

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 1788

INTRODUCER: Senator Passidomo

SUBJECT: Agency for Persons With Disabilities

DATE: January 26, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Hendon	CF	Pre-meeting
2.			AHS	
3.			AP	

I. Summary:

SB 1788 provides that the Agency for Persons with Disabilities (APD) may not grant a new comprehensive transitional education program (CTEP) license after July 1, 2018, and a license may not be renewed for an existing CTEP after December 31, 2020.

The bill also revises requirements for unlicensed staff that administer or assist with the administration of medications to persons with developmental disabilities to:

- Expand the minimum number of hours of the initial training course that unlicensed staff must complete from no less than 4 hours to no less than 8 hours;
- Implement new competency assessment and validation requirements based on the routes of medication administered; and
- Require direct service providers who administer or oversee self-administration of oral and enteral routes of medication to complete a 2-hour annual update course in medication administration.

The bill is part of APD’s legislative package, has an effective date of July 1, 2018, and will likely have a fiscal impact.

II. Present Situation:

Comprehensive Transitional Education Programs

A comprehensive transitional education program (CTEP) serves individuals with developmental disabilities who also have severe or moderate maladaptive behaviors.¹ In Florida, there are only two CTEPs licensed and both are held by Bellwether Behavioral Health, which currently

¹ Agency for Persons with Disabilities legislative analysis dated December 21, 2017.

manages one group home under the licenses.² CTEP licenses are issued for a 12-month period, and no fees are charged for the initial application or any renewal.³

Carlton Palms Educational Center

Carlton Palms Educational Center (Carlton Palms) is the state's only CTEP and is located in Mt. Dora, Florida.⁴ Carlton Palms provides 24-hour care for children and adults with intellectual and developmental disabilities (IDD), many of whom are dually diagnosed with mental and/or emotional disorders.⁵ Carlton Palms provides services to people whose severe behavioral challenges require safe and effective treatment.⁶ Individuals are referred to Carlton Palms for intensive treatment when other placements and programs have failed.⁷

Under recently-issued federal Medicaid waiver guidelines, effective March 2019, the Medicaid Home and Community-Based Services (HCBS) waiver funding will no longer pay for services provided at Carlton Palms.⁸ Additionally, there has been a shift for states to provide care to persons with developmental disabilities in home and community-based settings and move away from settings with institutional characteristics such as Carlton Palms.⁹ The intent of the rule is to ensure individuals receiving long-term services and support through HCBS programs under the 1915(c), 1915(i) and 1915(k) Medicaid authorities, have full access to benefits of community living and the opportunity to receive services in the most integrated setting appropriate.¹⁰ Moreover, the rule intends to enhance the quality of HCBS and provide protections to participants,¹¹ by helping participants be active in their community, providing them a home-like environment, and enabling them to make personal choices.¹²

² *Id.*

³ *Id.*

⁴ Bellwether Behavioral Health website, Carlton Palms Educational Center, available at <http://bellbh.com/programs/florida-program/carlton-palms-education-center/> (last viewed January 26, 2018).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ The guidelines will become effective in March 2019. Medicaid Program; State Plan Home and Community-Based Services, 5-Year Period for Waivers, Provider Payment Reassignment, and Home and Community-Based Setting Requirements for Community First Choice and Home and Community-Based Services (HCBS) Waivers; Final Rule, 79 Fed. Reg. 2948 (Jan. 16, 2014). The effective date of the final regulations was March 17, 2014, and the regulations allow states up to five years to bring their home and community-based programs into compliance with the home and community-based settings requirements.

⁹ 42 CFR 441.301.

¹⁰ Agency for Health Care Administration Presentation, *Home and Community-Based Settings and Transition Planning*, August 2014, slide 4, available at http://ahca.myflorida.com/Medicaid/hcbs_waivers/docs/AHCA_HCBS_Rule_Overview_and_Transition_Planning_2014.pdf (last visited January 26, 2018).

¹¹ *Id.*

¹² Agency for Health Care Administration, *Home and Community-Based Settings Rule*, 2017, available at http://ahca.myflorida.com/Medicaid/hcbs_waivers/index.shtml, (last visited January 26, 2018).

In addition to federal compliance issues, between 2001 and 2016 there were more than 140 Department of Children and Families (DCF) neglect or abuse reports involving Carlton Palms.¹³ Carlton Palms has an extensive history of complaints and regulatory action.¹⁴

As a result of state and federal reforms, as well as the prior incidents of verified abuse and neglect at Carlton Palms over the last several years, APD and Carlton Palms entered into a consent decree on November 10, 2016, and agreed that APD will not approve any new admissions of APD clients to Carlton Palms and that Carlton Palms will not accept any new residents.¹⁵ Furthermore, Carlton Palms will work with families, guardians, and other states to transition its residents safely back to their places of origin or other agreed upon locations for further services.¹⁶

Direct Service Providers

Clients receiving services from APD in home and community-based settings often receive care from direct service providers. A direct service provider is defined in statute as a person 18 years of age or older who has direct face-to-face contact with a client while providing services to the client or has access to a client's living areas or to a client's funds or personal property.¹⁷

Administration of Medication

Direct service providers provide supervision of a client's self-administration of medication or direct administration of the medication to the client. Section 393.506, F.S., provides that a direct service provider who is not currently licensed to administer medication may supervise the self-administration of medication or may administer several types of prescription medications to clients, including:

- Oral,
- Transdermal,
- Ophthalmic,
- Otic,
- Rectal,
- Inhaled,
- Enteral, or
- Topical.

¹³ Carol Marbin Miller, *After Latest Abuse Case, Florida Moves to Close Home for Disabled*, MIAMI HERALD, (June 23, 2016), available at <http://www.miamiherald.com/news/article85592982.html> (last visited January 26, 2018).

¹⁴ APD has filed 4 administrative complaints against the facility since 2011, detailing inadequate training of staff, physical violence, inadequate care, and inadequate supervision of residents while in the care and custody of Carlton Palms. APD has twice sought moratoria on new admissions to the facility, once in 2012 and most recently in September of 2014. In this most recent administrative complaint, DOAH Case No: 14-004853, APD sought the maximum fine allowed by law, \$10,000, as well as a moratorium on new admissions. APD has settled each of these administrative complaints without the imposition of a moratorium.

¹⁵ Amended Settlement Agreement between Agency for Persons with Disabilities and Carlton Palms Educational Center, November 10, 2016, p. 1.

¹⁶ *Id.* at p. 4.

¹⁷ S. 393.063, F.S.

In order to supervise the self-administration of medication or to administer medications, a direct service provider must satisfactorily complete a training course of not less than four hours in medication administration and be found competent to supervise the self-administration of medication by a client or to administer medication to a client in a safe and sanitary manner.¹⁸ Currently, competency must be assessed and validated at least annually by a registered nurse licensed pursuant to ch. 464, F.S., or a physician licensed pursuant to ch. 458 or ch. 459, F.S., in an onsite setting and must include the registered nurse or physician personally observing the direct service provider satisfactorily supervising the self-administration of medication by a client, and administering medication to a client.¹⁹

The client or the client's guardian or legal representative must give his or her informed consent to self-administering medication under the supervision of an unlicensed direct service provider or to receiving medication administered by an unlicensed direct service provider.²⁰

III. Effect of Proposed Changes:

Section 1 amends s. 393.18, F.S., to provide that new CTEPs may not be licensed in Florida after July 1, 2018, and existing licenses may not be renewed after December 31, 2020. Currently, CTEP licenses are renewed at the end of each calendar year. This will allow APD to comply with the federal guidelines related to the provision of Medicaid home and community-based services in residential settings, and fulfill the requirements of the consent decree between APD and Carlton Palms.

Section 2 amends s. 393.506, F.S., to require that direct service providers must complete a training course of no less than 8 hours, an increase from the previous requirement of at least 4 hours.

The bill also requires that direct service providers who administer or supervise the administration of oral and enteral medications complete a two-hour course in medication administration provided by APD or an agency designee. The bill removes the annual revalidation requirement for ophthalmic, rectal, or inhaled routes of medication administration while maintaining that initial assessment and validation require onsite administration of medication on an actual client. For otic, transdermal, or topical medications, the bill removes the annual onsite competency revalidation requirement and provides that competency may be validated by simulation during a training course required under s. 393.506(2), F.S.

Section 3 provides an effective date of July 1, 2018.

¹⁸ S 393.506(2), F.S.

¹⁹ See ss. 393.506(2) and (4), F.S.

²⁰ S 393.506(3), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The transition from the current large group home to smaller group homes will require all clients, including those with private insurance, to move into a new group home. The location and expense of the smaller group homes are not known at this time.

Additionally, there may be a positive fiscal impact on providers who will no longer have to pay for nurses or doctors to come to their facility to validate direct service providers on otic, topical, and transdermal routes, as these would be done by simulation at the time of the required initial coursework. Providers would only have to pay once for initial validation at their facility for ophthalmic, rectal, and inhaled routes. The only routes which will continue to require annual validation are oral and enteral.

C. Government Sector Impact:

APD will be required to provide assessments and transition plans to current group home residents. APD will also be required to provide the licensing and oversight of the smaller group homes. This has been an ongoing effort by APD.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires direct service providers to annually and satisfactorily complete a 2-hour course in medication administration and error prevention as a prerequisite to annual revalidation. However, the bill also eliminates the annual revalidation requirement for all service providers except those administering or overseeing the administration of oral and/or enteral medication. If

the intention of the bill is to require the 2-hour course annually for all providers regardless of the types of medication administered, the revalidation requirement should still apply to all providers, but language should be included to specify that for certain routes of medication, annual revalidation only requires completion of the 2-hour course.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 393.18 and 393.506.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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