

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

House Bill 181 CS allows a direct service provider, who is not licensed to administer medication, the ability to administer or supervise the self-administration of medication by a client with a developmental disability, who resides in a facility regulated under Chapter 393, F.S.

The bill provides that a 4-hour medication training course must be satisfactorily completed and the direct service provider must be found competent to administer or supervise the self-administration of medication in a safe and sanitary manner. The bill requires that a consent form must be signed by a legal guardian or a legal representative.

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

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 facilities to provide care to the clients with developmental disabilities. The bill allows direct care providers who are not licensed to administer medication the ability to administer or to supervise the self-administration of medication, if they successfully complete a 4-hour training course in medication administration.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Developmental Disabilities and Chapter 393

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.

Section 393.063(12), F.S., provides a definition of a “direct service provider” or “caregiver” or “caretaker” as 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.

Chapter 393, F. S. regulates the following types of facilities:

- Comprehensive transitional education program centers
- Day habilitation facilities
- Developmental disabilities institutions
- Foster care facilities
- Group home facilities
- Intermediate Care Facilities for the Developmentally Disabled (ICF/DD)
- Residential facilities
- Residential habilitation centers

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. 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.¹

Training Requirements of Unlicensed Direct Care Staff

Currently, 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 APD before an unlicensed direct care staff assists with the administration of medication. The policies and procedures must include, at a minimum, the following provisions:

¹ See s. 393.506, F.S.

- 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.

Statutory Provisions for the Administration of Medication by Unlicensed Staff

Current law² provides authority, with specific guidelines, for unlicensed individuals to administer medication. Sections 400.488 and 400.4256, F.S., specify 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.

Statutory Provisions Related to Surrogate Families 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 law, incidental care may be provided to sick or non-institutionalized persons, as long as the care is performed by friends or members of the family, domestic servants, or a surrogate family.³ This provision provides an exemption to the Nurse Practice Act, which allows an unlicensed caregiver 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 of medication or to administer medication directly.⁴

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.⁵

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 provide a definition for “day programs.” Section 393.063(8), F.S., does define “day habilitation facility” and “day habilitation services.”

- A "day habilitation facility" is any nonresidential facility which provides day habilitation services.
- A "day habilitation service" is 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 focus on enabling the individual to attain or maintain his or her maximum functional level and are coordinated with any physical, occupational, or speech therapies listed in the plan of care.

² Sections. 400.488, 400.4256, 400.9685, and 1006.062, F.S.

³ See s. 464.022(1), F.S.

⁴ See s. 393.506, F.S.

⁵ *Ibid.*

PROPOSED CHANGES

The bill allows a direct service provider who is not licensed to administer medication to supervise self-administration or to administer medication to a client. The bill expands the existing provision (s. 393.506, F.S.) by allowing direct service providers to administer otic, ophthalmic and rectal prescription medications.

The bill provides that, in order to supervise self-administration of medication or to administer medications, a direct service provider must successfully complete a 4-hour training course in medication administration. The direct service provider is required to be assessed annually for competency in an onsite setting. A nurse or physician is required to observe and validate that the individual has met specified criteria such that the individual is able to administer medication to a client in a safe and sanitary manner.

The bill requires that a direct service provider must receive informed consent from the client, or the client's guardian, or legal representative, prior to supervising the self-administration of medication or administration of medication. The consent form must be accompanied with a description of the routes medication may be administered and the procedures that a direct service provider is authorized to supervise or administer.

The bill provides rule-making authority to APD so it may establish standards and procedures that a direct service provider must follow in order to supervise or administer medication to a client. The rules must include guidelines for such items as the labeling of medication, documentation and recordkeeping, storage and disposal of medication, and the training curriculum and validation procedures.

The bill removes the following provisions from s. 393.506, F.S.:

- The requirement that facilities, institutions or programs must include in its policies and procedures a plan for training designating the safe handling, storage, and administration of medications and requires that the policies and procedures be approved by the agency;
- The requirement that facilities maintain a copy of the written prescription, dosage and administration schedule, reason for the prescription, and termination date; and
- Reference to intermediate care facilities which are licensed by the Agency for Health Care Administration and are regulated pursuant to Chapter 400, F.S.

The bill changes "day programs" to "day habilitation services" to reference existing definitions within Chapter 393, F.S, and provides APD with the authority to promulgate rules.

C. SECTION DIRECTORY:

Section 1. Amends s. 393.506, F.S., to delete the requirements for unlicensed staff of direct care facilities to administer prescribed medications to persons with developmental disabilities; to authorize direct service providers to administer medication or supervise the self-administration of medication if they successfully complete a 4-hour training course on medication administration; to require APD to adopt rules to establish standards and procedures governing the supervision of direct care providers and their ability to administer medication.

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:

Programs regulated by Chapter 393, F.S., may incur costs associated with the 4-hour training course on medication administration.

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:

DRAFTING ISSUES:

On lines 54 and 55, the bill references "unlicensed" direct service provider. By definition a direct service provider is unlicensed, so the reference to unlicensed is not necessary. Other references to "unlicensed" were removed in the strike-all amendment that was adopted in the Health Care Regulation Committee.

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

On March 15, 2006, the Health Care Regulation Committee adopted a strike-all amendment offered by the bill's sponsor. The Committee Substitute differs from the original bill as filed in that it:

- Broadens the provisions of s. 393.506, F.S., and applies to all facilities that are regulated under chapter 393 such as: comprehensive transitional education programs, developmental disability institutions, foster care facilities, group home facilities, residential facilities, supported, living, etc. The original bill added a provision that was specific to comprehensive transitional education programs;
- Adds a 4-hour training course in medication administration;
- Removes the provision that medication may only be administered under the general supervision of a registered nurse; and
- Changes the term "unlicensed direct care staff" to "direct service provider" and consistently uses the term "direct service provider."

The bill, as amended, was reported favorably as a committee substitute. This analysis is drafted to the committee substitute.