

# 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.)

Prepared By: Health Care Committee

BILL: CS/SB 170

INTRODUCER: Health Care Committee and Senator Baker

SUBJECT: Administration of Medication

DATE: January 12, 2006

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

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Munroe	Wilson	HE CF	Fav/CS
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

## I. Summary:

The bill expands the existing statutory authorization for unlicensed direct care services staff providing services to persons with developmental disabilities in day programs and intermediate care facilities for the developmentally disabled to administer certain prescription medications. The bill allows all direct service providers in a variety of community-based settings who meet specified requirements established by the Agency for Persons with Disabilities to supervise the self-administration of medication by a client or to administer medication to clients who are developmentally disabled under specified circumstances. The types of prescription medications that may be administered are expanded.

This bill amends s. 393.506, F.S.

## II. Present Situation:

### Developmental Disabilities Program

Under ch. 393, F.S., the Agency for Persons with Disabilities administers the home and community-based services waiver for persons with developmental disabilities. The purpose of the home and community-based services waiver is to promote and maintain the health of individuals with developmental disabilities through the provision of medically necessary supports and services that will help the individual live in the community and avoid the necessity for institutional placement. Most community-based services for the developmental disabilities program are delivered by the private sector, both non-profit and for-profit organizations, and include services such as support coordination, personal attendant services, respite care, supported employment, adult day training, companion services, and dental services. Chapter 393, F.S., defines "clients" to mean certain persons with developmental disabilities who are determined

eligible by the Agency for Persons with Disabilities for services.<sup>1</sup> A “direct service provider” is defined to mean a person 18 years of age or older who has direct contact with individuals with developmental disabilities, or has access to a client’s living areas or to a client’s funds or personal property, and is not a relative of such individuals.<sup>2</sup>

Chapter 393, F.S., defines “comprehensive transitional education program” to mean a group of jointly operating centers or units, the collective purpose of which is to provide a sequential series of educational care, training, treatment, habilitation, and rehabilitation services to persons who have developmental disabilities and who have severe or moderate maladaptive behaviors. The services provided by a comprehensive transitional education program must be temporary in nature and delivered in a structured residential setting with the primary goal of incorporating the normalization principle to establish permanent residence for persons with maladaptive behaviors in facilities not associated with the program. The comprehensive transitional educational program is a large program that serves as many as 120 residents who reside in smaller residential units in three locations. The services provided by a comprehensive transitional education program are funded under a Medicaid program waiver.

The administration of medication to persons with developmental disabilities in the comprehensive transitional education program requires a nurse. Individuals with developmental disabilities who reside in smaller residential settings may have properly trained and validated direct care staff administer medications to them. In such smaller settings, trained direct care staff, in effect, functions as a surrogate family. Section 393.506, F.S., provides an exception to the requirements of the Nurse Practice Act, to authorize medications to be administered to persons with developmental disabilities when such persons are in programs or facilities that do not and may not function as a surrogate family, such as day programs or intermediate care facilities.<sup>3</sup>

Notwithstanding pt. I, ch. 464, F.S., the Nurse Practice Act, unlicensed direct care services staff providing services to persons with developmental disabilities in day programs and intermediate care facilities for the developmentally disabled may administer oral, transdermal, inhaled, or topical prescription medications as provided in s. 393.506, F.S. Under s. 393.506, F.S., for day programs, the director of the facility or program must designate in writing unlicensed direct care services staff who are eligible to be trained to assist in the administration of or to administer medication. The director of an intermediate care facility for the developmentally disabled may designate unlicensed staff who may provide medication assistance under the general supervision of a Florida-licensed registered nurse.

Each facility, institution, or program under s. 393.506, F.S., must include in its policies and procedures a plan for training designated staff to ensure the safe handling, storage, and administration of prescription medications. These policies and procedures must be approved by the agency before unlicensed direct care services staff assist with medication. The policies and procedures must include, at a minimum, the following provisions:

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<sup>1</sup> See section 393.063(4), F.S.

<sup>2</sup> See s. 393.063(12), F.S.

<sup>3</sup> Section 393.506, F.S., refers to “day programs” as defined in s. 393.063, F.S., but s. 393.063, F.S., does not define “day programs.” Section 393.063, F.S., does define “day habilitation facility” and “day habilitation services.”

- An expressed and informed consent for each client;
- The director of the facility, program, or provider must maintain a copy of the written prescription, and that prescription must include the name of the medication, the dosage and administration schedule, the reason for the prescription, and the termination date; and
- Each prescribed medication must be kept in its original container and in a secure location.

The training required in s. 393.506, F.S., must be conducted by a registered nurse or a Florida-licensed medical physician or osteopathic physician.

### **Nurse Practice Act**

Part I, ch. 464, F.S., provides for the regulation of nursing in Florida by the Board of Nursing in the Department of Health. The board has adopted administrative rules relating to the delegation of nursing tasks to unlicensed assistive personnel.<sup>4</sup> A registered nurse or licensed practical nurse must use nursing judgment to consider the task or activity to be delegated. The delegation process must include communication to the unlicensed assistive personnel, which identifies the task or activity, the expected or desired outcome, the limits of authority, the time frame for the delegation, the nature of the supervision required, verification of the delegate's understanding of assignment and verification of monitoring and supervision. The registered nurse or licensed practical nurse, under the direction of the appropriate licensed professional, must not delegate activities not within the delegating or supervising nurse's scope of practice.

Nursing activities that include the use of the nursing process and require the special knowledge, nursing judgment or skills of a registered or practical nurse may not be delegated to unlicensed assistive personnel. Such nursing activities include: the initial nursing assessment or any subsequent assessments; the determination of the nursing diagnosis or interpretations of nursing assessments; the establishment of nursing care goals and development of the plan of care; and the evaluation of progress in relationship to the plan of care. The Nurse Practice Act and rules do not expressly prohibit a registered nurse or licensed practical nurse from delegating the administration of medication but, in effect, require the nurse to determine the competency of the unlicensed person who is delegated any nursing task or activity to ensure that the person is competent and that the person's competency has been validated.

### **III. Effect of Proposed Changes:**

The bill amends s. 393.506, F.S., to revise the existing exception to the Nurse Practice Act, which allows unlicensed direct care services staff providing services to persons with developmental disabilities in day programs and intermediate care facilities for the developmentally disabled to administer certain prescription medications, to allow all direct service providers in all settings who meet specified requirements established by the Agency for Persons with Disabilities to supervise the self-administration of medication by a client or to administer medication to clients who are developmentally disabled under specified circumstances.

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<sup>4</sup> See Chapter 64B9-14, Florida Administrative Code.

The bill authorizes direct service providers who are not currently licensed to administer medications to supervise the self-administration of medication by clients or administer oral, transdermal, ophthalmic, otic, rectal, inhaled, or topical prescription medications to clients. The current law authorizes the administration of only oral, transdermal, inhaled or topical prescription medications as an exception to the Nurse Practice Act. The bill deletes references to the Nurse Practice Act since nurses are not the only health care practitioners authorized to administer medications.

To supervise the self-administration of medication by a client or to administer medication to a client, the direct service provider must satisfactorily complete a medication administration training course of not less than 4 hours and be determined competent to supervise the self-administration of medication by a client or to administer medication to a client in a safe and sanitary manner. The direct service provider's competency must be assessed and validated at least annually in an on-site client setting and include personally observing that the direct service provider both satisfactorily supervises the self-administration of medication by a client and satisfactorily administers medication to a client.

A direct service provider may supervise the self-administration of medication by a client or administer medication to a client only if the client, or the client's guardian or legal representative, has been informed and has consented to have an unlicensed person supervise the self-administration of or the administration of medication to that client. Informed consent must include a description of the medication routes or procedures that the direct service provider is authorized to supervise or administer, and an assurance that only those providers that have received appropriate training and have been validated as competent may supervise the self-administration of medication by a client or may administer medication to a client.

A registered nurse licensed in Florida must conduct the determination of competency and the annual validation required for the administration of medication to clients by direct service providers. The Agency for Persons with Disabilities must establish by rule standards and procedures for the supervision of self-administration of medication by a client and administration of medication to a client by direct service providers. The rules must, at a minimum, address medication labeling requirements, documentation and recordkeeping, storage and disposal, instructions on the safe administration or supervision of self-administered medication, informed consent requirements and records, and training curriculum and validation procedures.

The effective date of the bill is upon becoming a law.

#### **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 Art. VII, s 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:**

None.

**B. Private Sector Impact:**

This procedure for persons with developmental disabilities to receive medications from unlicensed personnel would allow for more flexibility for the programs serving such individuals.

**C. Government Sector Impact:**

None.

**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 introducer or the Florida Senate.

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

None.

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