

# 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.)

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Prepared By: Health and Human Services Appropriations Committee

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BILL: CS/SB 720

SPONSOR: Health and Human Services Appropriations Committee and Senator Wise

SUBJECT: Health Care

DATE: April 21, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harkey</u>	<u>Wilson</u>	<u>HE</u>	<b>Favorable</b>
2.	<u>deMarsh-Mathues</u>	<u>O'Farrell</u>	<u>ED</u>	<b>Favorable</b>
3.	<u>Brown</u>	<u>Maclure</u>	<u>JU</u>	<b>Favorable</b>
4.	<u>Fabricant</u>	<u>Peters</u>	<u>HA</u>	<b>Fav/CS</b>
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This bill repeals the requirement that, when a nurse registry contracts to provide services to a patient, a registered nurse must make monthly visits to the patient's home. The bill also repeals the reporting requirement associated with the visits.

The bill makes permanent, and potentially expands statewide, the program to provide personal care attendants to persons participating in the brain and spinal cord injury program in the Department of Health. The bill changes the eligibility criteria for the program and requires the Department of Health to establish an oversight workgroup with specified membership for the program. The bill increases from 25 to 50 percent, the percentage of collections from the tax collection enforcement diversion program that are deposited with the Florida Endowment Foundation for Vocational Rehabilitation to fund the personal care attendant program. By expanding the program statewide, the Revenue Impact Conference estimates a \$1.5 positive fiscal impact to the state.

This bill amends the following sections of the Florida Statutes: 400.506, 413.402, and 413.4021.

## II. Present Situation:

### Nurse Registries

A nurse registry is not an employer of nurses, but rather acts as employment agency between an individual patient and a nurse, certified nursing assistant (CNA), home health aide, companion, or homemaker for services in the patient's home. All nurse registries are required to be licensed under s. 400.506, F.S., and surveyed by the Agency for Health Care Administration (AHCA). Licenses are issued for a one-year period.

There were 212 licensed nurse registries in Florida as of December 18, 2004. A nurse registry is a business that offers contracts for registered nurses, licensed practical nurses, home health aides, CNAs, homemakers, and companions. These persons work as independent contractors and provide services to patients in their homes or private duty and staffing services in health care facilities. Nurse registries provide nursing care services, as follows:

- Nursing care provided by licensed registered nurses or licensed practical nurses;
- Care and services provided by certified nursing assistants or home health aides; or
- Homemaker or companion services registered under s. 400.509, F.S.

Persons who receive care from a home health aide or a CNA must have a physician, and the physician must be notified within 48 hours after the contract for care is completed. Under s. 400.506(10)(c), F.S., a registered nurse must make a monthly visit to each patient who receives services from a home health aide or a CNA to assess the patient's condition and the quality of care provided. The nurse is required to report any condition that requires further medical attention to the attending physician and the nurse registry. The assessment becomes a part of the patient's file with the nurse registry and may be reviewed by AHCA during an agency survey.

### **Personal Care Attendants for Individuals with Traumatic Spinal Cord Injury**

Sections 413.402 and 413.4021, F.S., establish the personal care attendant pilot program to assist eligible persons who are disabled due to a traumatic spinal cord injury to return to work in their communities by providing personal care attendants. The Florida Association of Centers for Independent Living (FACIL) is responsible for developing the pilot program in a collaborative effort with the Department of Revenue (DOR), the Brain and Spinal Cord Injury Program in the Department of Health (DOH), the Florida Medicaid program in AHCA, the Florida Endowment Foundation for Vocational Rehabilitation, and the Division of Vocational Rehabilitation of the Department of Education (DOE).

The law requires FACIL to establish procedures for selecting eligible participants and to make recommendations for the placement of such participants into appropriate work-related training programs. Eligibility is extended to persons who are:

- At least 18 years old and significantly disabled due to a traumatic spinal cord injury;
- Eligible for training services from the Division of Vocational Rehabilitation; and
- Living 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.

Other duties conferred on FACIL to administer the pilot program include the development of a training program to prepare selected participants to manage their own personal care attendant and the development of a program to recruit, screen, and select candidates to be trained as personal care attendants. The services of a nurse registry licensed under s. 400.506, F.S., may be used to recruit and screen candidates to serve as personal care attendants under the pilot program

and to act as a fiscal intermediary through which payments may be made to such candidates. AHCA is required to seek any federal waivers necessary to implement the pilot program.

The law requires DOR, in coordination with FACIL and the Florida Prosecuting Attorneys Association, to select four counties in which to operate the pilot program. The following counties were selected: Miami-Dade, Broward, Palm Beach, and Hillsborough. The law requires FACIL and the state attorney's offices in Duval County and the four pilot program counties to develop and implement a tax collection enforcement diversion program to collect revenue due from persons who have not remitted their collected sales tax.

Notwithstanding s. 212.20, F.S., which requires all sales tax collections to be deposited in the General Revenue Fund of the state, 25 percent of the revenues collected through the tax collection enforcement diversion program are required to be deposited into the operating account of the Florida Endowment Foundation for Vocational Rehabilitation to implement the pilot program. The Legislature increased the percentage of revenues deposited into the Florida Endowment Foundation for Vocational Rehabilitation from 25 to 50 percent for the personal care attendant pilot program in the Appropriations Implementing Bills for fiscal years 2003-2004 and 2004-2005. The pilot program may only use funds deposited into the operating account. The Legislature appropriated \$250,000 from the Brain and Spinal Cord Injury Program Trust Fund in DOH during fiscal year 2002-2003 for the development of the personal care attendant pilot program. Each pilot program county received a \$50,000 loan to cover the cost of one position to collect the sales tax during the first year of implementation. The loan must be repaid to the Brain and Spinal Cord Injury Program Trust Fund at the rate of ten percent per quarter.

### **Implementation of the Personal Care Attendant Pilot Program**

The law requires FACIL to present the implementation plan for the pilot program to the President of the Senate and the Speaker of the House of Representatives no later than March 1, 2003, and requires implementation of the pilot program beginning July 1, 2003, unless there is specific legislative action to the contrary. As of February 18, 2005, no individuals have been served in the pilot program.

Five counties have established tax collection enforcement diversion programs. Revenues collected during fiscal year 2003-2004 for the Personal Care Attendant Pilot Program totaled \$226,104, which includes \$18,082 from Broward, \$41,819 from Miami-Dade, \$156,721 from Duval, \$3,488 from Hillsborough, and \$5,994 from Palm Beach.

The total amount collected for the program for Fiscal Year 2004-2005 as of December, 2004 was \$177,929, which includes \$62,844 from Broward, \$63,018 from Miami-Dade, \$42,141 from Duval, \$5,679 from Hillsborough, and \$4,247 from Palm Beach.

### **Brain and Spinal Cord Injury Program**

The Brain and Spinal Cord Injury (BSCI) Program within DOH provides a statewide coordinated infrastructure to provide access to medical care and rehabilitation for individuals with moderate to severe traumatic brain and spinal cord injuries, which enables individuals to return to community settings. Via a network of case managers, the BSCI program provides acute care,

rehabilitation, transitional living and assistive technology, home and vehicle modification, and institutional transition services. The BSCI program refers individuals who have the potential to obtain gainful employment directly to the Division of Vocational Rehabilitation of DOE. Under s. 381.77, F.S., the BSCI program conducts annual nursing home surveys to identify individuals who reside in nursing homes and who may have the potential for rehabilitation and community reintegration.

The Medicaid Home and Community-based Waiver Program implemented by DOH's BSCI program provides basic and essential long-term, community-based support services necessary to ensure an individual's health and safety in the community, prevent institutionalization, and provide support needed to transition individuals currently living in nursing homes who have the potential to be reintegrated back into the community. Services under the waiver can also be used to let individuals make a transition from institutions and to maintain any needed support until they are accepted into a vocational rehabilitation training program. A personal care attendant may be provided under this waiver. However, an employed individual who earns too much to be eligible for Medicaid would not be eligible for these services and could pay a significant portion of his or her salary for a personal care attendant and other assistance in order to be able to work.

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 400.506, F.S., to eliminate the requirement that, when a nurse registry contracts to provide services to a patient, a registered nurse must make monthly visits to the patient's home to assess the patient's condition and the quality of care provided by a certified nursing assistant or home health aide. The bill deletes the requirements for the registered nurse to report to the attending physician and the nurse registry any condition that requires further medical attention; for such assessment to become a part of the patient's file with the nurse registry; and for the report to be reviewed by AHCA as part of the agency's survey.

**Section 2.** Amends s. 413.402, F.S., to make the personal care attendant pilot program permanent and potentially expand it statewide. The duties of collaborating agencies are revised to require FACIL, in conjunction with DOH's BSCI program, to develop the personal care attendant program and to jointly develop memoranda of understanding with DOR, the Medicaid program in AHCA, the Florida Endowment Foundation for Vocational Education, and the Division of Vocational Rehabilitation of DOE.

Eligibility requirements are revised to extend eligibility to individuals who must:

- Be at least 18 years old and significantly disabled due to a traumatic spinal cord injury;
- Require a personal care attendant for bathing, dressing, bowel and bladder management, and transportation;
- Require a personal care attendant to maintain substantial gainful employment;
- Be able to hire and supervise a personal care attendant; and
- Meet one of the following requirements—
  - Live in a nursing home;

- 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; or
- Presently be employed but due to loss of a caregiver will lose employment and potentially return to a nursing home.

Eligibility criteria for the program are further revised to delete the requirement that individuals be eligible for training services from the Division of Vocational Rehabilitation in DOE.

The bill deletes a requirement for FACIL to develop a training program for persons who participate in the pilot program that will prepare each person to manage his or her own personal care attendant.

FACIL and DOH in cooperation with the Florida Endowment Foundation for Vocational Rehabilitation must develop a program to recruit, screen, and select candidates to be trained as personal care attendants. The bill requires DOH and AHCA to seek federal waivers to implement the personal care attendant program. FACIL, in cooperation with DOH and the Florida Endowment Foundation for Vocational Rehabilitation, must develop a training program for personal care attendants and establish procedures for selecting persons eligible to participate in the personal care attendant program. Participating governmental units will be judicial circuits instead of counties to reflect the participation of the state attorney's office in each judicial circuit.

The bill requires DOH to establish a personal care attendant program oversight workgroup to oversee the implementation and administration of the program. The workgroup must be composed of one representative from the following groups: the BSCI program in DOH, DOR, the Florida Medicaid Program in AHCA, the Florida Endowment Foundation for Vocational Rehabilitation, FACIL, and the Division of Vocational Rehabilitation of DOE. Two members of the workgroup must be persons who have traumatic spinal cord injuries or are family members of persons with traumatic spinal cord injuries. Obsolete language is eliminated that refers to a report due to Legislature by March 1, 2003, regarding an implementation plan for the pilot program, and requirements for the pilot program to be implemented by July 1, 2003.

**Section 3.** Amends s. 413.4021, F.S., to increase from 25 to 50 percent the percentage of collections from the tax collection enforcement diversion program that are deposited with the Florida Endowment Foundation for Vocational Rehabilitation to fund the personal care attendant program. The Florida Endowment Foundation for Vocational Rehabilitation must select the entity to administer the personal care attendant program. Conforming changes are made to provide that participating governmental units will be judicial circuits instead of counties to reflect the participation of the state attorney's office in each judicial circuit currently implementing the pilot program. The bill deletes the July 1, 2005, repeal date for subsection (4), thus making the personal care attendant program permanent.

**Section 4.** Provides an effective date of July 1, 2005.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

**C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art III, subsection 19(f) of the Florida Constitution.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

The bill does not propose any additional taxes or fees; rather, the bill would redirect 50 percent of the sales tax collections obtained through the tax collection enforcement diversion program to the personal care attendant program.

**B. Private Sector Impact:**

An individual with traumatic spinal cord injury, who required the services of a personal care attendant in order to work, could receive the assistance he or she needed in order to be able to work.

**C. Government Sector Impact:**

The bill increases from 25 percent to 50 percent the percentage of collections from the tax collection enforcement diversion program that fund the personal care attendant program.

By expanding the program statewide, the Revenue Impact Conference estimates a \$1.5 positive fiscal impact to the state.

To the extent that the program enables individuals to work, who would be eligible for Medicaid if they did not work, there should be an indeterminate savings to the state.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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

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## **VIII. Summary of Amendments:**

None.

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