

**STORAGE NAME:** h2385.hcs

**DATE:** April 18, 2000

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
HEALTH CARE SERVICES  
ANALYSIS**

**BILL #:** HB 2385 (PCB HCS 00-03)

**RELATING TO:** The Brain and Spinal Injury Program

**SPONSOR(S):** Committee on Health Care Services, Rep. Peadar

**TIED BILL(S):**

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) HEALTH CARE SERVICES YEAS 13 NAYS 0
  - (2)
  - (3)
  - (4)
- 

**I. SUMMARY:**

HB 2385 relates to the brain and spinal cord injury program. The bill, in part, reflects the recommendations of the Department of Health's request for additional statutory language to implement and operate the Charlie Mack Overstreet Brain or Spinal Cord Injuries Act, as transferred to the department via 1999 legislation. The bill:

- Revises legislative intent;
- Provides definitions;
- Modifies the duties and responsibilities of the Department of Health;
- Specifies the nonassignability of benefits;
- Revises provisions relating to eligibility for the brain and spinal cord injury program;
- Provides for the retention of title to and disposal of equipment by the department;
- Deletes obsolete language relating to the advisory council on brain and spinal cord injuries;
- Provides for the removal of council members for cause by appointing authority;
- Provides reimbursement for travel and related expenses for council members;
- Prohibits council members from voting on matters of direct financial interest or conflict of interest;
- Provides for the recovery of third-party payments for services;
- Provides for liens;
- Authorizes trust fund expenditures for matching funds;
- Specifies deposit of certain revenue into the trust fund;
- Authorizes the department to accept and use gifts made by will or otherwise;
- Prohibits certain hearings by the department relating to the brain and spinal cord injury program;
- Provides for a contract with the Department of Children and Family Services; and
- Correcting references and cross references.

In addition, the bill also provides planning for long-term community-based supports for individuals with specified brain and spinal cord injuries, as follows:

- Provides for a study, a purpose, and a report;
- Provides for the establishment of a program;
- Provides for a residency requirement; and
- Provides the department with certain rulemaking authority.

The bill provides for severability.

The bill takes effect on July 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

The Brain and Spinal Cord Injury Program was established to provide all eligible injured individuals with the opportunity to obtain the necessary services to enable them to be referred to a vocational rehabilitation program or to an appropriate level of functioning in their community. Last year the program received \$13,927,316 in revenue, spent \$11,779,392 in expenses. Approximately 68 percent of the funds were spent on client services, 5 percent on administration, 7 percent on centers for independent living, 8 percent on research, and 12 percent on contracts. Last year 2,670 individuals were referred to the program. The program handled 4,822 cases, opening 1,888 cases and closing 2,934 cases.

The Legislature transferred the Brain and Spinal Cord Injury Program to the Department of Health from the Department of Labor and Employment Security effective January 1, 2000, as part of chapter 99-240, Laws of Florida. While much of the statutory language necessary for the program's operations was transferred from chapter 413, F.S., to chapter 381, F.S.; not all statutory authority necessary for the operation of the program was transferred to or replicated in chapter 381 from chapter 413.

**Long-term Community-based Supports**

Individuals sustaining traumatic brain and spinal cord injuries have intense, immediate, and ongoing needs from the resulting disability. Due to the lack of services responsive to those needs, such individuals often find themselves placed in inappropriate residential or institutional placements. Individuals and their families often lack the resources to educate themselves as to the existence of programs that could address those needs. Presently there is no central resource to ease the onerous burden of discovering and coordinating all available services or to step into the gap when resources cannot be found to prevent inappropriate residential or institutional placements.

C. EFFECT OF PROPOSED CHANGES:

See SECTION-BY-SECTION ANALYSIS which follows.

D. SECTION-BY-SECTION ANALYSIS:

**Section 1.** Amends s. 381.739, F.S., relating to the short title, to correct a statutory reference.

**Section 2.** Transfers and renumbers s. 413.46, F.S., as s. 381.735, F.S., and amends that section to make technical and conforming revisions relating to legislative intent.

**Section 3.** Creates s. 381.745, F.S., providing definitions for the following terms: activity of daily living, brain and spinal cord injury, emergency medical service system, personal assistance services, funded services, designated facility, third-party coverage, third-party payment, transitional living facility, and trauma center.

**Section 4.** Amends s. 381.75, F.S., relating to duties and responsibilities under the program to: correct a cross reference; update references to the emergency medical services system and trauma centers; and incorporate technical and conforming revisions.

**Section 5.** Creates s. 381.755, F.S., specifying the nonassignability of benefits under the program.

**Section 6.** Amends s. 381.76, F.S., relating to eligibility for the brain and spinal cord injury program, to incorporate technical and conforming revisions.

**Section 7.** Creates s. 381.765, F.S., providing for the retention of title and disposal of property, tools, instruments, training supplies, equipment, or other items of value acquired as program services or for personnel employed in the operation of the program. Provides the department with the exclusive right to develop rules relating to records and record-keeping for department-owned property.

**Section 8.** Amends s. 381.78, F.S., relating to the advisory council, to delete obsolete language, to provide for the removal of council members for cause by the Secretary of the Department of Health, authorize reimbursement for travel and related expenses for council members, and prohibit council members from voting on matters of direct financial interest or conflict of interest.

**Section 9.** Creates s. 381.785, F.S., providing for the recovery of third-party payments for program services. Requires an applicant to subrogate his or her rights to third-party payments. Authorizes applicant or recipient of funded services to assign rights of payment for the sole purpose of obtaining reimbursement. Authorizes the program to institute, intervene in, or join any legal proceeding against a third party against whom recovery rights arise. Authorizes statutory liens.

**Section 10.** Amends s. 381.79, F.S., relating to the Brain and Spinal Cord Injury Rehabilitation Trust Fund, to provide for expenditures for matching funds for public or private assistance with program-approved expansion of services. Specifies the deposit of certain revenue into the trust fund, and authorizes the department to accept and use gifts made by will or otherwise for the purposes of the program. Updates name of trust fund.

**Section 11.** Amends subsection (15) of s. 120.80, F.S., relating to exceptions and special requirements of agencies, to provide an exception and special requirements for hearings and authorizing the Department of Health to contract with the Department of Children and Family Services for a hearing officer.

**Section 12.** Amends paragraph (d) of subsection (2) of section 318.21, F.S., relating to the disposition of civil penalties by county courts, to update obsolete language and a cross-reference.

**Section 13.** Amends subsection (2) of section 320.131, F.S., relating to temporary tags, to update obsolete language.

**Section 14.** Amends subsection (9) of section 327.35, F.S., relating to boating under the influence, to update obsolete language.

**Section 15.** Amends s. 938.07, F.S., relating to driving under the influence, to update obsolete language.

**Section 16.** Authorizes the Department of Health, subject to specific appropriations, to create the "long-term community-based supports" program.

Subsection (1) requires the department to conduct a study of the long-term needs for community-based supports and services for individuals who have sustained traumatic brain or spinal cord injuries. Provides that the purpose of the study is to prevent inappropriate residential and institutional placement of these individuals and to promote placement in the most cost-effective and least restrictive environment. Requires that any placement recommendations for these individuals must ensure full utilization of and collaboration with other state agencies, programs, and community partners. Requires the study to be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives not later than December 31, 2000.

Subsection (2) requires the department to establish a plan for the implementation of a program of long-term community-based supports and services for individuals who have sustained traumatic brain or spinal cord injuries and who may be subject to inappropriate residential and institutional placement as a direct result of such injuries. The plan is to be based on the results of the study conducted by the department.

Paragraph (a) provides that records relating to any applicant for or recipient of program services are subject to the confidentiality provisions of s. 381.775, F.S., relating to applicant and client records.

Paragraph (b) provides that the program is the payor of last resort for program services. Provides that expenditures for program services are considered funded services for the purposes of s. 381.785, F.S., relating to recovery of third-party payments for brain and spinal cord injury program services. Provides that notwithstanding s. 381.79(5), F.S., relating to the Brain and Spinal Cord Injury Trust Fund, proceeds resulting from this section must be used solely for this program.

Paragraph (c) provides the department with rulemaking authority to create procedures to ensure that, in the event the program is unable to directly or indirectly provide the services to all eligible individuals due to lack of funds, the

individuals most at risk to suffer the greatest harm from an imminent inappropriate residential or institutional placement are served first.

Paragraph (d) requires that every applicant or recipient of the long-term community-based supports and services program must have been a resident of the state for 1 year immediately preceding the application and be a resident of the state at the time of the application.

**Section 17.** Provides severability.

**Section 18.** Provides an effective date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

According to the Department of Health, this bill has no fiscal impact. However, the department indicates that absent the passage of this bill and lien authorization, the program would not be able to collect upon its statutory liens, and potentially forego over \$300,000 each year in funding. This additional funding has allowed the program to serve hundreds of additional brain or spinal cord injured citizens over the past decade.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

**STORAGE NAME:** h2385.hcs

**DATE:** April 18, 2000

**PAGE 6**

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

This bill provides the department with exclusive authority to promulgate rules relating to the records and record-keeping of department-owned property.

C. OTHER COMMENTS:

While a related public records exemption bill, HB 2321, is moving through the process, it should be noted that these are not tied bills and can travel independently.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE SERVICES:

Prepared by:

Staff Director:

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