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**DATE:** January 7, 2002

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
ELDER & LONG TERM CARE  
ANALYSIS**

**BILL #:** HB 295  
**RELATING TO:** Persons with Disabilities  
**SPONSOR(S):** Representative Littlefield & Others

**TIED BILL(S):**

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

- (1) ELDER & LONG TERM CARE
  - (2) HEALTH & HUMAN SERVICES APPROPRIATIONS
  - (3) COUNCIL FOR HEALTHY COMMUNITIES
  - (4)
  - (5)
- 

I. SUMMARY:

This bill provides for the development and implementation of a pilot program to train individuals to become personal care attendants (PCA) for persons with traumatic spinal cord injuries, and to train those injured individuals to work with a PCA. Individuals with disabilities identified to participate in the pilot program will live in a nursing home, or have recently left the nursing home under the auspices of a Medicaid home and community-based waiver.

This is a collaborative effort among the Department of Health's (DOH) Brain and Spinal Cord Injury Program (BSCIP), the Department of Education's Division of Vocational Rehabilitation (VR), the Florida Endowment Foundation for Vocational Rehabilitation (known as the Able Trust), the Department of Revenue (DOR), the Florida Prosecuting Attorney's Association, and Florida's non-profit Centers for Independent Living (CIL).

According to the department's analysis, the bill will have an undetermined fiscal impact on the DOR.

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 checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input 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:

Section 381.7395, F.S., provides that the intent of the Legislature is that individuals who have moderate-to-severe brain or spinal cord injuries are referred to the brain and spinal cord injury program that is administered by the DOH. The program is to provide the rehabilitative services necessary for the person to benefit from the vocational rehabilitation program or return to the community at an appropriate functional level.

The 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 BSCIP Rehabilitation Trust Fund from fines levied for speeding, driving or boating under the influence, and surcharges on temporary license plates. The BSCIP 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 to the program.

Section 381.77, F.S., requires DOH to conduct an annual survey of nursing homes to determine the number of persons 55 years of age and younger who are in the facility because of a brain or spinal cord injury. The statute further provides that all persons identified in that survey be evaluated and any person who might benefit from rehabilitation be given an opportunity to participate in any appropriate rehabilitation program for which she or he may be eligible.

The American's with Disabilities Act (ADA)

Signed into law on July 26, 1990, the ADA has been described by advocates as, "a 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 they 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. [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 ADA 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."

On June 22, 1999, the Supreme Court issued its ruling. The Court held that unjustified institutionalization of people with disabilities is prohibited discrimination under the ADA. 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 ADA 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, however, 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.<sup>1</sup>

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

Second, CMS 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. CMS 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 (PCA)

Disabled persons and other advocates have developed a strong sense of what a PCA is 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

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<sup>1</sup> Internet citation: <http://www.hhs.gov/ocr/olmintro.htm>

- how.

Thus, 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.

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 with a state law enacted in 1986. Currently, there are more than 400 highly qualified, trained personal care attendants employed by over 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.

#### The Sales Tax Revenue Collections Diversion Program in Florida's Fourth Judicial Circuit

The State Attorney's Office in the fourth Judicial Circuit in Jacksonville has operated its "Citizen's Dispute Settlement Program" since 1975. Among the cases they handle are cases referred from the state DOR related to sales tax collected but not remitted properly to the state. These programs have been quite successful at collecting restitution according to information provided by State Attorney Harry Shorstein and his associate, Assistant State Attorney William Hodges. Last year, more than \$1.1 million dollars in restitution was ordered to be paid directly to individual citizens or to state agencies, including more than \$500,000 in sales tax receipts.

#### C. EFFECT OF PROPOSED CHANGES:

This bill will require the Florida Association of Centers for Independent Living to develop and implement pilot programs in four counties. The pilot programs will test the idea that some persons in nursing homes who have a traumatic spinal cord disability and could with a personal care attendant, and in some instances job training, live in the community with a degree of independence. Each participating Center for Independent Living (CIL) will select the participants, train them, and train the PCAs.

#### D. SECTION-BY-SECTION ANALYSIS:

Section 1 directs the Florida Association of Centers for Independent Living (Association) to develop a pilot program to provide personal care attendants to eligible persons. The Association shall also 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 Education.

Subsection (1) specifies the eligibility criteria. Subsection (2) directs the Association to develop a training program for persons who are selected to participate in the pilot that will prepare each person to manage his or her own PCA. Subsection (3) provides that the Association and the Florida Endowment Foundation for Vocational Rehabilitation (ABLE Trust) will develop a program to recruit, screen, and select candidates to be trained as PCAs. Subsection (4) directs the Association and ABLE Trust to develop procedures for selecting eligible persons to participate in the pilot.

Subsection (6) directs the Association in cooperation with the Division of Vocational Rehabilitation to assess the selected participants and make recommendations related to placement in appropriate work-related training programs. Subsection (7) directs the Association in cooperation with the DOR, the Brain and Spinal Cord Injury program, Medicaid and a representative from the state attorney's office in each participating county, the ABLE Trust, and the Division of Vocational Rehabilitation to develop a plan for implementation of the pilot program.

Subsection (8) provides that the Association shall present the implementation plan to the President of the Senate and the Speaker of the House by March 1, 2003. The pilot program will begin July 1, 2003 unless there is specific legislative action to the contrary.

Section 2. The Department of Revenue with the Association and the Florida Prosecuting Attorneys Association will select the four counties in which to operate the pilot. The Association and the state attorney's offices in Duval county and the pilot counties will implement a tax collection enforcement diversion program to collect revenue due from persons who have not remitted their collected sales tax. Twenty-five percent of the revenues collected from this diversion program shall be deposited in the operating account of the ABLE Trust and used to implement the PCA pilot program. Every year the revenue estimating conference will project the amount of money likely to be generated from the tax collection enforcement diversion program.

Section 3 amends the dates of the "Consumer Control" projects in the Department of Children & Family Services, Developmental Services program.

Section 4. The sum of \$250,000 is appropriated from the Brain & Spinal Cord Injury Program Trust Fund to the ABLE Trust. The initial \$50,000 from each of the pilot counties that is deposited in the ABLE Trust shall be used to repay the Brain & Spinal Cord Injury Trust Fund.

Section 5. This act shall take effect July 1, 2002.

### III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

DOR projects collection in each judicial circuit of less than \$500,000 per year.

##### 2. Expenditures:

The bill directs that 25 percent of the funds collected in each circuit be deposited in the operating fund of the Able Trust and be used to implement this program. The bill also appropriates \$250,000 from the Brain & Spinal Cord Injury Program trust fund to the Able Trust as "seed money". This funding is to be repaid from the pilot projects with the first \$50,000 deposited from each county going to repay the trust fund.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None is anticipated.

2. Expenditures:

None is anticipated.

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

To the extent that eligible persons are able to hire a PCA there will be a minimal impact on private sector employment.

D. **FISCAL COMMENTS:**

The Medicaid program should explore ways that this program would be eligible for federal financial participation. The Medicaid matching rate is approximately 56%. This population may be eligible to participate in a Medicaid home and community-based waiver program.

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

A. **APPLICABILITY OF THE MANDATES PROVISION:**

The mandates provision of Article VII, Section 18 of the state constitution does not apply.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

No reduction of state tax shared with counties and municipalities.

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

No reduction of state tax shared with counties and municipalities.

V. COMMENTS:

A. **CONSTITUTIONAL ISSUES:**

None are identified.

B. **RULE-MAKING AUTHORITY:**

No rule-making authority is provided.

C. **OTHER COMMENTS:**

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

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VII. SIGNATURES:

COMMITTEE ON ELDER & LONG TERM CARE:

Prepared by:

Staff Director:

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Melanie Meyer

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Tom Batchelor