

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1045 Delegation of the Administration of Prescription Medications

**SPONSOR(S):** Professions & Public Health Subcommittee, Snyder

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1298

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Professions & Public Health Subcommittee	14 Y, 0 N, As CS	Rahming	McElroy
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

Certified nursing assistants (CNAs) and home-health aides (HHAs) assist older individuals and those with disabilities with daily tasks, such as dressing, bathing, and eating. Under current law, a CNA or HHA may administer oral, transdermal, ophthalmic, otic, rectal, inhaled, enteral, or topical prescription medications to a patient of a home health agency if a registered nurse delegates such tasks and the CNA or HHA:

- Has completed a 6-hour training course approved by the Board of Nursing; 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. Current law requires the Board of Nursing and the Agency for Health Care Administration (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.

A registered nurse is prohibited from delegating the administration of medications listed as Schedule II, Schedule III, or Schedule IV controlled substances.

Under current law, a registered nurse is not authorized to delegate to a CNA or HHA medication administration to a patient of a nurse registry.

A nurse registry is an agency licensed to secure employment for registered nurses, licensed practical nurses, certified nursing assistants, home health aides, homemakers, and companions (caregivers) in a patient's home or with health care facilities or other entities. Caregivers referred for contract to a patient by a nurse registry are independent contractors not employees of the nurse registry. Nurse registries must advise patients that caregivers referred for contract are independent contractors and that the nurse registry is prohibited from monitoring, supervising, managing, or training caregivers.

CS/HB 1045 authorizes a registered nurse to delegate to a CNA or HHA medication administration to a patient of a nurse registry. The bill requires a nurse registry that authorizes a registered nurse to delegate tasks to a CNA or HHA to ensure that such delegation meets specified requirements. The bill requires the Board, in consultation with AHCA, to adopt rules on the standards and procedures that a CNA must follow for medication administration to a patient of a nurse registry.

The bill has no fiscal impact on state or local governments.

The bill has an effective date of July 1, 2021.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Florida Direct Care Workers

Direct care workers assist older individuals and those with disabilities with daily tasks, such as dressing, bathing, and eating.<sup>1</sup> They work in many different settings, such as private homes, group homes, residential care facilities, assisted living facilities, skilled nursing facilities, and hospitals.<sup>2</sup> 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.<sup>3</sup>

##### *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.<sup>4</sup> The Florida Board of Nursing (Board), 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.<sup>5</sup> The Board establishes the general scope of practice for CNAs, who perform services under the general supervision<sup>6</sup> of a registered nurse or licensed practical nurse.<sup>7</sup> A CNA may not work independently and may not perform any tasks that require specialized nursing knowledge, judgment, or skills.<sup>8</sup>

##### *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.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>

##### Nurse Delegation of Duties

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<sup>1</sup> Paraprofessional Healthcare Institute, *Understanding the Direct Care Workforce*, available at <https://phinational.org/policy-research/key-facts-faq/> (last visited Mar. 28, 2021).

<sup>2</sup> Paraprofessional Healthcare Institute, *Direct Care Workforce 2018 Year in Review*, <https://phinational.org/resource/the-direct-care-workforce-year-in-review-2018/> (last visited Mar. 28, 2021), and Paraprofessional Healthcare Institute, *Who Are Direct-Care Workers?* <https://phinational.org/wp-content/uploads/legacy/clearinghouse/NCDCW%20Fact%20Sheet-1.pdf> (last visited Mar. 28, 2021).

<sup>3</sup> *Id.*

<sup>4</sup> 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 Mar. 28, 2021).

<sup>5</sup> S. 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.

<sup>6</sup> 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. R. 64B9-15.001(5), F.A.C.

<sup>7</sup> R. 64B9-15.002, F.A.C.

<sup>8</sup> *Id.*

<sup>9</sup> *Supra* note 4. If the only service the home health agency provides is physical, speech, or occupational therapy, in addition to home health aide or CNA services, a licensed therapist may provide supervision. R. 59A-8.0095, F.A.C.

<sup>10</sup> 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](https://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Lab_HomeServ/HHA/Home_health_aides.shtml) (last visited January 20, 2020).

<sup>11</sup> Rules 59A-8.0095(5)

Under current law, a registered nurse is authorized to delegate any task, including medication administration, to a CNA or HHA,<sup>12</sup> if the registered nurse determines that the CNA or HHA is competent to perform the task, the task is delegable under federal law, and the task:<sup>13</sup>

- 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*

Medication administration is to obtain and provide a single dose of a medication to a patient for his or her consumption.<sup>14</sup> Currently, a CNA or HHA may administer oral, transdermal, ophthalmic, otic, rectal, inhaled, enteral, or topical prescription medications to a patient of a home health agency if a registered nurse delegates such tasks to the CNA and the CNA:<sup>15</sup>

- Has completed a 6-hour training course approved by the Board of Nursing; 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.<sup>16</sup> Current law requires the Board and the AHCA to adopt rules, in consultation with each other, on the standards and procedures that a CNA or HHA must follow for medication administration to a patient of a home health agency.<sup>17</sup> 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.<sup>18</sup>

A registered nurse is prohibited from delegating the administration of medications listed as Schedule II, Schedule III, or Schedule IV controlled substances.<sup>19</sup>

Under current law, a registered nurse is not authorized to delegate to a CNA or HHA medication administration to a patient of a nurse registry. Additionally, the Board and the AHCA are not required to adopt rules on the standards and procedures that a CNA must follow for medication administration to a patient of a nurse registry.

### Nurse Registries

A nurse registry is an agency licensed to secure employment for registered nurses, licensed practical nurses, certified nursing assistants, home health aides, homemakers, and companions (caregivers) in a patient's home or with health care facilities or other entities.<sup>20</sup> Nurse registries are governed by part II of chapter 408, F.S.,<sup>21</sup> associated rules in Chapter 59A-35, F.A.C., and the nurse registry rules in Chapter 59A-18, F.A.C. A nurse registry must be licensed by the AHCA to offer contracts in Florida.<sup>22</sup>

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<sup>12</sup> Ss. 400.489 and 464.2035, F.S. Home health aide includes those CNAs who work in positions that work as home health aides or equivalent positions.

<sup>13</sup> Ss. 400.489 and 464.0156, F.S.

<sup>14</sup> S. 465.003, F.S.

<sup>15</sup> Ss. 400.489(1) and 464.2035(1), F.S.

<sup>16</sup> *Id.*

<sup>17</sup> Ss. 400.489(3) and 464.2035(3), F.S.

<sup>18</sup> *Id.*

<sup>19</sup> S. 464.0156(1), F.S.

<sup>20</sup> S. 400.462(21), F.S.

<sup>21</sup> S. 400.506(2), F.S. A nurse registry is also governed by the provisions in s. 400.506, F.S.

<sup>22</sup> S. 400.506(1), F.S.

A caregiver referred by a nurse registry for contract in a private residences who is not a nurse licensed under part I of chapter 464, such as a CNA or HHA, may only provide patient services or care for which they have been certified or trained to perform under current law or rules of the AHCA or the Department of Business and Professional Regulation.<sup>23</sup> Providing services beyond their authorized scope constitutes the unauthorized practice of medicine or a violation of the Nurse Practice Act and is subject to punishment as provided under current law.

A caregiver referred for contract to a patient by a nurse registry is an independent contractor not an employee of the nurse registry.<sup>24</sup> Nurse registries must advise patients that a caregiver referred for contract is an independent contractor and that the nurse registry is prohibited from monitoring, supervising, managing, or training the caregiver.<sup>25</sup>

### **Effect of Proposed Bill**

CS/HB 1045 authorizes a registered nurse to delegate to a CNA or HHA medication administration to a patient of a nurse registry. The bill requires a nurse registry that authorizes a registered nurse to delegate tasks to a CNA or HHA to ensure that such delegation meets the requirements of chapter 400, chapter 464, and the rules adopted thereunder. The bill requires the Board, in consultation with AHCA, to adopt rules on the standards and procedures that a CNA must follow for medication administration to a patient of a nurse registry.

The bill has an effective date of July 1, 2021.

#### **B. SECTION DIRECTORY:**

- Section 1:** Amends s. 464.0156, relating to the delegation of duties.  
**Section 2:** Amends s. 464.2035, relating to the administration of medication.  
**Section 3:** Provides an effective date of July 1, 2021.

### **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:  
None.
2. Expenditures:  
None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:  
None.
2. Expenditures:  
None.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

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<sup>23</sup> S. 400.506(7).

<sup>24</sup> S. 400.506(6)(d).

<sup>25</sup> S. 400.506(6)(e).

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides sufficient rulemaking authority to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On April 1, 2021, the Professions & Public Health Subcommittee adopted an amendment to HB 1045 and reported the bill favorably as a committee substitute. The amendment required a nurse registry that authorizes a registered nurse to delegate tasks to a certified nursing assistant or home health aide to ensure that such delegation meets specified requirements.

The analysis is drafted to the committee substitute as passed by the Professions & Public Health Subcommittee.