

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: SB 88

INTRODUCER: Senator Wise

SUBJECT: Caregivers for Adults

DATE: December 19, 2005 REVISED: 01/11/06

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Goltry</u>	<u>Whiddon</u>	<u>CF</u>	Fav/2 amendments
2.	<u>Garner</u>	<u>Wilson</u>	<u>HE</u>	Fav/1 amendment
3.	<u> </u>	<u> </u>	<u>GO</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u>HA</u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

Senate Bill 88 provides legislative intent to foster the development of caregiving for disabled or frail elderly adults as a non-licensed paraprofessional activity and to promote caregivers' use of best practices. The bill creates the Florida Caregiver Institute, Inc., as an independent not-for-profit corporation to be administratively housed in the Florida Policy Exchange Center on Aging (FPECA) at the University of South Florida (USF). The bill further specifies the membership, purposes, duties, and powers of the corporation. The responsibilities of the corporation include:

- Developing and disseminating information on best practices in caregiving;
- Assisting the FPECA in developing policy recommendations to improve the skills and availability of caregivers;
- Seeking state, federal, and private funding to provide training in the use of best practices by caregivers;
- Working with state universities to develop training materials, identify best-practices techniques, and develop a curriculum;
- Conducting needs assessments of non-licensed caregivers working in the community or certain facilities;

- Making recommendations to the appropriate state agencies regarding policy and related changes to help improve the quality, availability, and retention of non-licensed caregivers;
- Reviewing the need for non-licensed caregivers in specified areas;
- Making recommendations to the Legislature and Governor on proposed legislative changes and budget-related items;
- Developing agreements with state agencies for the purpose of accessing state-owned buildings and state employees to provide training and professional development;
- Offering training and charging a fee for this training on a sliding-scale basis;
- Collecting information on non-licensed caregivers including salary rates, professional development needs, turnover rates, and use of best practices; and,
- Developing a memorandum of agreement with FPECA for staff, administrative support, data storage, and startup costs.

The bill creates a 13-member board of directors of the corporation; mandates the membership of the board, terms of office for board members, meeting requirements, and the powers and duties of the board; and directs that annual reports be submitted to the Governor and Legislature. It directs each agency that provides training or support for non-licensed caregivers to cooperate with the corporation and requires that the corporation certify to the Legislature and Governor that this support is being provided.

The Office of Program Policy Analysis and Government Accountability (OPPAGA) is directed to conduct an evaluation and review of the corporation and to provide a report to the Governor and the Legislature by October 1, 2009.

This bill creates two undesignated sections of law.

II. Present Situation:

Caregiving

About 10.1 million people over the age of 18 in the U.S., or 3.8 percent of the population, need another person's assistance to carry out activities such as bathing, feeding, cleaning, or grocery shopping.¹ Within this group, it is estimated that 63 percent (6.3 million) are age 65 or older.² Most people (79 percent) who need long-term care live at home or in the community.³ Of those who live in nursing homes and other institutional settings, some could live in the community if appropriate, affordable support was available.⁴ Family members and friends provide most of the needed assistance for people in home and community-based settings, but home-care workers, personal assistants, direct-support professionals and other direct-care workers are a critical

¹ McNeil, Jack. 2001. *Americans with disabilities: Household economic studies*. Washington, D.C., U.S. Department of Commerce, Economics and Statistics Administration, US Census Bureau.

² Health and Human Services, *Informal Caregiving: Compassion in Action*. Washington, D.C., U.S. Department of Health and Human Services, Based on Data from the National Survey of Families and Households, 1998.

³ Agency for Healthcare Research and Quality. *Long-term Care users range in age and most do not live in nursing homes: Research Alert*, Rockville, MD, 2000.

⁴ U.S. Department of Health and Human Services, 2000. *Understanding Medicaid Home and Community Services: A primer*. Washington, DC: Office of the Assistant Secretary for Planning and Evaluation.

resource for many. Individuals and families rely on these workers to provide them with comfort, companionship, and care in an atmosphere that preserves their dignity and well-being. These workers are already in short supply in many regions and demand is expected to grow rapidly, due to a combination of consumer demand and changes in public policy.

According to the Department of Elderly Affairs (DOEA), of Florida's total population (17,425,772), 17.6 percent (3,066,746) are persons over the age of 65. An estimated 831,907 have two or more disabilities, including self-care limitations.

Nursing homes, assisted living facilities, and adult family care homes employ both licensed and unlicensed staff responsible for providing medical, nursing or personal care or assistance to their residents to enable them to live as independently as possible. The requirements for staff training and education vary depending upon the setting and the specific job responsibilities of the caregiver.

The Omnibus Budget Reconciliation Act of 1987 enhanced the training required of certified nursing assistants in nursing homes and home health aides in certified home health agencies. However, federal health care training resources are typically reserved for the development of medical professionals (doctors, nurses, etc.). There are limited resources to address the training needs of paraprofessional caregivers who work in nursing homes, assisted living facilities, adult day care centers, and private homes.

Assisted Living Facilities

Assisted living facilities (ALFs) are residential care facilities that provide housing, meals, personal care, assistance with or administration of medications, and supportive services to older persons and disabled adults who are unable to live independently. The facilities are licensed under ch. 400, part III, F.S., and are intended to be a less costly alternative to more restrictive, institutional settings for individuals who do not require 24-hour nursing supervision.

Administrators, managers, and staff of ALFs are required to obtain specific training and education pursuant to s. 400.452, F.S., and Rule 58A-5.0191, F.A.C. Training requirements are specific to the individual's responsibilities within the facility and DOEA establishes minimum training and education requirements by rule. Facility staff is required to participate in training relevant to their job duties as specified by rule. Depending on the staff and facility, required training may include ongoing staff in-service training, HIV/AIDS training, first aid, CPR, assistance with self-administered medication, nutrition and food service, extended congregate care training, or limited mental health training. Facilities that advertise that they provide special care for persons with Alzheimer's disease and related disorders, or who maintain secured areas as described in Rule 58A-5.023, F.A.C., must ensure that facility staff receives training in this area.

Home Health Agencies, Nurse Registries, and Companion/Homemaker Services

Many disabled and elderly persons receive care in their homes through home health agencies, nurse registries, or persons who provide companion and homemaker services. These entities are regulated in accordance with ch. 400, pt. IV, F.S., to ensure the safe and adequate care of persons

receiving health services in their own homes. An entity licensed under this section is required to provide specific training to its employees. In addition, many of these entities employ or contract with health care providers who have specific training requirements under their profession's licensure laws (e.g., physicians, registered nurses, licensed practical nurses, and certified nursing assistants, etc.).

However, s. 400.464, F.S., provides exemptions from licensure (thus, no training requirements) to certain persons or entities that could benefit from the educational and training opportunities necessary to develop workers with the requisite skills to meet the complex needs of individuals needing long-term-care services. Some of these entities include:

- Companion and sitter organizations, and their staff, that were grandfathered in under a developmental services provider certificate on January 1, 1999;
- An individual who acts alone, in his or her individual capacity, and who is not employed by or affiliated with a licensed home health agency or registered with a licensed nurse registry; and
- Persons employed by a not-for-profit, community-based agency that provides early intervention services to infants and toddlers.

Adult Family Care Homes

An adult family care home (AFCH) is a family-type living arrangement in a private home. AFCHs are licensed in accordance with ch. 400, part VII, F.S., to provide room, board, and personal care on a 24-hour basis for up to five residents as an alternative to more restrictive, institutional settings for individuals who need housing and supportive services. The provider must own or rent and live in the home.

Staff in AFCHs are either employed or under contract with the provider. All AFCH providers must attend a 12-hour, Adult Family Care Home Basic Training program that covers the minimum requirements of s. 400.6211, F.S., prior to accepting any residents or prior to licensing.

In addition to the basic training, an AFCH provider is required to obtain three hours of continuing education annually in topics related to the care and treatment of frail elders or disabled adults, or the management and administration of an AFCH. Providers must also attend update training for any portion of the basic course that has been updated as the result of new legislation or rule amendment. The AFCH provider, each relief person, and any person left in sole charge of residents, which may include staff, household members, or volunteers, must hold a currently valid card documenting completion of courses in First Aid and CPR. Prior to assuming responsibility for the care of residents or within 30 days of employment, an AFCH provider must ensure that each relief person and all staff receive training in areas that are relevant to the person's job duties, including emergency and evacuation procedures, universal precautions, food safety, reporting abuse and neglect, and resident rights.

Adult Day Care Centers

Adult Day Care Centers (ADCC) are licensed under ch. 400, part V, F.S., to provide therapeutic programs of social and health services as well as activities for adults in a non-institutional

setting. Participants may utilize a variety of services offered during any part of a day but less than a 24-hour period. All staff employed by an ADCC must receive basic written information about interacting with participants who have Alzheimer's disease or dementia related disorders. Section 400.5571, F.S., requires new employees having direct contact with participants who suffer from Alzheimer's disease or other dementia related disorders to complete certain training within specified periods. Training requirements of staff employed by an ADCC vary based upon the work performed by the individual.

Caregiver Training Providers

As of July 1, 2003, the training component for ALFs and AFCHs was privatized by DOEA. Currently, ALFs and AFCHs contract with private consultants and associations to ensure that facility staff is provided with required training. There are currently 19 training providers statewide; these providers and the fees charged are not regulated by any state agency. Training providers and facility administrators have expressed concerns about increased staff training costs to facilities, especially those serving OSS residents. The cost of training has increased in some areas to \$250 per person and the cost of the examination is capped at \$200 by rule.⁵

Caregiver Training Testing

DOEA currently contracts with the Institute for Instructional Research and Practice at USF to develop the testing materials for the ALF Core Training requirements and to administer the test.

University Research on Aging

There are a number of research institutes and centers on aging affiliated with Florida's state universities. Each institute has a specific focus for research and policy related to aging and long-term care. Research areas include work and retirement, pensions, long-term care, assisted living, technology and aging, dementia and caregiving, well-being, life satisfaction, the impact of Alzheimer's disease on families and communities, intergenerational relations, Social Security, and health and aging.

The Florida Policy Exchange Center on Aging (FPECA) at USF collects and analyzes information related to older adults, especially older Floridians. The Center informs policymakers, media representatives, scholars, and advocates on policies, programs, and services for older adults.

III. Effect of Proposed Changes:

Section 1. Specifies Legislative intent regarding the development of caregiving for frail elders and disabled adults; and creates the Florida Caregiver Institute, Inc.

Subsection (1) states legislative intent to foster the development of caregiving as a non-licensed paraprofessional activity, to promote the use of nationally recognized best practices by

⁵ Costs have increased due to the fees charged for training by the privatized trainers and an increase in the cost of the exam by the University of South Florida.

caregivers in licensed facilities and to improve quality of care through uniformity of techniques, practices, and standards in caring for the state's most vulnerable residents.

Subsection (2) creates the Florida Caregiver Institute, Inc., for the purpose of developing best-practices information and disseminating it to caregivers. The corporation is to be organized as a not-for-profit corporation in compliance with ch. 617, F.S. It is not a unit or entity of state government and is administratively housed within FPECA at the University of South Florida.

Subsection (3) directs the corporation to assist FPECA with the development of policy recommendations to enhance FPECA's efforts to improve the availability and skills of individuals seeking to work as caregivers in the home or community. The corporation is directed to exercise certain responsibilities including seeking state, federal, and private funding for training and working with universities and other institutions to identify best practices and develop training materials and curriculum. It is charged with conducting a needs assessment of non-licensed caregivers, reviewing and forecasting the need for non-licensed caregivers, and providing this information to the Legislature and the Governor. The corporation is directed to make recommendations to the Legislature, the Governor, DOEA, the Department of Children and Family Services (DCF), AHCA and the Department of Health (DOH) on proposed legislative changes and budget recommendations to help improve the quality, availability, and retention of non-licensed caregivers. The corporation must develop agreements with DOEA, DCF, AHCA, DOH, and other relevant state agencies to allow access to state-owned buildings and state employees to provide training and professional development. The corporation is authorized to offer core training to staff of ALFs, AFCHs, and ADCCs and to charge a reasonable fee based on a sliding scale to provide this training. The DOEA must evaluate the testing materials annually.

This subsection directs the corporation to collect information regarding non-licensed caregivers, which must include but is not limited to, salary rates for various positions, professional development needs, turnover and retention, and number of caregivers using best practices in the care they provide.

The corporation must develop a memorandum of understanding with FPECA describing how the corporation will interact with FPECA and other state agencies in carrying out its responsibilities and is required to develop an agreement with FPECA for the center's provision of start-up and administrative support; this support will terminate on June 1, 2008. The corporation is authorized to contract with FPECA for the provision of staff support, research, technical assistance, and data storage under a memorandum of agreement.

Subsection (4) provides that the corporation board of directors is to consist of 13 members who represent the interests of the stakeholders affected by the activities of the corporation. The board of directors for the corporation must include members selected by a variety of trade associations and advocacy groups, as well as members appointed by the President of the Senate, the Speaker of the House of Representatives, and the Governor. Members serve at the pleasure of the entity that appointed them and may be removed by the appointing entity without cause.

This section also provides for election of a chair, terms of office, creation of by-laws, meeting procedures, responsibilities of members, and frequency of meetings. The corporation meetings

are to be open to the public and the schedule, location of meetings, and minutes must be posted on a website. The chair of the board of directors is authorized to appoint advisory committees on specific issues. Members of the board and its advisory committees must serve at their own expense.

Subsection (5) requires the chair of the board of the corporation to establish an audit committee to review and report on the financial condition of the corporation to the board members, the Legislature, and the Governor by January 10 of each year. This subsection also authorizes the corporation to employ staff and contract with consultants, within available funds, to accomplish its goals and purposes. The corporation is also required to report to the Legislature and the Governor by January 10 of each year on the status of its efforts to promote best practices for non-licensed caregivers.

This subsection requires public-sector agencies that provide training or support to non-licensed caregivers to cooperate with the corporation. The FPECA is required to certify, using criteria that includes communication, timeliness of response, and coordination efforts, as to whether the corporation is receiving the necessary support from the various public-sector entities that provide training to non-licensed caregivers.

Section 2. Directs OPPAGA to conduct a review of the Florida Caregiver Institute, Inc., by October 1, 2008, and report to the Legislature and the Governor whether the corporation has been effective in helping the state meet its goals of improving the retention of non-licensed caregivers and whether it has been successful in promoting the use of best practices in caregiving.

Section 3. Provides that this act will take effect on July 1, 2006

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:

Because the Florida Caregiver Institute, Inc., created under this bill would be housed within a public university and is acting on behalf of a public agency, it could be considered an agency for purposes of the Public Records and Public Meetings Laws. As such, its records received in connection with its official business would be open to inspection and copying by members of the public and its meetings would be open to the public under the requirements of Article I, Section 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 Article III, Subsection 19(f) of the Florida Constitution.

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

None.

B. Private Sector Impact:

The corporation will need funding for start-up. The cost associated with establishing a similar corporation established by the 2003 Legislature was \$250,000.

Members of the corporation serve at their own expense and would be required to pay for the cost of travel, lodging, and food for the quarterly meetings.

The actual cost for the corporation to perform the responsibilities assigned by the bill could be considerable. These responsibilities include developing training curricula and materials, conducting a caregiver needs assessment, reviewing the need for caregivers in certain areas, developing core-training materials, and collecting and reporting information regarding the caregiver population. These costs could be covered by the public and private grants and the fees for training authorized by the bill.

There are approximately 2,300 ALFs, 460 AFCHs, 160 ADCCs and an undetermined number of unlicensed caregivers in the home and in other community settings. The training to be conducted by the corporation may be duplicative of the privatized core training now available to persons employed or seeking employment in an ALF, AFCH, or ADCC.

C. Government Sector Impact:

Section 1, subsection (3) of the bill provides that the corporation shall develop agreements with, DOEA, DCF, AHCA, DOH, and any other state agency for the purpose of accessing state-owned buildings and state employees to provide training and professional development. Most state agencies do not have the resources immediately available to provide the support for the corporation that is directed by this bill. For example, since the ALF Core Training program was privatized on July 1, 2003, DOEA does not provide training or support for either licensed or unlicensed caregivers. It is not clear how the actions directed by the bill fit with the priorities that have been established and funded by the Legislature for public agencies.

The University of South Florida

There will be an estimated cost of \$100,000 for the Florida Policy Exchange Center on Aging at the University of South Florida to support the activities of this corporation.

Department of Elderly Affairs

There will be costs incurred by DOEA for providing office space and training resources to the corporation. DOEA reports that they no longer have the staffing or infrastructure

capacity to meet the provisions of the bill because their training program was privatized during the 2003 Legislative Session.

Agency for Health Care Administration

At a minimum, AHCA estimates that there will be a need for one additional FTE to provide the proposed training.

This position, located in Tallahassee, would need to travel to different locations around the state as needed to provide the training. The comparable position identified for this training is a Health Services and Facilities Consultant (pay grade 24). It is estimated that there will be \$18,200 in travel expenses annually. The trainer would travel to seven districts quarterly with travel expenses as follows: \$300 airfare; \$300 hotel expenses (three days); and \$50 incidentals. There would be a \$650 travel expense for each trip totaling \$650 x 7 districts x 4 (quarterly visits) equaling \$18,200 annually. Deducting the allowance for travel of \$3,550 that is already included in the annual standard expenditure allowance for a position, an additional travel amount of \$14,650 per year is projected. There will be a total cost to the agency in year one of \$81,319 and in year two of \$77,309. Additionally, if training requirements are greater than anticipated, AHCA may require additional trainers in future years.

It is not possible to determine how much training will be required. However, there are more than 2,300 licensed ALFs and the staff turnover is high in some areas. In addition, there are 463 AFCHs and relief personnel, and 163 ADCCs' staff who may require training. The ALF, AFCH, and ADCC statutes and rules will need to be amended and promulgated to reflect changes in training requirements and providers

VI. Technical Deficiencies:

None.

VII. Related Issues:

The term "caregiver" is not defined for the purposes of this legislation. It appears that the bill is directed to unlicensed caregivers who are employed by a licensed facility or by a private individual. The Family Caregiver Alliance National Center on Caregiving describes a caregiver as "anyone who provides assistance to someone else who is, in some degree, incapacitated and needs help." "Informal caregivers" and "family caregivers" are unpaid; "formal caregivers" are volunteers or paid caregivers.⁶

Section 1, subsection (5) requires the corporation to establish an audit committee consisting of board members to annually review and report on the financial condition of the corporation. The committee is to provide to the Governor and Legislature a report that includes a complete accounting for all revenues and expenses incurred by the corporation. The bill does not address mechanisms for the corporation to accept and manage funds. Further, it is not clear that the

⁶ Family Caregiver Alliance: National Center on Caregiving, *Fact Sheet Selected Caregiver Statistics: Definitions*, <http://www.caregiver.org/caregiver>, November 8, 2005.

membership of the board will include persons who are qualified to complete a financial audit. Certified public accountants are typically used to complete these types of audits to ensure accuracy and unbiased reporting. The bill does authorize the corporation to hire staff, so, if funding were made available, it would be possible for someone to be hired with the expertise needed to complete the audit.

Although the bill states that meetings of the corporation are to be open to the public and minutes are to be posted on a web site, it does not specifically require that the corporation and any committees it forms be subject to the public records requirements of ch. 119, F.S., or the public meetings requirements of ch. 286, F.S.

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

VIII. Summary of Amendments:

Barcode 691126 by Children and Families:

Provides a definition of “caregiver” and title amendment.

Barcode 493998 by Children and Families:

Requires the corporation created by this bill to comply with the provisions of ch. 119 relating to open records and ch. 286 relating to open meetings.

Barcode 440358 by Health Care:

This amendment amends 691126 by Children and Families to clarify that a caregiver can also be someone who provides care without financial compensation.

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