

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1608

SPONSOR: Committee on Children and Families and Senator Mitchell

SUBJECT: Personal Care Attendant Pilot Project

DATE: April 11, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Barnes	Whiddon	CF	Favorable/CS
2.	_____	_____	HC	_____
3.	_____	_____	FT	_____
4.	_____	_____	AHS	_____
5.	_____	_____	AP	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 1608 provides for the development and implementation of a pilot program to train individuals to become personal care attendants for persons with brain or spinal cord injuries and to train those injured individuals to work with a personal care attendant. The bill provides for the pilot program to serve individuals with disabilities who are 18 years of age or older, are severely disabled due to a spinal cord injury, and have been determined eligible for training. The individuals must either live in a nursing home or have been moved out of a nursing home within the preceding 180 days due to participation in a Medicaid home and community-based waiver. Funding will be provided through a percentage of delinquent sales tax revenues from the tax collection enforcement diversion program collected by the Department of Revenue.

The bill requires that the Florida Association of Centers for Independent Living develop memorandums of understanding with the Department of Revenue, the Brain and Spinal Cord Injury Program in the Department of Health, the Florida Medicaid Program in the Agency for Health Care Administration, the Florida Endowment Foundation for Vocational Rehabilitation, and the Division of Vocational Rehabilitation of the Department of Education. The Florida Association of Centers for Independent Living and those state agencies play a role in the development and implementation of the Personal Care Attendant Pilot Program.

An appropriation is included in the bill of \$250,000 of nonrecurring funds from the Brain and Spinal Cord Injury Program Trust Fund to the Florida Endowment Foundation for Vocational Rehabilitation for FY 2001-2002 for the development of the personal care attendant pilot program.

This bill creates section 413.402 of the Florida Statutes.

II. Present Situation:

As specified in s. 381.7395, F.S., it is legislative intent that individuals who have moderate-to-severe brain or spinal cord injuries be referred to the brain and spinal cord injury program that is administered by the Department of Health. The program provides the rehabilitative services necessary for the person to benefit from the vocational rehabilitation program or return to the community at an appropriate functional level.

Under the provisions of s. 381.79(1)(b), F.S., the Brain and Spinal Cord Injury Program (BSCIP) provides for acute care, inpatient and outpatient rehabilitation, home and vehicle modification, and adaptive technology by a network of designated trauma, rehabilitation, and transitional living centers. The program is funded through the Brain and Spinal Cord Injury Trust Fund from fines levied for speeding, driving or boating under the influence, and surcharges on temporary license plates. The Brain and Spinal Cord Injury Program acts as a “payer of last resort” and relies heavily on third party payments and comparable benefits for provision of rehabilitation services. A 16-member Advisory Council provides oversight of the program.

The Americans with Disabilities Act was signed into law on July 26, 1990, and has been described by many advocates as “wide-ranging legislation intended to make American society more accessible to people with disabilities.”

Olmstead and the Medicaid Program

The *L.C. and E.W. v. Olmstead* case was brought in 1995 by the Atlanta Legal Aid Society on behalf of two women with mental retardation as well as psychiatric conditions who were patients in a state psychiatric hospital against Tommy Olmstead, the Georgia Commissioner of Human Services. The treating professionals in the hospital all agreed that the two women were appropriate for discharge into community programs but slots were not made available. While the case worked its way through the courts, both women were placed in the community where they have been doing very well. The case continued because the situation could arise again. The court issued its final order on July 11, 2000.

The women alleged that the failure to receive services in a community-based setting violated Title II of the Americans with Disabilities Act and its implementing regulation. Title II and its implementing regulation require public entities to administer their programs “in the most integrated setting appropriate to the needs of qualified individuals with disabilities,” that is, a setting which “enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible.”

The State appealed a favorable decision of the federal District Court granting summary judgment for the plaintiffs. Oral argument before the Eleventh Circuit Court of Appeals occurred in November, 1997, which ruled that the State’s failure to provide integrated community services violated the Americans with Disabilities Act. The State appealed to the United State Supreme Court to reverse that ruling. On June 22, 1999, the Supreme Court issued its ruling stating that unjustified institutionalization of people with disabilities is prohibited discrimination under the Americans with Disabilities Act. However, the Court further clarified that Title II does not require measures that would “fundamentally alter” the nature of a public entity’s programs.

“Fundamental alteration” is the concept under the Americans with Disabilities Act which governs the extent to which a public entity must modify its program to meet its obligations under the Act. Costs may bear on that determination. The decision also makes clear that the right of people with disabilities to receive services in the “most integrated setting” is not absolute.

In *Olmstead*, the Supreme Court indicated that, in evaluating a state’s “fundamental alteration” defense, courts are to consider not only the cost of providing community-based care to individuals but also the range of services the state provides to others with disabilities and the state’s obligation to mete out those services in an equitable manner.

The federal Health Care Financing Administration (HCFA), which operates the Medicaid and Medicare programs, has issued a series of letters and memos designed to clarify how HCFA is responding to the challenges presented by the *Olmstead* decision.

HCFA has recently provided technical assistance and clarification about how to use existing services and options to help people transition from an institutional setting to the community.

- First, case management services assist individuals in gaining access to needed medical, social, educational, and other services. Case management services are often used to foster the transitioning of a person from institutional care to a more integrated setting or to help maintain a person in the community. There are several ways that case management services may be furnished under the Medicaid program:
 - Targeted case management, defined in section 1915(g) of the Act, may be furnished as a service to institutionalized persons who are about to leave the institution to facilitate the process of transition to community services and to enable the person to gain access to needed medical, social, educational and other services in the community.
 - Home and Community Based Services Case Management may be furnished as a service under the authority of section 1915(c) when this service is included in an approved waiver. Persons served under the waiver may receive case management services while they are still institutionalized for up to 180 consecutive days prior to discharge.
 - Administrative Case Management may be furnished as an administrative activity, necessary for the proper and efficient administration of the State Medicaid Plan.
- Second, HCFA advised that states may assess the accessibility and need for modification in a person’s home or vehicle at any time. Medicaid matching dollars may be available to cover these costs.
- Third, in some cases it may be necessary to make environmental modifications to an individual’s home before the individual transitions from an institution to the community. HCFA has authorized states to claim Medicaid reimbursement for home modifications (including actual construction costs) furnished as a waiver service for up to 180 days prior to discharge.

Personal Care Attendants

Disabled persons and other advocates have developed a strong sense of a Personal Care Attendant and how it is different from the personal care services available from home health agencies or even the informal assistance available from family and friends. One resource put it this way:

“Personal” assistance means that users exercise the maximum control over how services are organized and custom-design their services according to their individual needs, capabilities, life circumstances and aspirations. In particular, personal assistance requires that the individual user decides who is to work, with which tasks, at which times, where and how. Therefore, the individual user must be able to recruit, train, schedule, supervise, and, if necessary, fire his or her own assistants. Simply put, “personal assistance” means that the user is the boss.

With a state law enacted in 1986, the state of Pennsylvania began a demonstration project to prove that greater independence for people with disabilities can be achieved by receiving assistance in the home. Currently, there are more than 400 highly qualified, trained personal care attendants employed by more than 405 people with physical disabilities. In Pennsylvania, the Attendant Care Program receives state and federal funds. Consumers who do not receive benefits from Social Security or the state’s medical assistance program pay for a portion of their attendant care service. The amount is based on a sliding fee scale to accommodate an individual’s ability to pay.

Currently, Florida does not have any programs to train personal care attendants or to subsidize attendant care services for individuals who are gainfully employed and do not qualify for Medicaid or Vocational Rehabilitation.

Revenue Collections for Unpaid Taxes

According to the Revenue Estimating Conference, the sales tax estimate for FY 2001-2002 includes \$158.1 million from recovery of unpaid taxes. Pursuant to s. 212.20, F.S., this money will be distributed to General Revenue, the Solid Waste Management Trust Fund, local governments, and sports facilities.

III. Effect of Proposed Changes:

The bill creates s. 413.402, F.S., the Personal Care Attendant Pilot Program. The Florida Association of Centers for Independent Living is directed to develop a pilot program to provide personal care attendants to individuals who are:

- At least 18 years of age and are seriously disabled due to a traumatic spinal cord injury.
- Either live in a nursing home or have moved out of a nursing home within the preceding 180 days due to participation in a Medicaid home and community-based waiver program targeted to persons with brain or spinal cord injuries.
- Determined eligible for training services from the Division of Vocational Rehabilitation of the Department of Education.

The bill requires that the Florida Association of Centers for Independent Living (association) develop memorandums of understanding with the Department of Revenue, the Brain and Spinal Cord Injury Program in the Department of Health, the Florida Medicaid Program in the Agency for Health Care Administration, the Florida Endowment Foundation for Vocational Rehabilitation, and the Division of Vocational Rehabilitation of the Department of Education.

The bill states that the association will develop a training program for persons selected to participate in the pilot program. The goal of the program is to prepare each person to manage his or her own personal care attendant.

The bill states that the association, in cooperation with the Florida Endowment Foundation for Vocational Rehabilitation, will develop a program to:

- recruit, screen, and select candidates to be trained as personal care attendants;
- develop a training program for personal care attendants; and
- establish procedures for selecting persons eligible to participate in the pilot program.

In cooperation with the Division of Vocational Rehabilitation in the Department of Education, the association will assess the selected participants and make recommendations for their placement into appropriate work-related training programs.

An implementation plan for the pilot program is required by January 7, 2002, to the Legislature that will include at a minimum:

- a timeline for implementation, including expiration of the pilots;
- estimates of the number of participants to be served;
- the sites selected to implement the pilots, and the rationale for their selection;
- the anticipated amount of collections by county for FY 2002-2003 under the tax collection diversion program;
- cost projections for each component of the pilot program; and
- method for and costs associated with an independent evaluation of the pilot program.

The pilot program will be implemented by July 1, 2002, unless there is specific legislative action to the contrary.

CS/SB 1608 requires that the Department of Revenue in coordination with the association and the state attorneys' offices in Duval, Miami-Dade, Broward, Orange, and Hillsborough counties develop and implement a tax collection enforcement diversion program which will collect revenue from persons who have not remitted their collected sales tax. The criteria for referral to the diversion program will be determined cooperatively between the state attorneys' offices in those counties and the Department of Revenue.

The bill states that 25 percent of the funds collected under the diversion program will be deposited in the operating account of the Florida Endowment Foundation for Vocational Rehabilitation and used to implement the Personal Care Attendant Pilot Program. The pilot program will operate only from funds deposited into that account.

The bill states that every year the revenue estimating conference is to project the amount of money likely to be generated from the tax collection enforcement diversion program.

The bill includes an appropriation of \$250,000 of nonrecurring funds from the Brain and Spinal Cord Injury Program Trust Fund to the Florida Endowment Foundation for Vocational Rehabilitation for FY 2001-2002 for the development of the personal care attendant pilot program.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The impact of the tax collection enforcement diversion program will affect only those persons who fail to remit collected sales tax revenues.

CS/SB 1608 will benefit those persons with a disability who obtain a personal care attendant and become gainfully employed in the community.

C. Government Sector Impact:

The bill specifies that \$250,000 of nonrecurring funds will be transferred from the Brain and Spinal Cord Injury Program Trust Fund to the Florida Endowment Foundation for Vocational Rehabilitation for FY 2001-2002 to implement the Personal Care Attendant Pilot Program. It has not been determined by the Department of Health if sufficient surplus funds will be available in the Trust Fund account in FY 2001-2002 to accommodate this transfer.

State general revenue funds will be used to operate the pilot program. There may be options available for Medicaid funding for eligible services, which would bring approximately 56 cents of federal dollars into the state for every 44 cents of state money expended.

The bill directs the Department of Revenue in coordination with the association and the state attorneys' offices in Duval, Miami-Dade, Broward, Orange, and Hillsborough counties to develop and implement a tax collection enforcement diversion program which will collect revenue from persons who have not remitted their collected sales tax. Twenty-five percent of the funds collected under the diversion program will be deposited in the operating account of the Florida Endowment Foundation for Vocational Rehabilitation and used to implement the Personal Care Attendant Pilot Program which will be the only funding source to operate this program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
