

**The Florida Senate**  
**PROFESSIONAL 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: Children, Families, and Elder Affairs Committee

BILL: CS/CS/SB 922

INTRODUCER: Children, Families, and Elder Affairs Committee and Health Policy Committee and Senator Wise

SUBJECT: The Personal Care Attendant Program

DATE: April 24, 2007 REVISID: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Garner	Wilson	HP	Fav/CS
2.	Marconnet	Jameson	CF	Fav/CS
3.			HA	
4.				
5.				
6.				

**I. Summary:**

The bill changes the existing personal care attendant program and expands participant eligibility in order to provide personal care attendants to persons who have severe and chronic disabilities of all kinds, not just those with traumatic spinal cord injuries. The bill also names the program the James Patrick Memorial Work Incentive Personal Attendant Services program.

The bill requires the Florida Endowment Foundation for Vocational Rehabilitation to contract with the Florida Association of Centers for Independent Living (FACIL or association) to provide training to program participants on hiring and managing a personal care attendant. It also provides that, effective July 1, 2007, FACIL shall receive 15 percent of the funds to be deposited with the Florida Endowment Foundation for Vocational Rehabilitation pursuant to ss. 320.08068(4)(d) and 413.4021(1), F.S., to administer the program.

The bill deletes requirements that FACIL, the Department of Health (DOH), and the Florida Endowment Foundation for Vocational Rehabilitation develop a program to recruit, screen, and select persons to be trained as personal care attendants. It also deletes provisions allowing nurse registries to recruit and screen candidates to act as fiscal intermediaries to make payments to personal care attendants under the program.

The bill places the administration of the program solely with FACIL. It establishes an oversight group, specifies membership, and requires FACIL to review and revise policies and procedures governing the program. The bill repeals specific provisions requiring the establishment of procedures for selecting eligible participants and the requirement that a plan be developed for the implementation of the program.

The bill increases the percent of the revenue collected from the tax collection enforcement diversion program that is provided to the program from 50 percent to 90 percent. The bill also repeals a provision that the Florida Endowment Foundation for Vocational Rehabilitation shall select the entity to administer the personal care attendant program.

The bill provides that all persons who are enrolled in the existing personal care attendant program and the Cross Disability pilot program on June 30, 2007, are automatically eligible for and enrolled in the revised program.

This bill substantially amends ss. 413.402 and 413.4021, F.S., and creates an undesignated section of law.

## II. Present Situation:

Sections 413.402 and 413.4021, F.S., establish and provide a specific funding source for the personal care attendant program to assist eligible persons who are disabled due to a traumatic spinal cord injury to return to work in their communities by providing personal care attendants.<sup>1</sup> The personal care attendant program consists of two major components:

- recruiting, screening, selecting, and training of candidates as personal care attendants; and
- selecting of eligible individuals for participation as well as providing financial assistance of \$500 per month (\$6,000 per year) to reimburse a participant for the cost of his or her personal care attendant.

The FACIL is responsible for developing the program in a collaborative effort with the Brain and Spinal Cord Injury program (BSCIP) in DOH, the Department of Revenue (DOR), the Florida Medicaid program in the Agency for Health Care Administration (AHCA), the Florida Endowment Foundation for Vocational Rehabilitation, and the Division of Vocational Rehabilitation of the Department of Education (DOE).<sup>2</sup>

Persons eligible to participate in the program must:

- Be at least 18 years of age and be significantly disabled due to a traumatic spinal cord injury;
- Require a personal care attendant for bathing, dressing, bowel and bladder management, and transportation;
- Require a personal care attendant to obtain or maintain substantial gainful employment;
- Be able to hire and supervise a personal care attendant, and
- Meet one of the following requirements:
  - Live in a nursing home.
  - Have moved out of a nursing home within the preceding 180 days due to participation in a Medicaid home and community-based waiver program targeted to persons with brain or spinal cord injuries.

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<sup>1</sup> Chapter 2002-286, Laws of Florida, established the program as a pilot; the program was made permanent in Ch. 2005-172, Laws of Florida.

<sup>2</sup> s. 413.402, F.S.

- Presently be employed but, because of a loss of a caregiver, will lose employment and potentially return to a nursing home.<sup>3</sup>

The FACIL, in cooperation with DOH and the Florida Endowment Foundation for Vocational Rehabilitation, is responsible for developing the program to recruit, screen, select, and train candidates as personal care attendants.<sup>4</sup> These entities are also responsible for establishing procedures for selecting persons eligible for participation in the program.

The FACIL is also responsible for the development of a plan for implementation of the personal care attendant program, in cooperation with DOR, BSCIP in DOH, the Florida Medicaid program, a representative from the state attorney's office in each of the judicial circuits participating in the program, the Florida Endowment Foundation for Vocational Rehabilitation, and the Division of Vocational Rehabilitation of DOE.

Responsibility for implementation and administration of the program is with the Personal Care Attendant Program Oversight Workgroup established by DOH. The workgroup consists of one representative from the BSCIP in DOH, one representative from DOR, one representative from the Florida Medicaid program in AHCA, one representative from the Florida Endowment Foundation for Vocational Rehabilitation, one representative from FACIL, one representative from the Division of Vocational Rehabilitation of DOE, and two members who are persons with traumatic spinal cord injuries or are family members of persons with traumatic spinal cord injuries.<sup>5</sup>

The DOH and AHCA are responsible for pursuing any federal waivers necessary to implement the personal care attendant program.

### **Implementation of the Personal Care Attendant Program**

The personal care attendant program started as a pilot in 2002 in select counties in Florida.<sup>6</sup> Under the pilot, the law required the DOR, in coordination with FACIL and the Florida Prosecuting Attorneys Association, to select four counties in which to operate the pilot program.<sup>7</sup> The following counties were selected: Miami-Dade, Broward, Palm Beach, and Hillsborough Counties.<sup>8</sup>

Although established in 2002, the program was unable to identify any persons who were able to meet the statutory eligibility criteria at that time. In 2005, the Legislature modified the criteria to include persons who had already transitioned out of nursing homes or into employment. However, enrollment in the program is still very low because of the limited number of qualifying medical conditions (traumatic spinal cord injuries) and qualifying circumstances (i.e., able to

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<sup>3</sup> s. 413.402(1), F.S.

<sup>4</sup> The services of a nurse registry licensed pursuant to s. 400.506, F.S., may be utilized to recruit and screen candidates and to operate as a fiscal intermediary through which payments are made to individuals performing services as personal care attendants under the program.

<sup>5</sup> s. 413.402(6), F.S.

<sup>6</sup> Chapter 2002-286, Laws of Florida

<sup>7</sup> s. 413.402(7)

<sup>8</sup> <http://www.doh.state.fl.us/workforce/brainsc/PCAProgram/PCA.pdf> (last visited April 16, 2007)

have gainful employment, recently left a nursing home; etc). The following table shows the growth in the program in the last year.

<b>Month and Year</b>	<b>Enrollment</b>
January 2006	3
April 2006	8
July 2006	15
October 2006	19
January 2007	22

**Funding for the Personal Care Attendant Program**

There are two funding sources for the existing personal care attendant program: proceeds from the Tax Collection Enforcement Diversion Program and from the Motorcycle Specialty License (Bikers Care) Tag.<sup>9</sup>

*Tax Collection Enforcement Diversion Program*

In conjunction with the establishment of the personal care attendant program, the Legislature directed FACIL and the state attorney’s offices in the participating counties to implement a Tax Collection Enforcement Diversion program (Diversion program), which collects revenue from persons who have not remitted their sales taxes. Section 413.4021(1), F.S, specifies that 50 percent of those collections are to be remitted by DOR to the Able Trust of the Florida Endowment Foundation for Vocational Rehabilitation to be used to implement the personal care attendant program, with the other 50 percent going to the General Revenue Fund. The Able Trust, in turn, remits funds to FACIL to administer and operate the personal care attendant program.

Currently five State Attorney’s offices in Florida operate a program in which un-remitted sales tax is collected from delinquent business owners. These collections generate about \$80,000 per month for the personal care attendant program. According to DOR, in FY 2005-06 the Tax Collection Enforcement Diversion programs in the five participating counties collected and DOR remitted the following to the Able Trust:

<b>County</b>	<b>Total Collected FY 2005-06</b>	<b>50 Percent to Able Trust</b>	<b>50 Percent to General Revenue</b>
Broward	\$297,333	\$148,666	\$148,666
Dade	306,807	153,403	153,403
Duval	448,668	224,334	224,334
Hillsborough	327,724	163,862	163,862
Palm Beach	176,738	88,369	88,369
<b>TOTAL*</b>	<b>\$1,557,270</b>	<b>\$778,634</b>	<b>\$778,634</b>

\* All figures are rounded so do not add exactly.

*Motorcycle Specialty (Bikers Care) Tag*

<sup>9</sup> Ss. 413.4021(1), F.S., and 320.08068(4)(d), F.S.

Since 2003, the Department of Highway Safety and Motor Vehicles (DHSMV) has offered a specialty tag to the owner or lessee of any motorcycle who chooses to pay the additional cost. Pursuant to s. 320.08068(4), F.S., 20 percent of the proceeds from the sale of that tag are remitted to the Able Trust to operate the personal care attendant program.<sup>10</sup>

In FY 2005-06, FACIL received \$60,389 from the Able Trust as their share of the specialty tag proceeds.

### **Cross Disability Pilot Program**

In 2006, the Legislature appropriated \$400,000 in non-recurring general revenue to establish a pilot personal care attendant program in Orange, Osceola, Lake, and Seminole counties.<sup>11</sup> In contrast to the statutory personal care attendant program, which may serve only those who suffer from traumatic spinal cord injuries, the Cross Disability pilot is intended to serve persons who are significantly physically or mentally disabled without regard to the underlying cause of the disability. Such individuals who need the assistance of a personal care attendant to accept or maintain employment are eligible to enroll in the pilot program.

Operating procedures for the Cross Disability pilot are based on the experiences of the existing personal care attendant program and cross disability personal assistance programs of six other states. The Cross Disability pilot program provides each participant up to \$1,500 per month to pay for a personal care attendant. The maximum reimbursable amount is based on a formula which takes into account a participant's income.

Among current enrollees, those maximums range from \$1,238.15 to \$1,500; however, in no case may a participant be reimbursed for more than the amount actually paid to his or her personal care attendant. The pilot began enrollment in January 2007 and currently has 11 individuals participating in the program.

Because the appropriation establishing the pilot specified non-recurring general revenue, the Cross Disability pilot will be without funds on June 30, 2007, unless the Legislature makes a new appropriation.

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

**Section 1** amends s. 413.402, F.S., requiring the Florida Endowment Foundation for Vocational Rehabilitation to contract with FACIL to administer the James Patrick Memorial Work Incentive Personal Attendant Services program to provide personal care attendants to persons having severe and chronic disabilities of all kinds. Effective July 1, 2007, the bill provides that FACIL shall receive 15 percent of the funds to be deposited with the Florida Endowment Foundation for Vocational Rehabilitation pursuant to ss. 320.08068(4)(d) and 413.4021(1), F.S.; amends program eligibility standards; deletes requirements relating to recruitment, screening and selection of personal care attendants; requires FACIL to provide certain training to program participants; establishes an oversight group and provides membership; and repeals specific

<sup>10</sup> Prior to July 1, 2006, the share allotted to the personal care attendant program was 25 percent. See Ch. 2006-169, LOF.

<sup>11</sup> See Specific Appropriation 340, General Appropriations Act, Ch. 2006-25, LOF. These funds were appropriated to the Department of Children and Families and are being distributed to FACIL pursuant to grant agreements.

provisions requiring the establishment of procedures for selecting eligible participants and the requirement that a plan be developed for the implementation of the program.

**Section 2** amends s. 413.4021, F.S., changing the percent of the revenue collected from the tax collection enforcement diversion program that is provided to the program from 50 percent to 90 percent; and, repealing the provision that the Florida Endowment Foundation for Vocational Rehabilitation shall select the entity to administer the personal care attendant program.

**Section 3** creates an undesignated section of law providing for automatic eligibility for and enrollment in the personal care attendant program, as amended by this act and, effective July 1, 2007, of each person enrolled in the personal care attendant program under s. 413.402, F.S., on June 30, 2007, and each person enrolled in the pilot personal care attendant program in Lake, Orange, Osceola, and Seminole Counties as authorized in Specific Appropriation 340, ch. 2006-25, LOF, on June 30, 2007.

**Section 4** provides that the bill takes effect on July 1, 2007.

#### **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:**

The provisions of this bill have no impact on public records or open meetings issues 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:**

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

##### **C. Government Sector Impact:**

**Department of Revenue**

The DOR reports that it anticipates increased State Attorney participation in the Tax Collection Enforcement Diversion Program by at least two judicial circuits as a result of this bill. The DOR prepares diversion cases and refers them to the participating state attorney. In support of the current effort, the agency has an investigator and the equivalent of one additional staff member in each of the five judicial circuits where the Diversion Program operates. If two new Diversion Programs were added, DOR would need two Investigators (Pay Grade 18) to work up the cases, and two Revenue Specialists (Pay Grade 17) to make adjustments to the SUNTAX system.<sup>12</sup> The DOR estimates that the annual salaries of the four positions combined would total \$153,213.<sup>13</sup>

Also, the change in the percentage of the distribution from the Tax Collection Enforcement Diversion program to the Able Trust for support of the program being increased from the current 50 percent of collections to 90 percent of collections will result in an approximate \$700,000 decrease in revenue going into the General Revenue Fund annually.

### **The Florida Association of Centers for Independent Living**

As noted above, the existing personal care attendant program provides participants \$500 per month for their personal care attendants, while the Cross Disability pilot reimburses up to \$1,500 per month. This bill modifies the personal care attendant program to operate like the Cross Disability pilot; thus, each participant in the expanded program will be reimbursed a maximum of \$1,500 per month for his or her personal care attendant.

The maximum reimbursable amount is based on a formula, which takes into account a participant's income. Among current enrollees, those maximums range from \$1,238.15 to \$1,500 per month; in no case, however, may a participant be reimbursed for more than the amount actually paid to his or her personal care attendant.

Under the bill, all persons currently enrolled in the personal care attendant program and the 11 participants in the Cross Disability pilot on June 30, 2007, will be automatically enrolled in the new program, and FACIL estimates that an additional 12 participants could be served. Thus, up to 45 participants may receive a maximum reimbursement of \$1,500 per month, for an annual total of \$810,000.

There are also expenses associated with the Diversion Program, which is one source of funding for the personal care attendant program. As reported by FACIL, for the first year of the project, BSCIP provided a \$50,000 loan to the State Attorney's Office in each of the 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 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 program

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<sup>12</sup> Department of Revenue Fiscal Impact Analysis dated April 2, 2007

<sup>13</sup> Id.

participants. The FACIL has provided its (unaudited) financial report for Fiscal Year 2005-06 as follows:

<b>Receipts:</b>	
Broward	\$145,569.38
Dade	172,134.39
Duval	202,613.20
Hillsborough	181,838.98
Palm Beach	101,632.33
Motorcycle Tag	60,388.75
<b>Total Receipts</b>	<b>\$864,177.03</b>
<b>Expenses:</b>	
Total of 5% repayments to BSCIP on FY receipts	\$ 40,189.41
Administration of program	7,187.22
Payments to 5 diversion programs	250,000.00
Payments to program participants	15,939.00
<b>Total Expenses</b>	<b>\$313,315.63</b>

The FACIL has been receiving funds to support the existing personal care attendant program since 2003. The FACIL reports the following account balances as of January 1, 2007, to support administration and operation of the program:

Tax collection enforcement diversion program	\$1,366,587
Motorcycle specialty tag	84,136
Interest	36,606
Total funds on hand (01/31/07)	\$1,487,329

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.



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

None.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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