

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 181 Administration of Medication
SPONSOR(S): Hays
TIED BILLS: IDEN./SIM. BILLS: SB 170

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Health Care Regulation Committee, Hamrick, Mitchell. Row 2: Elder & Long-Term Care Committee. Row 3: Health & Families Council. Row 4: Blank. Row 5: Blank.

SUMMARY ANALYSIS

HB 181 allows unlicensed direct care services staff to administer prescription medications to persons with developmental disabilities who reside in a comprehensive transitional education program, under the general supervision of a registered nurse.

The bill allows such programs to train unlicensed direct care staff to administer or assist in administering oral, otic, transdermal, ophthalmic, inhaled, rectal or topical prescription medications.

The bill provides an exemption to the Nurse Practice Act, which allows unlicensed direct care providers to administer medication without fear of prosecution for practicing nursing without a license. The nursing practice act does not prohibit a registered nurse or licensed practical nurse from delegating the administration of medication, but does require the nurse to determine the competency of the unlicensed person.

The bill expands the existing provision (s. 393.506, F.S.) for unlicensed direct care staff to include the administration of otic, ophthalmic and rectal prescription medications.

Current statute, (ss. 400.488, 400.4256, 400.9685, and 1006.062, F.S.) provides statutory authority with specific guidelines for unlicensed individuals to administer medication. Sections 400.488 and 400.4256, F.S., specifically state that assistance with self-administration does not include administration of rectal medications. These sections also limit the administration of medications by unlicensed care providers, and prohibit the administration of medications where judgment or discretion is needed to determine the time of administration, the amount, the strength of dosage, the method of administration, or the reason for administration. The bill does not include any specific guidelines or limitations that are provided in statute for other entities.

The bill also changes "day programs" to "day habilitation services" to reference existing definitions within ch. 393, F.S, and provides the Agency for Persons with Disabilities the authority to promulgate rules.

Fiscal Impact: This bill does not appear to have a fiscal impact on state or local governments.

This bill will take effect upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Safeguard individual liberty**-Increases the options for a comprehensive transitional education program to provide care to their clients. This may adversely affect a client's safety if the unlicensed direct care staff is not sufficiently trained.

#### B. EFFECT OF PROPOSED CHANGES:

The bill allows comprehensive transitional education programs to train unlicensed direct care services staff to administer or assist in administering oral, otic, transdermal, ophthalmic, inhaled, rectal or topical prescription medications to persons with developmental disabilities, under the general supervision of a registered nurse.

The bill provides an exemption to the Nurse Practice Act, which allows the unlicensed direct care staff to administration medication without fear of prosecution for practicing nursing without a license.

The bill expands the existing provision (s. 393.506, F.S.) for unlicensed direct care staff to include the administration of otic, ophthalmic and rectal prescription medications.

Current statute, (ss. 400.488, 400.4256, 400.9685, and 1006.062, F.S.) provides statutory authority, with specific guidelines, for unlicensed individuals to administer medication. Sections 400.488 and 400.4256, F.S., specifically state that assistance with self-administration does not include administration of rectal medications. These sections also limit the administration of medications by unlicensed care providers and prohibit the administration of medications where judgment or discretion is needed to determine the time of administration, the amount, the strength of dosage, the method of administration, or the reason for administration. The bill does not include the specific guidelines or limitations that are provided in statute for other entities.

The bill changes "day programs" to "day habilitation services" to reference existing definitions within ch. 393, F.S, and provides the Agency for Persons with Disabilities with the authority to promulgate rules.

### PRESENT SITUATION

#### Nurse Practice Act, Supervision and Delegation of Authority

The nursing practice act and rules do not expressly prohibit a registered nurse or licensed practical nurse from delegating the administration of medication but, in effect, requires 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.

Chapter 464, Part I, 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 tasks to unlicensed assistive personnel.<sup>1</sup>

These rules provide that a registered nurse or licensed practical nurse must use nursing judgment in considering the task or activity to be delegated. The delegation process must include communication to the unlicensed assistive personnel to identify 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 that the delegate understands the assignment, verification of monitoring, and supervision.

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<sup>1</sup> See Chapter 64B9-14, Florida Administrative Code.

A registered nurse or licensed practical nurse may *not* delegate activities that are not within the delegating or supervising nurse's scope of practice.

Nursing activities that require the special knowledge and use of nursing processes, judgment, or skills of a registered or practical nurse, may *not* be delegated to unlicensed assistive personnel.

Examples of such nursing activities that may *not* be delegated include:

- initial nursing assessment or any subsequent assessments;
- determination of the nursing diagnosis or interpretations of nursing assessments;
- establishment of nursing care goals and development of the plan of care; and
- evaluation of progress in relationship to the plan of care.

### **Comprehensive Transitional Education Program**

Currently, there is one comprehensive transitional education program licensed in Florida.<sup>2</sup> The comprehensive transitional educational program is a large program that has the capacity to serve as many as 120 residents who reside in smaller residential units in three locations. According to the program, they currently provide services to 91 residents, of whom at least 97% take some type of medication. According to the website for the program, it treats clients who have been diagnosed with conditions such as autism, developmental disabilities, severe emotional disturbances, dual diagnoses, conduct disorders and other related diagnoses.<sup>3</sup>

The facility currently has (1) full-time registered nurse and (1) licensed practical nurse on staff. These individuals are available 24-hours a day. Over the weekends (2) Registered Nurses are on call. According to the facility, all unlicensed direct care staff are required to attend training on how to administer medications and identify adverse reactions. The training is administered locally and the participants receive a certificate of completion.

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 that are 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.<sup>4</sup>

Section 393.063, F.S., defines "developmental disability" as a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

The services provided by the comprehensive transitional education program are funded under a Medicaid program waiver.

### **Surrogate Family and Smaller Residential Settings**

In smaller residential settings, properly trained persons or direct care staff may administer medications, as long as smaller residential settings function as a surrogate family. Under current statute incidental care may be provided to sick or non-institutionalized persons, as long as the care is performed by

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<sup>2</sup> Advoserv-Carlton Palms, *Our Florida Locations*, available at <http://www.advoserv.com/florida.html> (January 4, 2006).

<sup>3</sup> *Ibid.*

<sup>4</sup> See s. 393.062(7), F.S.

friends or members of the family, domestic servants, or a surrogate family.<sup>5</sup> This provision provides an exemption to the Nurse Practice Act, which allows unlicensed care to provide care to a surrogate family member without fear of prosecution for practicing nursing without a license.

In day programs, the director of a facility or program must designate in writing that an unlicensed direct care services staff is eligible to be trained in how to assist in the administration or is able to administer medication directly.<sup>6</sup>

In an intermediate care facility, the director of a facility or program for the developmentally disabled may designate unlicensed staff that may provide medication assistance under the general supervision of a Florida-licensed registered nurse.<sup>7</sup>

### **Types of Medications Administered to Persons with Developmental Disabilities**

Currently, the administration of medication to persons with developmental disabilities in the comprehensive transitional educational program is performed by a nurse. The bill allows unlicensed direct care staff to administer medication under the general supervision of a registered nurse in such programs.

Currently, in day programs and intermediate care facilities, unlicensed direct care staff may administer oral, transdermal, inhaled or topical prescription medications to persons with developmental disabilities.<sup>8</sup> The bill expands this provision by allowing unlicensed direct care services to include the administration of otic, ophthalmic and rectal prescription medications.

### **Training Requirements of Unlicensed Direct Care Staff**

Each facility, institution, or program under the purview of 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 medication. These policies and procedures must be approved by the Agency for Persons with Disabilities before an unlicensed direct care staff assists with the administration of medication. The policies and procedures must include, at a minimum, the following provisions:

- 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.

### **Clarification of Terminology for Day Programs and Day Habilitation Facilities**

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(8), F.S., does define “day habilitation facility” and “day habilitation services.” The bill corrects the inconsistency in terminology.

- A "day habilitation facility" is defined as any nonresidential facility which provides day habilitation services.

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<sup>5</sup> See s. 464.022(1), F.S.

<sup>6</sup> See s. 393.506, F.S.

<sup>7</sup> Ibid.

<sup>8</sup> See s. 393.506, F.S.

- A "day habilitation service" is defined as a service that provides assistance with the acquisition, retention, or improvement in self-help, socialization, and adaptive skills which takes place in a nonresidential setting, separate from the home or facility in which the individual resides. Day habilitation services shall focus on enabling the individual to attain or maintain his or her maximum functional level and shall be coordinated with any physical, occupational, or speech therapies listed in the plan of care.

C. SECTION DIRECTORY:

**Section 1.** Amends s. 393.506, F.S., relating to the administration of medication by unlicensed direct care staff in a comprehensive transitional education program, and grants rule making authority to the Agency for Persons with Disabilities.

**Section 2.** Provides the bill will take effect upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Comprehensive Transitional Education Program (CTEP) may economically benefit from implementation of this bill. They would no longer be required to have medications administered by a nurse and may be able to decrease their nursing staff.

D. FISCAL COMMENTS:

There may be costs associated with rule promulgation by the Agency for Persons with Disabilities.

## 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. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

This bill provides the Agency for Persons with Disabilities the authority to adopt rules to facilitate implementation.

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

According to the Department of Health, the Board of Nursing has client safety concerns regarding the administration of medications by unlicensed personnel and feels that any authority to do so should mimic the requirements for education/training and supervision by a registered nurse as provided in chapter 400, F.S.

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