

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: CS/SB 1132

INTRODUCER: Health Policy Committee and Senator Bean

SUBJECT: Personal Care Attendants

DATE: March 22, 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>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1132 amends ss. 400.141 and 400.211, F.S., to allow nursing homes to employ personal care attendants (PCA) and to allow a PCA to work as a nursing assistant (and count as a certified nursing assistant (CNA) for the purposes of staffing requirements) for a period of up to four months if the PCA is participating in the PCA training program established by the Agency for Health Care Administration (AHCA) in consultation with the Board of Nursing (BON).

The bill defines a PCA as a person who provides care to and assists residents with tasks related to the activities of daily living and who meets specified training requirements. The bill requires the AHCA, in consultation with the BON, to develop a training program for PCAs, in accordance with 42 C.F.R. ss. 483.151-483.154, which must consist of a minimum of 16 hours of education and which will lead to the PCA becoming a CNA. The bill also prohibits a PCA from performing any task that requires clinical assessment, interpretation, or judgment, or from working as a PCA for more than one nursing home before becoming a CNA.

The bill provides that, should the Governor's Emergency Order 20-52 or its extension expire or be terminated before the AHCA is able to adopt rules to implement the PCA training program, the PCA program as it is operating currently may continue to operate until the AHCA adopts such rules.

The bill takes effect upon becoming law.

II. Present Situation:

Nursing Home Staffing Standards

Section 400.23(3), F.S., requires the 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 certified nursing assistants 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 Program

On March 28, 2020, in response to a request from the Florida Health Care Association to help with a shortage of skilled nursing services during the COVID-19 pandemic, the AHCA approved skilled nursing facilities to temporarily use PCAs to perform resident care procedures usually delivered by CNAs. The goal is to provide nursing centers with additional staff to care for residents during the COVID-19 state of emergency and to train new workers to obtain skills necessary to become a CNA. The Temporary COVID-19 Personal Care Attendant Program is an 8-Hour Preservice Course (5-Hour Classroom and 3-Hour Simulation/Competency Check-Off) with continued on-the-job training. The program has been extended to correspond with COVID-19 state of emergency, or until such time AHCA finds it necessary to extend or discontinue the program to meet needs of crisis.²

Federal Requirements for Nurse Aide Training

42 C.F.R. Subpart D establishes requirements that must be met by states and state agencies for nurse aide training programs and competency evaluations. 42 C.F.R. s. 483.151 establishes

¹ Rule 59A-4.108(4), F.A.C., simply 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 See Florida Health Care Association, Facility Operations, *Temporary COVID-19 Personal Care Attendant Program* available at https://www.fhca.org/facility_operations/pcaprogram (last visited March 21, 2021).

general requirements for states to approve nurse aide training programs and specifies 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. 42 C.F.R. s. 483.152 establishes 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. 42 C.F.R. s. 483.154 establish requirements for competency evaluations including written and oral exams and demonstrations of skills.

Florida Requirements for Certification as a Nursing Assistant

Section 464.203, F.S., requires the BON 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 requirements:

- Has successfully completed an approved training program³ 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:

CS/SB 1132 amends s. 400.141, F.S., to allow a nursing home to employ PCAs if the PCA is participating in the PCA training program developed by the AHCA, in consultation with the BON and in accordance with 42 C.F.R. ss. 483-151-483-154.⁴ The bill requires the training program to be at least 16 hours in length and include at least the following topics:

³ Curriculum requirements for CNA 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.

⁴ These sections establish requirements for state training programs for nurse aides. (Under Florida law, nurse aides are certified as nursing assistants.)

- 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.⁵
- Measuring vital signs.
- Skin care and pressure sore prevention.
- Portable oxygen use and safety.
- Nutrition and hydration.
- Dementia care.

The bill prohibits a PCA from performing any task that requires clinical assessment, interpretation, or judgment; requires a PCA to work exclusively for one nursing home facility; and prohibits a PCA from working for more than one nursing home facility before becoming a CNA.

The bill allows the AHCA to adopt rules to implement the program and requires the current PCA program to continue regardless of whether the Governor's Emergency Order 20-52 or its extension expires or is terminated prior to the AHCA adopting rules until such time that the AHCA adopts rules to implement the program. The bill requires the AHCA to notify the Division of Law Revision on the date the implementing rules take effect and the subparagraph extending the current PCA program expires upon the AHCA adopting such rules.

The bill also amends s. 400.211, F.S., to allow a nursing home to hire a PCA, who has completed the training as detailed above, to work as a nursing assistant (and count as a CNA for the purposes of staffing requirements) for a period of up to four months. The bill 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 law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁵ 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.

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 PCA program created under the bill. The bill may also positively impact persons in a fiscal sense who are employed as PCAs under the program.

C. Government Sector Impact:

The bill may have an indeterminate negative fiscal impact on the AHCA related to developing the PCA training program.

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.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

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.