

By Senator Constantine

22-1743-03

1 A bill to be entitled
2 An act relating to health care; creating part
3 XIII of ch. 400, F.S., consisting of s.
4 400.990, F.S.; providing a short title;
5 providing legislative intent; providing for
6 certification of relative caregivers who take
7 care of certain disabled children or adults in
8 the disabled person's home; defining the term
9 "relative"; requiring the Department of
10 Children and Family Services to provide
11 training and education programs for relative
12 caregivers; providing for oversight and fraud
13 prevention; providing violations; providing
14 penalties; providing an effective date.

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

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18 Section 1. Part XIII of chapter 400, Florida Statutes,
19 consisting of section 400.990, Florida Statutes, is created to
20 read:

21 400.990 Relative Caregiver Act; legislative intent;
22 definitions; training; oversight; violations; penalties.--

23 (1) SHORT TITLE.--This section may be cited as the
24 "Relative Caregiver Act."

25 (2) LEGISLATIVE INTENT; PURPOSE.--

26 (a) The Legislature encourages providing disabled
27 children and adults who are involved in the Medicaid Waiver
28 Program with care that takes place in a family living
29 arrangement in a private home.

30 (b) Such care can be provided by a relative caregiver
31 within the home of the disabled child or adult. The relative

1 caregiver provider must live in the home. The purpose of this
2 section is to provide for the health, safety, and welfare of
3 each individual who is under the care and supervision of a
4 relative caregiver.

5 (c) The Legislature recognizes that relative
6 caregivers are an important part of the continuum of long-term
7 or short-term care. Support provided under this part for the
8 provision of personal care by a relative caregiver in a
9 private home is intended to assist families financially while
10 attempting to delay placement in a nursing home or other
11 institution. Such care would also allow the nurse that would
12 otherwise provide personal care for the disabled individual to
13 be placed elsewhere, thus helping to alleviate the nursing
14 shortage in this state. Regulations governing relative
15 caregiver homes must be sufficiently flexible to allow
16 residents to age in place if resources are available to meet
17 their needs and accommodate their preferences.

18 (d) The Legislature further finds and declares that
19 certification under this section is a public trust and a
20 privilege, not an entitlement. This principle must guide the
21 finder of fact or trier of law at any administrative
22 proceeding or legal action initiated by the Department of
23 Children and Family Services to enforce this section.

24 (e) Rules of the department relating to relative
25 caregivers must be as minimal and flexible as possible to
26 ensure the protection of disabled children and adults while
27 minimizing the obstacles that could inhibit the certification
28 of a relative caregiver.

29 (3) DEFINITION.--As used in this section, the term
30 "relative" means an individual who is the father, mother, son,
31 daughter, brother, sister, grandfather, grandmother,

1 great-grandfather, great-grandmother, uncle, aunt, first
2 cousin, nephew, niece, husband, wife, father-in-law,
3 mother-in-law, son-in-law, daughter-in-law, brother-in-law,
4 sister-in-law, stepfather, stepmother, stepson, stepdaughter,
5 stepbrother, stepsister, half brother, or half sister of the
6 disabled child or adult.

7 (4) TRAINING AND EDUCATION PROGRAMS.--

8 (a) The department shall provide training and
9 education programs for all relative caregivers.

10 (b) Training and education programs must include
11 information relating to:

12 1. State laws and rules governing relative caregivers.

13 2. Identifying and meeting the special needs of
14 disabled children or adults.

15 3. Monitoring the health of the disabled child or
16 adult.

17 (c) A relative caregiver must complete the training
18 and education program within a reasonable time as determined
19 by the department. Failure to complete the training and
20 education program within the time set by the department is a
21 violation of this section and subjects the relative caregiver
22 to revocation of his or her certification.

23 (d) If the support coordinator or the department
24 determines that there are problems in a home in which there is
25 a relative caregiver, which problems could be reduced through
26 specific training or education beyond that which is required
27 under this section, the department may require the caregiver
28 to complete such training or education.

29 (e) The department shall specify by rule training and
30 education programs, training requirements, and the assignment
31 of training responsibilities for relative caregivers.

1 (5) OVERSIGHT; FRAUD PREVENTION.--In order to assure
2 that a Medicaid waiver beneficiary who is in the care of a
3 relative caregiver is receiving adequate care, the support
4 coordinator shall make visits to the home in which the
5 individual who is receiving care resides. The frequency of
6 such visits shall be left to the discretion of the support
7 coordinator or the department.

8 (6) VIOLATIONS; PENALTIES.--In addition to any other
9 liability or penalty provided by law, the department may
10 impose a civil penalty on a relative caregiver according to
11 the following classifications:

12 (a) If the department determines that the care given
13 by the relative caregiver directly threatens the physical or
14 emotional health, safety, or security of the disabled
15 individual or establishes the possibility that death or
16 serious physical or emotional harm could result from such
17 care, the condition or practice that constitutes such a
18 violation must be abated or eliminated within 24 hours, unless
19 a fixed period, as determined by the department, is required
20 for correcting the violation. A first-time deficiency of this
21 sort is cause for mandatory additional training and education
22 as determined by the department.

23 (b) If the department determines that a relative
24 caregiver has committed a second violation in which the care
25 that is being given directly threatens the physical or
26 emotional health, safety, or security of the residents or
27 establishes the possibility that death or serious physical or
28 emotional harm could result from such care, the relative
29 caregiver is subject to suspension of certification for a
30 period of 6 months and to mandatory additional training and
31 education as determined by the department.

