

Tab 1	SB 718 by Bradley ; (Similar to CS/H 00469) Patient Care in Health Care Facilities
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Tab 2	SB 1080 by Baxley ; (Identical to H 00607) Medicaid Managed Care Specialty Plans					
382832	A	S	RCS	HP, Baxley	Delete L.14 - 24:	01/19 10:05 AM

Tab 3	CS/SB 498 by BI, Baxley (CO-INTRODUCERS) Perry, Taddeo, Book ; (Similar to H 00079) Coverage for Hearing Aids for Children
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Tab 4	SB 1222 by Bean ; (Identical to H 00937) Nonemergent Patient Care					
758824	A	S	RCS	HP, Bean	Delete L.26 - 130:	01/19 10:05 AM

Tab 5	SB 836 by Brodeur ; (Similar to H 01403) Medication Technicians					
811990	D	S		HP, Brodeur	Delete everything after	01/14 03:14 PM

Tab 6	SB 842 by Brodeur ; (Identical to H 01449) Invalid Restrictive Covenants in Health Care					
720062	A	S		HP, Brodeur	Delete L.42 - 47:	01/14 04:46 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

HEALTH POLICY
Senator Diaz, Chair
Senator Brodeur, Vice Chair

MEETING DATE: Wednesday, January 19, 2022

TIME: 9:00—10:00 a.m.

PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Diaz, Chair; Senator Brodeur, Vice Chair; Senators Albritton, Baxley, Bean, Book, Cruz, Garcia, Jones, and Powell

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 718 Bradley (Similar CS/H 469)	Patient Care in Health Care Facilities; Revising provisions relating to medications and devices with which unlicensed individuals may assist patients in self-administration under certain circumstances; specifying staffing requirements for advanced life support ambulances during interfacility transfers; revising the list of medications that a registered nurse may delegate the administration of to a certified nursing assistant or home health aide, etc. HP 01/19/2022 Temporarily Postponed AP RC	Temporarily Postponed
2	SB 1080 Baxley (Identical H 607, Compare S 1950)	Medicaid Managed Care Specialty Plans; Authorizing Medicaid managed care specialty plans to continue serving certain children whose guardians receive guardianship assistance payments under the Guardianship Assistance Program, etc. HP 01/19/2022 Fav/CS AHS AP	Fav/CS Yeas 8 Nays 0
3	CS/SB 498 Banking and Insurance / Baxley (Similar H 79)	Coverage for Hearing Aids for Children; Requiring certain individual health insurance policies to provide coverage for hearing aids for certain children 18 years of age or younger under certain circumstances; requiring certain individual health maintenance organization contracts to provide coverage for hearing aids for certain children 18 years of age or younger under certain circumstances; specifying certain coverage requirements; providing an exception, etc. BI 01/12/2022 Fav/CS HP 01/19/2022 Favorable AP	Favorable Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Health Policy

Wednesday, January 19, 2022, 9:00—10:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1222 Bean (Identical H 937)	Nonemergent Patient Care; Defining the term "community paramedicine"; providing that a physician who supervises the provision of certain services by a paramedic or an emergency medical technician is liable for any act or omission during the provision of such services; authorizing paramedics and emergency medical technicians to perform community paramedicine under certain circumstances; specifying that Class III institutional pharmacies may dispense, distribute, compound, and fill prescriptions for medicinal drugs for inpatient and outpatient treatment, etc. HP 01/19/2022 Fav/CS JU RC	Fav/CS Yeas 8 Nays 0
5	SB 836 Brodeur (Similar H 1403)	Medication Technicians; Defining the term "medication technician"; providing minimum requirements and specifications for training of medication technicians, etc. HP 01/19/2022 Temporarily Postponed AHS AP	Temporarily Postponed
6	SB 842 Brodeur (Identical H 1449)	Invalid Restrictive Covenants in Health Care; Defining the terms "hospital" and "physician"; specifying that certain restrictive covenants in employment agreements between physicians and hospitals do not support a legitimate business interest; authorizing a party to an employment agreement to elect to have a mutually agreed upon arbitrator make a specified binding determination, etc. CM 01/10/2022 Favorable HP 01/19/2022 Temporarily Postponed RC	Temporarily Postponed

Other Related Meeting Documents

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 Committee on Health Policy

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	Pre-meeting
2.	_____	_____	AP	_____
3.	_____	_____	RC	_____

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.¹ Home health services are health and medical services and supplies furnished to an individual in the individual’s home or place of residence.²

Home health aides³ and certified nursing assistants⁴ (CNAs) are unlicensed health care workers employed by a home health agency to provide personal care⁵ 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.⁶

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,⁷ 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.

¹ Section 400.462(12), F.S.

² 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.

³ 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.

⁴ 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.

⁵ 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.

⁶ Rule 59A-8.002(3), F.A.C.

⁷ 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.⁸ A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-

⁸ 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.⁹ Activities of daily living include ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.¹⁰

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.¹¹ The owner or facility administrator determines whether an individual is appropriate for admission to the facility based on a number of criteria.¹² 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.¹³

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,¹⁴ 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.

⁹ Section 429.02(18), F.S.

¹⁰ Section 429.02(1), F.S.

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

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

¹³ Section 429.28, F.S.

¹⁴ 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.¹⁵ The DOH licenses three types of emergency medical services: air ambulance,¹⁶ 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.¹⁷ In contrast, an advanced life support service is an emergency medical transport or

¹⁵ 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).

¹⁶ Sections 401.23(3) and (4) and 401.251, F.S.

¹⁷ Section 401.23(8), F.S.

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

“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.²¹ 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.²²

“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.²³

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.²⁴ Interfacility transfers²⁵ 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.²⁶

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.²⁷

¹⁸ Section 401.23(2), F.S.

¹⁹ Section 401.23(11), F.S.

²⁰ Section 401.23(17), F.S.

²¹ Section 401.23(7), F.S.

²² Section 401.25(7)(a), F.S.

²³ Section 401.23(1), F.S.

²⁴ Section 401.25(7)(b), F.S.

²⁵ 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.

²⁶ *Id.*

²⁷ 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.

By Senator Bradley

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A bill to be entitled

An act relating to patient care in health care facilities; amending s. 400.488, F.S.; revising provisions relating to medications and devices with which unlicensed individuals may assist patients in self-administration under certain circumstances; amending s. 401.252, F.S.; specifying staffing requirements for advanced life support ambulances during interfacility transfers; providing that the person occupying the ambulance who has the highest medical certification in this state is in charge of patient care during the transfer; amending s. 464.0156, F.S.; revising the list of medications that a registered nurse may delegate the administration of to a certified nursing assistant or home health aide; amending ss. 401.25, 401.27, and 429.256, F.S.; conforming provisions to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (2), (3), and (4) of section 400.488, Florida Statutes, are amended to read:

400.488 Assistance with self-administration of medication.—

(2) Patients who are capable of self-administering their own medications without assistance must ~~shall~~ be encouraged and allowed to do so. However, an unlicensed person may, consistent with a dispensed prescription's label or the package directions of an over-the-counter medication, assist a patient whose

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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 patient or the patient's surrogate, guardian, or attorney in fact. For purposes of this section, self-administered medications include both legend and over-the-counter oral dosage forms, topical dosage forms, transdermal patches, and topical ophthalmic, otic, and nasal dosage forms, including solutions, suspensions, sprays, inhalers, and nebulizer treatments.

(3) Assistance with self-administration of medication includes:

(a) Taking the medication, in its previously dispensed, properly labeled container, from where it is stored and bringing it to the patient. For purposes of this paragraph, an insulin syringe that is prefilled with the proper dosage by a pharmacist and an insulin pen that is prefilled by the manufacturer are considered medications in previously dispensed, properly labeled containers.

(b) 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.

(c) 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.

(d) Applying topical medications, ~~including routine~~

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59 ~~preventive skin care and applying and replacing bandages for~~
60 ~~minor cuts and abrasions as provided by the agency in rule.~~

61 (e) Returning the medication container to proper storage.

62 (f) ~~For nebulizer treatments, assisting with setting up and~~
63 ~~cleaning the device in the presence of the patient, confirming~~
64 ~~that the medication is intended for that patient, orally~~
65 ~~advising the patient of the medication name and purpose, opening~~
66 ~~the container, removing the prescribed amount for a single~~
67 ~~treatment dose from a properly labeled container, and assisting~~
68 ~~the patient with placing the dose into the medicine receptacle~~
69 ~~or mouthpiece.~~

70 ~~(g)~~ Keeping a record of when a patient receives assistance
71 with self-administration under this section.

72 (g) Assisting with the use of a nebulizer, including
73 removing the cap of a nebulizer, opening the unit dose of
74 nebulizer solutions, and pouring the prescribed premeasured dose
75 of medication into the dispensing cup of the nebulizer.

76 (h) Using a glucometer to perform blood-glucose level
77 checks.

78 (i) Assisting with putting on and taking off antiembolism
79 stockings.

80 (j) Assisting with applying and removing an oxygen cannula
81 but not with titrating the prescribed oxygen settings.

82 (k) Assisting with the use of a continuous positive airway
83 pressure device but not with titrating the prescribed setting of
84 the device.

85 (l) Assisting with measuring vital signs.

86 (m) Assisting with colostomy bags.

87 (4) Assistance with self-administration does not include:

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88 (a) Mixing, compounding, converting, or calculating
89 medication doses, except for measuring a prescribed amount of
90 liquid medication or breaking a scored tablet or crushing a
91 tablet as prescribed.

92 (b) The preparation of syringes for injection or the
93 administration of medications by any injectable route.

94 (c) ~~Administration of medications through intermittent~~
95 ~~positive pressure breathing machines or a nebulizer.~~

96 ~~(d)~~ Administration of medications by way of a tube inserted
97 in a cavity of the body.

98 ~~(d)~~ ~~(e)~~ Administration of parenteral preparations.

99 ~~(e)~~ ~~(f)~~ Irrigations or debriding agents used in the
100 treatment of a skin condition.

101 ~~(f)~~ ~~(g)~~ Rectal, urethral, or vaginal preparations.

102 (g) ~~(h)~~ Medications ordered by the physician or health care
103 professional with prescriptive authority to be given "as
104 needed," unless the order is written with specific parameters
105 that preclude independent judgment on the part of the unlicensed
106 person, and at the request of a competent patient.

107 (h) ~~(i)~~ Medications for which the time of administration,
108 the amount, the strength of dosage, the method of
109 administration, or the reason for administration requires
110 judgment or discretion on the part of the unlicensed person.

111 Section 2. Section 401.252, Florida Statutes, is amended to
112 read:

113 401.252 Interfacility transfer.—

114 (1) When conducting an interfacility transfer, a permitted
115 advanced life support ambulance must be occupied by at least two
116 persons: one patient attendant who is a certified paramedic, a

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117 registered nurse authorized under subsection (2), or a licensed
 118 physician; and one who is a certified emergency medical
 119 technician, a certified paramedic, a licensed physician, or an
 120 ambulance driver who meets the driver requirements of s.
 121 401.281. The person occupying the ambulance who has the highest
 122 medical certification in this state is in charge of patient care
 123 during the interfacility transfer.

124 (2) A licensed basic or advanced life support ambulance
 125 service may conduct interfacility transfers in a permitted
 126 ambulance, using a registered nurse in place of an emergency
 127 medical technician or paramedic, if:

128 (a) The registered nurse holds a current certificate of
 129 successful course completion in advanced cardiac life support;

130 (b) The physician in charge has granted permission for such
 131 a transfer, has designated the level of service required for
 132 such transfer, and has deemed the patient to be in such a
 133 condition appropriate to this type of ambulance staffing; and

134 (c) The registered nurse operates within the scope of part
 135 I of chapter 464.

136 ~~(3)(2)~~ A licensed basic or advanced life support service
 137 may conduct interfacility transfers in a permitted ambulance if
 138 the patient's treating physician certifies that the transfer is
 139 medically appropriate and the physician provides reasonable
 140 transfer orders. An interfacility transfer must be conducted in
 141 a permitted ambulance if it is determined that the patient
 142 needs, or is likely to need, medical attention during transport.
 143 If the emergency medical technician or paramedic believes the
 144 level of patient care required during the transfer is beyond his
 145 or her capability, the medical director, or his or her designee,

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146 must be contacted for clearance prior to conducting the
 147 transfer. If necessary, the medical director, or his or her
 148 designee, shall attempt to contact the treating physician for
 149 consultation to determine the appropriateness of the transfer.

150 ~~(4)(2)~~ Infants younger less than 28 days old or ~~infants~~
 151 weighing less than 5 kilograms, who require critical care
 152 interfacility transport to a neonatal intensive care unit must,
 153 ~~shall~~ be transported in a permitted advanced life support or
 154 basic life support transport ambulance, or in a permitted
 155 advanced life support or basic life support ambulance that is
 156 recognized by the department as meeting designated criteria for
 157 neonatal interfacility critical care transport.

158 Section 3. Subsection (2) of section 464.0156, Florida
 159 Statutes, is amended to read:

160 464.0156 Delegation of duties.—

161 (2) A registered nurse may delegate to a certified nursing
 162 assistant or a home health aide the administration of oral,
 163 transdermal, ophthalmic, otic, rectal, inhaled, enteral, or
 164 topical prescription medications to a patient of a home health
 165 agency, if the certified nursing assistant or home health aide
 166 meets the requirements of s. 464.2035 or s. 400.489,
 167 respectively. A registered nurse may not delegate the
 168 administration of any controlled substance listed in Schedule
 169 II, Schedule III, or Schedule IV of s. 893.03 or 21 U.S.C. s.
 170 812, except for the administration of an insulin syringe that is
 171 prefilled with the proper dosage by a pharmacist or an insulin
 172 pen that is prefilled by the manufacturer.

173 Section 4. Subsection (7) of section 401.25, Florida
 174 Statutes, is amended to read:

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175 401.25 Licensure as a basic life support or an advanced
176 life support service.-

177 (7) (a) Each permitted basic life support ambulance not
178 specifically exempted from this part, when transporting a person
179 who is sick, injured, wounded, incapacitated, or helpless, must
180 be occupied by at least two persons: one patient attendant who
181 is a certified emergency medical technician, certified
182 paramedic, or licensed physician; and one ambulance driver who
183 meets the requirements of s. 401.281. This paragraph does not
184 apply to interfacility transfers governed by s. 401.252 ~~s.~~
185 ~~401.252(1)~~.

186 (b) Each permitted advanced life support ambulance not
187 specifically exempted from this part, when transporting a person
188 who is sick, injured, wounded, incapacitated, or helpless, must
189 be occupied by at least two persons: one who is a certified
190 paramedic or licensed physician; and one who is a certified
191 emergency medical technician, certified paramedic, or licensed
192 physician who also meets the requirements of s. 401.281 for
193 drivers. The person with the highest medical certifications
194 shall be in charge of patient care. This paragraph does not
195 apply to interfacility transfers governed by s. 401.252 ~~s.~~
196 ~~401.252(1)~~.

197 Section 5. Subsection (1) of section 401.27, Florida
198 Statutes, is amended to read:

199 401.27 Personnel; standards and certification.-

200 (1) Each permitted ambulance not specifically exempted from
201 this part, when transporting a person who is sick, injured,
202 wounded, incapacitated, or helpless, must be occupied by at
203 least two persons, one of whom must be a certified emergency

5-00716A-22

2022718__

204 medical technician, certified paramedic, or licensed physician
205 and one of whom must be a driver who meets the requirements for
206 ambulance drivers. This subsection does not apply to
207 interfacility transfers governed by s. 401.252 ~~s. 401.252(1)~~.

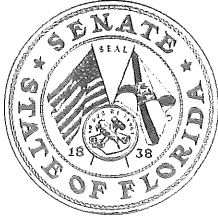
208 Section 6. Paragraph (a) of subsection (3) of section
209 429.256, Florida Statutes, is amended to read:

210 429.256 Assistance with self-administration of medication.-

211 (3) Assistance with self-administration of medication
212 includes:

213 (a) Taking the medication, in its previously dispensed,
214 properly labeled container, ~~including an insulin syringe that is~~
215 ~~prefilled with the proper dosage by a pharmacist and an insulin~~
216 ~~pen that is prefilled by the manufacturer,~~ from where it is
217 stored, and bringing it to the resident. For purposes of this
218 paragraph, an insulin syringe that is prefilled with the proper
219 dosage by a pharmacist and an insulin pen that is prefilled by
220 the manufacturer are considered medications in previously
221 dispensed, properly labeled containers.

222 Section 7. This act shall take effect July 1, 2022.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Community Affairs, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Education
Ethics and Elections
Judiciary
Reapportionment

SELECT SUBCOMMITTEE:
Select Subcommittee on Congressional
Reapportionment, *Chair*

JOINT COMMITTEES:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

SENATOR JENNIFER BRADLEY
5th District

November 16, 2021

Senator Manny Diaz, Chairman
Senate Health Policy Committee
306 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Mr. Chairman:

I respectfully request that Senate Bill 718 be placed on the agenda of the Health Policy Committee at your earliest convenience. The bill includes a provision that mirrors the duties of a home health aide or a CNA with the assistance of a patient's self-administration of medicine in the home health statute to the assisted living facility statute (ALF). It also allows for flexibility for ambulance providers related to the persons staffing the vehicle for non-emergency transports only.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Bradley".

Jennifer Bradley

cc: Allen Brown, Staff Director
Tori Denson, Administrative Assistant

REPLY TO:

- 1279 Kingsley Avenue, Kingsley Center, Suite 117, Orange Park, Florida 32073 (904) 278-2085
- 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

718

Bill Number or Topic

1/19/22
Meeting Date

Health Pdr
Committee

Amendment Barcode (if applicable)

Name

DAVID MICA, Jr

Phone

352-277-8700

Address

Street

Email

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without
compensation or sponsorship.

I am a registered lobbyist,
representing:

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

Florida Hospital Association

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

Jan. 19, 2022

Meeting Date

Health Policy

Committee

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

718

Bill Number or Topic

Amendment Barcode (if applicable)

Name Zayne Smith

Phone 850.228.4243

Address 215 South Monroe St.

Email zsmith@aarp.org

Street

Tallahassee

FL

32301

City

State

Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

AARP

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

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 Committee on Health Policy

BILL: CS/SB 1080

INTRODUCER: Health Policy Committee and Senator Baxley

SUBJECT: Medicaid Managed Care Specialty Plans

DATE: January 19, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Smith</u>	<u>Brown</u>	<u>HP</u>	<u>Fav/CS</u>
2.	_____	_____	<u>AHS</u>	_____
3.	_____	_____	<u>AP</u>	_____

I. Summary:

CS/SB 1080 authorizes a child welfare specialty managed care plan under contract with the Medicaid Managed Medical Assistance (MMA) program to serve a child in a permanent guardianship situation. Specifically, such child must continue to be eligible for Medicaid and his or her parent or guardian must receive guardianship assistance payments under the Guardianship Assistance Program.

If children become eligible and receive services through a child welfare specialty plan as authorized in the bill, the bill will have an indeterminate negative fiscal impact.

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

II. Present Situation:

Florida Medicaid Program

The Medicaid program is a joint federal-state program that finances health coverage for individuals, including eligible low-income adults, children, pregnant women, elderly adults, and persons with disabilities.¹ The Centers for Medicare & Medicaid Services (CMS) within the U.S. Department of Health and Human Services (HHS) is responsible for administering the federal Medicaid program. Florida Medicaid is the health care safety net for low-income Floridians. Florida's program is administered by the Agency for Health Care Administration (AHCA) and financed through state and federal funds.²

A Medicaid state plan is an agreement between a state and the federal government describing how the state administers its Medicaid programs. The state plan establishes groups of individuals

¹ Medicaid.gov, *Medicaid*, available at <https://www.medicare.gov/medicaid/index.html> (last visited Jan. 12, 2022).

² Section 20.42, F.S.

covered under the Medicaid program, services that are provided, payment methodologies, and other administrative and organizational requirements.

In order to participate in Medicaid, federal law requires states to cover certain population groups (mandatory eligibility groups) and gives states the flexibility to cover other population groups (optional eligibility groups). States set individual eligibility criteria within federal minimum standards. The AHCA may seek an amendment to the state plan as necessary to comply with federal or state laws or to implement program changes. States send state plan amendments to the federal CMS for review and approval.³

Florida Medicaid enrollees generally receive benefits through one of two service-delivery systems: fee-for-service (FFS) or managed care. Under FFS, health care providers are paid by the state Medicaid program for each service provided to a Medicaid enrollee. Under managed care, the AHCA contracts with private managed care plans for the coordination and payment of services for Medicaid enrollees. The state pays the managed care plans a capitation payment, or fixed monthly payment, per recipient enrolled in the managed care plan.

In Florida, the majority of Medicaid recipients receive their services through a managed care plan contracted with the AHCA under the Statewide Medicaid Managed Care (SMMC) program. The SMMC program has two components, the Managed Medical Assistance (MMA) program and the Long-term Care Managed Care program. SMMC benefits are authorized by federal authority and are specifically required in ss. 409.973 and 409.98, F.S.

The AHCA contracts with managed care plans on a regional basis to provide services to eligible recipients. The MMA program, which covers most primary care, acute care, and behavioral health care services for managed care plan enrollees, was fully implemented in August 2014 and was re-procured for a period beginning December 2018 and ending in December 2023.

Specialty Plans⁴

An MMA managed care plan can participate in the MMA program as a standard plan or as a specialty plan. A specialty plan is a managed care plan that serves Medicaid recipients who meet specified criteria based on age, medical condition, or diagnosis.⁵ If a specialty plan is available to accommodate a specific condition or diagnosis of a Medicaid recipient, the AHCA must automatically enroll the recipient in that plan unless the recipient chooses a different plan.⁶ MMA specialty plans cover the same health care services as the standard MMA plans, and in addition, they must maintain a care coordination program tailored to the special needs of the plan's enrollees.

When a recipient is eligible for more than one MMA specialty plan, the AHCA uses a ranking to determine which MMA specialty plan to assign. The recipient is automatically assigned to the

³ Medicaid.gov, *Medicaid State Plan Amendments*, available at <https://www.medicaid.gov/medicaid/medicaid-state-plan-amendments/index.html> (last visited Jan. 13, 2022).

⁴ Agency for Health Care Administration, *Medicaid Managed Medical Assistance Specialty Plans* available at https://ahca.myflorida.com/medicaid/statewide_mc/pdf/mma/Specialty_Plans_110316.pdf (last visited Jan. 13, 2022).

⁵ Section 409.962(18), F.S.

⁶ Section 409.977(1), F.S.

specialty plan listed highest on the ranking, unless the recipient chooses to enroll in another MMA specialty plan for which he or she is eligible or in a standard MMA plan offered in his or her region.

Currently, the following specialty plans are offered under the SMMC:⁷

- Children’s Medical Services Network Plan
- Clear Health Alliance HIV/AIDS Specialty Plan
- Molina Health Care Serious Mental Illness Specialty Plan (in Regions 4, 5, and 7)
- Sunshine Serious Mental Illness Specialty Plan
- Sunshine Health Child Welfare Specialty Plan

Under s. 409.977, F.S., specialty plans serving children in the care and custody of the DCF may serve such children as long as they remain in care, including those remaining in extended foster care pursuant to s. 39.6251, F.S., or are in subsidized adoption and continue to be eligible for Medicaid pursuant to s. 409.903, F.S.

Sunshine Health Child Welfare Specialty Plan⁸

The Sunshine Health Child Welfare Specialty Plan serves over 53,000 members and is available statewide to children who are under the age of 21, who have a child welfare case or post adoption case open for services as identified in the DCF Florida Safe Families Network (FSFN) database, and who have an FSFN eligibility indicator in the AHCA’s Florida Medicaid Managed Information System (FMMIS). A recipient will receive a letter informing them that they may enroll in the child welfare specialty plan.⁹

Like any MMA plan, the child welfare specialty plan must cover the minimum benefits outlined in s. 409.973, F.S., and the following benefits are available under the child welfare specialty plan:

- Medical Foster Care
- Statewide Inpatient Psychiatric Program (SIPP)
- Specialized therapeutic foster care and therapeutic group care
- Targeted case management
- Private duty nursing
- Individual and family therapy
- Behavioral Health Overlay Services
- Comprehensive behavioral health assessments
- Emergency transportation
- Non-medical/non-emergency transportation with up to three round trips per month

⁷ Agency for Health Care Administration, List of Plans as of Oct. 11, 2021 (on file with the Senate Committee on Health Policy).

⁸ Sunshine Health Child Welfare Specialty Plan updated Nov. 2021 (on file with the Senate Committee on Health Policy). See also Sunshine Health, Benefits Overview *available at* <https://www.sunshinehealth.com/members/child-welfare-plan/benefits-services.html> (last visited Jan. 14, 2022).

⁹ *Id.* at 4.

- Care grants of up to \$150 per child per calendar year for services and supplies for social or physical activities, such as gym memberships, swim lessons, sports equipment, art supplies or application fees for post high school
- Transition assistance up to \$500 in one-time assistance for young adults transitioning out of foster care at age 18 or extended foster care at age 21.
- Life skills development education for children ages 12 and up with developmental disabilities to help them keep, learn, or improve skills and functioning for daily living.
- Over-the-counter medication up to \$25 per household, per month
- Home-delivered meals for 10 days after being discharged from a facility
- Doula Services
- Newborn circumcision
- A 24-Hour Nurse Advice Line
- A 24-Hour Behavioral Health Line

Guardianship Assistance Program

Through the Guardianship Assistance Program (GAP), Florida offers guardianship assistance payments to relatives and fictive kin¹⁰ that commit to providing long-term care for children in Florida's Child Welfare System and meet eligibility criteria.¹¹ The GAP is governed by s. 39.6225, F.S., and is designed to provide additional services and supports to caregivers of children who were removed from their primary caregiver due to abuse or neglect.¹² The DCF must approve a GAP application if all of the following requirements have been met:

- The child's placement with the guardian has been approved by the court.
- The court has granted legal custody to the guardian.
- The guardian has been licensed to care for the child.
- The child was eligible for foster care room and board payments for at least six consecutive months while the child resided in the home of the guardian and the guardian was licensed as a foster parent.¹³

A child receiving assistance through the GAP is eligible for Medicaid coverage until the child attains 18 years of age, or until the child attains 21 years of age if he or she is:

- Completing secondary education or a program leading to an equivalent credential;
- Enrolled in an institution that provides postsecondary or vocational education;
- Participating in a program or activity designed to promote or eliminate barriers to employment;
- Employed for at least 80 hours per month; or
- Unable to participate full time in programs or activities listed in the four bullets above due to a physical, intellectual, emotional, or psychiatric condition that limits participation.¹⁴

¹⁰ "Fictive kin" means a person unrelated by birth, marriage, or adoption who has an emotionally significant relationship, which possesses the characteristics of a family relationship, to a child. Section 39.01(28), F.S.

¹¹ Florida Department of Children and Families Office of Child Welfare, Guardianship Assistance Program (GAP) available at <https://www.myflfamilies.com/service-programs/child-welfare/gap/> (last visited Jan. 12, 2022).

¹² *Id.*

¹³ Section 39.6225(2), F.S.

¹⁴ Section 39.6225(8) and (9), F.S.

III. Effect of Proposed Changes:

CS/SB 1080 amends s. 409.977(5), F.S., to authorize a child welfare specialty managed care plan under contract with the MMA program to serve a child who continues to be eligible for Medicaid and whose parent or guardian receives guardianship assistance payments under the Guardianship Assistance Program.

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:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

A child who will become eligible to receive services through a child welfare specialty plan under the bill is already eligible for Medicaid, either in another MMA specialty plan for which he or she is eligible or in a standard MMA plan offered in his or her region. The capitation rate for children in the child welfare specialty plan is higher than the rates for most children in other plans. If children become eligible and receive services through the child welfare specialty plan, the bill will have an indeterminate negative fiscal impact.

The precise fiscal impact of children becoming newly eligible for the specialty plans cannot be calculated without knowing the Medicaid region in which an eligible child resides and the capitation rate category in which the child is currently categorized. This is because Medicaid capitation rates vary by region and children could be in different rate cells based on age, gender, Medicaid eligibility category, and other characteristics.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 409.977 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on January 19, 2022:

The committee substitute makes technical changes with no substantive changes to the underlying bill.

- B. **Amendments:**

None.



382832

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/19/2022	.	
	.	
	.	
	.	

The Committee on Health Policy (Baxley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 14 - 24

and insert:

(5) Specialty plans serving children in the care and custody of the department may serve such children as long as they remain in care, including those remaining in extended foster care pursuant to s. 39.6251, ~~or~~ are in subsidized adoption and continue to be eligible for Medicaid pursuant to s. 409.903, or are receiving guardianship assistance payments and



382832

11 continue to be eligible for Medicaid pursuant to s. 409.903.

12

13

14 ===== T I T L E A M E N D M E N T =====

15 And the title is amended as follows:

16 Delete line 5

17 and insert:

18 certain children who receive guardianship

By Senator Baxley

12-01157-22

20221080__

1 A bill to be entitled

2 An act relating to Medicaid managed care specialty
3 plans; amending s. 409.977, F.S.; authorizing Medicaid
4 managed care specialty plans to continue serving
5 certain children whose guardians receive guardianship
6 assistance payments under the Guardianship Assistance
7 Program; providing an effective date.
8

9 Be It Enacted by the Legislature of the State of Florida:

10
11 Section 1. Subsection (5) of section 409.977, Florida
12 Statutes, is amended to read:

13 409.977 Enrollment.—

14 (5) A specialty plan plans serving a child children in the
15 care and custody of the department may continue to serve such
16 child children as long as he or she continues to be eligible for
17 Medicaid pursuant to s. 409.903 and:

18 (a) Remains They remain in care, including those remaining
19 in extended foster care pursuant to s. 39.6251;

20 (b) Is, or are in subsidized adoption; or

21 (c) His or her guardian receives guardianship assistance
22 payments as defined in s. 39.01 under the Guardianship
23 Assistance Program and continue to be eligible for Medicaid
24 pursuant to s. 409.903.

25 Section 2. This act shall take effect July 1, 2022.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR DENNIS BAXLEY

12th District

COMMITTEES:

Ethics and Elections, *Chair*
Appropriations
Appropriations Subcommittee on Criminal and Civil Justice
Community Affairs
Criminal Justice
Health Policy
Judiciary
Rules

JOINT COMMITTEE:

Joint Legislative Auditing Committee, *Alternating Chair*

January 7, 2022

The Honorable Senator Manny Diaz
306 Senate Office Building
Tallahassee, FL 32399

Dear Chairman Diaz,

I would like to request SB 1080 Medicaid Managed Care Specialty Plans be heard in the next Health Policy Committee meeting.

This good bill authorizes Medicaid to continue providing specialty care plans to children in the care and custody of a guardian as long as he or she continues to be eligible and remains in care, including those in foster care or in subsidized adoption.

I appreciate your favorable consideration.

Onward & Upward,

A handwritten signature in blue ink that reads "Dennis K. Baxley".

Dennis K. Baxley, Senator
Senate District 12

DKB/dd

cc: Allen Brown, Staff Director, Health Policy

REPLY TO:

- 206 South Hwy 27/441, Lady Lake, Florida 32159 (352) 750-3133
- 315 SE 25th Avenue, Ocala, Florida 34471 (352) 789-6720
- 412 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5012

Senate's Website: www.flsenate.gov

Wilton Simpson
President of the Senate

Aaron Bean
President Pro Tempore

SMMC HEALTH PLANS (2018-2024)

SMMC SPECIALTY PLANS (2018-2024)

SMMC DENTAL PLANS (2018-2024)

REGIONAL ROLLOUT SCHEDULE	REGION	AETNA BETTER HEALTH (COV)	COMMUNITY CARE PLAN (CCP)	FLORIDA COMMUNITY CARE (FCC)	HUMANA MEDICAL PLAN (HUM)	MOLINA HEALTHCARE (MOL)	AMERIHEALTH (PRS)	SIMPLY HEALTHCARE (SHP)	SUNSHINE HEALTH (SUN)	UNITED-HEALTHCARE (URA)	VIVIDA HEALTH (BST)	CHILDREN'S MEDICAL SERVICES PLAN – CHILDREN WITH CHRONIC CONDITIONS	CLEAR HEALTH ALLIANCE – HIV/AIDS	MOLINA HEALTHCARE SERIOUS MENTAL ILLNESS (SMI)	SUNSHINE SERIOUS MENTAL ILLNESS (SMI)	SUNSHINE HEALTH CHILD WELFARE (CW)	DENTAQUEST	LIBERTY	MCNA DENTAL
PHASE 3 2/1/2019	1			FCC LTC+	HUM COMP			SHP MMA	SUN COMP			CHILDREN'S MEDICAL SERVICES PLAN SPEC	CLEAR HEALTH ALLIANCE SPEC		SUNSHINE HEALTH SPEC	SUNSHINE HEALTH SPEC	DENTAQUEST DEN	LIBERTY DEN	MCNA DENTAL DEN
	2			FCC LTC+	HUM COMP			SHP MMA	SUN COMP			CHILDREN'S MEDICAL SERVICES PLAN SPEC	CLEAR HEALTH ALLIANCE SPEC		SUNSHINE HEALTH SPEC	SUNSHINE HEALTH SPEC	DENTAQUEST DEN	LIBERTY DEN	MCNA DENTAL DEN
	3			FCC LTC+	HUM COMP				SUN COMP	URA COMP		CHILDREN'S MEDICAL SERVICES PLAN SPEC	CLEAR HEALTH ALLIANCE SPEC		SUNSHINE HEALTH SPEC	SUNSHINE HEALTH SPEC	DENTAQUEST DEN	LIBERTY DEN	MCNA DENTAL DEN
	4			FCC LTC+	HUM COMP				SUN COMP	URA COMP		CHILDREN'S MEDICAL SERVICES PLAN SPEC	CLEAR HEALTH ALLIANCE SPEC	MOLINA HEALTHCARE SPEC	SUNSHINE HEALTH SPEC	SUNSHINE HEALTH SPEC	DENTAQUEST DEN	LIBERTY DEN	MCNA DENTAL DEN
PHASE 2 1/1/2019	5			FCC LTC+	HUM COMP			SHP MMA	SUN COMP			CHILDREN'S MEDICAL SERVICES PLAN SPEC	CLEAR HEALTH ALLIANCE SPEC	MOLINA HEALTHCARE SPEC	SUNSHINE HEALTH SPEC	SUNSHINE HEALTH SPEC	DENTAQUEST DEN	LIBERTY DEN	MCNA DENTAL DEN
	6	COV COMP		FCC LTC+	HUM COMP			SHP MMA	SUN COMP	URA COMP		CHILDREN'S MEDICAL SERVICES PLAN SPEC	CLEAR HEALTH ALLIANCE SPEC		SUNSHINE HEALTH SPEC	SUNSHINE HEALTH SPEC	DENTAQUEST DEN	LIBERTY DEN	MCNA DENTAL DEN
	7	COV COMP		FCC LTC+	HUM COMP			SHP MMA	SUN COMP			CHILDREN'S MEDICAL SERVICES PLAN SPEC	CLEAR HEALTH ALLIANCE SPEC	MOLINA HEALTHCARE SPEC	SUNSHINE HEALTH SPEC	SUNSHINE HEALTH SPEC	DENTAQUEST DEN	LIBERTY DEN	MCNA DENTAL DEN
	8			FCC LTC+	HUM COMP	MOL COMP			SUN COMP		BST MMA	CHILDREN'S MEDICAL SERVICES PLAN SPEC	CLEAR HEALTH ALLIANCE SPEC		SUNSHINE HEALTH SPEC	SUNSHINE HEALTH SPEC	DENTAQUEST DEN	LIBERTY DEN	MCNA DENTAL DEN
PHASE 1 12/1/2018	9			FCC LTC+	HUM COMP		PRS MMA	SHP MMA	SUN COMP			CHILDREN'S MEDICAL SERVICES PLAN SPEC	CLEAR HEALTH ALLIANCE SPEC		SUNSHINE HEALTH SPEC	SUNSHINE HEALTH SPEC	DENTAQUEST DEN	LIBERTY DEN	MCNA DENTAL DEN
	10		CCP MMA	FCC LTC+	HUM COMP				SUN COMP			CHILDREN'S MEDICAL SERVICES PLAN SPEC	CLEAR HEALTH ALLIANCE SPEC		SUNSHINE HEALTH SPEC	SUNSHINE HEALTH SPEC	DENTAQUEST DEN	LIBERTY DEN	MCNA DENTAL DEN
	11	COV COMP		FCC LTC+	HUM COMP	MOL COMP	PRS MMA	SHP MMA	SUN COMP	URA COMP		CHILDREN'S MEDICAL SERVICES PLAN SPEC	CLEAR HEALTH ALLIANCE SPEC		SUNSHINE HEALTH SPEC	SUNSHINE HEALTH SPEC	DENTAQUEST DEN	LIBERTY DEN	MCNA DENTAL DEN

Comp = Comprehensive Plan

MMA = Managed Medical Assistance Plan

LTC+ = Long-Term Care Plus Plan

Spec = Specialty Plan

Den = Dental Plan

6/1/2024

STATEWIDE MEDICAID MANAGED CARE (SMMC) HEALTH PLANS

(2018-2024)

REGIONAL ROLLOUT SCHEDULE	REGION	AETNA BETTER HEALTH (COV)	COMMUNITY CARE PLAN (CCP)	FLORIDA COMMUNITY CARE (FCC)	HUMANA MEDICAL PLAN (HUM)	MOLINA HEALTHCARE (MOL)	AMERIHEALTH (PRS)	SIMPLY HEALTHCARE (SHP)	SUNSHINE HEALTH (SUN)	UNITED-HEALTHCARE (URA)	VIVIDA HEALTH (BST)
PHASE 3	2/1/2019	1		FCC LTC+	HUM COMP			SHP MMA	SUN COMP		
		2		FCC LTC+	HUM COMP			SHP MMA	SUN COMP		
		3		FCC LTC+	HUM COMP				SUN COMP	URA COMP	
		4		FCC LTC+	HUM COMP				SUN COMP	URA COMP	
PHASE 2	1/1/2019	5		FCC LTC+	HUM COMP			SHP COMP	SUN COMP		
		6	COV COMP		FCC LTC+	HUM COMP			SHP COMP	SUN COMP	URA COMP
		7	COV COMP		FCC LTC+	HUM COMP			SHP COMP	SUN COMP	
		8			FCC LTC+	HUM COMP	MOL COMP			SUN COMP	
PHASE 1	12/1/2018	9		FCC LTC+	HUM COMP		PRS MMA	SHP MMA	SUN COMP		
		10		CCP MMA	FCC LTC+	HUM COMP			SHP COMP	SUN COMP	
		11	COV COMP		FCC LTC+	HUM COMP	MOL COMP	PRS MMA	SHP COMP	SUN COMP	URA COMP

COMP = Comprehensive Plan MMA = Managed Medical Assistance Plan LTC+ = Long-Term Care Plus Plan

SMMC SPECIALTY PLANS

(2018-2024)

SMMC DENTAL PLANS

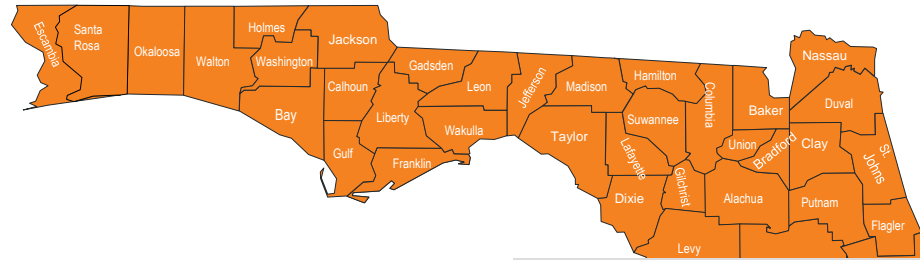
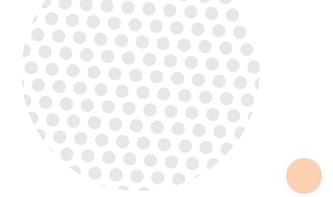
(2018-2024)

REGIONAL ROLLOUT SCHEDULE	REGION	CHILDREN'S MEDICAL SERVICES PLAN - CHILDREN WITH CHRONIC CONDITIONS	CLEAR HEALTH ALLIANCE HIV/AIDS	MOLINA HEALTHCARE SERIOUS MENTAL ILLNESS (SMI)	SUNSHINE SERIOUS MENTAL ILLNESS (SMI)	SUNSHINE HEALTH CHILD WELFARE (CW)	DENTAQUEST	LIBERTY	MCNA DENTAL	
PHASE 3	2/1/2019	1	CHILDREN'S MEDICAL SERVICES PLAN SPEC	CLEAR HEALTH ALLIANCE SPEC		SUNSHINE HEALTH SPEC	SUNSHINE HEALTH SPEC	DENTAQUEST DEN	LIBERTY DEN	MCNA DENTAL DEN
		2	CHILDREN'S MEDICAL SERVICES PLAN SPEC	CLEAR HEALTH ALLIANCE SPEC		SUNSHINE HEALTH SPEC	SUNSHINE HEALTH SPEC	DENTAQUEST DEN	LIBERTY DEN	MCNA DENTAL DEN
		3	CHILDREN'S MEDICAL SERVICES PLAN SPEC	CLEAR HEALTH ALLIANCE SPEC		SUNSHINE HEALTH SPEC	SUNSHINE HEALTH SPEC	DENTAQUEST DEN	LIBERTY DEN	MCNA DENTAL DEN
		4	CHILDREN'S MEDICAL SERVICES PLAN SPEC	CLEAR HEALTH ALLIANCE SPEC	MOLINA HEALTHCARE SPEC	SUNSHINE HEALTH SPEC	SUNSHINE HEALTH SPEC	DENTAQUEST DEN	LIBERTY DEN	MCNA DENTAL DEN
PHASE 2	1/1/2019	5	CHILDREN'S MEDICAL SERVICES PLAN SPEC	CLEAR HEALTH ALLIANCE SPEC	MOLINA HEALTHCARE SPEC	SUNSHINE HEALTH SPEC	SUNSHINE HEALTH SPEC	DENTAQUEST DEN	LIBERTY DEN	MCNA DENTAL DEN
		6	CHILDREN'S MEDICAL SERVICES PLAN SPEC	CLEAR HEALTH ALLIANCE SPEC		SUNSHINE HEALTH SPEC	SUNSHINE HEALTH SPEC	DENTAQUEST DEN	LIBERTY DEN	MCNA DENTAL DEN
		7	CHILDREN'S MEDICAL SERVICES PLAN SPEC	CLEAR HEALTH ALLIANCE SPEC	MOLINA HEALTHCARE SPEC	SUNSHINE HEALTH SPEC	SUNSHINE HEALTH SPEC	DENTAQUEST DEN	LIBERTY DEN	MCNA DENTAL DEN
		8	CHILDREN'S MEDICAL SERVICES PLAN SPEC	CLEAR HEALTH ALLIANCE SPEC		SUNSHINE HEALTH SPEC	SUNSHINE HEALTH SPEC	DENTAQUEST DEN	LIBERTY DEN	MCNA DENTAL DEN
PHASE 1	12/1/2018	9	CHILDREN'S MEDICAL SERVICES PLAN SPEC	CLEAR HEALTH ALLIANCE SPEC		SUNSHINE HEALTH SPEC	SUNSHINE HEALTH SPEC	DENTAQUEST DEN	LIBERTY DEN	MCNA DENTAL DEN
		10	CHILDREN'S MEDICAL SERVICES PLAN SPEC	CLEAR HEALTH ALLIANCE SPEC		SUNSHINE HEALTH SPEC	SUNSHINE HEALTH SPEC	DENTAQUEST DEN	LIBERTY DEN	MCNA DENTAL DEN
		11	CHILDREN'S MEDICAL SERVICES PLAN SPEC	CLEAR HEALTH ALLIANCE SPEC		SUNSHINE HEALTH SPEC	SUNSHINE HEALTH SPEC	DENTAQUEST DEN	LIBERTY DEN	MCNA DENTAL DEN



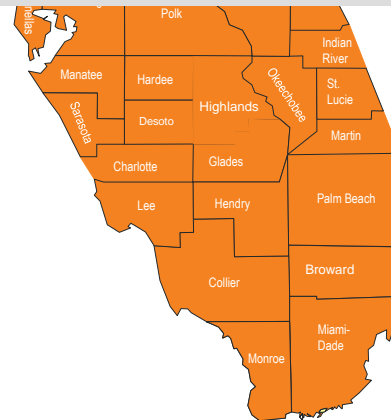
Child Welfare Specialty Plan

Sunshine Health Child Welfare Programs*



53,000+
members*

We offer the
Child Welfare Specialty Plan statewide.



*Includes both CW Specialty Plan
and Child Welfare MMA members.

Eligibility



CW Specialty Population Eligibility Criteria

- 1) Is a child, under the age of twenty-one (21) years;
- 2) Has a child welfare case or post adoption case open for services as identified in the FSFN database (CW Information System); and
- 3) Has an FSFN eligibility indicator in FMMIS (Medicaid Information System)

Sunshine Health Child Welfare Specialty Plan

We help coordinate integrated, trauma informed care for abused, neglected, and abandoned children in the child welfare system throughout the entire state.

Additionally, we provide continuous care and support for children adopted from the child welfare system, and for young adults transitioning out of foster care and into adulthood.

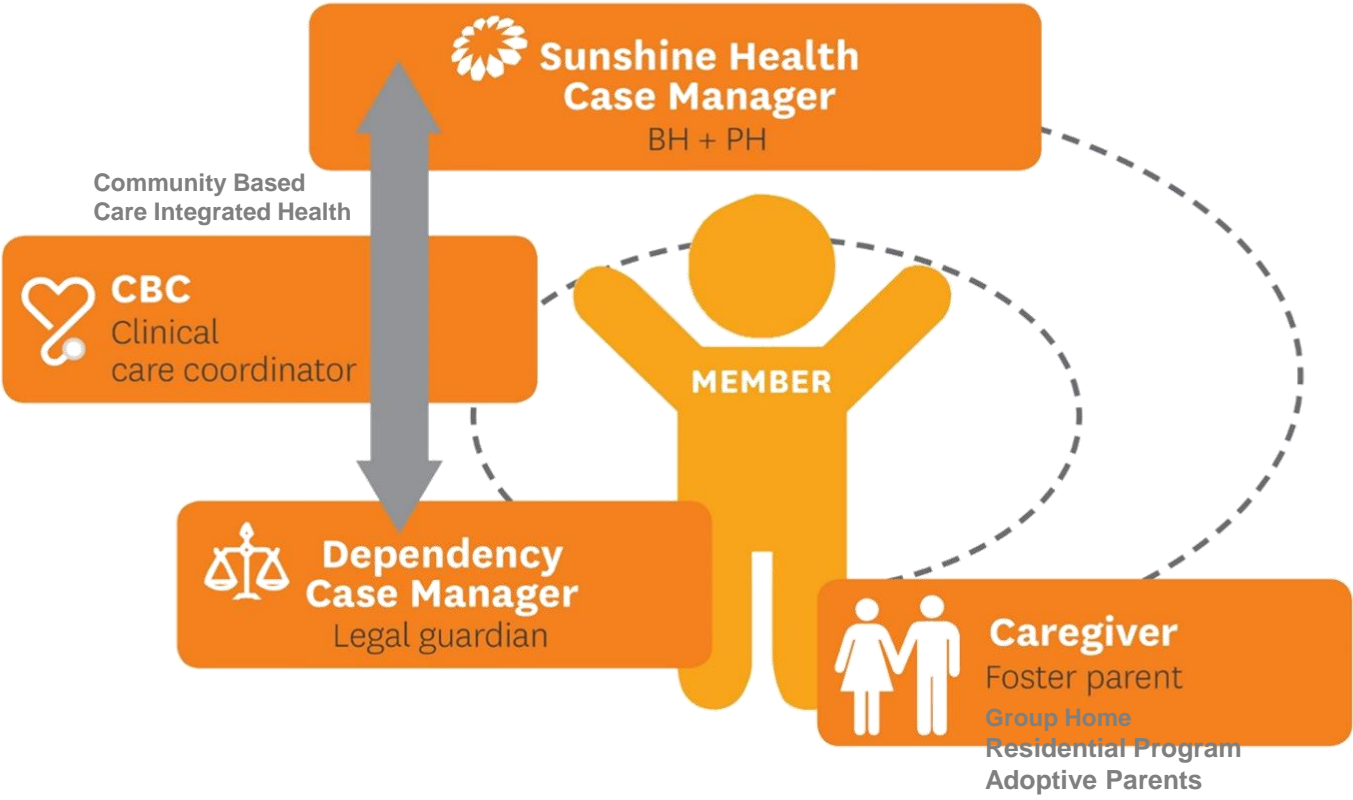


Sunshine Health Child Welfare Specialty Plan



- Sunshine Health coordinates the integrated delivery of physical and behavioral health services for children in or adopted from Florida's child welfare system.
- We bring together healthcare providers, child welfare community-based care lead agencies, residential providers, and foster, adoptive and biological parents to create a care plan to match each child's needs.
- Through trauma trained teams, we provide care management and member services that are uniquely designed and dedicated to this population.
- Our CWSP leadership and staff have years of experience in the child welfare system. We understand the unique and complex needs of children in care, those adopted, and the system that supports them.

Integrated Care Coordination/Care Management Approach



Benefits Highlights*

- Medical Foster Care
- Statewide Inpatient Psychiatric Program (SIPP)
- Specialized therapeutic foster care and therapeutic group care
- Targeted case management
- Private duty nursing
- Individual and family therapy
- Behavioral Health Overlay Services
- Comprehensive BH Assessments
- Transportation



*You can find a description of all benefits and expanded benefits on [SunshineHealth.com](https://www.sunshinehealth.com).

Expanded Benefits Highlights



- Care grants
- Transition Assistance
- Life skills development
- Non-medical/non-emergency transportation – 3 round trips per month
- Over the Counter medication, \$25 per household, per month
- Home Delivered Meals – post-facility discharge (10 days)
- Doula Services
- Newborn Circumcision



You can find a description of all benefits and expanded benefits on SunshineHealth.com.

List of approved OTC items can be found on SunshineHealth.com.

Care Grants

Up to \$150 per child per calendar year for services and supplies for social or physical activities, such as gym memberships, swim lessons, sports equipment, art supplies or application fees for post high school

Transition Assistance

Up to \$500 in one-time assistance for young adults transitioning out of foster care at age 18 or extended foster care at age 21.

Life Skills Development

Education for children ages 12 and up with developmental disabilities to help them keep, learn or improve skills and functioning for daily living.



You can find a description of all benefits and expanded benefits on [SunshineHealth.com](https://www.sunshinehealth.com).

The help you need any time, day or night!

The 24-Hour Nurse Advice Line is a free service connecting members to a registered nurse to:

- Find a doctor
- Learn where to go for care
- Get answers to health questions

We also offer a Behavioral Health Line that is available 24 hours a day.



You can call the 24-hour Nurse Advice Line at 1-855-463-4100, TTY 1-800-955-8770



Behavioral Health In-Lieu of Services Highlights*

- Mobile Crisis Assessment & Intervention
- Community Based Wraparound
- Self-Help/Peer Support
- Infant Mental Health Pre & Post Assessment
- Family Training & Counseling for Child Development
- Multi-Systemic Therapy



*You can find a description of all benefits, including In-Lieu of Services, and expanded benefits on [SunshineHealth.com](https://www.sunshinehealth.com).

Supporting Healthy Teen Pregnancy Program

- Strategies to identify pregnant teens earlier and connect them to prenatal and post-partum care
- Partnerships and coordination with maternity group homes serving youth in care
- Partnerships and coordination with local Healthy Start Programs
- Digital Apps for pregnant youth - Wellframe
- Training and support to group homes, foster homes and CBCs

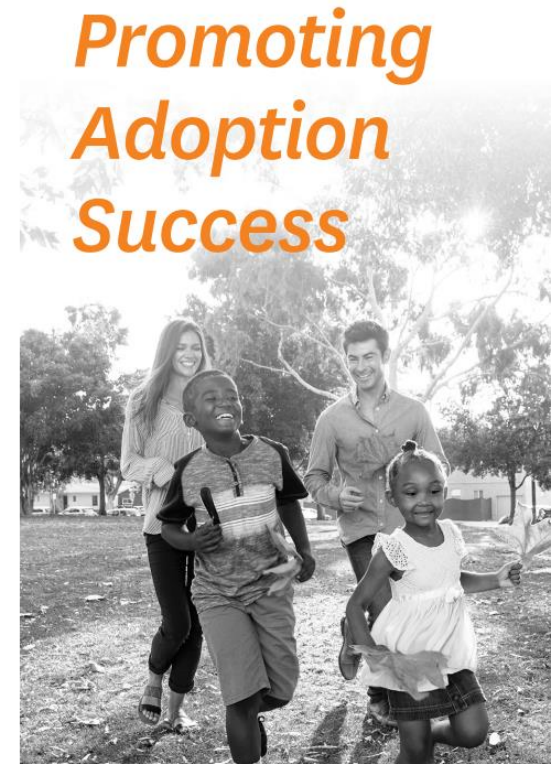


Promoting Adoption Success Program

Supporting the long-term stability of foster care adoptions in Florida

Engaging and supporting adoptive families early to prevent crises and adoption disruption

- Care Managers with specialized adoption training and expertise
- Collaboration with CW Community Based Care Lead Agencies, organizations, & stakeholders
- Adoption Competent Network
- Adoptive Parent Training



Promoting Adoption Success Program

Program Staff Training

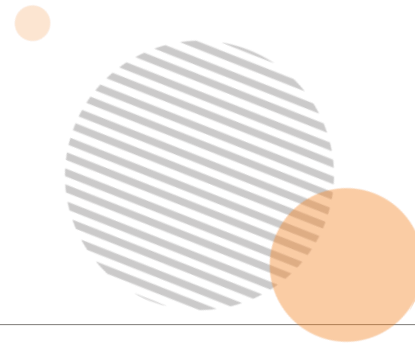
- Sunshine Health Child Welfare Trainer approved to provide Rutgers University – Adoption Competency Curriculum (for Sunshine Health staff)
- National Adoption Competency Mental Health Training Initiative (NTI) Child Welfare 20 hour curriculum

Network

- Includes Adoption Competent treatment professionals
- Specialized clinical training for Adoption Behavioral Health providers
- Rutgers University – Adoption Competency Curriculum (for network providers)

Adoptive Parent Education

- Specialized modules for adoptive parents in development. Topics such as: older child adoption, transracial adoption, social media, adoption attachment theory
- Live training available or via webinar
- Also available for CBCs/CW system stakeholders (DCMs, GALs, judges)



Transitioning Youth Program



In Florida, young adults in extended foster care can get healthcare coverage from Sunshine Health's Child Welfare Specialty Plan until age 21. We have a program designed specifically for these members.

- **Specialized Case Management** that focuses on healthcare transition planning as the youth prepares for adulthood.
- Over-the-Counter medication/supplies to help with personal hygiene, sexual health, first aid and more with a \$25 monthly allowance. For a list of items, check out the [Over-the-Counter Health and Wellness Catalog](#).
- Round-trip transportation three times a month to social activities and places like work, post-secondary school and more.
- Things like Uber and Lyft rides, paying cellphone bill, rent and more through our member rewards program, MyHealthPays®.
- Up to \$500 in services and items such as rental deposits, utility services or household supplies to help Members get into stable housing through our one-time **Transition Assistance expanded benefit**.
- Partnerships & coordination with agencies/programs serving Transitional Independent Living, (TIL) youth throughout the state.

Child Welfare Training and Education

Sunshine Health offers FREE trainings to support our providers, partners, and foster and adoptive parents as they deliver quality care to our members. Topics include:

- Adverse Childhood Experiences (ACE) Study
- Hooked on a Feeling: Helping Children Understand Emotions
- Hope for Healing – Attachment Series
- Motivational Interviewing
- Providing Culturally Affirming Care
- Secondary Traumatic Stress
- Supporting Healthy Behaviors in Youth
- Toxic Stress & Brain Development
- The Impact of Trauma
- Trauma Informed Care for Professionals
- Trauma Informed Interventions
- Trauma Informed Care for Caregivers (Parts 1-5)
- Understanding & Supporting Survivors of Human Trafficking
- Working with Birth Parents
- Mental Health First Aid
- Rutgers Adoption Competency
- Trauma-Focused Cognitive Behavioral Therapy (TF-CBT)
- Components for Enhancing Clinician Experience and Reducing Trauma (CE-CRT)

Behavioral Health Focus on Trauma-Informed & Evidence Based Practices

➤ **BH In Lieu of Services:** Further develop network and increase access for Mobile Crisis, High Fidelity Wraparound, Peer Support, Multi-Systemic Therapy, Family Training, Infant MH Pre/Post Testing

➤ **Evidence Based & Trauma Informed Practices:** Build increased capacity for Behavioral Health EBPs



➤ **Skill Building of Clinical Network:** Improve quality and effectiveness of CW Behavioral Health network clinicians to impact outcomes

➤ **Community Based Behavioral Health Service Capacity:** Increase Specialized Therapeutic Foster Care capacity & TFC FP skills

➤ **Improve Caregiver Skills:** Specialized training, including evidence-based & trauma informed models, to support the retention, skills and personal/professional growth of caregivers (*FPs, GHs, adoptive parents, & kinship*)



Questions?

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

SB 1080

Bill Number or Topic

382832

Amendment Barcode (if applicable)

01/19/2022

Meeting Date

Health Policy

Committee

Name Sarah Nemes, Embrace Families

Phone 407-592-1732

Address 4001 Pelee Street

Email sarah.nemes@embracefamilies.org

Street

Orlando FL 32817

City

State

Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1, [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

SB 1080

Bill Number or Topic

382832

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01/19/2022

Meeting Date

Health Policy

Committee

Name

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State

Zip

Speaking:

For

Against

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S-001 (08/10/2021)

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 Committee on Banking and Insurance

BILL: CS/SB 498

INTRODUCER: Banking and Insurance Committee, Senator Baxley and Senator Perry

SUBJECT: Insurance Coverage for Hearing Aids for Children

DATE: January 18, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Smith</u>	<u>Brown</u>	<u>HP</u>	<u>Favorable</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 498 requires an individual health insurance policy or individual health maintenance organization contract that provides major medical coverage or similar coverage for a dependent child of an insured or subscriber, respectively, to provide hearing aid coverage for a covered child from birth through age 18 who has been diagnosed with hearing loss by a licensed physician or a licensed audiologist. The term, "hearing aid," means any wearable instrument or device designed for, offered for the purpose of, or represented as aiding persons with or compensating for impaired hearing. The term does not include cochlear implants.

The bill requires the policies or contracts to provide a minimum coverage limit of \$3,500 per ear within a 24-month period. The insured or subscriber remains responsible for the cost of hearing aids and related services that exceed the coverage limit provided for in the policy or contract. If, however, a child experiences a significant and unexpected change in his or her hearing or experiences a medical condition requiring an unexpected change in the hearing aid before the existing 24-month period expires, and alterations to the existing hearing aid do not, or cannot, meet the needs of the child, the bill requires that a new 24-month period must begin with full benefits and coverage.

The bill applies to individual health insurance policies or contracts that are issued on or after January 1, 2023 and the bill would take effect on that date. The provisions of the bill do not apply to the State Group Insurance program; therefore, there is no fiscal impact to the program.

II. Present Situation:

One in eight people in the United States (13 percent, or 30 million) age 12 years or older has hearing loss in both ears, based on standard hearing examinations.¹ Hearing loss is one of the most common birth defects² in the United States, with approximately two or three out of every 1,000 children in the United States are born with a detectable level of hearing loss in one or both ears.³

Many people who are deaf or hard-of-hearing have some hearing. In some instances, a hearing aid may help a child with hearing loss to make the most of their residual hearing.⁴ Hearing aids make sounds louder and can be worn by people of any age, including infants. Babies with hearing loss may understand sounds better using hearing aids. There are many styles of hearing aids. They can help many types of hearing loss. A young child is usually fitted with behind-the-ear style hearing aids because they are better suited to growing ears.⁵

Hearing loss may be in one ear (unilateral loss) or in both ears (bilateral loss). The degree of hearing loss can range from mild to profound, as described below:⁶

- Mild Hearing Loss (26-40 decibels). A person with a mild hearing loss may hear some speech sounds, but soft sounds are hard to hear.
- Moderate Hearing Loss (41-70 decibels). A person with a moderate hearing loss may hear almost no speech when another person is talking at a normal level.
- Severe Hearing Loss (71-90 decibels). A person with severe hearing loss will hear no speech when a person is talking at a normal level and only hear some loud sounds.
- Profound Hearing Loss (91 decibels or more). A person with a profound hearing loss will not hear any speech and will hear only very loud sounds.⁷

Hearing loss can affect a child's ability to develop communication, language, and social skills. Early detection of hearing loss can help infants and children with learning and reaching developmental milestones, according to recent research. In the United States, researchers have reported that children have more favorable language outcomes, such as greater vocabulary and reading abilities, when hearing loss is identified sooner and the child receives hearing aids and

¹ See National Institutes for Health, National Institute on Deafness and Other Communication Disorders *available at* <https://www.nidcd.nih.gov/health/statistics/quick-statistics-hearing> (last visited Jan. 14, 2022).

² Florida Newborn Screening, Early Hearing and Intervention Program *available at* <https://floridanewbornscreening.com/hearing/early-hearing-and-intervention-programs/> (last visited Jan. 14, 2022).

³ *Id.*

⁴ Centers for Disease Control and Prevention, National Center on Birth Defects and Developmental Disorders (Jun. 8, 2020) *available at* <https://www.cdc.gov/ncbddd/hearingloss/treatment.html> (last visited Dec. 18, 2021). The amount of hearing a deaf or hard-of-hearing person has is referred to as "residual hearing."

⁵ *Id.* A plastic ear mold is connected to a behind-the-ear hearing aid and is fitted for the child's ear. It directs sound from the hearing aid into the ear canal. Each individual's ear is shaped differently, and a child's ear will change as he or she grows. An audiologist uses a soft material to make a copy of the child's outer ear canal. This is used to make an ear mold that will fit the child. As the child grows, new ear molds can be made and attached to the same hearing aid.

⁶ Florida Department of Health and Children's Medical Services, *A Florida Parent's Guide to Hearing* (Apr. 2020 Edition) *available at* <http://floridanewbornscreening.com/wp-content/uploads/Hearing-Guide-English-FINAL-1.pdf> (last visited Jan. 14, 2022).

⁷ See Centers for Disease Control and Prevention, National Center on Birth Defects and Developmental Disorders (Jun. 8, 2020), *available at* <https://www.cdc.gov/ncbddd/hearingloss/types.html> (last visited Jan. 14, 2022).

interventions at an earlier age.⁸ A second study similarly found that children who received hearing aids and cochlear implants earlier had better language outcomes, comparing language skills with the provision of a hearing aid at three months compared to 24 months.⁹ The authors' state:

The younger the child received intervention, the better the language outcome. In addition, more substantial benefits of earlier access to useful HAs (hearing aids) and CI (cochlear implants) were obtained by those with worse hearing. Earlier intervening, rather than access to UNHS (universal newborn hearing screening), improved outcomes.¹⁰

Florida Newborn Hearing Screening Program

Florida has a universal newborn hearing-screening program¹¹ that requires all Florida-licensed facilities that provide maternity and newborn care to screen, or refer for screening, all newborns prior to discharge for hearing loss, unless a parent objects to the screening.¹² All test results, including recommendations for any referrals or follow-up evaluations by a licensed audiologist, a physician licensed under chs. 458 or 459, F.S., or other newborn hearing screening providers in the hospital facility, must be placed in the newborn's medical records within 24 hours after the completion of the screening procedure.¹³ For babies born in a facility other than a hospital, the parents are to be instructed on the importance of having a screening conducted, information must be provided, and assistance must be given to make an appointment within three months.¹⁴

The initial newborn screening and any necessary follow-up and evaluation are covered benefits reimbursable by Medicaid, health insurers, and health maintenance organizations, with some limited exceptions.¹⁵ For those newborns and children found to have a permanent hearing loss, the law also provides for referral to the state's Part C program of the federal Individuals with Disabilities Education Act¹⁶ and Children's Medical Services' Early Intervention Program, Early Steps.¹⁷

⁸ Christine Yoshinaga-Itano, Ph.D., et al, *Early Hearing Detection and Vocabulary of Children with Hearing Loss*, PEDIATRICS, (Aug. 2017, Vol. 140, No. 2), available at <https://pediatrics.aappublications.org/content/140/2/e20162964> (last visited Jan. 14, 2022).

⁹ Teresa Y.C. Ching, Ph.D., *Age at Intervention for Permanent Hearing Loss and 5-Year Language Outcomes*, Pediatrics, (Sept. 2017, Vol. 140, Issue 3), available at <https://pediatrics.aappublications.org/content/140/3/e20164274> (last visited Jan. 14, 2022).

¹⁰ *Id.*

¹¹ Florida's Early Hearing Detection and Intervention Program (EHDI) is Florida's newborn hearing-screening program available at <https://floridanewbornscreening.com/hearing/early-hearing-and-intervention-programs/> (last visited Jan. 14, 2022).

¹² See s. 383.145, F.S.

¹³ Section 383.145(3)(e), F.S.

¹⁴ Section 383.145(3)(i), F.S.

¹⁵ Section 383.145(3)(j), F.S.

¹⁶ See Pub. L. No. 108-446. The Part C program provides benefits and services for infants and toddlers from birth to age 36 months. Children's Medical Services, within the Department of Health, administers Florida's Part C program, which is known as Early Steps.

¹⁷ The Early Steps program services children with disabilities, developmental delays, or children with a physical or mental condition known to create a risk of a developmental delay. See http://www.cms-kids.com/families/early_steps/early_steps.html (last visited Jan. 14, 2022).

Hearing Aid Coverage in Public Insurance Programs

Medicaid

Florida Medicaid provides hearing services for eligible recipients under the age of 21, if such services are medically necessary to correct or ameliorate a defect, a condition, or a physical or mental illness. This coverage includes diagnostic services, treatment, equipment, supplies, and other measures described in 42 U.S.C. 1396d(a).¹⁸ Medicaid recipients under the age of 21 have coverage for the following hearing related services:

- Recipients who have documented, profound, severe hearing loss in one or both ears have coverage for:
 - An implanted device for recipients age five years and older; or
 - A non-implanted (softband) device for recipients under age five.
- Cochlear implants for recipients age 12 months and older who have documented, profound to severe, bilateral sensorineural hearing loss.
- For recipients who have moderate hearing loss or greater, the coverage is:
 - One new, complete, (not refurbished) hearing aid device per ear, every three years, per recipient;
 - Up to three pairs of ear molds per year, per recipient; and
 - One fitting and dispensing service per ear, every three years, per recipient.
- A recipient under the age of 12 months may receive up to two newborn screenings. A second screening may be conducted only if the recipient did not pass the test in one or both ears.
- An eligible recipient may receive one hearing assessment every 3 years for the purposes of determining hearing aid candidacy and the most appropriate hearing aid.

¹⁹

Medicaid also covers repairs and replacement of both Medicaid and non-Medicaid provided hearing aids, up to two hearing aid repairs every 366 days, after the one-year warranty period has expired.²⁰

*State Children's Health Insurance Program*²¹

The Children's Health Insurance Program (CHIP) was enacted as part of the Balanced Budget Act of 1997, and it created Title XXI of the federal Social Security Act as a joint state-federal funding partnership to provide health insurance to children in low to moderate income households.²² The Florida Healthy Kids Corporation²³ is one component of Florida's Title XXI program, known as Florida KidCare, and is the only program component utilizing a

¹⁸ See Fla. Admin. Code R. 54G-4.110 (2021). The hearing services coverage policy from the Agency for Health Care Administration available at <https://www.flrules.org/Gateway/reference.asp?No=Ref-06744> (last visited Jan. 14, 2022).

¹⁹ See Agency for Health Care Administration, *Hearing Services Coverage Policy* (June 2016), available at http://ahca.myflorida.com/medicaid/review/specific_policy.shtml (last visited Jan. 14, 2022).

²⁰ *Id.*

²¹ 42 U.S.C. s. 1397aa-1397mm.

²² Pub. L. No. 105-33, 111 Stat. 251 (1997).

²³ See ss. 624.91-624.915, F.S.

non-Medicaid benefit package.²⁴ The other program components, Medicaid for children, Medikids, and Children’s Medical Services Network, follow the Medicaid benefit package.²⁵

In order for health benefits coverage to qualify for premium assistance payments, KidCare enrollees must receive hearing screenings as a covered, preventative health service.²⁶ Additionally, s. 409.815(2)(h), F.S., provides that the benefits for durable medical equipment include within covered services equipment and devices that are medically indicated to assist in the treatment of a medical condition, and specifically prescribed as medically necessary. Hearing aids are covered only when medically indicated to assist in the treatment of a medical condition. There are no out of pocket costs for the well-child hearing screening for subsidized Title XXI eligible children.²⁷

Hearing Aid Coverage in the Private Health Insurance Market

The Office of Insurance Regulation (OIR) is responsible for the regulation of all activities of insurers and other risk-bearing entities that do business in Florida.²⁸ Florida law does not require health insurance policies or HMO contracts to provide coverage for hearing aids. According to OIR, some of the plans offered by UnitedHealthcare (All Savers, Neighborhood Health, etc.) cover hearing aids if recommended by a physician, and bone-anchored hearing aids are covered with some restrictions. Molina and Health First cover implant type hearing aids, if medically necessary.²⁹

Currently, 24 states appear to mandate health benefit plans to provide coverage for hearing aids for children.³⁰ Coverage requirements range from authorizing coverage of a hearing aid every 24 months to every five years. Many states include caps on the amount the insurer must pay. These caps range from \$1,000 to \$4,000.³¹

State Mandated Health Insurance Coverage

Prior to 2012, OIR identified 18 state mandated benefits.³² Subsequently, Florida has not enacted any mandated benefits. Examples of benefits mandated under Florida law include:

- Treatment for temporomandibular joint disorders;
- Coverage for bone marrow transplants;
- Coverage for certain cancer drugs;

²⁴ See ss. 409.810-409.821, F.S.

²⁵ See s. 409.815(2)(a), F.S., and s. 391.0315, F.S.

²⁶ Section 409.815(2)(a), F.S.

²⁷ Florida Healthy Kids Corporation, *Medical Benefits available at* <https://www.healthykids.org/benefits/medical/> (last visited Jan. 14, 2022).

²⁸ The OIR is under the Financial Services Commission, which is composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, which serves as the agency head of the commission. Section 20.121(3), F.S.

²⁹ Office of Insurance Regulation correspondence (Dec. 8, 2020) (on file with Senate Committee on Banking and Insurance).

³⁰ See information gathered by the American Speech-Language-Hearing Association *available at* https://www.asha.org/advocacy/state/issues/ha_reimbursement/ (last visited Jan. 14, 2022).

³¹ *Id.*

³² Centers for Medicare & Medicaid Services, *Florida – State Required Benefits, available at* https://downloads.cms.gov/ccio/State%20Required%20Benefits_FL.pdf (last visited Jan. 14, 2022).

- Diabetes treatment services;
- Osteoporosis;
- Certain coverage for newborn children;
- Child health supervision services; and
- Treatment of cleft lip and cleft palate in children.³³

Section 624.215, F.S., requires every person or organization seeking consideration of a legislative proposal, which would mandate a health coverage or the offering of a health coverage by an insurer, to submit to the Agency for Health Care Administration and the legislative committees having jurisdiction, a report that assesses the social and financial impacts of the proposed coverage. Proponents submitted a report to Senate Banking and Insurance Committee staff in 2021 that indicates there are less than 7,200 children under the age of 18 in Florida are deaf.³⁴ Hearing aids and the services necessary to prescribe, evaluate, fit, and manage children with hearing loss generally cost an average of \$3,500 per ear depending on the technology and enhancements selected by the audiologist based on the individual needs of the child.³⁵ (See Section V, Fiscal Impact Statement, Private Sector Impact of the Bill Analysis.)

Advocates of the bill note that untreated hearing loss may lead to tremendous expense for the taxpayer, as described below:

- Untreated pediatric hearing loss costs \$420,000 in special education costs per child and \$1 million over the lifetime of the individual.
- Longitudinal, peer-reviewed studies have shown that healthcare costs are significantly higher for individuals with untreated vs treated hearing loss.
- Increased costs are not confined to the medical bills in the studies. Medical providers must absorb (and pass on via increased overall costs) costs incurred from longer visit times due to communication difficulties, increased risk of malpractice lawsuits from communication difficulties, and necessary accommodations like interpreter services.
- Communication difficulties in deaf and hard of hearing patients, which would be mitigated by appropriate access to sound, result in more physician visits and overuse of emergency rooms and urgent care centers.
- Patients with untreated hearing loss are more likely to be misdiagnosed when visiting providers for unrelated health issues and are more difficult to treat due to communication difficulties.³⁶

Federal Patient Protection and Affordable Care Act

The Patient Protection and Affordable Care Act (PPACA)³⁷ does not require health insurance policies to cover hearing aids for adults or for children. Under PPACA, individuals and small

³³ *Id.*

³⁴ Florida Coalition for Spoken Language Options, *2021 Florida Legislature, SB 1268 Mandate Report* (on file with Senate Committee on Banking and Insurance).

³⁵ *Id.*

³⁶ *Id.*

³⁷ The PPACA (Pub. Law No. 111-148) was enacted on March 23, 2010. On March 30, 2010, PPACA was amended by Pub. Law No. 111-152, the Health Care and Education Reconciliation Act of 2010. The two laws are collectively referred to as the “Patient Protection and Affordable Care Act” or “PPACA.”

businesses can obtain health insurance coverage on or off the federal marketplace exchanges.³⁸ All non-grandfathered health plans³⁹ must offer qualified health plans meeting certain federal mandates, including the provisions of the following 10 essential health benefits (EHB):

- Ambulatory services (outpatient care);
- Emergency services;
- Hospitalization (inpatient care);
- Maternity and newborn care;
- Mental health and substance abuse disorder services;
- Prescription drugs;
- Rehabilitative services and rehabilitative services and devices;
- Laboratory services;
- Preventive care and chronic disease management; and
- Pediatric services, including oral and vision care.⁴⁰

States may modify the EHB offered in their states by mandating additional coverage. However, states must defray the associated costs such benefits imposed on qualified health plans coverage, and those costs should not be included in the percentage of premium attributable to the coverage of EHB for calculating the premium tax credit for eligible enrollees⁴¹ on the exchange.⁴² The State of Florida may be required to defray the costs of any additional benefits beyond the required EHB put in place after 2011.⁴³

Reporting of Additional State-Required Benefits and Cost Analysis

For plan years beginning on or after January 1, 2020, each state must identify and report to the federal Department of Health and Human Services (HHS) benefits mandated by state law and identify which of those benefits are in addition to EHB. The first annual submission deadline for states to notify the HHS of their state-mandated benefits was July 1, 2021.⁴⁴ Each qualified

³⁸ Exchanges are entities established under PPACA through which qualified individuals and qualified employers can purchase health insurance coverage in qualified health plans (QHPs). Many individuals who enroll in QHPs through individual market exchanges are eligible to receive a premium tax credit (PTC) to reduce their costs for health insurance premiums and to receive reductions in required cost-sharing payments to reduce out-of-pocket expenses for health care services. 42 U.S.C. s. 18031.

³⁹ A “grandfathered health plan” is a plan that maintains coverage that was in place prior to the passage of the PPACA or in which the enrollee was enrolled on March 23, 2010, while complying with the consumer protection components of the PPACA. If a group health plan enters a new policy, certificate, or contract of insurance, the group must provide the new issuer the documentation from the prior plan so it can be determined whether there has been a change sufficient to lose grandfather status. *See* s. 627.402, F.S.

⁴⁰ 42 U.S.C. s. 18022(b)(1)(A)-(J).

⁴¹ In Florida, 1,705,902 or 95 percent of the total marketplace exchange enrollees receive premium tax credits. KFF, Marketplace Effectuated Enrollment and Financial Assistance (2020) available at <https://www.kff.org/other/state-indicator/effectuated-marketplace-enrollment-and-financial-assistance/?currentTimeframe=0&selectedRows=%7B%22wrapups%22:%7B%22united-states%22:%7B%7D%7D,%22states%22:%7B%22florida%22:%7B%7D%7D%7D&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D> (last visited Jan. 14, 2022).

⁴² HealthCare.gov, Subsidized Coverage, available at <https://www.healthcare.gov/glossary/subsidized-coverage/> (last visited Jan. 14, 2022). Household income must be between 100 percent and 400 percent of the federal poverty level to qualify for a premium tax credit.

⁴³ *See* 42 U.S.C. s. 18031(d)(3)(B)(ii).

⁴⁴ CFR 156.111.

health plan issuer in the state must quantify cost attributable to each additional required benefit and then report this to the state.⁴⁵ In May 2020, HHS clarified existing rules to provide that it would also be permissible for issuers to choose to rely on another entity, such as the state, to produce the cost analysis, provided the issuer remains responsible for ensuring that the quantification complies with existing rules.⁴⁶ Further, the HHS noted that this calculation should be done prospectively to allow for the offset of an enrollee's share of premium and for purposes of calculating the PTC and reduced cost sharing.⁴⁷

Audiologist Scope of Practice and Licensure Requirements

An audiologist is licensed under part I of chapter 468, F.S., to practice audiology.⁴⁸ The practice of audiology includes the application of principles, methods, and procedures for the prevention, identification, evaluation, consultation, habilitation, rehabilitation, instruction, treatment, and research, relative to hearing and the disorders of hearing, and to related language and speech disorders.⁴⁹ A licensed audiologist may:

- Offer, render, plan, direct, conduct, consult, or supervise services to individuals or groups of individuals who have or are suspected of having disorders of hearing, including prevention, identification, evaluation, treatment, consultation, habilitation, rehabilitation, instruction, and research.
- Participate in hearing conservation, evaluation of noise environment, and noise control.
- Conduct and interpret tests of vestibular function and nystagmus, electrophysiologic auditory-evoked potentials, central auditory function, and calibration of measurement equipment used for such purposes.
- Habilitate and rehabilitate, including, but not limited to, hearing aid evaluation, prescription, preparation, fitting and dispensing, assistive listening device selection and orientation, auditory training, aural habilitation, aural rehabilitation, speech conservation, and speechreading.
- Fabricate ear molds.
- Evaluate tinnitus.
- Include speech and language screening, limited to a pass/fail determination for identifying individuals with disorders of communication.⁵⁰
- To become licensed as an audiologist, an applicant must:
- Have earned a doctoral degree in audiology or have completed the academic requirements of a doctoral degree program with a major emphasis on audiology at an institution that meets specified requirements.⁵¹
- Receive a passing score on a national examination;⁵² and

⁴⁵ CFR 155.170(c).

⁴⁶ 85 Fed. Reg. 29218 (May 14, 2020).

⁴⁷ *Id.*

⁴⁸ Section 468.1125(1), F.S.

⁴⁹ Section 468.1125(6)(a), F.S.

⁵⁰ Section 468.1125(6)(b), F.S.

⁵¹ Section 468.1155(3)(b), F.S.

⁵² Section 468.1155(1)(a), F.S.

- Demonstrate a minimum of 11 months of full-time professional employment or practice with a provisional license.⁵³

An audiologist is required to perform a final fitting for a client to ensure the physical and operational comfort of the hearing aid “when indicated.”⁵⁴

Hearing Aid Specialist Scope of Practice and Licensure Requirements

A hearing aid specialist is licensed under part II of chapter 484, F.S., to practice the dispensing of hearing aids.⁵⁵ To become a hearing aid specialist, an applicant must:

- Be a graduate from an accredited high school or its equivalent;
- Have completed a training program as established by the Board of Hearing Aid Specialists that is a minimum of six months in length, or be licensed or certified and have been actively practicing for at least 12 months as a licensed in another state; and
- Pass an examination as established by the Board of Hearing Aid Specialists.⁵⁶

A hearing aid specialist is required to perform a final fitting for all clients to ensure the physical and operational comfort of the hearing aid.⁵⁷

III. Effect of Proposed Changes:

Sections 1 and 2 create ss. 627.6413 and 641.31(48), F.S., respectively, to require an individual health insurance policy or individual HMO contract that provides major medical or similar coverage for a dependent child, age 18 or younger, of the insured or subscriber to provide coverage for a hearing aid prescribed, fitted, and dispensed by a physician licensed under ch. 458 or 459, F.S., or an audiologist licensed under part I of ch. 468, F.S. Such policies are required to provide a minimum coverage of \$3,500 per ear within a 24-month period.

The term, “hearing aid,” is defined as “any wearable instrument or device designed for, offered for the purpose of, or represented as aiding persons with or compensating for, impaired hearing.” The term does not include cochlear implants.

The bill provides that the insured or subscriber remains responsible for the cost of hearing aids and related services that exceed the coverage limit provided for in the policy or contract. However, if a child experiences a significant and unexpected change in his or her hearing or experiences a medical condition requiring an unexpected change in the hearing aid before the existing 24-month period expires, and alterations to the existing hearing aid do not or cannot meet the needs of the child, the bill requires that a new 24-month period must begin with full benefits and coverage.

The bill applies to policies or contracts that are issued or renewed on or after January 1, 2023.

⁵³ *Id.*

⁵⁴ Section 468.1225(3), F.S.

⁵⁵ Section 484.041, F.S.

⁵⁶ Section 484.045, F.S.

⁵⁷ Section 484.0501(3), F.S.

Section 3. The bill provides an effective date of January 1, 2023.

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:

In 2021, advocates of the Florida Coalition for Spoken Language Options provided the following analysis of the fiscal impact of SB 1268 on individual policies or contracts.⁵⁸ Like SB 1268, CS/SB 498 provides coverage up to age 18. According to the Florida Coalition for Spoken Language Options, approximately 461 children will benefit from the mandated coverage, and the resulting increases in costs are estimated to be \$0.74 annually or .06 monthly per covered life, as described below:

Florida Population/Demographics	21,477,737
Florida Population Under 0-18 (19.7%)	4,231,114
All Floridians with individual major medical plans⁵⁹	1,765,807
19.7% of all covered lives on individual major medical plans are under 18	347,864
0.17% of children have hearing loss	7,193

⁵⁸ Florida Coalition for Spoken Language Options, *SB 1268 Mandate Report* (on file with Senate Committee on Banking and Insurance).

⁵⁹ Office of Insurance Regulation correspondence (Dec. 8, 2020) (on file with Senate Committee on Banking and Insurance).

0.17% of the children who have individual major medical plans	591
2% of .17% slight loss/no hearing aid needed	-12
30% of .17% severe to profound sensorineural or mixed loss/ cochlear implant candidate	-177
.17% of 16,170 Children Receiving Early Steps	-11
<i>Impacted Hearing Aid Candidates</i>	461
39% unilateral	180
61% bilateral	281
Total Cost per Unilateral (\$3500 per ear over 24 months)	\$630,000
Total Cost Per Bilateral (\$3500 per ear over 24 months)	\$1,967,000
Total Cost Over 24 Months	\$2,597,000
<i>Cost per Year</i>	\$1,298,500
Annual Cost per Plan (\$1,298,500 spread over 1,765,807 covered lives)	\$0.74
Cost Per Month Per Covered Life	\$0.06

C. Government Sector Impact:

None. The bill’s requirements do not apply to the State Group Insurance Program since the bill does not mandate that group or employer coverage provide the benefits.

VI. Technical Deficiencies:

The bill does not define “significant and unexpected change” in hearing requiring an unexpected change in the prescription or what criteria will be used to make that determination. Defining this term in the bill or through rulemaking should reduce disputes over whether a change in hearing is “significant and unexpected.”⁶⁰

VII. Related Issues:

Generally, insurance policies and HMO contracts are issued with a one-year duration. It may be difficult to implement a coverage requirement that lasts for 24 months, as proposed in the bill.⁶¹

⁶⁰ Office of Insurance Regulation, *2021 Legislative Session, Senate Bill 1268 Fiscal Analysis* (Feb. 18, 2021) (on file with Senate Committee on Banking and Insurance).

⁶¹ *Id.*

VIII. Statutes Affected:

This bill substantially amends section 641.31 of the Florida Statutes.

This bill creates section 627.6413 of the Florida Statutes.

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 Banking and Insurance on January 12, 2022:

The committee substitute:

- Requires individual market health insurance policies and HMO contracts providing major medical or similar comprehensive coverage to provide coverage for hearing aids for children through age 18 rather than age 21.
- Revises the definition of the term “hearing aid” to exclude cochlear implants.
- Clarifies that a physician licensed under ch. 458 or 459, F.S., or an audiologist licensed under ch. 468, F.S., must make the diagnosis of a hearing loss.

- B. **Amendments:**

None.

By the Committee on Banking and Insurance; and Senators Baxley,
Perry, and Taddeo

597-01975-22

2022498c1

1 A bill to be entitled
2 An act relating to coverage for hearing aids for
3 children; creating s. 627.6413, F.S.; defining the
4 term "hearing aid"; requiring certain individual
5 health insurance policies to provide coverage for
6 hearing aids for certain children 18 years of age or
7 younger under certain circumstances; specifying
8 certain coverage requirements; providing an exception;
9 providing that an insured is responsible for certain
10 costs that exceed the policy limit; providing
11 applicability; amending s. 641.31, F.S.; requiring
12 certain individual health maintenance organization
13 contracts to provide coverage for hearing aids for
14 certain children 18 years of age or younger under
15 certain circumstances; specifying certain coverage
16 requirements; providing an exception; providing that a
17 subscriber is responsible for certain costs that
18 exceed the contract limit; defining the term "hearing
19 aid"; providing applicability; providing an effective
20 date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Section 627.6413, Florida Statutes, is created
25 to read:

26 627.6413 Coverage for hearing aids for children.—

27 (1) As used in this section, the term "hearing aid" means
28 any wearable instrument or device designed for, offered for the
29 purpose of, or represented as aiding persons with or

Page 1 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-01975-22

2022498c1

30 compensating for impaired hearing, and includes ear molds. The
31 term does not include a cochlear implant.

32 (2) A health insurer issuing an individual policy that
33 provides major medical or similar comprehensive coverage for a
34 dependent child of the insured must provide coverage for a
35 hearing aid for any such child 18 years of age or younger
36 diagnosed with hearing loss by a physician licensed under
37 chapter 458 or chapter 459 or by an audiologist licensed under
38 part I of chapter 468, and for whom the hearing aid is
39 prescribed as medically necessary. Coverage for a hearing aid
40 prescribed to a child 18 years of age or younger must require
41 the hearing aid to be prescribed, fitted, and dispensed by a
42 physician licensed under chapter 458 or chapter 459 or an
43 audiologist licensed under part I of chapter 468.

44 (3) The policy must provide benefits in any 24-month period
45 of at least \$3,500 per ear. The policy may limit coverage for
46 ear molds to six ear molds in any 24-month period. However, if a
47 child experiences a significant and unexpected change in his or
48 her hearing or a medical condition requiring an unexpected
49 change in the prescription for the hearing aid before the
50 existing 24-month period expires, and alterations to the
51 existing hearing aid do not or cannot meet the needs of the
52 child, a new 24-month period must begin with full benefits and
53 coverage.

54 (4) An insured is responsible for the cost of hearing aids
55 and related services which exceeds the coverage limit provided
56 by his or her policy.

57 (5) This section applies to a policy issued or renewed on
58 or after January 1, 2023.

Page 2 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-01975-22

2022498c1

59 Section 2. Subsection (48) is added to section 641.31,
 60 Florida Statutes, to read:
 61 641.31 Health maintenance contracts.—
 62 (48) (a) A health maintenance organization issuing an
 63 individual contract that provides major medical or similar
 64 comprehensive coverage for a dependent child of the subscriber
 65 must provide coverage for a hearing aid for any such child 18
 66 years of age or younger diagnosed with hearing loss by a
 67 physician licensed under chapter 458 or chapter 459 or by an
 68 audiologist licensed under part I of chapter 468, and for whom
 69 the hearing aid is prescribed as medically necessary. Coverage
 70 for a hearing aid prescribed to a child 18 years of age or
 71 younger must require the hearing aid to be prescribed, fitted,
 72 and dispensed by a physician licensed under chapter 458 or
 73 chapter 459 or an audiologist licensed under part I of chapter
 74 468.
 75 (b) The contract must provide benefits in any 24-month
 76 period of at least \$3,500 per ear. The contract may limit
 77 coverage for ear molds to six ear molds in any 24-month period.
 78 However, if a child experiences a significant and unexpected
 79 change in his or her hearing or a medical condition requiring an
 80 unexpected change in the prescription for the hearing aid before
 81 the existing 24-month period expires, and alterations to the
 82 existing hearing aid do not or cannot meet the needs of the
 83 child, a new 24-month period must begin with full benefits and
 84 coverage.
 85 (c) A subscriber is responsible for the cost of hearing
 86 aids and related services which exceeds the coverage limit
 87 provided by his or her contract.

Page 3 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-01975-22

2022498c1

88 (d) As used in this section, the term "hearing aid" means
 89 any wearable instrument or device designed for, offered for the
 90 purpose of, or represented as aiding persons with or
 91 compensating for impaired hearing, and includes ear molds. The
 92 term does not include a cochlear implant.
 93 (e) This subsection applies to a contract issued or renewed
 94 on or after January 1, 2023.
 95 Section 3. This act shall take effect January 1, 2023.

Page 4 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Ethics and Elections, *Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Community Affairs
Criminal Justice
Health Policy
Judiciary
Rules

JOINT COMMITTEE:

Joint Legislative Auditing Committee,
Alternating Chair

SENATOR DENNIS BAXLEY

12th District

January 12, 2022

The Honorable Senator Manny Diaz
306 Senate Office Building
Tallahassee, Florida 32399

Dear Chairman Diaz,

I would like to request that CS/SB 498 Insurance Coverage for Children with Hearing Aids be heard in the Health Policy Committee meeting.

This would require a private health insurance policy that provides coverage on an expense-incurred basis for a member of the family of the insured must provide health insurance benefits that include coverage for children diagnosed with hearing loss from birth through 18 years of age for hearing aids prescribed, fitted, and dispensed by a licensed audiologist.

An insurer must provide a minimum coverage amount of \$3,500 per ear within a 24-month period. However, if a child experiences a significant and unexpected change in his or her hearing or a medical condition requiring an unexpected change in the hearing aid before the existing 24-month period has expired, and alterations to the existing hearing aid do not or cannot meet the needs of the child, a new 24-month period shall begin with full benefits and coverage. Also, the insured is responsible for the cost of hearing aids and related services that exceed the coverage provided by his or her policy.

Thank you for your favorable consideration.

Onward & Upward,



Senator Dennis K. Baxley
Senate District 12

DKB/dd

cc: Allen Brown, Staff Director

REPLY TO:

- 206 South Hwy 27/441, Lady Lake, Florida 32159 (352) 750-3133
- 315 SE 25th Avenue, Ocala, Florida 34471 (352) 789-6720
- 322 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5012

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

498 HEARING AID

Bill Number or Topic

1/19/22

Meeting Date

Deliver both copies of this form to Senate professional staff conducting the meeting

Health Policy

Committee

(PRODUCED BULL - JER)

Amendment Barcode (if applicable)

Name

Theresa Bulger

Phone

904 880 9063

Address

253 Hayden

Email

tb@deafkidscan.org

Street

Tallahassee

State

FL

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

1/19/2022

Meeting Date

498 Hearing Act

Bill Number or Topic

HEALTH POLICY

Committee

Amendment Barcode (if applicable)

Name ARCHIE D. CAMPBELL JR

Phone 904-703-1512

Address 120 IVY LAKES DR.

Email ARCHIECAMPBELLJR@GMAIL.COM

Street

SAINT JOHNS FL 32259

City

State

Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

1/19/22

Meeting Date

498 HEARING AIDS

Bill Number or Topic

Health Policy

Committee

Amendment Barcode (if applicable)

Name Garrett Campbell

Phone 904-298-6890

Address 170 Ivy Lakes Dr.

Street

Email gkcampbell0620@gmail.com

Saint Johns

City

Florida

State

32259

Zip

Speaking: [checked] For [] Against [] Information OR Waive Speaking: [] In Support [] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[checked] I am appearing without compensation or sponsorship.

[] I am a registered lobbyist, representing:

[] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flisenate.gov)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

1/19/22

Meeting Date

C/S/SB 498

Bill Number or Topic

Health Policy

Committee

Amendment Barcode (if applicable)

Name Mary-Lynn Cullen

Phone 941 928 0278

Address 1674 University Pkwy

Street

Email achildren@aol.com

Sarasota

City

Fl.

State

34243

Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing: Advocacy Institute (For Children for no Compensation)

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

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 Committee on Health Policy

BILL: CS/SB 1222

INTRODUCER: Health Policy Committee and Senator Bean

SUBJECT: Nonemergent Patient Care

DATE: January 19, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Rossitto-Vanwinkle</u>	<u>Brown</u>	<u>HP</u>	<u>Fav/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

PLEASE MAKE SELECTION

I. Summary:

CS/SB 1222 amends s. 401.272, F.S., to encourage the more effective use of the skills of certified paramedics by authorizing them to perform services in a nonemergent community environment in partnership with specific hospitals. The bill authorizes paramedics in a nonemergent community environment to administer not only basic life support (BLS) services and advanced life support (ALS) services, but also additional health care services to acute care at-home patients as described in the paramedic's formal supervisory relationship with a physician or in the physician's standing orders.

A physician supervising a certified paramedic who administers BLS services, ALS services, or additional health care services to acute care at-home patients in a nonemergent community setting under the bill, is liable for any act or omission of the certified paramedic acting under the physician's supervision or medical direction when the paramedic performs such tasks or services.

The bill amends s. 465.019, F.S., to authorize Class III institutional pharmacies to dispense, distribute, compound, and fill prescriptions for medicinal drugs for inpatients or acute care at-home patients in a nonemergent community setting. The bill further authorizes hospitals that operate Class II and III institutional pharmacies that do not have a community pharmacy permit to also dispense medical drugs to an acute care at-home patient in a nonemergent community setting if a prescriber treating the patient in the hospital determines that the medicinal drug is warranted and that community pharmacy services are not readily accessible, geographically or otherwise.

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

II. Present Situation:

Florida's Department of Health (DOH)

The Legislature created the Department of Health (DOH) to protect and promote the health, safety and welfare of all residents and visitors in the state.¹ The DOH is charged with the regulation of health practitioners for the preservation of the health, safety, and welfare of the public. The Division of Medical Quality Assurance (MQA) is responsible for the boards² and professions within the DOH.³

Boards of Medicine and Osteopathic Medicine

The Board of Medicine regulates allopathic physicians (MD). An MD is a person who is licensed to practice medicine in Florida. Practicing medicine includes the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition.⁴ Allopathic standards of practice and standards of care for a particular practice setting include, but are not limited to, education and training, equipment and supplies, medications including anesthetics, assistance of and delegation to other personnel, transfer agreements, sterilization, records, performance of complex or multiple procedures, informed consent, and policy and procedure manuals.⁵

The Board of Osteopathic Medicine regulates osteopathic physicians (DO). A DO is a person who is licensed to practice osteopathic medicine Florida. The practice of osteopathic medicine includes the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition, which practice is based in part upon educational standards and requirements that emphasize the importance of the musculoskeletal structure and manipulative therapy in the maintenance and restoration of health.⁶

Emergency Medical Services (EMS)

The Legislature created ch. 401, F.S., in 1973 with the intent to establish a statewide organized and regulated system of regional EMS providers with two major objectives:

- To develop a statewide system of emergency medical telecommunications to maximize the use of existing radio channels to provide faster and more effective EMS to the general population;⁷ and
- To protect and enhance the public health, safety, and welfare with the establishment a state wide EMS plan to:

¹ Sections 20.43 and 456.003, F.S.

² Under s. 456.001(1), F.S., "board" is defined as any board, commission, or other statutorily created entity, to the extent such entity is authorized to exercise regulatory or rulemaking functions within the DOH or, in some cases, within the MQA.

³ Section 20.43, F.S.

⁴ Section 458.305, F.S.

⁵ Section 458.331(1)(v), F.S.

⁶ Section 459.003, F.S.

⁷ Section 401.013, F.S.

- Monitor the quality of patient care delivered by each licensed service;
- Certify EMS personnel;
- Create an EMS advisory council;
- Develop a comprehensive statewide injury-prevention program; and
- Development minimum standards for EMS providers, personnel, vehicles, services, medical direction and inspections.⁸

The Legislature further recognized that a major impediment to meeting its two legislative objectives for s. 401, F.S., was the inability of governmental and private agencies to respond cooperatively in order to finance a system of regional EMS. In response, the Legislature found it in the public interest to foster the development of a statewide EMS provider system and created the Florida Emergency Medical Services Grant Act.⁹ This law authorizes the DOH to make grants to local agencies, EMS organizations, and youth athletic organizations to provide EMS, including emergency medical dispatch, and work with local EMS organizations to expand the use of automated external defibrillator (AED) devices.¹⁰

Emergency Medical Service Providers

Every person, firm, corporation, association, or governmental entity owning or acting as an agent for the owner of any business or service which furnishes, operates, conducts, maintains, advertises, engages in, proposes to engage in, or professes to engage in the business or service of providing prehospital or interfacility advanced life support (ALS) services or basic life support (BLS) transportation services, must be licensed as a BLS service or an ALS service, or both, before offering such services to the public. Every ALS ambulance transporting a person who is sick, injured, wounded, incapacitated, or helpless must have a least two persons on-board: one who is a certified paramedic or licensed physician and one who is a certified emergency medical technician (EMT), certified paramedic, or licensed physician and also meets the requirements of an ambulance driver. The person with the highest medical certification must be in charge of patient care.¹¹

Paramedic

A certified paramedic may perform both BLS and ALS.¹² ALS includes the assessment or treatment by a certified paramedic qualified in 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 administrative rules.¹³

Qualifications for Certification

To be qualified for certification as a paramedic, an individual must either successfully complete an initial Florida paramedic training program that was conducted in accordance with the January 2009 U.S. DOT National EMS Education Standards; or, if the individual is from out of state or

⁸ Section 401.211, F.S.

⁹ See ss. 401.101 and 401.104, F.S.

¹⁰ Section 401.111, F.S.

¹¹ Section 401.25(1), F.S.

¹² Section 401.23(17), F.S.

¹³ Section 401.23(1), F.S.

military trained in accordance with the 1998 U.S. DOT EMT-Paramedic (EMT-P) NSC or the January 2009 U.S. DOT National EMS Education Standards, if he or she currently holds a valid paramedic certification from the National Registry of Emergency Medical Technicians (NR-EMT).

Each applicant must submit an application to the DOH. If the applicant completed his or her initial paramedic training program in Florida, then he or she must pass the DOH-required paramedic certification examination within two years of completing the initial Florida training program. The DOH will accept a passing score for this exam if taken within the two-year period, whether the exam is taken before or after the application is filed.

To maintain an active certificate, a paramedic must pay the recertification fee and complete 30 hours of paramedic refresher training based on criteria in the January 2009 U.S. DOT National EMS Education Standards which includes adult and pediatric education with a minimum of two hours in pediatric emergencies, and maintain a current Advanced Cardiac Life Support (ACLS) card.¹⁴ The DOH accepts either the affirmation of a licensed EMS provider's medical director, a certificate of completion of refresher training from a DOH-approved Florida training program, or a DOH-approved CE provider's proof of compliance with the CE requirements.

EMS Services in Community Health Care

Section 401.272, F.S., was created by the Legislature to encourage more effective use of the skills of EMTs and paramedics by enabling them to perform, in partnership with local county health departments, specific additional health care tasks that are consistent with the public health and welfare. Notwithstanding any other provision of law to the contrary, a paramedic or an EMT may perform "health promotion and wellness"¹⁵ activities and blood pressure screenings in a nonemergency environment, within the scope of his or her training, and under the direction of a medical director.

A paramedic may administer immunizations in a nonemergency environment, within the scope of his or her training, and under the direction of a medical director. There must be a written agreement between the paramedic's medical director and the county health department located in each county in which the paramedic administers immunizations. This agreement must establish the protocols, policies, and procedures under which the paramedic must operate. Each medical director under whose direction a paramedic administers immunizations must verify and document that the paramedic has received sufficient training and experience to administer immunizations. The verification must be documented on forms developed by the DOH, and the forms must be maintained at the service location of the licensee and made available to the DOH upon request.

The Board of Pharmacy

The Board of Pharmacy (BOP) is created within the DOH and is authorized to make rules to regulate the practice of professional pharmacy in pharmacies meeting minimum requirements for

¹⁴ See s 401.27(4)(e)2., F.S., and Fla. Admin. Code R. 64J-1.022, (2021).

¹⁵"Health promotion and wellness" means the provision of public health programs pertaining to the prevention of illness and injury. Section 401.272,(2)(a), F.S.

safe practice.¹⁶ All pharmacies must obtain a permit before operating, unless exempt by law. This is true whether opening a new establishment or simply changing locations or owners.¹⁷

The Practice of Pharmacy

Florida law recognizes seven types of pharmacies as eligible for various operating permits to be issued by the DOH:

- Community pharmacy;¹⁸
- Institutional pharmacy;¹⁹
- Nuclear pharmacy;²⁰
- Special pharmacy;²¹
- Internet pharmacy;²²
- Non-resident sterile compounding pharmacy;²³ and
- Special sterile compounding pharmacy.²⁴

Institutional Pharmacies

An “institutional pharmacy” includes any pharmacy located in a health care institution, which includes a hospital, clinic, nursing home, dispensary, sanitarium, extended care facility, or other facility where medicinal drugs are compounded, dispensed, stored, or sold.²⁵ Institutional pharmacy permits are required for any pharmacy located in any health care institution.²⁶

Currently there are four types of institutional pharmacy permits issued by the BOP to institutional pharmacies: Institutional Class I, Class II, Modified Class II, and Class III.²⁷

Institutional Class I Pharmacy

A Class I institutional pharmacy is an institutional pharmacy in which all medicinal drugs are administered from individual prescription containers to an individual patient and in which

¹⁶ See ss. 465.002, and 465.0155, F.S.

¹⁷ Fla. Admin. Code R. 64B16-28.100(1) (2021).

¹⁸ The term “community pharmacy” includes every location where medicinal drugs are compounded, dispensed, stored, or sold or where prescriptions are filled or dispensed on an outpatient basis. See ss. 465.003(11)(a)1. and 465.018, F.S.

¹⁹ See ss. 465.003(11)(a)2., and 465.019, F.S.

²⁰ The term “nuclear pharmacy” includes every location where radioactive drugs and chemicals within the classification of medicinal drugs are compounded, dispensed, stored, or sold, but does not include hospitals licensed under ch. 395, F.S., or the nuclear medicine facilities of such hospitals. See ss. 465.003(11)(a)3. and 465.0193, F.S.

²¹ The term “special pharmacy” includes every location where medicinal drugs are compounded, dispensed, stored, or sold if such locations are not otherwise defined by law. See ss. 465.003(11)(a)4. and 465.0196, F.S.

²² The term “internet pharmacy” includes locations not otherwise licensed or issued a permit under ch. 465, F.S., whether or not in Florida, which use the Internet to communicate with or obtain information from consumers in this state and use such communication or information to fill or refill prescriptions or to dispense, distribute, or otherwise engage in the practice of pharmacy in this state. See ss. 465.003(11)(a)5. and 465.0197, F.S.

²³ The term “nonresident sterile compounding pharmacy” includes a pharmacy that ships, mails, delivers, or dispenses, in any manner, a compounded sterile product into Florida, and a nonresident pharmacy registered under s. 465.0156, F.S., or an outsourcing facility, must hold a nonresident sterile compounding permit. See s. 465.0158(1), F.S.

²⁴ See Fla. Admin. Code R. 64B16-28.100 and 64B16-28.802 (2021). An outsourcing facility is considered a pharmacy and must hold a special sterile compounding permit if it engages in sterile compounding.

²⁵ Section 465.003(11)(a)2., F.S.

²⁶ Fla. Admin. Code R. 64B16-28.100(3) (2021).

²⁷ Section 465.019, F.S.

medicinal drugs are not dispensed on the premises, except that licensed nursing homes²⁸ may purchase medical oxygen for administration to residents.²⁹

Institutional Class II Pharmacy

A Class II institutional pharmacy is a pharmacy that employs the services of a registered pharmacist or pharmacists who, in practicing institutional pharmacy, provide dispensing and consulting services on the premises to patients of the institution, for use on the premises of the institution.³⁰ A Class II institutional pharmacy is required to be open sufficient hours to meet the needs of the hospital facility.³¹ The consultant pharmacist of record is responsible for establishing a written policy and procedure manual.³²

Modified Institutional Class II Pharmacy Permits

Modified Institutional Class II pharmacies are institutional pharmacies in short-term, primary care treatment centers that meet all the requirements for a Class II permit, except space and equipment requirements.³³ Modified Class II Institutional pharmacies are designated as Type A, Type B, and Type C according to the specialized type of the medicinal drug delivery system utilized at the facility, either a patient-specific or bulk drug system, and the quantity of the medicinal drug formulary at the facility.³⁴

Institutional Class III Pharmacies

Class III institutional pharmacies are pharmacies, including central distribution facilities, that are affiliated with a hospital that provide the same services authorized by a Class II institutional pharmacy permit. Class III institutional pharmacies may:

- Dispense, distribute, compound, and fill prescriptions for medicinal drugs;
- Prepare prepackaged drug products;
- Conduct other pharmaceutical services for the affiliated hospital and for entities under common control that are each permitted under ch. 465, F.S., to possess medicinal drugs; and

²⁸ See part II, ch. 400, F.S., relating to nursing homes.

²⁹ Section 465.019(2)(a), F.S.

³⁰ See s. 465.019(2)(b), F.S. Exceptions apply when there is a state of emergency and for single doses of a drug ordered by physicians in limited circumstances.

³¹ Fla. Admin. Code R. 64B16-28.603 (2021).

³² Section 465.019(5), F.S.

³³ Section 465.019(2)(c), F.S.

³⁴ Fla. Admin. Code R. 64B16-28.702(2) (2021). Modified Class II Institutional Pharmacies provide the following pharmacy services: (1) Type “A” Modified Class II Institutional Pharmacies provide pharmacy services in a facility which has a formulary of not more than 15 medicinal drugs, excluding those medicinal drugs contained in an emergency box, and in which the medicinal drugs are stored in bulk and in which the consultant pharmacist provides on-site consultations not less than once every month, unless otherwise directed by the BOP after review of the policy and procedure manual; (2) Type “B” Modified Class II Institutional Pharmacies provide pharmacy services in a facility in which medicinal drugs are stored in the facility in patient specific form and in bulk form and which has an expanded drug formulary, and in which the consultant pharmacist provides on-site consultations not less than once per month, unless otherwise directed by the BOP after review of the policy and procedure manual; and (3) Type “C” Modified Class II Institutional Pharmacies provide pharmacy services in a facility in which medicinal drugs are stored in the facility in patient specific form and which has an expanded drug formulary, and in which the consultant pharmacist provides onsite consultations not less than once per month, unless otherwise directed by the BOP after review of the policy and procedure manual.

- Provide the services in Class I institutional pharmacies, Class II institutional pharmacies, and Modified Class II institutional pharmacies that hold an active health care clinic establishment permit.^{35, 36}

Institutional Pharmacies – Dispensing Medicinal Drugs

Class II and Class III institutional pharmacies are permitted to dispense medicinal drugs to outpatients only when that institution has been issued a community pharmacy permit from the DOH.³⁷ However, medicinal drugs may be dispensed by a hospital that operates a Class II or Class III institutional pharmacy to a patient of the hospital's emergency department or a hospital inpatient upon discharge if a prescriber treating the patient in the hospital determines that the medicinal drug is warranted and that community pharmacy services are not readily accessible, geographically or otherwise, to the patient. Such prescribing and dispensing must be for a supply of the drug that will last for the greater of the following:

- Up to 48 hours; or
- Through the end of the next business day.³⁸

Notwithstanding those limits, if a state of emergency has been declared and is in effect for a specific area of the state, a supply of a medicinal drug which will last up to 72 hours may be prescribed and dispensed to persons in that area. A prescriber prescribing medicinal drugs in a state of emergency may also provide the patient with a prescription for the drug for use beyond the initial prescription period if the prescriber determines that such use is warranted. Any prescribing or dispensing of a controlled substance during a state of emergency must comply with the applicable requirements of ss. 456.44 and 465.0276, F.S.

III. Effect of Proposed Changes:

CS/SB 1222 amends s. 401.272, F.S., to encourage more effective use of the skills of paramedics by enabling them to perform services in a nonemergent community environment in partnership with not just local county health departments, but also hospitals as defined in s. 408.032 (11), F.S.

The bill authorizes certified paramedics to administer BLS services, ALS services, and additional health care services to acute care at-home patients in a nonemergent community setting as described in the paramedic's formal supervisory relationship with a physician or in the physician's standing orders. Under the bill, a physician who supervises or provides medical direction to a paramedic who administers BLS, ALS, or additional health care services to acute care to at-home patients, is liable for any act or omission of the paramedic acting under the physician's supervision or medical direction when the paramedic performs such services.

The bill authorizes the DOH to adopt and enforce rules relating to paramedics practicing in a nonemergent community setting to provide the services described above.

³⁵ Section 465.019(2)(d)1., F.S.

³⁶ See s. 499.01(2)(r), F.S.

³⁷ See s. 465.019(2)(a), F.S., which prohibits a Class I institutional pharmacy from dispensing medicinal drugs.

³⁸ Section 465.019(4), F.S.

The bill amends s. 465.019, F.S., to expand the scope of Class III institutional pharmacies to authorize them to dispense, distribute, compound, and fill prescriptions for medicinal drugs to inpatients and to acute care at home patients. The bill further authorizes hospitals that operate Class II and III institutional pharmacies that have not obtained a community pharmacy permit to also dispense to an acute care at-home patient in a nonemergent community setting if a prescriber treating the patient in the hospital determines that the medicinal drug is warranted and that community pharmacy services are not readily accessible, geographically or otherwise.

The bill makes technical and conforming changes to ss. 401.23, 14.33, 252.515, 395.1027, and 401.245 F.S.

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:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

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: 401.23, 401.272, 465.019, 14.33, 252.515, 395.1027, and 401.245.

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:**CS by Health Policy on January 19, 2022:**

The CS:

- Authorizes paramedics to perform BLS services, ALS services, and additional health care services to acute care at-home patients in a nonemergent community setting under the supervision of a physician in partnership with specific hospitals;
- Requires a physician supervising a paramedic who provides BLS, ALS, or additional health care services to acute care at home patients under the bill, to be liable for any act or omission of the paramedic when performing the acts or services;
- Authorizes Class III institutional pharmacies to dispense, distribute, compound, and fill prescriptions for medicinal drugs to acute care at home patients and inpatients; and
- Authorizes Class II and III institutional pharmacies that do not have community pharmacy permits to dispense to an acute care at-home patient in a nonemergent community setting if a prescriber treating the patient in the hospital determines that the medicinal drug is warranted and that community pharmacy services are not readily accessible, geographically or otherwise.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/19/2022	.	
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	.	

The Committee on Health Policy (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 26 - 130

and insert:

Section 1. Section 401.272, Florida Statutes, is amended to read:

401.272 Emergency medical services community health care.-

(1) The purpose of this section is to encourage more effective use ~~utilization~~ of the skills of emergency medical technicians and paramedics in nonemergent community settings by enabling them to perform, in partnership with local county



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12 health departments and hospitals as defined in s. 395.002(13),
13 specific additional health care tasks that are consistent with
14 the public health and welfare.

15 (2) Notwithstanding any other provision of law to the
16 contrary:

17 (a) Certified paramedics or emergency medical technicians
18 may perform health promotion and wellness activities and blood
19 pressure screenings in a nonemergency environment, within the
20 scope of their training, and under the supervision of a
21 physician or the direction of a medical director. As used in
22 this paragraph, the term "health promotion and wellness" means
23 the provision of public health programs pertaining to the
24 prevention of illness and injury.

25 (b) Certified paramedics may administer immunizations in a
26 nonemergency environment, within the scope of their training,
27 and under the supervision of a physician or the direction of a
28 medical director. There must be a written agreement between the
29 paramedic's supervising physician or medical director and the
30 county health department located in each county in which the
31 paramedic administers immunizations. This agreement must
32 establish the protocols, policies, and procedures under which
33 the paramedic must operate.

34 (c) Certified paramedics may provide basic life support
35 services, advanced life support services, and additional health
36 care services to acute care at-home patients in a nonemergent
37 community setting as specified in the paramedic's formal
38 supervisory relationship with a physician or standing orders as
39 described in s. 401.265, s. 458.348, or s. 459.025. Each
40 physician who supervises or provides medical direction to a



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41 paramedic who administers basic life support services, advanced
42 life support services, or additional health care services to
43 acute care at-home patients in a nonemergent community setting
44 pursuant to a formal supervisory relationship or standing orders
45 is liable for any act or omission of the paramedic acting under
46 the physician's supervision or medical direction when performing
47 such services.

48 (3) Each physician or medical director under whose
49 supervision or direction a paramedic administers immunizations
50 or provides basic life support services, advanced life support
51 services, or additional health care services to acute care at-
52 home patients in a nonemergency community setting must verify
53 and document that the paramedic has received sufficient training
54 and experience to administer immunizations or provide basic life
55 support services, advanced life support services, or additional
56 health care services to acute care at-home patients in a
57 nonemergency community setting, as applicable. The verification
58 must be documented on forms developed by the department, and the
59 completed forms must be maintained at the service location of
60 the licensee and made available to the department upon request.

61 (4) The department may adopt and enforce all rules
62 necessary to enforce the provisions relating to paramedics and
63 emergency medical technicians practicing in a nonemergent
64 community setting under subsection (2) a paramedic's
65 administration of immunizations and the performance of health
66 promotion and wellness activities and blood pressure screenings
67 by a paramedic or emergency medical technician in a nonemergency
68 environment.

69 Section 2. Paragraph (d) of subsection (2) and paragraph



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70 (a) of subsection (4) of section 465.019, Florida Statutes, are
71 amended to read:

72 465.019 Institutional pharmacies; permits.—

73 (2) The following classes of institutional pharmacies are
74 established:

75 (d)1. "Class III institutional pharmacies" are those
76 institutional pharmacies, including central distribution
77 facilities, affiliated with a hospital which ~~that~~ provide the
78 same services that are authorized by a Class II institutional
79 pharmacy permit. Class III institutional pharmacies may also:

80 a. Dispense, distribute, compound, and fill prescriptions
81 for medicinal drugs for inpatient treatment or for acute care
82 at-home patients in a nonemergent community setting.

83 b. Prepare prepackaged drug products.

84 c. Conduct other pharmaceutical services for the affiliated
85 hospital and for entities under common control that are each
86 permitted under this chapter to possess medicinal drugs.

87 d. Provide the services in sub-subparagraphs a.-c. to an
88 entity under common control which holds an active health care
89 clinic establishment permit as required under s. 499.01(2)(r).

90 2. A Class III institutional pharmacy shall maintain
91 policies and procedures addressing:

92 a. The consultant pharmacist responsible for pharmaceutical
93 services.

94 b. Safe practices for the preparation, dispensing,
95 prepackaging, distribution, and transportation of medicinal
96 drugs and prepackaged drug products.

97 c. Recordkeeping to monitor the movement, distribution, and
98 transportation of medicinal drugs and prepackaged drug products.



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99 d. Recordkeeping of pharmacy staff responsible for each
100 step in the preparation, dispensing, prepackaging,
101 transportation, and distribution of medicinal drugs and
102 prepackaged drug products.

103 e. Medicinal drugs and prepackaged drug products that may
104 not be safely distributed among Class III institutional
105 pharmacies.

106 (4) (a) Medicinal drugs shall be dispensed in an
107 institutional pharmacy to outpatients only when that institution
108 has secured a community pharmacy permit from the department.
109 However, ~~medicinal drugs may be dispensed by~~ a hospital that has
110 not secured a community pharmacy permit but operates a Class II
111 or Class III institutional pharmacy may dispense medicinal drugs
112 to a patient of the hospital's emergency department, an acute
113 care at-home patient in a nonemergent community setting, or a
114 hospital inpatient upon discharge if a prescriber, as defined in
115 s. 465.025(1), treating the patient in such hospital determines
116 that the medicinal drug is warranted and that community pharmacy
117 services are not readily accessible, geographically or
118 otherwise, to the patient. Such prescribing and dispensing must
119 be for a supply of the drug that will last for the greater of
120 the following:

- 121 1. Up to 48 hours; or
122 2. Through the end of the next business day.

123 Section 3. Subsection (19) of section 401.23, Florida
124 Statutes, is amended to read:

125 401.23 Definitions.—As used in this part, the term:

126 (19) "Physician" means a practitioner who is licensed under
127 ~~the provisions of~~ chapter 458 or chapter 459. For the purpose of



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128 providing "medical direction" as defined in this section
129 ~~subsection (14)~~ for the treatment of patients immediately before
130 ~~prior to~~ or during transportation to a United States Department
131 of Veterans Affairs medical facility, "physician" also means a
132 practitioner employed by the United States Department of
133 Veterans Affairs.

134

135 ===== T I T L E A M E N D M E N T =====

136 And the title is amended as follows:

137 Delete lines 2 - 21

138 and insert:

139 An act relating to acute care at-home patients in
140 nonemergent community settings; amending s. 401.272,
141 F.S.; revising a legislative purpose regarding
142 emergency medical services community health care;
143 authorizing certified paramedics to perform basic life
144 support services, advanced life support services, and
145 additional health care services to acute care at-home
146 patients in nonemergent community settings under
147 certain circumstances; providing that a physician or
148 medical director who supervises or directs the
149 provision of such services by a paramedic is liable
150 for any act or omission during the provision of such
151 services; requiring supervising physicians and medical
152 directors to verify and document that paramedics
153 providing such services under their supervision or
154 direction are sufficiently trained and experienced to
155 do so; revising the Department of Health's rulemaking
156 authority to conform to changes made by the act;



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157 amending s. 465.019, F.S.; specifying that Class III
158 institutional pharmacies may dispense, distribute,
159 compound, and fill prescriptions for medicinal drugs
160 for inpatients and acute care at-home patients in
161 nonemergent community settings; authorizing hospitals
162 to dispense medicinal drugs to certain patients
163 without first securing a community pharmacy permit
164 under certain circumstances; amending ss. 14.33,
165 252.515, 395.1027, 401.23, and 401.245, F.S.; making
166 technical changes; providing an effective

By Senator Bean

4-01088-22

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A bill to be entitled

An act relating to nonemergent patient care; amending s. 401.23, F.S.; defining the term "community paramedicine"; amending s. 401.265, F.S.; providing that a physician who supervises the provision of certain services by a paramedic or an emergency medical technician is liable for any act or omission during the provision of such services; amending s. 401.272, F.S.; revising a legislative purpose regarding emergency medical services community health care; authorizing paramedics and emergency medical technicians to perform community paramedicine under certain circumstances; amending s. 465.019, F.S.; specifying that Class III institutional pharmacies may dispense, distribute, compound, and fill prescriptions for medicinal drugs for inpatient and outpatient treatment; authorizing hospitals to dispense medicinal drugs to patients without first securing a community pharmacy permit under certain circumstances; amending ss. 14.33, 252.515, 395.1027, and 401.245, F.S.; conforming cross-references; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsections (10) through (22) of section 401.23, Florida Statutes, are redesignated as subsections (11) through (23), respectively, a new subsection (10) is added to that section, and present subsection (19) of that section is

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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amended, to read:

401.23 Definitions.—As used in this part, the term:

(10) "Community paramedicine" means any nonemergent basic or advanced life support services provided in a community setting by a paramedic or an emergency medical technician, as applicable, under the medical supervision of a physician pursuant to a formal supervisory relationship or standing order, as described in s. 401.265, s. 458.348, or s. 459.025.

(20) ~~(19)~~ "Physician" means a practitioner who is licensed under ~~the provisions of~~ chapter 458 or chapter 459. For the purpose of providing "medical direction" as defined in this section ~~subsection (14)~~ for the treatment of patients immediately before ~~prior to~~ or during transportation to a United States Department of Veterans Affairs medical facility, "physician" also means a practitioner employed by the United States Department of Veterans Affairs.

Section 2. Subsection (4) of section 401.265, Florida Statutes, is amended to read:

401.265 Medical directors.—

(4) Each physician who supervises or provides medical direction to ~~medical director who uses~~ a paramedic or an emergency medical technician to perform community paramedicine; to perform blood pressure screening, health promotion, and wellness activities; 7 or to administer immunization for ~~on~~ any patient under a protocol as specified in s. 401.272, which is not in the provision of emergency care, is liable for any act or omission of any paramedic or emergency medical technician acting under his or her supervision and control when performing such services.

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59 Section 3. Subsections (1) and paragraph (a) of subsection
60 (2) of section 401.272, Florida Statutes, are amended to read:

61 401.272 Emergency medical services community health care.—

62 (1) The purpose of this section is to encourage more
63 effective ~~use utilization~~ of the skills of emergency medical
64 technicians and paramedics by enabling them to perform community
65 paramedicine, in partnership with local county health
66 departments and health care facilities as defined in s. 408.07
67 ~~specific additional health care tasks that are consistent with~~
68 ~~the public health and welfare.~~

69 (2) Notwithstanding any other provision of law to the
70 contrary:

71 (a) Paramedics or emergency medical technicians may perform
72 community paramedicine, health promotion and wellness
73 activities, and blood pressure screenings in a nonemergency
74 environment, within the scope of their training, and under the
75 direction of a physician ~~medical director~~. As used in this
76 paragraph, the term "health promotion and wellness" means the
77 provision of public health programs pertaining to the prevention
78 of illness and injury.

79 Section 4. Paragraph (d) of subsection (2) and paragraph
80 (a) of subsection (4) of section 465.019, Florida Statutes, are
81 amended to read:

82 465.019 Institutional pharmacies; permits.—

83 (2) The following classes of institutional pharmacies are
84 established:

85 (d)1. "Class III institutional pharmacies" are those
86 institutional pharmacies, including central distribution
87 facilities, affiliated with a hospital which ~~that~~ provide the

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88 same services that are authorized by a Class II institutional
89 pharmacy permit. Class III institutional pharmacies may also:

90 a. Dispense, distribute, compound, and fill prescriptions
91 for medicinal drugs for inpatient or outpatient treatment.

92 b. Prepare prepackaged drug products.

93 c. Conduct other pharmaceutical services for the affiliated
94 hospital and for entities under common control that are each
95 permitted under this chapter to possess medicinal drugs.

96 d. Provide the services in sub-subparagraphs a.-c. to an
97 entity under common control which holds an active health care
98 clinic establishment permit as required under s. 499.01(2)(r).

99 2. A Class III institutional pharmacy shall maintain
100 policies and procedures addressing:

101 a. The consultant pharmacist responsible for pharmaceutical
102 services.

103 b. Safe practices for the preparation, dispensing,
104 prepackaging, distribution, and transportation of medicinal
105 drugs and prepackaged drug products.

106 c. Recordkeeping to monitor the movement, distribution, and
107 transportation of medicinal drugs and prepackaged drug products.

108 d. Recordkeeping of pharmacy staff responsible for each
109 step in the preparation, dispensing, prepackaging,
110 transportation, and distribution of medicinal drugs and
111 prepackaged drug products.

112 e. Medicinal drugs and prepackaged drug products that may
113 not be safely distributed among Class III institutional
114 pharmacies.

115 (4) (a) Medicinal drugs shall be dispensed by ~~in~~ an
116 institutional pharmacy to outpatients only when that institution

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117 has secured a community pharmacy permit from the department.
 118 However, ~~medicinal drugs may be dispensed by~~ a hospital that has
 119 not secured a community pharmacy permit but operates a Class II
 120 or Class III institutional pharmacy may dispense medicinal drugs
 121 to a patient of the hospital's emergency department or a
 122 hospital inpatient upon discharge if a prescriber, as defined in
 123 s. 465.025(1), treating the patient in such hospital determines
 124 that the medicinal drug is warranted and that community pharmacy
 125 services are not readily accessible, geographically or
 126 otherwise, to the patient. Such prescribing and dispensing must
 127 be for a supply of the drug that will last for the greater of
 128 the following:

129 1. Up to 48 hours; or

130 2. Through the end of the next business day.

131 Section 5. Subsection (1) of section 14.33, Florida
 132 Statutes, is amended to read:

133 14.33 Medal of Heroism.—

134 (1) The Governor may award a Medal of Heroism of
 135 appropriate design, with ribbons and appurtenances, to a law
 136 enforcement, correctional, or correctional probation officer, as
 137 defined in s. 943.10(14); a firefighter, as defined in s.
 138 112.191(1)(b); an emergency medical technician, as defined in s.
 139 401.23 ~~s. 401.23(11)~~; or a paramedic, as defined in s. 401.23 ~~s.~~
 140 ~~401.23(17)~~. A recipient must have distinguished himself or
 141 herself conspicuously by gallantry and intrepidity, must have
 142 risked his or her life deliberately above and beyond the call of
 143 duty while performing duty in his or her respective position,
 144 and must have engaged in hazardous or perilous activities to
 145 preserve lives with the knowledge that such activities might

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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146 result in great personal harm.

147 Section 6. Paragraph (a) of subsection (3) of section
 148 252.515, Florida Statutes, is amended to read:

149 252.515 Postdisaster Relief Assistance Act; immunity from
 150 civil liability.—

151 (3) As used in this section, the term:

152 (a) "Emergency first responder" means:

153 1. A physician licensed under chapter 458.

154 2. An osteopathic physician licensed under chapter 459.

155 3. A chiropractic physician licensed under chapter 460.

156 4. A podiatric physician licensed under chapter 461.

157 5. A dentist licensed under chapter 466.

158 6. An advanced practice registered nurse licensed under s.
 159 464.012.

160 7. A physician assistant licensed under s. 458.347 or s.
 161 459.022.

162 8. A worker employed by a public or private hospital in the
 163 state.

164 9. A paramedic as defined in s. 401.23 ~~s. 401.23(17)~~.

165 10. An emergency medical technician as defined in s. 401.23
 166 ~~s. 401.23(11)~~.

167 11. A firefighter as defined in s. 633.102.

168 12. A law enforcement officer as defined in s. 943.10.

169 13. A member of the Florida National Guard.

170 14. Any other personnel designated as emergency personnel
 171 by the Governor pursuant to a declared emergency.

172 Section 7. Subsection (5) of section 395.1027, Florida
 173 Statutes, is amended to read:

174 395.1027 Regional poison control centers.—

Page 6 of 8

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175 (5) By October 1, 1999, each regional poison control center
 176 shall develop a prehospital emergency dispatch protocol with
 177 each licensee as defined in s. 401.23 ~~by s. 401.23(13)~~ in the
 178 geographic area covered by the regional poison control center.
 179 The prehospital emergency dispatch protocol shall be developed
 180 by each licensee's medical director in conjunction with the
 181 designated regional poison control center responsible for the
 182 geographic area in which the licensee operates. The protocol
 183 shall define toxic substances and describe the procedure by
 184 which the designated regional poison control center may be
 185 consulted by the licensee. If a call is transferred to the
 186 designated regional poison control center in accordance with the
 187 protocol established under this section and s. 401.268, the
 188 designated regional poison control center shall assume
 189 responsibility and liability for the call.

190 Section 8. Paragraph (b) of subsection (2) of section
 191 401.245, Florida Statutes, is amended to read:

192 401.245 Emergency Medical Services Advisory Council.—

193 (2)

194 (b) Representation on the Emergency Medical Services
 195 Advisory Council shall include ~~+~~ two licensed physicians who are
 196 ~~medical directors~~ as defined in s. 401.23 ~~s. 401.23(15)~~ or
 197 whose medical practice is closely related to emergency medical
 198 services; two emergency medical service administrators, one of
 199 whom is employed by a fire service; two certified paramedics,
 200 one of whom is employed by a fire service; two certified
 201 emergency medical technicians, one of whom is employed by a fire
 202 service; one emergency medical services educator; one emergency
 203 nurse; one hospital administrator; one representative of air

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204 ambulance services; one representative of a commercial ambulance
 205 operator; and two laypersons who are in no way connected with
 206 emergency medical services, one of whom is a representative of
 207 the elderly. Ex officio members of the advisory council from
 208 state agencies shall include, but ~~are shall~~ not ~~be~~ limited to,
 209 representatives from the Department of Education, the Department
 210 of Management Services, the State Fire Marshal, the Department
 211 of Highway Safety and Motor Vehicles, the Department of
 212 Transportation, and the Division of Emergency Management.

213 Section 9. This act shall take effect July 1, 2022.

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The Florida Senate

Committee Agenda Request

To: Senator Manny Diaz, Jr., Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: January 5, 2022

I respectfully request that **Senate Bill #1222**, relating to Nonemergent Patient Care, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in blue ink that reads "Aaron Bean".

Senator Aaron Bean
Florida Senate, District 4

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

11/19/2022

Meeting Date

1222

Bill Number or Topic

75824

Amendment Barcode (if applicable)

Committee

Name Dr. Michael Maniaci

Phone 704 342 1828

Address 624 Post Charlotte Dr
Street

Email maniaci.michael@mayo.edu

Ponte Vedra FL 32081
City State Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

- I am appearing without compensation or sponsorship.
- I am a registered lobbyist, representing:
- I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

5-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

11/19/2022
Meeting Date

1222
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Dr. Michael Maniaci

Phone 904-382-1828

Address 64 Post Charlotte Dr
Street

Email Maniaci.michael@mayo.edu

Ponte Vedra, FL 32081
City State Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

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 Committee on Health Policy

BILL: SB 836

INTRODUCER: Senator Brodeur

SUBJECT: Medication Technicians

DATE: January 18, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Brown	HP	Pre-meeting
2.			AHS	
3.			AP	

I. Summary:

SB 836 amends s. 429.02, F.S., to define the term “medication technician.” The bill requires that a medication technician must have six hours of training and amends s. 429.52, F.S., to specify what must be included in the training. The bill also allows a medication technician to assist a resident in an assisted living facility (ALF) with his or her self-administration of medications and with his or her use of point-of-care devices (PCD).

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

II. Present Situation:

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.¹ A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.² Activities of daily living include ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.³

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.⁴ The owner or facility administrator determines whether an individual is appropriate for admission to the facility based on a number of criteria.⁵ If, as determined by the facility administrator or health care provider, a resident no longer meets

¹ Section 429.02(5), F.S. An ALF does not include an adult family-care home or a non-transient public lodging establishment.

² Section 429.02(18), F.S.

³ Section 429.02(1), F.S.

⁴ See Fla. Admin. Code R. 59A-36.007 (2019), for specific minimum standards.

⁵ Section 429.26, F.S., and Fla. Admin. Code R. 59A-36.006 (2019).

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.⁶

There are currently 3,129 licensed ALFs in Florida with a total of 114,919 beds.⁷ An ALF must have a standard license issued by the Agency for Health Care Administration (AHCA) under part I of ch. 429, F.S., and part II of ch. 408, F.S. In addition to a standard license, an ALF may have one or more specialty licenses that allow an ALF to provide additional care. These specialty licenses include limited nursing services (LNS),⁸ limited mental health services (LMH),⁹ and extended congregate care services (ECC).¹⁰

Assistance with the Self-Administration of Medications

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,¹¹ 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.

⁶ Section 429.28, F.S.

⁷ Florida health finder data, available at <https://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx> (last visited Jan 13, 2022).

⁸ Section 429.07(3)(c), F.S.

⁹ Section 429.075, F.S.

¹⁰ Section 429.07(3)(b), F.S.

¹¹ 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.

Point-of-Care Devices

A PCD is a device that allows for diagnostic tests to be performed at or near where the patient is located or at the site where care or treatment is provided. Devices for point-of-care tests come in an array of forms. They may use basic dipsticks as with urinalysis, handheld devices like glucose meters, or sophisticated molecular analyzers to detect infectious diseases. The most common point-of-care tests are blood glucose monitoring and home pregnancy tests. Many point-of-care tests can be performed by the patient at home, including the two mentioned above, as well as rapid HIV tests and colorectal cancer screening.¹²

¹² *What is point-of-care testing?* Testing.com, 11/9/21, available at <https://www.testing.com/articles/point-of-care-testing/> (last visited Jan. 14, 2022).

III. Effect of Proposed Changes:

SB 836 amends s. 429.02, F.S., to define the term “medication technician.” The bill requires that a medication technician must have six hours of training and amends s. 429.52, F.S., to specify that the training must include infection control, safe handling and use of PCDs, communicating with case managers and health care providers, standard of care protocols for the provision of care in a licensed ALF, identification of nursing standards, and methods of assisting residents with the self-administration of medications. The bill allows a medication technician to assist a resident in an ALF with his or her self-administration of medications and with his or her use of PCDs.

The bill establishes 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:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

SB 836 amends s. 429.02, F.S., to define the term “medication technician” and to allow medication technicians to assist with the self-administration of medication. However, the bill does not amend s. 429.256, F.S., which is the section of the Florida Statutes that allows for the assistance with self-administration of medications by unlicensed persons in an ALF, to include medication technicians. As such, it is unclear who is authorized under the bill to provide assistance with the self-administration of medications in an ALF, i.e. whether this would be the medication technicians or, as currently defined in s. 429.256, F.S., the unlicensed persons. It may be advisable to amend SB 836 to incorporate the definition of medication technician into s. 429.256, F.S., to provide clarity on who is authorized to perform the services allowed by that section.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 429.02 and 429.52.

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.



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LEGISLATIVE ACTION

Senate

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. .
. .
. .
. .

House

The Committee on Health Policy (Brodeur) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (b) of subsection (1), subsection (2), paragraphs (g) and (h) of subsection (4), and subsection (5) of section 429.256, Florida Statutes, are amended to read:

429.256 Assistance with self-administration of medication.—

(1) For the purposes of this section, the term:

(b) "Medication technician" ~~"Unlicensed person"~~ means an



811990

11 individual not currently licensed to practice nursing or
12 medicine who is employed by or under contract with ~~to~~ an
13 assisted living facility and who has received training on ~~with~~
14 ~~respect to~~ assisting with the self-administration of medication
15 and use of point-of-care devices in an assisted living facility
16 as provided under s. 429.52 before ~~prior to~~ providing such
17 assistance as described in this section.

18 (2) Residents who are capable of self-administering their
19 own medications or using their point-of-care devices without
20 assistance shall be encouraged and allowed to do so. However, a
21 medication technician ~~an unlicensed person~~ may, consistent with
22 a dispensed prescription's label or the package directions of an
23 over-the-counter medication or point-of-care device, assist a
24 resident whose condition is medically stable with the self-
25 administration of routine, regularly scheduled medications that
26 are intended to be self-administered and may assist with a
27 resident's use of point-of-care devices. Assistance with self-
28 medication by a medication technician ~~an unlicensed person~~ may
29 occur only upon a documented request by, and the written
30 informed consent of, a resident or the resident's surrogate,
31 guardian, or attorney in fact. For the purposes of this section,
32 self-administered medications include both legend and over-the-
33 counter oral dosage forms, topical dosage forms, transdermal
34 patches, and topical ophthalmic, otic, and nasal dosage forms
35 including solutions, suspensions, sprays, and inhalers.

36 (4) Assistance with self-administration does not include:

37 (g) Assisting with medications ordered by the physician or
38 health care professional with prescriptive authority to be given
39 "as needed," unless the order is written with specific



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40 parameters that preclude independent judgment on the part of the
41 medication technician ~~unlicensed person~~, and the resident
42 requesting the medication is aware of his or her need for the
43 medication and understands the purpose for taking the
44 medication.

45 (h) Medications for which the time of administration, the
46 amount, the strength of dosage, the method of administration, or
47 the reason for administration requires judgment or discretion on
48 the part of the medication technician ~~unlicensed person~~.

49 (5) Assistance with the self-administration of medication
50 by a medication technician ~~an unlicensed person~~ as described in
51 this section ~~is shall~~ not be considered administration as
52 defined in s. 465.003.

53 Section 2. Subsection (6) of section 429.52, Florida
54 Statutes, is amended to read:

55 429.52 Staff training and educational requirements.—

56 (6) Medication technicians ~~Staff~~ assisting with the self-
57 administration of medications and point-of-care devices under s.
58 429.256 must complete a minimum of 6 additional hours of
59 training provided by a registered nurse or a licensed pharmacist
60 before providing assistance. Two hours of continuing education
61 are required annually thereafter. The agency shall establish by
62 rule the minimum requirements for medication technician ~~of this~~
63 training, which must address infection control, safe handling
64 and use of point-of-care devices, communicating with case
65 managers and health care providers, standard of care protocols
66 for the provision of care in a licensed assisted living
67 facility, identification of nursing standards, and methods of
68 assisting residents with the self-administration of medications.



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69 Section 3. This act shall take effect July 1, 2022.

70

71 ===== T I T L E A M E N D M E N T =====

72 And the title is amended as follows:

73 Delete everything before the enacting clause
74 and insert:

75 A bill to be entitled
76 An act relating to medication technicians; amending s.
77 429.256, F.S.; defining the term "medication
78 technician"; requiring that assisted living facility
79 residents who are able to use their point-of-care
80 devices without assistance be encouraged and allowed
81 to do so; authorizing medication technicians to assist
82 assisted living facility residents with their use of
83 point-of-care devices under certain circumstances;
84 conforming provisions to changes made by the act;
85 amending s. 429.52, F.S.; providing minimum
86 requirements and specifications for the training of
87 medication technicians; requiring the Agency for
88 Health Care Administration to adopt rules establishing
89 such requirements; providing an effective date.

By Senator Brodeur

9-00914A-22

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1 A bill to be entitled
2 An act relating to medication technicians; amending s.
3 429.02, F.S.; defining the term "medication
4 technician"; amending s. 429.52, F.S.; providing
5 minimum requirements and specifications for training
6 of medication technicians; providing an effective
7 date.

8
9 Be It Enacted by the Legislature of the State of Florida:

10 Section 1. Present subsections (16) through (28) of section
11 429.02, Florida Statutes, are redesignated as subsections (17)
12 through (29), respectively, a new subsection (16) is added to
13 that section, and subsection (12) of that section is amended, to
14 read:

15
16 429.02 Definitions.—When used in this part, the term:
17 (12) "Extended congregate care" means acts beyond those
18 authorized in subsection (19) ~~(18)~~ which may be performed
19 pursuant to part I of chapter 464 by persons licensed thereunder
20 while carrying out their professional duties, and other
21 supportive services that may be specified by rule. The purpose
22 of such services is to enable residents to age in place in a
23 residential environment despite mental or physical limitations
24 that might otherwise disqualify them from residency in a
25 facility licensed under this part.

26 (16) "Medication technician" means an unlicensed staff
27 member who has completed 6 hours of training. A medication
28 technician may provide assistance with a resident's self-
29 administration of medications and with his or her use of point-

Page 1 of 2

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30 of-care devices.

31 Section 2. Subsection (6) of section 429.52, Florida
32 Statutes, is amended to read:

33 429.52 Staff training and educational requirements.—

34 (6) Medication technicians shall ~~Staff assisting with the~~
35 ~~self-administration of medications under s. 429.256 must~~
36 complete a minimum of 6 additional hours of training provided by
37 a registered nurse or a licensed pharmacist before providing
38 assistance. Two hours of continuing education are required
39 annually thereafter. The agency shall establish by rule the
40 minimum requirements of medication technician ~~this~~ training,
41 which must address infection control, safe handling and use of
42 point-of-care devices, communicating with case managers and
43 health care providers, standard of care protocols for the
44 provision of care in a licensed assisted living facility,
45 identification of nursing standards, and methods of assisting
46 residents with the self-administration of medications.

47 Section 3. This act shall take effect July 1, 2022.

Page 2 of 2

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The Florida Senate

Committee Agenda Request

To: Senator Manny Diaz, Jr., Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: January 11, 2022

I respectfully request that **Senate Bill 836**, relating to **Medication Technicians**, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script that reads "Jason Brodeur".

Senator Jason Brodeur
Florida Senate, District 9



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Environment and Natural Resources, *Chair*
Health Policy, *Vice Chair*
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Appropriations Subcommittee on Health and
Human Services
Children, Families, and Elder Affairs
Community Affairs

JOINT COMMITTEE:

Joint Administrative Procedures Committee

SENATOR JASON BRODEUR

9th District

January 19, 2022

The Honorable Manny Diaz, Jr.
Chair of the Committee on Health Policy
306 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Diaz:

I respectfully request that **SB 836, Medication Technicians**, and **SB 842, Invalid Restrictive Covenants in Health Care**, be temporarily postponed for the Committee on Health Policy meeting on January 19, 2022.

If you have any questions regarding this request, please do not hesitate to contact me directly or my office.

Thank you for your consideration.

Respectfully,

A handwritten signature in black ink that reads "Jason Brodeur".

Jason Brodeur
The Florida Senate
District 09

CC: Allen Brown, Staff Director, Committee on Health Policy

REPLY TO:

- 922 Williston Park Point, Suite 1300, Lake Mary, Florida 32746 (407) 333-1802
- 311 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5009

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

1/19/22

Meeting Date

Health Policy

Committee

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

836

Bill Number or Topic

811990

Amendment Barcode (if applicable)

Name **James McFaddin**

Phone **850-671-4401**

Address **123 S. Adams St.**

Email **mcfaddin@thesoutherngroup.com**

Street

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FL

32312

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

Jan. 19, 2022

Meeting Date

Health Policy

Committee

Name Zayne Smith

Address 215 South Monroe St.

Street

Tallahassee

City

FL

State

32301

Zip

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

836

Bill Number or Topic

Amendment Barcode (if applicable)

Phone 850.228.4243

Email zsmith@aarp.org

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

AARP

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

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 Committee on Commerce and Tourism

BILL: SB 842

INTRODUCER: Senator Brodeur

SUBJECT: Invalid Restrictive Covenants in Health Care

DATE: January 18, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McMillan</u>	<u>McKay</u>	<u>CM</u>	Favorable
2.	<u>Smith</u>	<u>Brown</u>	<u>HP</u>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 842 amends Florida’s non-compete statute, which allows for the enforcement of contracts that restrict or prohibit competition as long as such contracts are reasonable in time, area, and line of business. Under current law, a person seeking enforcement of a non-compete agreement must prove the existence of one or more “legitimate business interests,” which include trade secrets; valuable confidential business or professional information; substantial relationships with specific prospective or existing customers, patients, or clients; customer goodwill associated with an ongoing business by way of trade name, specific geographic location, or specific marketing or trade area; or extraordinary or specialized training.

The bill provides that a restrictive covenant in an employment agreement between a physician and a hospital is not supported by a legitimate business interest if it does not include an option for the physician to buy out of the restrictive covenant at a reasonable price. If such an option is not provided, the bill provides a legislative finding that the restrictive covenant is void and unenforceable as it limits patient access to physicians and increases costs. The bill also provides that a party to an employment agreement who believes that the price to buy out of the restrictive covenant is unreasonable may elect to have a mutually agreed upon arbitrator determine a reasonable price. These provisions apply only to restrictive covenants entered into on or after July 1, 2022.

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

II. Present Situation:

Federal Antitrust Laws

In 1890, Congress passed the first antitrust law, the Sherman Act, as a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade. Congress subsequently passed two additional antitrust laws in 1914: the Federal Trade Commission Act, which created the Federal Trade Commission (FTC), and the Clayton Act. Currently, these are the three core federal antitrust laws.¹

The Sherman Act

The Sherman Act outlaws every contract, combination, or conspiracy in restraint of trade, and any monopolization, attempted monopolization, or conspiracy or combination to monopolize. The Sherman Act does not prohibit every restraint of trade, only those that are unreasonable. For example, an agreement between two individuals to form a partnership may restrain trade, but may not do so unreasonably, and thus may be lawful under the antitrust laws. In contrast, certain acts are considered “per se” violations of the Sherman Act because they are so harmful to competition. These include plain arrangements among competing individuals or businesses to fix prices, divide markets, or rig bids.²

The penalties for violating the Sherman Act can be severe. Although most enforcement actions are civil, the Sherman Act is also a criminal law, and individuals and businesses that violate it may be prosecuted by the U.S. Department of Justice (DOJ). Criminal prosecutions are typically limited to intentional and clear violations. The Sherman Act imposes criminal penalties of up to \$100 million for a corporation and \$1 million for an individual, along with up to 10 years in prison.³ Under some circumstances, the maximum fines can reach twice the gain or loss involved.⁴

The Federal Trade Commission Act

The Federal Trade Commission Act prohibits unfair methods of competition and unfair or deceptive acts or practices. The U.S. Supreme Court has said that all violations of the Sherman Act also violate the FTC Act. Therefore, the FTC can bring cases under the FTC Act against the same kinds of activities that violate the Sherman Act. The FTC Act also reaches other practices that harm competition but may not fit neatly into categories of conduct formally prohibited by the Sherman Act. Only the FTC brings cases under the FTC Act.⁵

¹ See *The Antitrust Laws*, Federal Trade Commission, available at <https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws> (last visited Jan. 12, 2022).

² *Id.*

³ See *Antitrust Enforcement and the Consumer*, U.S. Department of Justice, available at <https://www.justice.gov/atr/file/800691/download> (last visited Jan. 12, 2022).

⁴ *Id.*

⁵ See *The Antitrust Laws*, Federal Trade Commission, available at <https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws> (last visited Jan. 12, 2022).

The Clayton Act

The Clayton Act addresses specific practices that the Sherman Act does not clearly prohibit, such as mergers and interlocking directorates.⁶ It also bans mergers and acquisitions where the effect may substantially lessen competition or create a monopoly. As amended by the Robinson-Patman Act of 1936, the Clayton Act also prohibits certain discriminatory prices, services, and allowances in dealings between merchants. The Clayton Act was amended again in 1976 by the Hart-Scott-Rodino Antitrust Improvements Act to require companies planning large mergers or acquisitions to notify the government of their plans in advance. Additionally, private parties are authorized to sue for triple damages when they have been harmed by conduct that violates either the Sherman or Clayton Act and to obtain a court order prohibiting the anticompetitive practice in the future.⁷

Florida Antitrust Laws

Florida law also provides protections against anticompetitive practices. Chapter 542, F.S., the Florida Antitrust Act of 1980, has a stated purpose to complement the body of federal law prohibiting restraints of trade or commerce in order to foster effective competition.⁸ It outlaws every contract, combination, or conspiracy in restraint of trade or commerce in Florida⁹ and any person from monopolizing or attempting or conspiring to monopolize any part of trade.¹⁰

Contracts in Restraint of Trade or Commerce

Generally, a contract in restraint of trade or commerce in Florida is unlawful.¹¹ However, non-competition restrictive covenants¹² contained in employment agreements that are reasonable in time, area, and line of business are not prohibited.¹³ In any action concerning enforcement of a restrictive covenant, a court may not enforce a restrictive covenant unless it is set forth in a writing signed by the person against whom enforcement is sought, and the person seeking enforcement of a restrictive covenant must prove the existence of one or more legitimate business interests justifying the restrictive covenant.¹⁴ The term “legitimate business interest” includes, but is not limited to:

- Trade secrets;¹⁵
- Valuable confidential business or professional information that does not otherwise qualify as trade secrets;

⁶ “Interlocking directorates” means the same person making business decisions for competing companies. *See also Id.*

⁷ *Id.*

⁸ Section 542.16, F.S.

⁹ Section 542.18, F.S.

¹⁰ Section 542.19, F.S.

¹¹ Section 542.18, F.S.

¹² Section 542.335, F.S. employs the term “restrictive covenants” and includes all contractual restrictions such as noncompetition/nonsolicitation agreements, confidentiality agreements, exclusive dealing agreements, and all other contractual restraints of trade. *See Henao v. Prof'l Shoe Repair, Inc.*, 929 So.2d 723, 726 (Fla. 5th DCA 2006).

¹³ Section 542.335(1), F.S.

¹⁴ *Id.*

¹⁵ Section 688.002(4), F.S., defines a trade secret as information, including a formula, pattern, compilation, program, device, method, technique, or process that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

- Substantial relationships with specific prospective or existing customers, patients, or clients;
- Customer, patient, or client goodwill associated with:
 - An ongoing business or professional practice, by way of trade name, trademark, service mark, or “trade dress;”
 - A specific geographic location; or
 - A specific marketing or trade area; or
- Extraordinary or specialized training.¹⁶

Any restrictive covenant not supported by a legitimate business interest is unlawful and is void and unenforceable.¹⁷ A person seeking enforcement of a restrictive covenant must prove that the contractually specified restraint is reasonably necessary to protect the legitimate business interest or interests justifying the restriction.¹⁸

Restrictive Covenants in Florida Health Care

Pursuant to s. 542.336, F.S., a restrictive covenant entered into with a physician who practices a medical specialty in a county where one entity employs or contracts with all physicians who practice that specialty in that county, is not supported by a legitimate business interest and is void and unenforceable.¹⁹ The restrictive covenant remains void and unenforceable until three years after the date on which a second entity that employs or contracts with one or more physicians who practice that specialty begins serving patients in that county.²⁰

21st Century Oncology, Inc., sought a preliminary injunction to enjoin the application and enforcement of this statute. In August of 2019, the U.S. District Court for the Northern District of Florida denied the injunction. While s. 542.336, F.S., was found to impair Plaintiff’s employment contracts within the meaning of the Contracts Clause, the court held that the degree of impairment does not outweigh the statute’s significant, legitimate public purpose.²¹

III. Effect of Proposed Changes:

The bill amends s. 542.336, F.S., to provide that a restrictive covenant in an employment agreement between a physician and a hospital is not supported by a legitimate business interest if it does not include an option for the physician to buy out of the restrictive covenant at a reasonable price.²² If such an option is not provided, the bill provides a legislative finding that the restrictive covenant is void and unenforceable as it limits patient access to physicians and increases costs.

¹⁶ Section 542.335(1)(b), F.S.

¹⁷ *Id.*

¹⁸ Section 542.335(1)(c), F.S.

¹⁹ Section 542.336, F.S.

²⁰ *Id.*

²¹ “The ostensible public purpose of section 542.336 is to reduce healthcare costs and improve patients’ access to physicians. See § 542.336, Fla. Stat. (2019); ECF No. 64 at 8 (Attorney General’s post-hearing brief, stating “section 542.336 explicitly sets forth its own rational basis in declaring that the restrictive covenants addressed by it are not supported by a legitimate business interest, restrict patient access to physicians, and increase costs”). It is well settled that access to affordable healthcare is a legitimate state interest.” 21st Century Oncology, Inc. v. Moody, 402 F. Supp. 3d 1351, 1359 (N.D. Fla. 2019).

²² The bill does not define the term “reasonable price,” which may lead to differing interpretations of the meaning of the term.

The bill also provides that a party to an employment agreement which believes that the price to buy out of the restrictive covenant in the agreement is unreasonable may elect to have a mutually agreed upon arbitrator determine a reasonable price. The arbitrator's decision is binding on the parties. The Florida Arbitration Code would apply.²³ These provisions apply only to restrictive covenants entered into on or after July 1, 2022.

The bill establishes the following definitions:

- “Hospital” means a hospital as defined in s. 395.002(13), F.S.,²⁴ which is licensed under ch. 395, F.S., and part II of ch. 408, F.S.; and
- “Physician” means a person licensed to practice medicine under ch. 458, F.S., or osteopathic medicine under ch. 459, F.S.

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:

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²³ See s. 682.013, F.S.

²⁴ Section 395.002(13), F.S., defines “hospital” as any establishment that offers services more intensive than those required for room, board, personal services, and general nursing care, and offers facilities and beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care for illness, injury, deformity, infirmity, abnormality, disease, or pregnancy, and regularly makes available at least clinical laboratory services, diagnostic X-ray services, and treatment facilities for surgery or obstetrical care, or other definitive medical treatment of similar extent, except that a critical access hospital, as defined in s. 408.07, F.S., must not be required to make available treatment facilities for surgery, obstetrical care, or similar services as long as it maintains its critical access hospital designation and must be required to make such facilities available only if it ceases to be designated as a critical access hospital.

B. Private Sector Impact:

The bill provides an avenue for a physician or a hospital that has voluntarily entered into a restrictive covenant with a buyout clause to allege that the buyout clause they formerly agreed to is not reasonable and to require the other party to join them in arbitration where a mutually agreed-upon arbitrator will determine the reasonable price in a binding decision. The bill does not specify who pays the costs of the arbitrator, nor does it address what happens if the parties are unable to mutually agree upon an arbitrator. This could lead to a situation where a physician is unable to afford to leave his or her hospital employment until after an arbitrator has determined a reasonable buyout price that might or might not differ from the original buyout clause agreed to in the restricted covenant or until a court has intervened by way of a lawsuit. As each buyout clause would need to be assessed on a case by case basis, it is unclear who would lose or benefit from the changes proposed in this bill or whether the bill would, in fact, increase patient access to physicians or decrease costs. It is possible, however, that the changes proposed in this bill would lead to an increase in arbitration and litigation at the expense of physicians and hospitals.

The impact of this bill to the private sector overall is indeterminate.

C. Government Sector Impact:

As outlined above under “Private Sector Impact,” the impact of this bill to the public sector is also indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 542.336 of the Florida Statutes.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



720062

LEGISLATIVE ACTION

Senate

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. .
. .
. .
. .

House

The Committee on Health Policy (Brodeur) recommended the following:

Senate Amendment (with title amendment)

Delete lines 42 - 47

and insert:

for the physician to buy out of the restrictive covenant. The
Legislature

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 7 - 10



720062

11 and insert:
12 legitimate business interest; providing a legislative
13 finding;

By Senator Brodeur

9-00540-22

2022842__

A bill to be entitled

An act relating to invalid restrictive covenants in health care; amending s. 542.336, F.S.; defining the terms "hospital" and "physician"; specifying that certain restrictive covenants in employment agreements between physicians and hospitals do not support a legitimate business interest; authorizing a party to an employment agreement to elect to have a mutually agreed upon arbitrator make a specified binding determination; providing a legislative finding; providing applicability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 542.336, Florida Statutes, is amended to read:

542.336 Invalid restrictive covenants.—

(1) As used in this section, the term:

(a) "Hospital" means a hospital as defined in s. 395.002(13) which is licensed under chapter 395 and part II of chapter 408.

(b) "Physician" means a person licensed to practice medicine under chapter 458 or osteopathic medicine under chapter 459.

(2) A restrictive covenant entered into with a physician ~~who is licensed under chapter 458 or chapter 459 and who~~ practices a medical specialty in a county wherein one entity employs or contracts with, either directly or through related or affiliated entities, all physicians who practice such specialty

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

9-00540-22

2022842__

in that county is not supported by a legitimate business interest. The Legislature finds that such covenants restrict patient access to physicians, increase costs, and are void and unenforceable under current law. Such restrictive covenants ~~shall~~ remain void and unenforceable for 3 years after the date on which a second entity that employs or contracts with, either directly or through related or affiliated entities, one or more physicians who practice such specialty begins offering such specialty services in that county.

(3) A restrictive covenant in an employment agreement between a physician and a hospital is not supported by a legitimate business interest if it does not include an option for the physician to buy out of the restrictive covenant at a reasonable price. Any party to an employment agreement which believes that the price to buy out of the restrictive covenant in the agreement is unreasonable may elect to have a mutually agreed upon arbitrator determine a reasonable price, and such arbitrator's decision is binding on the parties. The Legislature finds that a restrictive covenant without this option limits patient access to physicians and increases costs and is void and unenforceable. This subsection applies to restrictive covenants entered into on or after July 1, 2022.

Section 2. This act shall take effect July 1, 2022.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



The Florida Senate

Committee Agenda Request

To: Senator Manny Diaz, Jr., Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: January 11, 2022

I respectfully request that **Senate Bill 842**, relating to **Invalid Restrictive Covenants in Health Care**, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script that reads "Jason Brodeur".

Senator Jason Brodeur
Florida Senate, District 9



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Environment and Natural Resources, *Chair*
Health Policy, *Vice Chair*
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Appropriations Subcommittee on Health and
Human Services
Children, Families, and Elder Affairs
Community Affairs

JOINT COMMITTEE:

Joint Administrative Procedures Committee

SENATOR JASON BRODEUR

9th District

January 19, 2022

The Honorable Manny Diaz, Jr.
Chair of the Committee on Health Policy
306 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Diaz:

I respectfully request that **SB 836, Medication Technicians**, and **SB 842, Invalid Restrictive Covenants in Health Care**, be temporarily postponed for the Committee on Health Policy meeting on January 19, 2022.

If you have any questions regarding this request, please do not hesitate to contact me directly or my office.

Thank you for your consideration.

Respectfully,

A handwritten signature in black ink that reads "Jason Brodeur".

Jason Brodeur
The Florida Senate
District 09

CC: Allen Brown, Staff Director, Committee on Health Policy

REPLY TO:

- 922 Williston Park Point, Suite 1300, Lake Mary, Florida 32746 (407) 333-1802
- 311 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5009

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Education, *Vice Chair*
Appropriations Subcommittee on Health and
Human Services
Finance and Tax
Health Policy
Transportation

JOINT COMMITTEE:

Joint Administrative Procedures Committee

SENATOR SHEVRIN D. "SHEV" JONES

35th District

January 19, 2022

The Honorable, Manny Diaz

Chairman, Senate Committee on Health Policy
530 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Diaz,

I respectfully request an excused tardy from the Health Policy Committee meeting scheduled for Wednesday, January 19, 2022 at 9:00am, as I will be presenting a bill in the Agriculture Committee.

Thank you in advance for your consideration of this request. As we prepare for committee, if I may be of assistance to answer questions, comments or concerns, please do not hesitate to contact me or my office.

Sincerely,

A handwritten signature in cursive script, appearing to read "Shev Jones".

Shevrin Jones
Senator, District 35

REPLY TO:

☐ 214 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5035

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

From: [DeValle, Ana](#)
To: [Diaz, Manny](#); [Brown, Allen](#); [Denson, Tori](#)
Cc: [Garcia, Ileana](#); [Felder, Jake](#)
Subject: Committee Absence Excusal Request
Date: Wednesday, January 19, 2022 7:46:19 AM

Good morning,

Please accept this letter on behalf of Chair Garcia relating to the meeting today, January 19, 2022 of the Health Policy Committee.

Chair Garcia respectfully requests an excused absence for the Committee on Wednesday, January 19, 2022.

Thank you for your consideration.

Sincerely,

Ana del Valle

Legislative Assistant

Senator Ileana Garcia- District 37



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Environment and Natural Resources, *Chair*
Health Policy, *Vice Chair*
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Appropriations Subcommittee on Health and
Human Services
Children, Families, and Elder Affairs
Community Affairs

JOINT COMMITTEE:

Joint Administrative Procedures Committee

SENATOR JASON BRODEUR

9th District

January 19, 2022

The Honorable Manny Diaz, Jr.
Chair of the Committee on Health Policy
306 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Diaz:

I respectfully request to be excused from the Committee on Health Policy meeting on January 19, 2022.

If you have any questions regarding this request, please do not hesitate to contact me directly or my office.

Thank you for your consideration.

Respectfully,

A handwritten signature in black ink that reads "Jason Brodeur".

Jason Brodeur
The Florida Senate
District 09

CC: Allen Brown, Staff Director, Committee on Health Policy

REPLY TO:

- 922 Williston Park Point, Suite 1300, Lake Mary, Florida 32746 (407) 333-1802
- 311 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5009

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

CourtSmart Tag Report

Room: KB 412 Case No.: -
Caption: Senate Committee on Health Policy

Type:
Judge:

Started: 1/19/2022 9:02:16 AM
Ends: 1/19/2022 9:26:14 AM Length: 00:23:59

9:02:15 AM Senate Health Policy roll call
9:02:21 AM A quorum is present
9:02:41 AM Garcia and Brodeur are excused from being absent
9:03:04 AM SB 1080 by Senator Baxley
9:03:51 AM Senator Baxley explains bill
9:04:03 AM Amendment 382832 by Senator Baxley
9:04:40 AM appearance cards
9:05:08 AM Technical amendment adopted
9:05:16 AM back on the bill as amended
9:05:23 AM Baxley waives close
9:05:39 AM Roll call on bill as amended
9:05:47 AM SB 1080 favorably
9:06:00 AM CS/SB 498 by Senator Baxley
9:06:20 AM Baxley explains the amendment
9:06:38 AM questions?
9:07:34 AM appearance cards
9:07:39 AM Garrett Campbell speaks on the bill
9:10:20 AM Any debate?
9:11:20 AM Senator Books makes comments
9:11:31 AM Baxley closes on bill
9:12:16 AM Roll on CS/SB 498 favorable
9:13:15 AM SB 1222 by Senator Bean
9:13:48 AM Senator Bean explains bill
9:15:11 AM 758824 late filed amendment by Senator Bean
9:16:11 AM Senator Bean explains amendment
9:16:26 AM Senator Cruz asks question
9:17:17 AM Senator Bean comments
9:17:25 AM Senator Cruz follow up
9:18:16 AM Dr. Michael Maniaci Mayo Clinic
9:19:16 AM Senator Cruz asks Doctor question
9:19:28 AM Doctor Maniaci answers
9:20:14 AM Senator Cruz follow up
9:21:06 AM Doctor Maniaci responds
9:21:16 AM Debate on amendment
9:21:30 AM Senator Bean closes on amendment
9:21:41 AM Amendment adopted
9:21:58 AM back on bill as amended
9:22:06 AM Senator Jones asks question
9:22:13 AM Senator Bean responds
9:22:24 AM Senator Powell follow up
9:22:52 AM Bean responds
9:22:59 AM Senator Cruz question

9:23:43 AM Senator Bean responds
9:24:06 AM appearance cards
9:24:29 AM debate
9:24:41 AM Senator Bean waives close
9:24:53 AM Roll call on bill as amended
9:25:04 AM voted favorably
9:25:11 AM Jones favorable on tab 2
9:25:12 AM Albritton favorable on tab 2
9:25:46 AM Chair closing remarks
9:25:56 AM Meeting adjourned