

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 Health Policy Committee

BILL: SB 370

INTRODUCER: Senator Wise

SUBJECT: Personal Care Attendant Program

DATE: February 18, 2008 REVISED: 02/20/08 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Garner</u>	<u>Wilson</u>	<u>HP</u>	Favorable
2.	_____	_____	<u>CF</u>	_____
3.	_____	_____	<u>HA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill changes the existing personal care attendant program and expands participant eligibility in order to provide personal care attendants to persons who have severe and chronic disabilities of all kinds, not just those with traumatic spinal cord injuries. The bill also names the program the James Patrick Memorial Work Incentive Personal Attendant Services Program.

The bill requires the Florida Endowment Foundation for Vocational Rehabilitation to contract with the Florida Association of Centers for Independent Living (FACIL or association) to administer the program and to provide training to program participants on hiring and managing a personal care attendant. It also provides that, effective July 1, 2008; the FACIL shall receive 15 percent of the funds to be deposited with the Florida Endowment Foundation for Vocational Rehabilitation from the Tax Collection Enforcement Diversion Program and the Motorcycle Specialty License Tag to administer the program.

The bill deletes requirements that the FACIL, the Department of Health, and the Florida Endowment Foundation for Vocational Rehabilitation develop a program to recruit, screen, and select persons to be trained as personal care attendants. It also deletes provisions allowing nurse registries to recruit and screen candidates to act as fiscal intermediaries to make payments to personal care attendants under the program.

The bill places the administration of the program solely with the FACIL. It establishes an oversight group and requires the FACIL to review and revise policies and procedures governing the program. The bill repeals specific provisions requiring the establishment of procedures for selecting eligible participants and the requirement that a plan be developed for implementation of the program.

The bill provides that all persons who are enrolled in the existing personal care attendant program and the Cross Disability pilot project on June 30, 2008, are automatically eligible for and enrolled in the revised program.

This bill substantially amends ss. 413.402 and 413.4021, F.S., and creates an undesignated section of law.

II. Present Situation:

Sections 413.402 and 413.4021, F.S., establish and provide a specific funding source for the personal care attendant program to assist eligible persons who are disabled due to a traumatic spinal cord injury to return to work in their communities by providing personal care attendants.¹ The personal care attendant program consists of two major components:

- Recruiting, screening, selecting, and training candidates as personal care attendants; and
- Selecting eligible individuals for participation, as well as providing financial assistance of approximately \$670 per month (\$8,000 per year) to reimburse a participant for the cost of his or her personal care attendant.

The FACIL is responsible for developing the program in a collaborative effort with the Brain and Spinal Cord Injury Program in the Department of Health (DOH), the Department of Revenue (DOR), the Florida Medicaid program in the Agency for Health Care Administration (AHCA), the Florida Endowment Foundation for Vocational Rehabilitation, and the Division of Vocational Rehabilitation of the Department of Education (DOE).²

Persons eligible to participate in the program must:

- Be at least 18 years of age and be significantly disabled due to a traumatic spinal cord injury;
- Require a personal care attendant for bathing, dressing, bowel and bladder management, and transportation;
- Require a personal care attendant to maintain substantial gainful employment;
- Be able to hire and supervise a personal care attendant; and
- Meet one of the following requirements:
 - Live in a nursing home.
 - Have moved out of a nursing home within the preceding 180 days due to participation in a Medicaid home and community-based waiver program targeted to persons with brain or spinal cord injuries.
 - Presently be employed but, because of a loss of a caregiver, will lose employment and potentially return to a nursing home.³

The FACIL, in cooperation with the DOH and the Florida Endowment Foundation for Vocational Rehabilitation, is responsible for developing the program to recruit, screen, select,

¹ Chapter 2002-286, Laws of Florida, established the program as a pilot; the program was made permanent in ch. 2005-172, Laws of Florida (L.O.F.).

² S. 413.402, F.S.

³ S. 413.402(1), F.S.

and train candidates as personal care attendants.⁴ These entities are also responsible for establishing procedures for selecting persons eligible for participation in the program.

The FACIL is also responsible for the development of a plan for implementation of the personal care attendant program, in cooperation with the DOR, the Brain and Spinal Cord Injury Program in the DOH, the Florida Medicaid program, a representative from the state attorney's office in each of the judicial circuits participating in the program, the Florida Endowment Foundation for Vocational Rehabilitation, and the Division of Vocational Rehabilitation of the DOE.

Responsibility for implementation and administration of the program is with the Personal Care Attendant Program Oversight Workgroup established by the DOH. The workgroup consists of one representative from the Brain and Spinal Cord Injury Program in the DOH, one representative from the DOR, one representative from the Florida Medicaid program in the AHCA, one representative from the Florida Endowment Foundation for Vocational Rehabilitation, one representative from the FACIL, one representative from the Division of Vocational Rehabilitation of the DOE, and two members who are persons with traumatic spinal cord injuries or are family members of persons with traumatic spinal cord injuries.⁵

The DOH and the AHCA are responsible for pursuing any federal waivers necessary to implement the personal care attendant program.

Implementation of the Personal Care Attendant Program

The personal care attendant program started as a pilot project in 2002 in select counties in Florida.⁶ Under the pilot project, the law required the DOR, in coordination with the FACIL and the Florida Prosecuting Attorneys Association, to select four counties in which to operate the pilot project.⁷ The following counties were selected: Broward, Duval, Hillsborough, Miami-Dade, and Palm Beach Counties.⁸

Although established in 2002, the program was unable to identify any persons who were able to meet the statutory eligibility criteria at that time. In 2005, the Legislature modified the criteria to include persons who had already transitioned out of nursing homes or into employment. However, enrollment in the program is still very low because of the limited number of qualifying medical conditions (traumatic spinal cord injuries) and qualifying circumstances (able to have gainful employment and recently left a nursing home). The following table shows the growth in the program in the last few years.

⁴ The services of a nurse registry licensed pursuant to s. 400.506, F.S., may be utilized to recruit and screen candidates and to operate as a fiscal intermediary through which payments are made to individuals performing services as personal care attendants under the program.

⁵ S. 413.402(6), F.S.

⁶ Ch. 2002-286, L.O.F.

⁷ S. 2 of ch. 2002-286, L.O.F.

⁸ <http://www.doh.state.fl.us/workforce/brainsc/PCAProgram/PCA.pdf> (last visited February 18, 2008)

Month and Year	Enrollment
January 2006	3
January 2007	22
January 2008	29

Funding for the Personal Care Attendant Program

There are two funding sources for the existing personal care attendant program: proceeds from the Tax Collection Enforcement Diversion Program and from the Motorcycle Specialty License (Bikers Care) Tag.⁹

Tax Collection Enforcement Diversion Program

In conjunction with the establishment of the personal care attendant program, the Legislature directed the FACIL and the state attorney’s offices in the participating counties to implement a Tax Collection Enforcement Diversion program, which collects revenue from persons who have not remitted their sales taxes. Section 413.4021(1), F.S., specifies that 50 percent of those collections are to be remitted by the DOR to the Able Trust of the Florida Endowment Foundation for Vocational Rehabilitation to be used to implement the personal care attendant program, with the other 50 percent going to the General Revenue Fund. The Able Trust, in turn, remits funds to the FACIL to administer and operate the personal care attendant program.

Currently five State Attorney’s offices in Florida operate a program in which un-remitted sales tax is collected from delinquent business owners. These collections generate about \$80,000 per month for the personal care attendant program. According to the DOR, in FY 2005-06 the Tax Collection Enforcement Diversion programs in the five participating counties collected and the DOR remitted the following to the Able Trust:

County	Total Collected FY 2006-07	50 Percent to Able Trust	50 Percent to General Revenue
Broward	\$473,528	\$236,764	\$236,764
Duval	570,540	285,270	285,270
Hillsborough	734,196	367,098	367,098
Miami-Dade	280,416	140,208	140,208
Palm Beach	241,078	120,539	120,539
Specialty Tag		55,807	
Other contributions		50	
Interest		61,399	
TOTAL*	\$2,299,758	\$1,267,135	\$1,149,879

* All figures are rounded to the nearest dollar, so some row totals will not sum precisely.

Motorcycle Specialty (Bikers Care) Tag

Since 2003, the Department of Highway Safety and Motor Vehicles has offered a specialty tag to the owner or lessee of any motorcycle who chooses to pay the additional cost. Pursuant to s. 320.08068(4), F.S., an annual use fee of \$20 is collected from the sale of each specialty license plate under this section. The fees are distributed to the Able Trust as a custodial agent of the

⁹ Ss. 413.4021(1) and 320.08068(4)(d), F.S.

funds.¹⁰ The Able Trust is permitted to retain up to 10 percent of these funds for administrative costs and the remaining funds are distributed as follows:

- Twenty percent to the Brain and Spinal Cord Injury Program Trust Fund;
- Twenty percent to Prevent Blindness Florida;
- Twenty percent to the Blind Services Foundation of Florida;
- Twenty percent to the Foundation for Vocational Rehabilitation to support the Personal Care Attendant Program pursuant to s. 413.402; and,
- Twenty percent to the FACIL to be used to leverage additional funding and new sources of revenue for the centers for independent living in this state.

In FY 2006-07, the FACIL received approximately \$60,000 from the Able Trust as their share of the specialty tag proceeds.

Cross Disability Pilot Program

In 2006, the Legislature appropriated \$400,000 in non-recurring general revenue to establish a pilot personal care attendant project in Orange, Osceola, Lake, and Seminole counties.¹¹ In contrast to the statutory personal care attendant program, which may serve only those who suffer from traumatic spinal cord injuries, the Cross Disability pilot project is intended to serve persons who are significantly physically or mentally disabled without regard to the underlying cause of the disability. Such individuals who need the assistance of a personal care attendant to accept or maintain employment are eligible to enroll in the pilot project.

Operating procedures for the Cross Disability pilot project are based on the experiences of the existing personal care attendant program and cross disability personal assistance programs of six other states. The Cross Disability pilot project provides each participant up to \$1,500 per month to pay for a personal care attendant. The maximum reimbursable amount is based on a formula that takes into account a participant's income.

Among current enrollees, those maximums range from \$1,238.15 to \$1,500; however, in no case may a participant be reimbursed for more than the amount actually paid to his or her personal care attendant. The pilot project began enrollment in January 2007 and currently has 11 individuals participating.

Because the appropriation establishing the pilot project specified non-recurring general revenue, the Cross Disability pilot project is operating under the original appropriation in 2006. The Department of Children and Families was permitted to carry forward the unspent balance of the original appropriation to fund the program's operations in FY 2007-08.¹² Without new funding, the program will not continue after July 2008.

¹⁰ Prior to July 1, 2006, the share allotted to the personal care attendant program was 25 percent. See ch. 2006-169, L.O.F.

¹¹ See Specific Appropriation 340, General Appropriations Act, ch. 2006-25, L.O.F. These funds were appropriated to the Department of Children and Families and are being distributed to the FACIL pursuant to grant agreements.

¹² Section 19 in the GAA for FY 07-08 authorizes DCF to carry forward the unexpended balance of the FY 2006-07 appropriation of \$400,000. The actual carry-forward amount was \$202,000 in non-recurring funds.

III. Effect of Proposed Changes:

Section 1. Amends s. 413.402, F.S., requiring the Florida Endowment Foundation for Vocational Rehabilitation to contract with the FACIL to administer the James Patrick Memorial Work Incentive Personal Attendant Services Program to provide personal care attendants to persons having severe and chronic disabilities of all kinds and who meet specified eligibility criteria. Effective July 1, 2008, the bill provides that the FACIL shall receive 15 percent of the funds to be deposited with the Florida Endowment Foundation for Vocational Rehabilitation pursuant to ss. 320.08068(4)(d) and 413.4021(1), F.S.

The bill amends program eligibility standards to require a person to: be a resident of Florida for at least 12 months immediately prior to application to the program; be chronically disabled; require assistance with at least two activities of daily living; and require a personal care attendant in order to accept or maintain employment. The person would no longer have to be a resident, or recent resident, of a nursing home and be employed, but at risk of losing employment. The bill deletes requirements relating to recruitment, screening, and selection of personal care attendants; requires the FACIL to provide certain training to program participants; establishes an oversight group and provides membership; and repeals specific provisions requiring the establishment of procedures for selecting eligible participants and the requirement that a plan be developed for implementation of the program.

Section 2. Amends s. 413.4021, F.S., repealing the provision that the Florida Endowment Foundation for Vocational Rehabilitation shall select the entity to administer the personal care attendant program.

Section 3. Creates an undesignated section of law providing for automatic eligibility for and enrollment in the personal care attendant program, as amended by this act and, effective July 1, 2008, of each person enrolled in the personal care attendant program under s. 413.402, F.S., on June 30, 2008, and each person enrolled in the pilot personal care attendant program in Lake, Orange, Osceola, and Seminole Counties as authorized in Specific Appropriation 340, ch. 2006-25, L.O.F., on June 30, 2008.

Section 4. Provides that the bill takes effect on July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Individuals with a broader range of disabilities will have the opportunity to hire a personal care attendant to assist them in order to obtain or maintain gainful employment.

C. Government Sector Impact:

None.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.