

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 Appropriations

BILL: CS/CS/SB 1132

INTRODUCER: Appropriations Committee; Health Policy Committee; and Senator Bean

SUBJECT: Personal Care Attendants

DATE: April 21, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Brown</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Cox</u>	<u>Cox</u>	<u>CF</u>	<u>Favorable</u>
3.	<u>McKnight</u>	<u>Sadberry</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1132 allows a nursing home to employ personal care attendants (PCA), as defined in the bill, participating in the PCA training program. The bill:

- Authorizes the Agency for Health Care Administration (AHCA) in consultation with the Board of Nursing, to develop a program for PCAs;
- Provides for PCA program requirements, including 16 hours of education in the content areas specified in the program curriculum developed by the AHCA;
- Requires a PCA to complete the required training before having any direct contact with a resident;
- Prohibits a PCA from performing any task that requires clinical assessment, interpretation, or judgment;
- Clarifies that a PCA must work exclusively for one nursing facility before becoming a certified nursing assistant (CNA);
- Requires the AHCA to adopt rules necessary to implement the PCA program. If the COVID-19 State of Emergency is terminated prior to the AHCA adopting rules, the AHCA is authorized to continue the PCA program until such rules are adopted; and
- Allows a PCA to work as a nursing assistant and count as a CNA for the purposes of staffing requirements for a single consecutive period of four months.

The bill has no fiscal impact on state revenues or expenditures. *See* Section V of this analysis.

The bill takes effect upon becoming a law.

II. Present Situation:

Nursing Home Staffing Standards

Section 400.23(3), F.S., requires the Agency for Health Care Administration (AHCA) to adopt rules¹ providing minimum staffing requirements for nursing home facilities. The requirements must include:

- A minimum weekly average of 3.6 hours of direct care per resident per day provided by a combination of certified nursing assistants (CNA) and licensed nursing staff. A week is defined as Sunday through Saturday.
- A minimum of 2.5 hours of direct care per resident per day provided by CNA staff. A facility may not staff at a ratio of less than one CNA 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.
- Nursing assistants employed under s. 400.211(2), F.S., may be included in computing the staffing ratio for CNAs if their job responsibilities include only nursing-assistant-related duties.
- Each nursing home facility must document compliance with staffing standards and post daily the names of staff on duty for the benefit of facility residents and the public.
- Licensed nurses may 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.
- Non-nursing staff providing eating assistance to residents do not count toward compliance with minimum staffing standards.

COVID-19 Personal Care Attendant Training Program

To help address a shortage of skilled nursing services during the COVID-19 pandemic, the AHCA temporarily approved the creation of the personal care attendant (PCA) training program to assist with resident care procedures usually delivered by CNAs. The program has been extended to correspond with the COVID-19 State of Emergency, or until the AHCA determines it is no longer necessary.²

The PCA program training must be taught by a registered nurse and consists of a total of eight hours of preservice course work, including five hours of classroom training and three hours of supervised simulation. Upon completion of instruction, PCA candidates must simulate and demonstrate competency in all required care procedures and continue to work under the direct

¹ Rule 59A-4.108(4), F.A.C., requires that “in accordance with the requirements outlined in subsection 400.23(3)(a), F.S., the nursing home licensee must have sufficient nursing staff, on a 24-hour basis to provide nursing and related services to residents in order to maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care.”

² Florida Health Care Association, *Temporary COVID-19 Personal Care Attendant Program*, available at https://www.fhca.org/facility_operations/pcaprogram (last visited Apr. 13, 2021).

supervision of the nursing staff and in collaboration with the CNAs providing activities of daily life services to residents.³

The PCA training program requires a PCA candidate to receive training and demonstrate competency in the following required areas:

- Resident Rights, the Health Insurance Portability and Accountability Act (HIPPA), and abuse and neglect;
- Infection control including how infection is spread, hand hygiene, standard precautions and personal protective equipment, handling of clean and soiled linens, and disinfection of common use articles, equipment, high touch objects, and areas;
- Emergency procedures including the Heimlich Maneuver and assisting a resident who is fallen;
- Activities of daily living, including:
 - Initial steps to responding to a call light;
 - Obtaining a resident's temperature and appropriate documentation;
 - Making an occupied bed, an unoccupied bed, and handling of linens;
 - Turning and repositioning a resident while in bed;
 - Transferring a resident from bed to a chair, wheelchair, bath or partial bath, and the use of a gait belt;
 - Assisting a resident with dressing or undressing;
 - Incontinence, perineal care, and assisting a resident to the toilet;
 - Oral care;
 - Using and storing devices, such as hearing aids, eyeglasses, and dentures; and
 - Final steps and observations to report to the supervising nurse.
- Skin care and pressure prevention including observations to report to the supervising nurse;
- Oxygen use and safety including observing liter flow;
- Nutrition and hydration including retrieving trays, passing ice water, and opening packages for residents who can consume meals independently;
- Dementia care including the stages of dementia, tips on communicating with cognitively impaired residents, and when to seek additional staff assistance;
- Mental health and challenging behaviors including when to seek additional staff assistance and reporting a challenging behavior to the supervising nurse; and
- Review of Resident Rights, abuse and neglect reporting, and reporting to the nurse.⁴

Federal Requirements for Nurse Aide Training

Federal regulations establish requirements that must be met by states and state agencies for nurse aide training programs and competency evaluations, including:

- Specifying that the state cannot approve training programs in certain nursing homes that are operating under specified waivers of federal requirements or that have had certain penalties assessed against them.⁵

³ Memorandum from the Agency for Health Care Administration to the Florida Health Care Association and Florida Leading Age (Mar. 28, 2020), available at https://www.fhca.org/images/uploads/pdf/Personal_Care_Attendant.pdf (last visited Apr. 13, 2021).

⁴ *Id.*

⁵ 42 CFR 483.151.

- Establishing specific requirements for such training programs including at least 75 clock hours of training, the inclusion of specific subjects, at least 16 hours of supervised practical training, supervision requirements, and 16 hours of training prior to direct contact with a resident.⁶
- Establishing requirements for competency evaluations including written and oral exams and demonstrations of skills.⁷

Florida Requirements for Certification as a Nursing Assistant

The Board of Nursing (BON) is required to issue a certificate to practice as a CNA to any person who demonstrates the minimum competency to read and write, successfully passes the required background screening, and has met either of the following requirements⁸:

- Has successfully completed an approved training program⁹ and achieved a minimum score, established by rule of the BON, on the nursing assistant competency examination, which consists of a written portion and skills-demonstration portion approved by the BON and administered at a site and by personnel approved by the department;
- Has achieved a minimum score, established by rule of the BON, on the nursing assistant competency examination, which consists of a written portion and skills-demonstration portion, approved by the BON and administered at a site and by personnel approved by the department and:
 - Has a high school diploma, or its equivalent; or
 - Is at least 18 years of age.
- Is currently certified in another state or territory of the United States or in the District of Columbia; is listed on that jurisdiction's certified nursing assistant registry; and has not been found to have committed abuse, neglect, or exploitation in that jurisdiction; or
- Has completed the curriculum developed under the Enterprise Florida Jobs and Education Partnership Grant and achieved a minimum score, established by rule of the BON, on the nursing assistant competency examination, which consists of a written portion and skills-demonstration portion, approved by the BON and administered at a site and by personnel approved by the department.

If the applicant fails to pass the certification examination in three attempts the applicant is not eligible to take the exam again until he or she completes an approved training course.

III. Effect of Proposed Changes:

This bill amends s. 400.141, F.S., to allow a nursing home to employ personal care attendants (PCA) participating in the PCA program developed by the Agency for Health Care

⁶ 42 CFR 483.152.

⁷ 42 CFR 483.154.

⁸ Section 464.203, F.S.

⁹ Curriculum requirements for certified nursing assistants training programs are established in Rule 64B9-15.006, F.A.C., and include 80 hours of classroom training and 40 hours of clinical instruction. Additionally the rule requires 16 hours of classroom instruction on specified topics prior to any direct contact with a resident.

Administration (AHCA), in consultation with the Board of Nursing (BON) and in accordance with federal regulations.¹⁰

The bill requires the PCA program to consist of a minimum of 16 hours of education and at a minimum, include training in all of the following content areas:

- Residents' rights.
- Confidentiality of residents' personal information and medical records.
- Control of contagious and infectious diseases.
- Emergency response measures.
- Assistance with activities of daily living.¹¹
- Measuring vital signs.
- Skin care and pressure sores prevention.
- Portable oxygen use and safety.
- Nutrition and hydration.
- Dementia care.

The bill also:

- Requires a PCA to complete the 16 hours of required education before having any direct contact with a resident.
- Prohibits a PCA from performing any task that requires clinical assessment, interpretation, or judgment.
- Requires a PCA to work exclusively for one nursing facility before becoming a certified nursing assistant (CNA).
- Authorizes the AHCA to adopt rules necessary to implement the PCA program. If the COVID-19 State of Emergency is terminated prior to the AHCA adopting rules, the AHCA is authorized to continue the PCA program until such rules are adopted.
- Allows a nursing home to hire a PCA, who has completed the program as detailed above, to work as a nursing assistant and count as a CNA for the purposes of staffing requirements for a single consecutive period of up to four months.
- Defines a PCA as a person who meets the above training requirements and who provides care to residents and assists residents with tasks related to the activities of daily living.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁰ 42 CFR 483.151-483.154. These sections establish requirements for state training programs for nurse aides. (Under Florida law, nurse aides are certified as nursing assistants.)

¹¹ Although not defined in nursing home statutes, activities of daily living are defined in other health care and facility statutes. For example, for assisted living facilities activities of daily living are defined as "the functions and tasks for self-care, including eating bathing grooming, dressing, ambulating, and other similar tasks. *See* s. 429.65(1), F.S., and for home health care activities of daily living are included in the definition of personal care and include bathing, dressing, eating, personal hygiene, assistance in physical transfer, ambulation, and in administering medications permitted by rule. *See* s. 400.462(23), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill may have an indeterminate fiscal impact on nursing homes that utilize the personal care attendants (PCA) program created under the bill. The bill may have a positive fiscal impact on individuals who are employed as PCAs under the program.

C. Government Sector Impact:

The bill has no fiscal impact on state revenues or expenditures. The Florida Department of Health¹² and the Agency for Health Care Administration¹³ report no fiscal impacts under the bill's requirements.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 400.141 and 400.211.

¹² Department of Health, *House Bill 485 Bill Analysis* (Jan. 11, 2021) (on file with Senate Committee on Appropriations).

¹³ Agency for Health Care Administration, *House Bill 485 Bill Analysis* (Jan. 28, 2021) (on file with Senate Committee on Appropriations).

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/cs by Appropriations on April 19, 2021:

The committee substitute:

- Provides that a personal care attendant (PCA) must complete 16 hours of required education before having any direct contact with a resident;
- Clarifies that an individual must work exclusively for one nursing facility before becoming a certified nursing assistant;
- Clarifies the AHCA is authorized to continue the PCA program until rules are adopted to implement the PCA program, should the COVID-19 State of Emergency terminate prior to the AHCA adopting program rules;
- Provides that a PCA working as a certified nursing assistant (CNA) and counted as a CNA for the purposes of staffing requirements is authorized to do so for a single consecutive period of four months, as opposed to just a period of four months; and
- Makes technical changes.

CS by Health Policy on March 17, 2021:

The CS expands the hours of training required to work as a PCA from 8 to 16 and ties the PCA training program to federal requirements for nurse aide training in 42 C.F.R. ss. 483.151-483.154. The CS prohibits PCAs from performing tasks that require clinical assessment, interpretation, or judgment; specifies that a PCA must work exclusively for one nursing home; and prohibits a PCA from working as a PCA for more than one nursing home before being certified as a CNA.

The CS also specifies that the current PCA program will continue until the AHCA adopts rules to implement the PCA training program established by the bill regardless of whether Emergency Order 20-52 or its extension expires or is terminated. The bill requires the AHCA to notify the Division of Law Revision of the date that the rules take effect. These requirements expire on the effective date of the AHCA's rules.

- B. **Amendments:**

None.