

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 797 CS

Health Care

**SPONSOR(S):** Davis, D.

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 720

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Elder & Long-Term Care Committee	8 Y, 0 N, w/CS	Walsh	Liem
2) Health Care Appropriations Committee	12 Y, 0 N	Money	Massengale
3) Health & Families Council	9 Y, 0 N	Walsh	Moore
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

House Bill 797 CS amends the Nurse Registry statute to remove the requirement for a monthly visit from a registered nurse to patients who are receiving care from a certified nursing assistant or home health aide.

The bill makes permanent the existing pilot program on personal care attendants for persons with traumatic spinal cord injuries, makes it available statewide, and specifies program eligibility requirements.

The bill also makes permanent the current allocation of 50 percent of the sales tax revenues collected from the Tax Collection Enforcement Diversion program, which allocation is used to administer the Personal Care Attendant program.

The bill takes effect July 1, 2005.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

##### Nurse Registries

**Provide Limited Government**—The bill removes the requirement for a nurse registry to provide a monthly visit from a registered nurse to patients who are receiving care from a certified nursing assistant or home health aide, making the requirement comparable to that of similarly-regulated home health agencies. In addition, by revising the eligibility requirements for participation in the program, certain persons significantly disabled by traumatic spinal cord injuries will be provided personal care attendants to enable them to return to the workforce.

**Promote Personal Responsibility**—The bill removes the requirement for a nurse registry to provide a monthly visit from a registered nurse to patients who are receiving care from a certified nursing assistant or home health aide. If a patient requested such a supervisory visit, the cost would be borne by the patient.

**Ensure Lower Taxes**—The bill does not propose any additional taxes or fees; the bill redirects 50 percent of the sales tax collections obtained through the tax collection enforcement diversion program, however, to the personal care attendant program.

#### B. EFFECT OF PROPOSED CHANGES:

##### Nurse Registries

The Agency for Health Care Administration (AHCA) licenses home health agencies and nurse registries under part IV of chapter 400, Florida Statutes. Nurse registries offer contracts for registered nurses, licensed practical nurses, home health aides, certified nursing assistants, and homemakers and companions to work as independent contractors serving patients in their homes or as private duty nursing and staffing to health care facilities.<sup>1</sup>

Section 400.506(10), Florida Statutes, requires as a condition of the nurse registry's license that a registered nurse from a nurse registry:

- Make monthly visits to a patient's home to assess the patient's condition and quality of care provided by the certified nursing assistant (CNA) or home health aide referred by the registry to the patient.
- Report to the attending physician and the nurse registry any condition that requires further medical attention.
- Maintain the assessment as part of the patient's nurse registry file for review by AHCA during their survey.

AHCA advises that the cost of these supervisory visits is borne by the nurse registry. AHCA also advises that these requirements are more stringent than similar requirements for home health agencies, which are similar to nurse registries.<sup>2</sup> Like nurse registries, home health agencies are required to arrange for supervisory visits by a registered nurse to the home of a patient receiving home health aide services; however, those supervisory visits may only be made upon the patient's direction and approval.<sup>3</sup>

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<sup>1</sup> s. 400.462(15), F.S.

<sup>2</sup> A home health agency is an organization that provides home health services and staffing services, including nursing care and certified nursing assistants and home health aides. See. ss. 400.462(8), 400.462(10), 400.462(21), F.S.

<sup>3</sup> s. 400.487(3), F.S.

House Bill 797 CS deletes section 400.506(10), Florida Statutes, removing the requirement that a registered nurse from a nurse registry make monthly visits to a patient's home to assess the care provided by the registry's CNA or home health aide. Accordingly, if a nurse registry patient requested such a supervisory visit, the cost of that visit would be borne by the patient.

### **Personal Care Attendant Pilot Program**

Chapter 2002-286, Laws of Florida, established the Personal Care Attendant (PCA) Pilot program to assist eligible persons, who are disabled because of a traumatic spinal cord injury, to return to work in their communities by providing personal care attendants.<sup>4</sup> The law also identified the Tax Collection Enforcement Diversion program as one funding source for the PCA pilot.<sup>5</sup>

The law placed responsibility for developing the PCA Pilot program with the Florida Association of Centers for Independent Living (FACIL), in a collaborative effort with the Department of Revenue (DOR), the Brain and Spinal Cord Injury (BSCI) program<sup>6</sup> in the Department of Health (DOH), the Florida Medicaid program in AHCA, the Florida Endowment Foundation for Vocational Rehabilitation (known as the Able Trust), and the Division of Vocational Rehabilitation (VR) of the Department of Education (DOE). Representatives of these entities meet as the PCA Steering Committee.

The pilot is available to persons at least 18 years of age who are significantly disabled because of a spinal cord injury, determined eligible for training services by VR, and either live in a nursing home or recently moved out of a nursing home to participate in a Medicaid home and community-based waiver program.

The PCA Pilot program does not have any participants. According to a report by FACIL,<sup>7</sup>

Over the course of the two years that the pilot project has been in existence the steering committee has determined that it will be difficult if not impossible to find individuals with traumatic spinal cord injuries who are residing in a nursing home who are ready to transition into the community and begin working. According to the Brain and Spinal Cord Injury Program persons with severe spinal cord injuries who are in nursing homes, need time and resources just to transition out of a nursing home and to begin living independently in the community. They do not have the skills or training to begin working right after transitioning out.

The steering committee recommends expanding the eligibility requirements.

The bill makes the PCA Pilot program permanent. It requires FACIL to work in conjunction with BSCI to develop the PCA program, and requires FACIL and DOH to jointly develop memoranda of understanding with DOR, Florida Medicaid, the Able Trust and VR. The bill deletes the requirement that VR determine eligibility for training services.

The bill also revises eligibility for program participation by specifying that eligible persons are at least 18 years of age who are significantly disabled because of a spinal cord injury and:

- Who require a personal care attendant for bathing, dressing, bowel and bladder management, and transportation.

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<sup>4</sup> Codified in s. 413.402, F.S.

<sup>5</sup> The other funding source is a 25 percent share of the net proceeds from the motorcycle specialty license tag, pursuant to s. 320.08068, F.S.

<sup>6</sup> BSCI 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. The BSCI program refers individuals who have the potential to obtain gainful employment directly to VR.

<sup>7</sup> *Personal Care Attendant Pilot Project, Project Update Report*, November 2004, page 3, on file with the Committee

- Who require a personal care attendant to obtain or maintain substantial gainful employment.
- Who are able to hire and supervise a personal care attendant.
- Who meet one of the following requirements:
  - Live in a nursing home.
  - Have recently moved out of a nursing home to participate in a Medicaid home and community-based waiver program.
  - Are presently employed, but because of a loss of a caregiver, will lose employment and potentially return to a nursing home.

The requirement that FACIL develop a training program to prepare participants to manage their PCAs is also deleted.

The bill directs DOH to work with AHCA to seek federal waivers necessary to allow nurse registries to recruit and screen candidates and to operate as fiscal intermediary to pay PCAs under the program. The bill also directs DOH to work with FACIL, in cooperation with VR, to develop a training program for PCAs. The bill directs DOH to work cooperatively with FACIL and the Able Trust to establish procedures for selecting program participants.

The bill requires DOH to establish a PCA program oversight workgroup to oversee the implementation and administration of the program. The workgroup comprises one representative from the following groups: BSCI, DOR, Florida Medicaid, the Able Trust, FACIL and VR. 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.

The bill removes obsolete language that refers to a report due to the 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.

### **Tax Collection Enforcement Diversion Program**

Chapter 2002-286, Laws of Florida, also directed FACIL and the state attorney's offices in Duval and the four pilot counties to implement a Tax Collection Enforcement Diversion program (diversion program), which collects revenue from persons who have not remitted their collected sales tax.<sup>8</sup> Section 413.4021(1), Florida Statutes, specifies that 25 percent of those collections are to be remitted to the Able Trust to be used to implement the PCA Pilot program. To implement certain specific appropriations in the General Appropriations Acts for FY 2003-2004 and 2004-2005, however, section 413.4021(4), Florida Statutes, was created to increase the percentage to 50 percent.<sup>9</sup>

The Department of Revenue remits to the Able Trust its share of the funds collected by the diversion program. According to DOR, in FY 2003-2004, the tax collection enforcement diversion programs in the five pilot counties collected the following:

<b>County</b>	<b>Total Collected FY 2003-2004</b>	<b>Amount to Able Trust</b>
Broward	51,573.15	25,786.58
Dade	100,287.42	50,143.71
Duval	256,774.01	129,839.24
Hillsborough	7,076.70	3,538.35
Palm Beach	14,764.82	7,283.41
<b>TOTAL</b>	<b>\$430,476.10</b>	<b>\$216,591.29</b>

<sup>8</sup> Codified in s. 413.4021, F.S.

<sup>9</sup> See section 83, chapter 2003-399, L.O.F. and section 71, chapter 2004-269, L.O.F.

The bill permanently sets the personal care attendant program's share of revenue collected from the tax collection enforcement diversion program at 50 percent. The Able Trust is required to select the entity to administer the PCA program.

The bill changes the word "counties" to "judicial circuits" to reflect the fact that Offices of State Attorney and their tax collection enforcement diversion programs operate in judicial circuits, rather than counties.

C. SECTION DIRECTORY:

**Section 1.** Deletes s. 400.506(10)(c), F.S., deleting the requirement that a registered nurse make a monthly supervisory visit to patients receiving care from the nurse registry's certified nursing assistant or home health aide.

**Section 2.** Amends s. 413.402, F.S., removing the designation "pilot;" requiring that FACIL work in conjunction with BSCI to develop the Personal Care Program; requiring that FACIL and DOH jointly develop a memorandum of understanding with various state program offices; revising eligibility requirements; requiring DOH to assist with program development; deleting assessment and placement requirements; requiring DOH to establish an oversight workgroup.

**Section 3.** Amends s. 413.4021, F.S., relating to participant selection and tax collection enforcement diversion program; requiring that the Able Trust select the entity to administer the PCA program; referencing judicial circuits instead of counties; deleting the word "pilot;" providing an appropriation.

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

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill would make permanent the current pilot program that involves more aggressive efforts to collect unremitted sales taxes. Fifty percent of the collected sales tax would be deposited in the General Revenue Fund; the remaining 50 percent would be used to fund this program.

2. Expenditures:

The bill makes permanent a decrease in the amount of sales tax collections available to the General Revenue Fund by continuing the diversion of the proceeds from the diversion programs in any judicial circuit implementing the program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals with disabilities will have the opportunity to hire a personal care attendant to assist them in obtaining or maintaining gainful employment.

D. FISCAL COMMENTS:

The bill does not propose any additional taxes or fees; rather, the bill makes permanent the redirection of 50 percent of the sales tax collections obtained through the Tax Collection Enforcement Diversion program to the Personal Care Attendant program.

The following information about PCA Pilot program and the diversion program is from the Florida Association of Centers for Independent Living.<sup>10</sup>

For the first year of the PCA pilot project, the Brain and Spinal cord Injury program provided a \$50,000 loan to the State Attorney's Office in each of the pilot sites to establish a Tax Collection Enforcement Diversion Program office. To re-pay the loan, each diversion program site is required to pay 25 percent of each quarter's earnings to the BSCIP until they have paid back the full \$50,000.

After the first year and the loan payments are made, the rest of the collections up to an amount of \$50,000 per year are given back to the state attorney offices to support the cost of the diversion program. The remaining funds are then available to pay for personal care attendants for individuals who are transitioning from nursing homes and who are planning to work.

At this time the diversion program is staffed and up and running in all five judicial circuits. The following table shows the fiscal year-to-date numbers [July through November 2004] for the diversion program collections after the BSCIP loan payments have been made and payments have been made for the diversion program office operation.

Judicial Circuit	Total current funds [11/04] available for PCAs, after the BSCIP has been repaid and the TCDEPs have been funded.
Duval	\$ 139,607
Miami-Dade	44,057
Broward	20,636
Hillsborough	1,922
Palm Beach	1,421

The BISCIP loan repayment and the Tax Collection Diversion Enforcement program funding plan are as follows:

From the revenues that are collected by each diversion program office, 50 percent is sent to the Able Trust. From this amount, 5 percent per quarter will be used for repayment of the BSCIP loan. This equates to each diversion program office paying 20 percent of the total that is sent to the Able Trust goes to the BSCIP for repayment of the loan.

After the 5 percent has gone to repayment of the loan, each state attorney's office will receive up to \$50,000 from the revenues that they collect to operate their diversion program. This is a policy that was approved by the PCA Steering Committee on June 16, 2004.

<sup>10</sup> *Personal Care Attendant Pilot Project, Project Update Report, page 1-2.*

In addition to the Tax Collection Diversion Enforcement program, the Personal Care Attendant Pilot Project in 2003 received another source of funding. In 2003, the Florida Legislature passed a law to create a specialty motorcycle license plate called the Biker's Care Tag.<sup>11</sup> After some marketing and administrative costs are paid, the PCA Pilot Project receives one-quarter of all revenues that the tag generates. It is estimated that the Biker's Care Tag will generate \$15,000 to \$30,000 per year for each of the four agencies.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its March 23, 2005, meeting, the Committee on Elder & Long-Term Care adopted a committee substitute, which removes a redundancy at Lines 144-149 and 158-164 in the bill as filed.

This analysis is drafted to the Committee Substitute.

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<sup>11</sup> See fn. 5, *infra*.