HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7053 PCB HMR 20-03 Direct Care Workers
SPONSOR(S): Health Care Appropriations Subcommittee, Health Market Reform Subcommittee, Tomkow
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1676

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Health Market Reform Subcommittee	10 Y, 5 N	Siples	Calamas
1) Health Care Appropriations Subcommittee	10 Y, 0 N, As CS	Nobles	Clark

SUMMARY ANALYSIS

Direct care workers, such as certified nursing assistants (CNAs), home health aides (HHAs), and personal care assistants (PCAs), provide hands-on assistance to older adults and disabled individuals. They assist with bathing, eating, dressing, and housekeeping. Florida, with its large aging population, is facing a shortage of direct care workers. However, employers find it difficult to retain individuals in these positions due to a lack of full-time employment and upward mobility.

HB 7053 increases opportunity for advancement for direct care workers by expanding the authority of registered nurses to delegate certain tasks to a certified nursing assistant or a home health aide. A registered nurse may delegate any task to a CNA or HHA that the nurse determines that the CNA or HHA can safely perform. The bill also authorizes CNAs and HHAs to administer certain medications if the CNA or HHA has completed training required by the bill, and a physician or registered nurse has validated the CNA's or HHA's competency to perform medication administration.

The bill also expands the scope of practice for CNAs in nursing home facilities by authorizing CNAs to assist with preventative skin care and basic wound care when assisting with the application of topical medications and to assist with intermittent positive pressure breathing treatments and nebulizer treatments. The bill also authorizes a nursing home facility to use dining room assistants to meet minimum staffing requirements.

The bill requires the Agency for Health Care Administration (AHCA) to create and maintain a direct care worker registry. Direct care workers, as well as licensed entities providing such services, may list themselves in the registry, along with their contact information, qualifications, background screening information, and photograph.

Currently, there is no reliable state-based data on the Florida direct care workforce. The bill requires all licensed nursing home facilities, home health agencies, hospices, nurse registries, and homemaker and companion services providers to complete a workforce survey at each biennial licensure renewal.

The bill creates an Excellence in Home Health Program that awards a designation to home health agencies that meet certain criteria. The home health agency may use the designation in marketing materials until such time that the home health agency no longer holds the designation or no longer qualifies for the designation.

The bill authorizes 4.0 full-time equivalent positions, with associated salary rate of 166,992, and appropriates the sums of $643,659 in recurring and $555,200 in nonrecurring funds from the Health Care Trust Fund to the Agency for Health Care Administration for the purpose of implementing this act.

The bill provides an effective date of July 1, 2020.

I. SUBSTANTIVE ANALYSIS

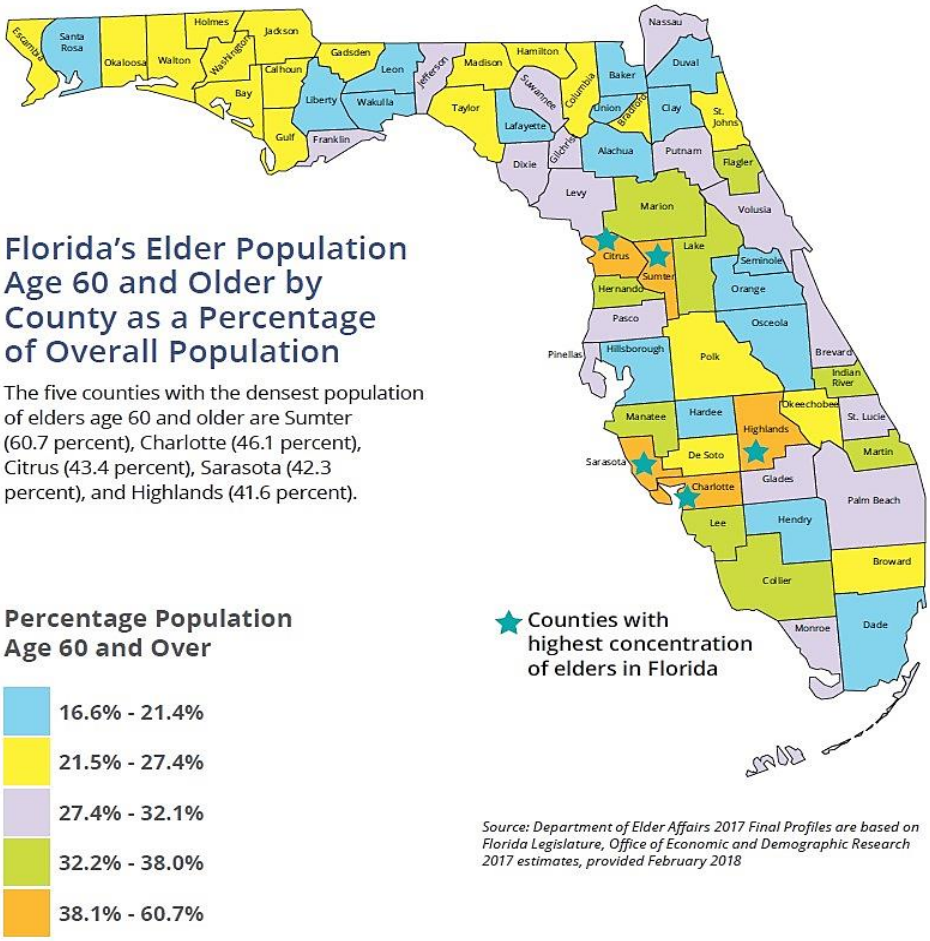
A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida's Aging Population

In the U.S. in 2015, nearly 19 million people under the age of 65 and nearly 14 million people over the age of 65 reported that they had difficulty taking care of themselves or living independently.[1]

Florida ranks first in the nation in the percentage of residents who are age 65 or older.[2] It is estimated that 20.5 percent of the state's population is over the age of 65.[3] Florida ranks fourth in the nation in the percentage of residents who are 60 and older,[4] and there are 21 counties in which residents aged 60 and older comprise at least 25 percent of the population.[5]



Someone turning 65 today has almost a 70 percent chance of needing some type of long term care services and supports in their remaining years.[6] As Florida grays, individuals with disabilities who need

[1] Paul Osterman, WHO WILL CARE FOR US: LONG-TERM CARE AND THE LONG-TERM CARE WORKFORCE 3 (2017).
[2] Department of Elder Affairs, *2019 Summary of Programs and Services*, (Jan. 2019), available at http://elderaffairs.state.fl.us/doea/pubs/pubs/sops2019/2019_SOPS_A.pdf (last visited January 10, 2020).
[3] U.S. Census Bureau, *Quick Facts: Florida*, (July 1, 2019), available at https://www.census.gov/quickfacts/FL (last visited January 10, 2020). Florida's population is estimated to be 21,477,737.
[4] *Supra* note 1 at p. 8.
[5] Id.
[6] U.S. Department of Health and Human Services, *How Much Care Will You Need?*, (last rev. Oct. 2017), available at https://longtermcare.acl.gov/the-basics/how-much-care-will-you-need.html (last visited January 20, 2020).

assistance with activities of daily living, such as eating, grooming, and making meals, may also lose their caretakers. Direct care workers may provide such care and enable these individuals to remain in the community.

Direct Care Workers

Direct care workers assist older individuals and those with disabilities with daily tasks, such as dressing, bathing, and eating.[7] They work in many different settings, such as private homes, group homes, residential care facilities, assisted living facilities, skilled nursing facilities, and hospitals.[8] Direct care workers account for 70 to 80 percent of all paid hands-on long-term care and personal assistance for the elderly or disabled.[9]

Florida Direct Care Workers

Nursing Assistants or Nursing Aides

Nursing assistants or nursing aides generally work in nursing homes, although some work in assisted living facilities, other community-based settings, or hospitals.[10] The Florida Board of Nursing, within the Department of Health, certifies nursing assistants (CNAs) who must, among other things, hold a high school diploma or equivalent, complete a 120-hour board-approved training program, and pass a nursing assistant competency exam, which includes written and practical portions.[11] A CNA must biennially complete 24 hours of inservice training to maintain certification.[12]

The Board of Nursing establishes the general scope of practice for CNAs. A CNA performs services under the general supervision[13] of a registered nurse or licensed practical nurse.[14] A CNA may perform the following services:[15]

- Personal care services, such as bathing, dressing grooming, and light housekeeping;
- Tasks associated with maintaining mobility, such as ambulating, transferring, positioning, lifting, and performing range of motion exercises;
- Nutrition and hydration tasks, such a feeding or assisting with eating and drinking;
- Tasks associated with elimination, such as toileting, providing catheter care, and emptying or changing ostomy bags;
- Tasks associated with using assistive devices;
- Maintaining the environment and resident safety;
- Taking measurements and gathering data, i.e. pulse, blood, pressure, height, and weight;
- Reporting abnormal resident findings, signs, and symptoms;
- Post mortem care;
- Tasks associated with end of life care;
- Tasks associated with resident socialization, leisure activities, reality orientation, and validation techniques;
- Performing basic first aid, CPR, and emergency care; and

[7] Paraprofessional Healthcare Institute, *Understanding the Direct Care Workforce*, available at https://phinational.org/policy-research/key-facts-faq/ (last visited November 8, 2019).
[8] Paraprofessional Healthcare Institute, *Direct Care Workforce 2018 Year in Review*, https://phinational.org/resource/the-direct-care-workforce-year-in-review-2018/ (last visited November 12, 2019) and Paraprofessional Healthcare Institute, *Who Are Direct-Care Workers?* https://phinational.org/wp-content/uploads/legacy/clearinghouse/NCDCW%20Fact%20Sheet-1.pdf (last visited January 14, 2020).
[9] Id.
[10] Paraprofessional Healthcare Institute, *Who Are Direct-Care Workers?*, (Feb. 2011), available at https://phinational.org/wp-content/uploads/legacy/clearinghouse/NCDCW%20Fact%20Sheet-1.pdf (last visited January 14, 2020).
[11] Section 464.203, F.S., and r. 64B9-15.006, F.A.C. Eighty hours must be classroom instruction and 40 hours must be clinical instruction, 20 of which must be in long term care clinical instruction in a licensed nursing home. 42 C.F.R. § 483.95 requires 75 hours of training; Florida training requirements exceed the federal minimum training requirements.
[12] Section 464.203(7), F.S.
[13] Under general supervision, the registered nurse or licensed practical nurse does not need to be present but must be available for consultation and advice, either in person or by a communication device. Rule 64B9-15.001(5), F.A.C
[14] Rule 64B9-15.002, F.A.C.
[15] *Supra* note 14.

- Documentation of CNA services provided to the resident.

A CNA may not work independently and may not may not perform any tasks that requires specialized nursing knowledge, judgement, or skills.[16]

Home Health Aides

Home health aides (HHA) provide essentially the same care and services as nursing assistants, but they assist people in their homes or in community settings under the supervision of a nurse or a physical, speech, occupational, or respiratory therapist.[17] In Florida, HHAs are not licensed or certified. However, the Agency for Health Care Administration (AHCA) licenses home health agencies and establishes training requirements for HHAs employed by home health agencies. A HHA must complete at least 75 hours of training and/or successfully pass a competency evaluation by the home health agency.[18] HHAs who work for a home health agency that is not certified by Medicare or Medicaid or who work for a nurse registry must complete 40 hours of training or pass an AHCA-developed competency examination.[19]

AHCA establishes the scope of practice for HHAs performing services under a licensed home health agency. A HHA performs services delegated by and under the supervision of a registered nurse, which include:[20]

- Assisting the patient or client with personal hygiene, ambulation, eating, dressing, shaving, physical transfer, and other personal care activities;
- Maintaining a clean, safe, and healthy environment, including light housekeeping;
- Activities taught by a licensed health professional for a specific patient or client and restricted to:
    - Toileting;
    - Assisting with tasks related to elimination;
    - Assisting with the use of devices for aid to daily living, such as a wheelchair;
    - Assisting with prescribed range of motion exercises;
    - Assisting with prescribed ice cap or collar;
    - Doing simple urine tests for sugar, acetone, or albumin;
    - Measuring and preparing special diets; and
- Assisting with self-administration of medication.

A HHA may not change sterile dressings, irrigate body cavities, irrigate a colostomy or wound, perform gastric irrigation or enteral feeding, catheterize a patient, administer medication, apply heat by any method, care for a tracheotomy tube, or any other services that has not been included in the patient's plan of care.[21]

Personal Care Assistants

Personal care assistants (PCAs) work in either private or group homes.[22] They have many titles, including personal care attendant, home care worker, homemaker/companion, and direct support professional.[23] (The latter work with people with intellectual and developmental disabilities). In addition to providing assistance with activities of daily living, they also help individuals go to work and remain

[16] *Supra* note 14.
[17] *Supra* note 10. If the only service the home health agency provides, is physical, speech, or occupational therapy, in additional to the home health aide or CNA services, the licensed therapist may provide supervision.RUle
[18] Agency for Health Care Administration, *Home Health Aides,* available at https://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Lab_HomeServ/HHA/Home_health_aides.shtml (last visited January 20, 2020).
[19] Rules 59A-8.0095(5)
[20] Id., and 64B9-15.002, F.A.C.
[21] Rule 59A-8.0095(5)(p), F.A.C.
[22] *Supra* note 10.
[23] Id.

engaged in their communities.[24] A growing number of these workers are employed and supervised directly by consumers.

There are no minimum training requirements for PCAs, and there is no agency that directly regulates them. PCAs may be employed by or provide services through a home health agency or homemaker/companion agency, although some PCAs work independently and are directly supervised by the employing family or individual.

A PCA does not have a clearly defined scope of practice because it is not a regulated profession. However, the Florida Medicaid program defines personal care services as medically necessary assistance with activities of daily living to enable an individual to accomplish tasks they would normally be able to do for themselves if they did not have a medical condition or disability.[25] Florida Medicaid authorizes the following personal care services:[26]

- Bathing or assistance with bathing;
- Assistance with dressing, including application of prosthetic devices or therapeutic stockings;
- Grooming and skin care;
- Positioning;
- Transfers;
- Toileting and maintaining continence;
- Assistance with eating; and
- Non-skilled medical task delegated by a registered nurse, and may include assisting with pre-measured medications, monitoring vital signs, and measuring intake and output.

Medication Administration and Assistance with Self-Administration

Medication Administration

Medication administration means to obtain and provide a single dose of a medication to a patient for his or her consumption.[27] Currently, neither CNAs nor HHAs may administer medication to a patient. However, Florida law authorizes unlicensed direct care personnel who complete a 6-hour training course to administer medication under the developmental disabilities program.[28] Many other states authorize HHAs or CNAs who complete additional training to administer medication.[29] For example, Texas authorizes home health medication aides.[30] Arizona, Georgia, Illinois, Minnesota, and North Arizona authorize CNAs to administer medication upon completion of specialized training.[31] Connecticut has a stand-alone medication administration technician profession.[32]

Assistance with Self-Administration

Some patients are capable of administering their own medication,but need assistance to ensure that they are taking the correct medication, at the proper dosage, and at the correct time. Under current law, HHAs may assist with self-administration after completion of prescribed training.

HHAs must complete two hours of training to assist with self-administration of medication.[33] The training must include state law and rule requirements for assistance with self-administration of medication in the home, procedures for assisting the patient with self-administration, common

[24] Id.
[25] Agency for Health Care Administration, Florida Medicaid, *Personal Care Services Coverage Policy*, (Nov. 2016), adopted in r. 59G-4.215, F.A.C.
[26] Id.
[27] Section 465.003, F.S.
[28] Section 393.506, F.S.
[29] Some states specifically certify or license medication aides.
[30] *See* TEX. HEALTH & SAFETY CODE 242 and 26 TEX. ADMIN. CODE 557.128.
[31] *See* ARIZ. REV. STAT. §32-1650, GA. CODE. ANN. 31-7-12.2, 225 ILL. COMP. STAT. 65 (pilot program), MINN. R. 4658.1360, N.C. GEN. STAT. § 131E-114.2, respectively.
[32] *See* CONN. GEN. STAT. §17a-210-1, et. seq.
[33] *Supra* note 19.

medications, recognition of side effects and adverse reactions, and procedures to follow if patients appear to be experiencing side effects or adverse reactions.[34] This 2-hour training may be included in the primary 75-hour or 40-hour HHA training.

Assistance with self-administration of medication includes:[35]

- Taking the medication, in its properly labeled container, from where it is stored to the patient;
- In the presence of the patient, reading the label, opening the container, removing a prescribed amount of medication from the container, and closing the container;
- Placing an oral dose in the patient's hand or placing the dosage in another container and helping the patient by lifting the container to his or her mouth;
- Applying topical medications;
- Returning the medication container to proper storage; and
- Keeping a record of when a patient receives assistance.

A HHA with the authority to assist with self-administration of medication may not:[36]

- Mix, compound, convert, or calculate medication doses;
- Prepare syringes for injection or the administration of medications by any injectable route;
- Administer medications through intermittent positive pressure breathing machines or a nebulizer;
- Administer medications by way of a tube inserted in a cavity of the body;
- Administer parenteral preparations;
- Irrigate or use debriding agents to treat a skin condition;
- Prepare rectal, urethral, or vaginal medications.
- Administer medications ordered by the physician or health care professional with prescriptive authority to be given "as needed," unless the order is written with specific parameters that preclude independent judgment on the part of the HHA, and at the request of a competent patient;
- Administer medications for which the time of administration, the amount, the strength of dosage, the method of administration, or the reason for administration requires judgment or discretion on the part of the unlicensed person.

CNAs who are not working for a home health agency may not assist with medication administration.

Challenges of the Direct Care Workforce

The federal Bureau of Labor Statistics estimate that home health aides and personal care assistants are in the top five occupations with the fastest job growth in the U.S. economy.[37] The demand for home health aides and nursing assistants is expected to increase by 34 percent by 2025.[38] However, the turnover rate in long term care is estimated to be between 45 to 66 percent.[39]

[34] Id.
[35] Section 400.488(3), F.S.
[36] Section 400.488(4), F.S.
[37] U.S. Department of Health and Human Services, Health Resources and Services Administration, Bureau of Health Workforce, National Center for Health Workforce Analysis, *Long-Term Services and Supports: Direct Care Worker Demand Projections 2015-2030*, (March 2018), available at https://bhw.hrsa.gov/sites/default/files/bhw/nchwa/projections/hrsa-ltts-direct-care-worker-report.pdf (last visited January 14, 2020).
[38] Id.
[39] Kezia Scales, PhD, *Staffing in Long-Term Care is a National Crisis*, (June 8, 2018), available at https://phinational.org/recruitment-retention-long-term-care-national-perspective/ (last visited January 14, 2020).

Many factors contribute to the high turnover rate, including compensation, lack of full-employment, and low job satisfaction.[40] Direct care workers also often have substantial family caregiving obligations, which adds to the stress of the job and contribute to the days missed from work.[41]

High turnover rates have a negative impact on both employers and patients. Turnover may have a negative impact on patient care and employers must incur costs for continuous recruitment and training of new employees.[42] Indirect costs to employers include lost productivity, lost revenue, and reduced service quality.[43] Employers must pay costs related to filling vacancies and training new employees. It is estimated that turnover costs direct care employers approximately $4.1 billion per year.[44] Turnover can cause a break in continuity of care and a reduction in the quality of care, which may ultimately affect the patient's quality of life.[45]

Approximately two-thirds of HHAs and PCAs work part time.[46] This may be due to personal needs; however, many home care workers receive several assignments to work in a day the total of which does not amount to a full work day. For example, a HHA may be scheduled to see two separate clients for three hours each, but due to the time to travel between patients, the HHA is unable to achieve a full 8-hour work day. Many direct workers also face other obstacles to remaining in their jobs, including challenges with transportation, family commitments, or health care.[47] Some states or regions have launched matching service registries to make it easier for workers to find clients and build schedules to suit individual needs and commitments.[48]

Low job satisfaction, which in turn leads to higher turnover, results from inadequate training and lack of opportunities for advancement.[49] Many direct care workers chose the career because they wanted to help people, and this motivation also plays a role in retaining workers in direct care.[50] However, many direct care workers leave the career field for other entry-level jobs in the food and hospitality industry that pay similarly, are less mentally and physically strenuous, and provide opportunities for advancement.[51] In fact, one in four CNAs and one in five HHAs report that they are actively seeking another job.[52]

Direct care workers are also at an increased risk of work-related injuries.[53] Direct care workers have an injury rate of 144 injuries per 10,000 workers among PCAs, 116 among HHAs, and 337 among CNAs.[54] By contrast, the injury rate across all occupations is 100 per 10,000 workers.[55]

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[40] *Supra* note 1, at pp. 27-37.
[41] U.S. Department of Health and Human Services, *Understanding Direct Care Workers: A Snapshot of Two of America's Most Important Jobs – Certified Nursing Assistants and Home Health Aides*, (March 2011), available at https://www.ahcancal.org/quality_improvement/Documents/UnderstandingDirectCareWorkers.pdf (last visited January 20, 2020).
[42] Institute of Medicine, Committee on the Future Health Care Workforce for Older Americans, Board on Health Care Services, *Retooling for an Aging America: Building the Health Care Workforce*, (2008), available at https://www.ncbi.nlm.nih.gov/books/NBK215401/pdf/Bookshelf_NBK215401.pdf (last visited January 14, 2020).
[43] Dorie Seavey, Better Jobs Better Care, *The Cost of Frontline Turnover in Long-Term Care*, (Oct. 2004), available at https://phinational.org/wp-content/uploads/legacy/clearinghouse/TOCostReport.pdf (last visited January 25, 2020).
[44] *Supra* note 42.
[45] Id.
[46] Paraprofessional Healthcare Institute, *U.S. Home Care Workers: Key Facts*, available at https://phinational.org/wp-content/uploads/2017/09/phi_homecare_factsheet_2017_0.pdf (last visited January 14, 2020).
[47] Paraprofessional Healthcare Institute, *Growing a Strong Direct Care Workforce: A Recruitment and Retention Guide for Employers*, available at https://phinational.org/wp-content/uploads/2018/05/RRGuide-PHI-2018.pdf (last visited January 20, 2020).
[48] Allison Cook, Paraprofessional Healthcare Institute, *Issue Brief: Localized Strategies For Addressing the Workforce Crisis in Home Care*, (Oct. 2019), available at https://phinational.org/wp-content/uploads/2019/11/Localized-Strategies-2019-PHI.pdf (last visited January 20, 2020).
[49] *Supra* note 41.
[50] *Supra* note 41, at p. 48.
[51] *Supra* note 42.
[52] Id.
[53] *Supra* note 41.
[54] Stephen Campbell, Paraprofessional Healthcare Institute, *Issue Brief: Workplace Injuries and the Direct Care Workforce*, (April 2018), available at https://phinational.org/wp-content/uploads/2018/04/Workplace-Injuries-and-DCW-PHI-2018.pdf (last visited January 20, 2020).
[55] Id.

In order to meet the future demand for direct care worker, employers will need to consider options such as offering better compensation, full-time hours, better training and advancement opportunities, and improved working conditions.[56]

Direct Care Workforce Data

In 2009, the federal Centers for Medicare and Medicaid Services (CMS) issued a report acknowledging that there was a lack of ongoing, reliable state-based information about the direct care workforce.[57] This lack of information has hampered the ability to develop policy to ensure that a stable and quality direct care workforce is available to meet the increasing demand for long term care services.[58]

CMS proposed that states collect a minimum data set of information on direct care workers, including the:

- Number umber of direct care workers (full time and part time);
- Stability of the direct care workforce (turnover and vacancies); and
- Average compensation of workers (wages and benefits).

Collecting this minimum data on the direct care workforce enables states to, among other things:[59]

- Create a baseline against which the progress of workforce initiatives can be measured;
- Inform policy formulation regarding workforce initiatives;
- Help identify and set long-term priorities for long-term care reform and system changes; and
- Promote integrated planning and coordinated approaches for long-term care and comparability of data across programs to assist in the assessment and evaluation of adopted policy initiatives.

This information will also enable states to determine the most useful deployment of state resources, anticipate increased demand for services, and assess trends in workforce turnover and related costs.[60]

In addition to direct care workers who are employed by entities, like home health agencies and nursing home facilities, there is a growing "gray market" comprised of independent providers. These independent providers are directly employed by the individuals to whom they provide care[61] and some may be employed by individuals through government-funded programs, such as Medicaid.[62] However, since these individuals are directly employed by patients, it is difficult to quantify the size of this market.

Regulation of Long Term Care Providers

The Division of Health Quality Assurance (HQA) within AHCA licenses, certifies, and regulates 40 different types of health care providers. Regulated providers include, among others, these providers of long-term care services:

- Nursing home facilities under part II of ch. 400, F.S.
- Assisted living facilities under part I of ch. 429, F.S.
- Home health agencies under part III of ch. 400, F.S.
- Companion or homemaker services providers under part III of ch. 400, F.S.
- Nurse registries under part III of ch. 400, F.S.
- Hospices under part IV of ch. 400, F.S.

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[56] *Supra* note 46, at p. 8.
[57] Centers for Medicare and Medicaid Services, National Direct Service Workforce Resource Center, *The Need for Monitoring Long-Term Direct Service Workforce and Recommendations for Data Collection*, (Feb. 2009), available at https://www.medicaid.gov/sites/default/files/2019-12/monitoring-dsw.pdf (last visited January 8, 2020).
[58] Id.
[59] Id at p. 8.
[60] Id.
[61] *Supra* note 1 at 18.
[62] For example, see *supra* note 25.

In addition to provider-specific requirements listed in the authorizing statutes for each provider type listed above, the Health Care Licensing Procedures Act (Act), in part II of ch. 408, F.S., establishes uniform licensing procedures and statutes for 29 provider types regulated by HQA. The Act authorizes HQA to inspect facilities, verify compliance with licensure requirements, identify deficiencies or violations, and impose fines and penalties for noncompliance.

Nursing Home Staffing

Section 400.23(3), F.S., establishes minimum staffing requirements for nursing home facilities:

- A minimum weekly[63] average of 3.6 hours of direct care per resident per day provided by a combination of certified nursing assistants and licensed nursing staff.
- A minimum of 2.5 hours of direct care per resident per day provided by certified nursing assistant staff. A facility may not staff at a ratio of less than one certified nursing assistant per 20 residents.
- A minimum of 1.0 hour of direct care per resident per day provided by licensed nursing staff. A facility may not staff at a ratio of less than one licensed nurse per 40 residents.

When computing the staffing ratio for certified nursing assistants, nursing home facilities are allowed to use uncertified nursing assistants under certain conditions to satisfy the staffing ratio requirements so long as their job duties only include nursing assistant-related duties.[64] If approved by AHCA, licensed nurses may also be used to meet staffing requirements for CNAs if the licensed nurses are performing the duties of a CNA and the facility otherwise meets minimum staffing requirements for licensed nurses.[65] Additionally, non-nursing staff providing eating assistance to residents do not count toward compliance with minimum staffing requirements.[66]

Background Screening

Certain licensees, including CNAs, and certain individuals who provide services to vulnerable populations[67] must pass a background screening to be approved for certification or employment. Chapter 435, F.S., outlines the screening requirements.

Every person required by law to be screened pursuant to ch. 435, F.S., must submit a complete set of information necessary to conduct a screening to his or her employer.[68] A level 1 screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE) and a check of the Dru Sjodin National Sex Offender Public Website,[69] and may include criminal records checks through local law enforcement agencies. A level 2 background screening includes, but, is not limited to, fingerprinting for statewide criminal history records checks through FDLE and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.[70]

[63] A week is defined as Sunday through Saturday.
[64] Sections 400.23(3)(a)2. and 400.211(2), F.S. Nursing facilities may employ uncertified nursing assistants for up to 4 months if they are enrolled in, or have completed, a state-approving nursing assistant program, have been positively verified as actively certified and on the registry in another state with no findings of abuse, neglect, or exploitation in that state, or have preliminarily passed the state's certification exam.
[65] Section 400.23(3)(a)4., F.S., and r. 59A-4.108(7), F.A.C. The hours of a licensed nurse with dual job responsibilities may not be counted twice.
[66] Sections 400.23(3)(b), F.S..
[67] "Vulnerable person" means a minor or a person over the age of 18 whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, developmental disability or dysfunction, or brain damage, or the infirmities of aging.
[68] Section 435.05(1)(a), F.S.
[69] The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site. The website is available at https://www.nsopw.gov/ (last visited January 20, 2020).
[70] Section 435.04, F.S.

For both level 1 and 2 screenings, the employer must submit the information necessary for screening to FDLE within five working days after receiving it.[71] The FDLE notifies the employer or agency whether a screening has revealed any disqualifying information.[72]

The Care Provider Background Screening Clearinghouse (Clearinghouse), housed within AHCA, warehouses criminal history checks of individuals who have direct contact with vulnerable persons and are required to be screened by AHCA, Department of Health, Department of Children and Families, Agency for Persons with Disabilities, Division of Vocational Rehabilitation, Department of Elder Affairs, Department of Juvenile Justice, and local child care licensing agencies.[73] The Clearinghouse allows the background screening results to be shared among these agencies, so that the employee or licensee does not have to undergo multiple background screenings when changing employers.[74] Employers register with the Clearinghouse and maintain the employment status of its employees listed in the Clearinghouse by timely reporting changes in employment.[75]

Effect of Proposed Bill

Nurse Delegation

HB 7053 authorizes a registered nurse to delegate any task, including medication administration, to a CNA or HHA, as long as the registered nurse determines that the CNA or HHA is competent to perform the tasks, the task is delegable under federal law, and the task:

- Is within the nurse's scope of practice;
- Frequently recurs in the routine care of a patient or group of patients;
- Is performed according to an established sequence of steps;
- Involved little or no modification from one patient to another;
- May be performed with a predictable outcome;
- Does not inherently involve ongoing assessment, interpretation, or clinical judgement; and
- Does not endanger a patient's life or well-being.

Medication Administration

Currently, HHAs can only assist a patient with medication but not actually provide it to the patient; CNAs can neither provide medication nor assist a patient with medication. The bill authorizes a registered nurse to delegate administration of oral, transdermal, ophthalmic, otic, rectal, inhaled, enteral, or topical prescription medications to a CNA or HHA. Once delegated the authority, the CNA or HHA can provide a dose of a prescribed or over-the-counter medication to a patient in the manner indicated by the prescribing health care practitioner. A nurse may delegate medication administration to the CNA or HHA if the CNA or HHA:

- Has completed a 6-hour training course approved by the Board of Nursing or AHCA, respectively; and
- Has been found competent to administer medication to a patient in a safe and sanitary manner.

A registered nurse or physician must conduct the training and determine whether the CNA or HHA can competently administer medication, and annually validate such competency. A CNA or HHA who has qualified to administer medications must annually complete 2 hours of inservice training in medication administration and medication error prevention. This inservice training is in addition to the training that CNAs and HHAs must currently complete. The bill places an affirmative duty on a nursing facility or home health agency to ensure that CNAs or HHAs performing medication administration meet these requirements.

[71] Section 435.05(1)(b)-(c), F.S.
[72] Section 435.05(1)(c), F.S.
[73] Section 435.12, F.S.
[74] Section 435.12(1), F.S.
[75] Section 435.12(20, F.S.

The bill requires the Board of Nursing and AHCA to adopt rules, in consultation with each other, on the standards and procedures that a CNA or HHA must follow for medication administration. Such rules must address qualifications for trainers, medication label requirements, documentation and recordkeeping, storage and disposal of medication, instructions for safe medication administration, informed consent, training curriculum, and validation procedures.

The bill specifically prohibits a registered nurse from delegating the administration of medications listed as Schedule II, Schedule III, or Schedule IV controlled substances. However, a CNA or HHA may administer Schedule V controlled substances.

The bill authorizes the Board of Nursing to adopt rules, in consultation with AHCA, on delegation of duties. The bill also creates a grounds for discipline against a registered nurse's license if the nurse delegates responsibilities to an individual that the nurse knows or has reason to know that such individual is not qualified to perform.

This authority will align Florida with other states that allow CNAs or HHAs to administer medication.

Direct Care Worker Survey

Beginning January 1, 2021, the bill requires each licensed nursing home facility, assisted living facility, home health agency, nurse registry, or companion or homemaker services provider to complete a survey on the direct care workforce at each license renewal. AHCA must adopt a survey form by rule, which requests the following information of each licensee:

- Number of direct care workers employed by the licensee;
- Turnover and vacancy rates of direct care workers and contributing factors;
- Average employee wage for each category of direct care worker;
- Employment benefits for direct care workers and average cost to the employer and employee; and
- Type and availability of training for direct care workers.

AHCA may not issue a license renewal until the licensee submits a completed survey. The administrator or designee must complete the survey and attest to the accuracy of the information provided, to the best of his or her knowledge.

AHCA must review and analyze the data received at least monthly and publish the results of the analysis on its website. The analysis should address:

- The number of direct care workers in the state, both full-time and part-time;
- Turnover rate and causes of turnover;
- Vacancy rate;
- Average hourly wage;
- Benefits offered; and
- Availability of post-employment training.

Direct Care Worker Registry

The bill directs AHCA to create and maintain a voluntary registry of home care workers,[76] accessible by the general public. A link to the registry must be available on the home page of its website. The registry must include:

- The full name, date of birth, social security number,[77] and a full face, passport-type color photograph of the home care worker;
- Contact information for the home care worker, including his or her city, county and phone number, or contact information for the employing home health agency;
- Name of the state-approved training program the home care worker completed and the date on which the training was completed;
- The number of years the home care worker has provided home health care services for compensation;
- Any disciplinary action taken or pending against a certification by the Department of Health, if the home care worker is a CNA; and
- Whether the home care worker provides services to special populations.

The bill authorizes AHCA to automatically populate work history information based on information in its records. The bill also authorizes AHCA to enter into an agreement with the Department of Health to obtain disciplinary history. A home care worker must meet the same background screening requirements to be included in the registry if the home care worker is not a CNA or currently employed by a home health agency.

The bill requires AHCA to post a disclaimer on each page of the home care worker registry website in bold, 14-point font stating that AHCA does not guarantee the accuracy of the information entered by a third party and does not endorse any individual listed in the registry.

Excellence in Home Health Award Program

The bill creates a gold seal program to designate home health agencies that meet certain criteria. The home health agency must have been actively licensed and operating for at least 24 months and have had no licensure denials revocations, or serious deficiencies during the preceding 24 months to be considered for the award

AHCA must adopt rules establishing standards for the award, including those relating to:

- Patient satisfaction;
- Patients requiring emergency care for wound infections;
- Patients admitted or re-admitted to an acute care hospital;
- Patient improvement in the activities of daily living;

[76] The bill defines "home care worker" as a certified nursing assistant certified under Part II of ch. 464, F.S., or a home health aide as defined in s. 400.462, F.S., which is a person who is trained or qualified, as provided by rule, and who provides hands-on personal care, performs simple procedures as an extension of therapy or nursing services, assists in ambulation exercises, or assists in administering medication as permitted in rule and for which the person has received training established by AHCA.
[77] The bill expressly prohibits AHCA from displaying the social security number on its website.

- Employee satisfaction;
- Quality of employee training; and
- Employee retention rates.

The bill authorizes an award recipient to use the designation in advertising and marketing. However, a home health agency may not use the designation if the agency:

- Has not been awarded the designation;
- Fails to review the award upon expiration of an award designation;
- Has undergone a change in ownership;
- Has been notified that it no longer meets the criteria for the award upon re-application after expiration of the award designation.

The award designation is not transferrable. The award designation is not subject to chapter 120, F.S.

Self-Administration of Medication

The bill authorizes a CNA to provide assistance with preventative skin care and basic wound care by assisting with the application of topical medications. The bill also authorizes a CNA to assist with intermittent positive pressure breathing treatments and nebulizer treatments to include:

- Assisting with devices set up and cleaning in the presence of the resident;
- Confirming that the medication is intended for the resident;
- Orally advising the resident of the medication name and purpose;
- Removing the prescribed amount for a single treatment from a properly labeled container; and
- Assisting the patient with placing the dose into the medicine receptacle or mouthpiece.

The bill requires a CNA assisting with self-administration to confirm that the medication is intended for the resident taking the medication. The CNA must also verbally advise the resident of the name and the purpose of the medication.

The bill authorizes a nursing home facility to count non-nursing staff who assist residents with eating to meet minimum staffing requirements.

The bill takes effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends s. 400.141, F.S., relating to administration and management of nursing home facilities.
Section 2: Creates s. 400.212, F.S., relating to nurse delegated tasks.
Section 3: Amends s. 400.23, F.S., relating to rules; evaluation and deficiencies; licensure status.
Section 4: Amends s. 400.462, F.S., relating to definitions.
Section 5: Amends s. 400. 464, F.S., relating to home health agencies to be licensed; expiration of license; unlawful acts; penalties.
Section 6: Amends s. 400.488, F.S., relating to assistance with self-administration of medication.
Section 7: Creates s. 400.489, F.S., relating to administration of medication; staff training; requirements.
Section 8: Creates s. 400.490, F.S., relating to nurse delegated tasks.
Section 9: Creates s. 400.52, F.S., relating to Excellence in Home Health program.
Section10: Creates s. 408.064, F.S., relating to registry of home care workers.
Section 11: Creates s. 408.822, F.S., relating to direct care workforce survey.
Section 12: Creates s. 464.0156, F.S., relating to delegation of duties.
Section 13: Amends s. 464.018, F.S., relating to disciplinary actions.
Section 14: Creates s. 464.2035, F.S., relating to administration of medication.
Section 15: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

HB 7053 authorizes 4.0 full-time equivalent positions, with associated salary rate of 166,992, and appropriates the sums of $643,659 in recurring and $555,200 in nonrecurring funds from the Health Care Trust Fund to the Agency for Health Care Administration for the purpose of implementing this act.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Home health agencies and nursing facilities may incur costs associated with providing medication administration training to CNAs and HHAs.

Consumers will have access to a centralized database of home care workers and may reduce costs associated with researching and hiring such individuals. Home care workers may acquire work, or more consistent work, using the registry.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides sufficient rulemaking authority to the Agency for Health Care Administration and the Board of Nursing to implement its provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 11, 2020, the Health Care Appropriations Subcommittee adopted an amendment that authorizes 4.0 full-time equivalent positions, with associated salary rate of 166,992, and appropriates the sums of $643,659 in recurring and $555,200 in nonrecurring funds from the Health Care Trust Fund to the Agency for Health Care Administration for the purpose of implementing this act.

The bill was reported favorably as amended.