicensed person, and at the request of a competent patient.
- 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.

### **Assisted Living Facilities**

An ALF is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.<sup>8</sup> A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-

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<sup>8</sup> Section 429.02(5), F.S. An ALF does not include an adult family-care home or a non-transient public lodging establishment.

administration of medication.<sup>9</sup> Activities of daily living include ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.<sup>10</sup>

An ALF is required to provide care and services that are appropriate to the needs of the residents who are accepted for admission to the facility.<sup>11</sup> The owner or facility administrator determines whether an individual is appropriate for admission to the facility based on a number of criteria.<sup>12</sup> If, as determined by the facility administrator or health care provider, a resident no longer meets the criteria for continued residency or the facility is unable to meet the resident's needs, the resident must be discharged in accordance with the Resident Bill of Rights.<sup>13</sup>

### *Assisting with the Self-Administration of Medication in an ALF*

Section 429.256, F.S., establishes requirements for the assistance with the self-administration of medication. Residents who are capable of administering their own medications are encouraged to do so but an unlicensed person who is 18 years of age or older and has completed the required six hours of training may,<sup>14</sup> consistent with a dispensed prescription's label or the package directions of an over-the-counter medication, assist a resident whose condition is medically stable with the self-administration of routine, regularly scheduled medications that are intended to be self-administered. Assistance with self-medication by an unlicensed person may occur only upon a documented request by, and the written informed consent of, a resident or the resident's surrogate, guardian, or attorney in fact.

The section specifies that the assistance with self-administration of medication includes:

- Taking the medication, in its previously dispensed, properly labeled container, including an insulin syringe that is prefilled with the proper dosage by a pharmacist and an insulin pen that is prefilled by the manufacturer, from where it is stored, and bringing it to the resident.
- In the presence of the resident, confirming that the medication is intended for that resident, orally advising the resident of the medication name and dosage, opening the container, removing a prescribed amount of medication from the container, and closing the container. The resident may sign a written waiver to opt out of being orally advised of the medication name and dosage. The waiver must identify all of the medications intended for the resident, including names and dosages of such medications, and must immediately be updated each time the resident's medications or dosages change.
- Placing an oral dosage in the resident's hand or placing the dosage in another container and helping the resident by lifting the container to his or her mouth.
- Applying topical medications.
- Returning the medication container to proper storage.
- Keeping a record of when a resident receives assistance with self-administration under this section.

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<sup>9</sup> Section 429.02(18), F.S.

<sup>10</sup> Section 429.02(1), F.S.

<sup>11</sup> See Fla. Admin. Code R. 59A-36.007 (2019), for specific minimum standards.

<sup>12</sup> Section 429.26, F.S., and Fla. Admin. Code R. 59A-36.006 (2019).

<sup>13</sup> Section 429.28, F.S.

<sup>14</sup> See Fla. Admin. Code R. 59A-36.008(3)(a) (2019).

- Assisting with the use of a nebulizer, including removing the cap of a nebulizer, opening the unit dose of nebulizer solution, and pouring the prescribed premeasured dose of medication into the dispensing cup of the nebulizer.
- Using a glucometer to perform blood-glucose level checks.
- Assisting with putting on and taking off antiembolism stockings.
- Assisting with applying and removing an oxygen cannula but not with titrating the prescribed oxygen settings.
- Assisting with the use of a continuous positive airway pressure device but not with titrating the prescribed setting of the device.
- Assisting with measuring vital signs.
- Assisting with colostomy bags.

The section also specifies that assistance with self-administration does not include:

- 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.
- The preparation of syringes for injection or the administration of medications by any injectable route.
- Administration of medications by way of a tube inserted in a cavity of the body.
- Administration of parenteral preparations.
- The use of irrigations or debriding agents used in the treatment of a skin condition.
- Assisting with rectal, urethral, or vaginal preparations.
- Assisting with 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 unlicensed person, and the resident requesting the medication is aware of his or her need for the medication and understands the purpose for taking the medication.
- 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.

### **Basic and Advanced Life Support Services**

Part III of ch. 401, F.S., consisting of ss. 401.2101-401.465, F.S., provides for the regulation of emergency medical services by the Department of Health (DOH). The DOH website reflects that its Emergency Medical Services Section is responsible for the licensure and oversight of over 60,000 emergency medical technicians and paramedics, 270+ advanced and basic life support agencies, and over 4,500 EMS vehicles.<sup>15</sup> The DOH licenses three types of emergency medical services: air ambulance,<sup>16</sup> basic life support, and advanced life support services.

A basic life support service is an emergency medical service that uses *only* basic life support techniques.<sup>17</sup> In contrast, an advanced life support service is an emergency medical transport or

<sup>15</sup> Florida Department of Health, Emergency Medical Services System, available at <http://www.floridahealth.gov/licensing-and-regulation/ems-system/index.html> (last visited Jan. 12, 2022).

<sup>16</sup> Sections 401.23(3) and (4) and 401.251, F.S.

<sup>17</sup> Section 401.23(8), F.S.

non-transport service that uses advanced life support techniques.<sup>18</sup> Similarly, an emergency medical technician (EMT) is certified to perform basic life support,<sup>19</sup> but a paramedic is certified to perform basic and advanced life support.<sup>20</sup>

“Basic life support” is the assessment or treatment through the use of techniques described in the EMT-Basic National Standard Curriculum or the National EMS Education Standards of the U.S. Department of Transportation and approved by the DOH. The term includes the administration of oxygen and other techniques that have been approved by the DOH.<sup>21</sup> When transporting a person who is sick, injured, wounded, incapacitated, or helpless, each basic life support ambulance must be occupied by at least two persons:

- One patient attendant who is a certified emergency medical technician, certified paramedic, or licensed physician; and
- One ambulance driver who meets the requirements of s. 401.281, F.S.<sup>22</sup>

“Advanced life support” is the assessment or treatment through the use of techniques 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, pursuant to DOH rules.<sup>23</sup>

When transporting a person who is sick, injured, wounded, incapacitated, or helpless, each advanced life support ambulance must be occupied by at least one certified paramedic or licensed physician and one certified emergency medical technician, certified paramedic, or licensed physician who also meets the requirements of s. 401.281, F.S., for drivers.<sup>24</sup> Interfacility transfers<sup>25</sup> under s. 401.252, F.S., are exempt from this requirement.

The person occupying the advanced life support ambulance with the highest medical certifications is in charge of patient care.<sup>26</sup>

Section 401.25, F.S., provides requirements for licensure as basic and advanced life support services. Every licensee must possess a valid permit for each vehicle in use.<sup>27</sup>

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<sup>18</sup> Section 401.23(2), F.S.

<sup>19</sup> Section 401.23(11), F.S.

<sup>20</sup> Section 401.23(17), F.S.

<sup>21</sup> Section 401.23(7), F.S.

<sup>22</sup> Section 401.25(7)(a), F.S.

<sup>23</sup> Section 401.23(1), F.S.

<sup>24</sup> Section 401.25(7)(b), F.S.

<sup>25</sup> Interfacility transfer is defined in s. 401.23, F.S., as the transportation by ambulance of a patient between two facilities licensed under chs. 393, 395, 400, or 429, F.S., pursuant to part III of ch. 401, F.S.

<sup>26</sup> *Id.*

<sup>27</sup> Section 401.26, F.S.

### **III. Effect of Proposed Changes:**

#### **Prefilled Insulin Pens and Syringes**

SB 718 amend ss. 400.488 and 429.256, F.S., respectively, to specify that assistance with the self-administration of medication in home health and ALF settings includes the unlicensed person, as defined in those sections, being able to take an insulin syringe that is prefilled with the proper dose by a pharmacist or an insulin pen that is prefilled by the manufacturer from the place where those items are stored and bring it to the patient or resident. Additionally, the bill amends s. 464.0156, F.S., to allow a registered nurse to delegate to a CNA or home health aide the administration of medication in an insulin syringe that has been prefilled with the proper dose by a pharmacist or an insulin pen that is prefilled by the manufacturer.

#### **Assistance with the Self-administration of Medication**

The bill amends s. 400.488, F.S., (allowing and specifying what is included in the assistance with self-administration of medications in a home health setting) to match what is allowed for the assistance with self-administration of medications in ALFs under s. 429.256, F.S. Specifically, the bill adds the following items to the list of activities that qualify as assistance with self-administration of medication in a home health setting:

- Assisting with transdermal patches.
- Using a glucometer to perform blood-glucose level checks.
- Assisting with putting on and taking off antiembolism stockings.
- Assisting with applying and removing an oxygen cannula but not with titrating the prescribed oxygen settings.
- Assisting with the use of a continuous positive airway pressure device but not with titrating the prescribed setting of the device.
- Assisting with measuring vital signs.
- Assisting with colostomy bags.

The bill also revises how assistance may be given in using a nebulizer in a home health setting to match how such assistance is authorized in an ALF. Specifically, the bill removes the authorization to set up and clean the nebulizer and confirm that the medication is intended for the patient.

#### **Interfacility Transfers of Patients**

The bill amends s. 401.252, F.S., to require that a permitted ALS ambulance be occupied by at least two persons when conducting an interfacility transfer:

- One patient attendant who is a certified paramedic, a registered nurse who qualifies under the provisions specified in the section, or a licensed physician; and
- One other person who is a certified EMT, certified paramedic, a licensed physician, or an ambulance driver who meets the driver requirements of s. 401.281, F.S.

The bill specifies that the person occupying the vehicle who has the highest medical certification in this state is in charge of patient care during the transfer.

**Other Provisions**

The bill amends ss. 401.25 and 401.27, F.S., to make conforming changes.

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

**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:**

Article III, Section 6, of the State Constitution requires that “every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.” SB 718 is entitled “An act relating to patient care in health care facilities.”

However, sections 2, 4, and 5 of the bill amend provisions relating to interfacility transfers of patients. As defined in s. 401.23, F.S., an interfacility transfer means “the transportation by ambulance of a patient between two facilities.” As such, the health care provided during an interfacility transfer necessarily does not take place within a health care facility.

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

None.

**B. Private Sector Impact:**

SB 718 may have an indeterminate negative fiscal impact on ALS service providers that may be required to have a second person in the ambulance when performing an interfacility transfer.



SB 718 may have an indeterminate positive fiscal impact on home health service providers who are able to use unlicensed persons to provide additional services that are not currently authorized.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 400.488, 401.252, 464.0156, 401.25, 401.27, and 429.256.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.