

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 Health Policy

BILL: SB 414

INTRODUCER: Senator Powell

SUBJECT: Family Caregiver Certified Nursing Assistant Program

DATE: December 1, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto - Van Winkle	Brown	HP	Pre-meeting
2.	_____	_____	AHS	_____
3.	_____	_____	AP	_____

I. Summary:

SB 414 requires the Board of Nursing (BON), in consultation with the Agency for Health Care Administration (AHCA), to develop the Family Caregiver Certified Nursing Assistant Program (Program) to train a family member to provide, or who intends to provide, significant personal care and assistance to a relative.

Under the bill, a person who completes the Program's training is authorized to take the certified nursing assistant (CNA) examination and, upon passing, becomes eligible for certification as a CNA on the condition that he or she must serve as a designated CNA for his or her relative under contract with a licensed nurse registry for a period of at least two years. After two years, such a CNA may practice in any setting authorized by law and is no longer required to contract with a licensed nurse registry.

The bill provides an effective date of July 1, 2022.

II. Present Situation:

The Agency for Health Care Administration

The Legislature created the AHCA as the chief health policy and planning entity for the state, and its Division of Health Quality Assurance (HQA) is responsible for, among other things, protecting Floridians through oversight of licensed health care facilities and organizations. The HQA is funded with more than \$49 million in state and federal funds. The HQA licenses and/or certifies and regulates 40 different types of health care providers, including hospitals, nursing

homes, assisted living facilities, and home health agencies. In total, the HQA licenses, certifies, regulates or provides exemptions for more than 48,000 providers.¹

The Department of Health

The Legislature created the Department of Health (DOH) to protect and promote the health of all residents and visitors in the state.² The DOH is charged with the regulation of health care practitioners for the preservation of the health, safety, and welfare of the public. The Division of Medical Quality Assurance (MQA) is responsible for the boards³ and professions within the DOH.⁴

Certified Nursing Assistants (CNAs)

Florida's statutory governance for CNAs is found in Part II of ch. 464, F.S. Section 464.201(5), F.S., defines the practice of a CNA as providing care and assisting persons with tasks relating to the activities of daily living. Activities of daily living include tasks associated with:

- Personal care;
- Maintaining mobility;
- Nutrition and hydration;
- Toileting and elimination;
- Assistive devices;
- Safety and cleanliness;
- Data gathering;
- Reporting abnormal signs and symptoms;
- Postmortem care;
- Patient socialization and reality orientation;
- End-of-life care;
- Cardiopulmonary resuscitation and emergency care;
- Patients' rights;
- Documentation of nursing-assistant services; and
- Other tasks that a CNA may perform after training.⁵

The Legislature has granted the BON rulemaking authority to establish the testing procedures for use in certifying CNAs, regulating the practice of CNAs, and specifying the scope of practice and the level of supervision required for the practice of CNAs.⁶

¹ Agency for Health Care Administration, Division of Health Quality Assurance, available at <https://ahca.myflorida.com/mchq/index.shtml> (last visited Nov. 22, 2021).

² Section 20.43, F.S.

³ Under s. 456.001(1), F.S., the term "board" is defined as any board, commission, or other statutorily created entity, to the extent such entity is authorized to exercise regulatory or rulemaking functions within the DOH or, in some cases, within the MQA.

⁴ Section 20.43, F.S.

⁵ Section 464.201, F.S.

⁶ Section 464.202, F.S.

The BON regulates 208 approved nursing assistant training programs as of July, 2021. Standards for CNA programs and standardized curriculum are regulated by Florida Administrative Code rules 64B9-15.005 and 64B9-15.006.⁷

The standardized training program curriculum for an approved CNA training program follows the framework established by the Department of Education. The curriculum requires a minimum of 80 hours of classroom and 40 hours clinical instruction. The clinical instruction must include at least 20 hours of long-term care clinical instruction in a licensed nursing home. Prior to any direct contact with a patient, a student must receive a minimum of 16 hours of classroom instruction in communication and interpersonal skills; infection control; safety/emergency procedures, including the Heimlich maneuver; promoting residents' independence; and respecting residents' rights. Clinical experience is provided under the direct supervision of the program instructor who is, at a minimum, a registered nurse.⁸

A training program must maintain a passage rate on the CNA examination for its graduates of not less than ten percent below the state average as reported annually. A program is considered abandoned if it has no test takers for one calendar year and is subject to program approval recension. Each program must renew every two years by completing a CNA training renewal application.⁹

Section 464.203, F.S., authorizes the BON to issue certificates to practice as a CNA to any person who demonstrates a minimum competency to read and write, successfully passes the required background screening, and demonstrates one of the following:

- Successful completion of an approved training program and no less than a minimum score on the nursing assistant competency examination, consisting of a written portion and skills-demonstration portion, approved by the BON;
- Achieving at least the minimum score on the nursing assistant competency examination and is at least 18 years old or has earned a high school diploma or its equivalent;
- Is currently certified in another state or the District of Columbia 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 at least the minimum score.¹⁰

If an applicant fails to pass the nursing assistant competency examination in three attempts, the applicant is not eligible for reexamination unless the applicant completes an approved training program. An oral examination must be administered as a substitute for the written portion of the examination upon request.

The BON may approve applications for licensure by endorsement only from currently licensed CNAs in another state and the District of Columbia. A CNA from a U.S. territory who wishes to be licensed in Florida, must apply for licensure by examination instead of endorsement.¹¹

⁷ Department of Health, *Senate Bill 414, 2022 Agency Legislative Bill Analysis* (Oct. 28, 2021)(on file with the Senate Committee on Health Policy).

⁸ Fla. Admin. Code R. 64B9-15.005(2),(2021).

⁹ *Supra*, note 7.

¹⁰ Section 464.203, F.S.

¹¹ *Id.*

A CNA may not work independently without the supervision of a registered nurse or a licensed practical nurse.¹²

The DOH must renew a CNA certificate, biennially, upon receipt of the renewal application and appropriate fee. A CNA must also complete 24 hours of in-service training during each biennium and maintain documentation demonstrating compliance. A CNA may continue to renew biennially until such time as he or she fails to perform any nursing-related services for monetary compensation for a period of 24 consecutive months, and, if the latter occurs, the nursing assistant must complete a new training and competency evaluation program or a new competency evaluation program in order to be recertified.

The BON maintains a list of all CNAs, referred to as the “registry.” The registry must consist of the name of each CNA in this state; other identifying information defined by BON rule; certification status; the effective date of certification; other information required by state or federal law; information regarding any crime or any abuse, neglect, or exploitation as provided under ch. 435, F.S.; and any disciplinary action taken against the CNA. The registry must be accessible to the public, the certificate holder, employers, and other state agencies.¹³

Nurse Registries

Section 400.462 (21), F.S., defines a “nurse registry” as any person that procures, offers, promises, or attempts to secure health-care-related contracts for registered nurses, licensed practical nurses, certified nursing assistants, home health aides, companions, or homemakers, who are compensated by fees as independent contractors, including, but not limited to, contracts for the provision of services to patients and contracts to provide private duty or staffing services to health care facilities licensed under chs. 395, 400, and 429 F.S.

Nurse registries are governed by Part II of ch. 408, F.S.;¹⁴ the associated rules in Florida Administrative Code Rule 59A-35; and the nurse registry rules in Florida Administrative Code Rule 59A-19. A nurse registry must be licensed by the AHCA, pursuant to Part III of ch. 400, F.S., to lawfully offer contracts in Florida.¹⁵

The health care providers referred by the nurse registry are hired as independent contractors by the patient, health care facility, or another business entity.¹⁶ This is a key defining feature of a nurse registry: It cannot have any employees except for the administrator, alternate administrator, and office staff. All individuals referred by a nurse registry who enter the home of patients to provide direct care must be independent contractors.

Under current law, a CNA is not required to enter into a contract with a licensed nurse registry to obtain certification or to practice as a CNA.

¹² Fla. Admin. Code R. 64B9-15.006(2), (2021).

¹³ Sections 464.201(6) and 464.202, F.S.

¹⁴ Section 400.506(2), F.S. A nurse registry is also governed by the provisions in s. 400.506, F.S.

¹⁵ Section 400.506(1), F.S.

¹⁶ Section 400.462(21), F.S.

III. Effect of Proposed Changes:

SB 414 creates the Family Caregiver Certified Nursing Assistant Program. The bill amends s. 464.201, F.S., and provides the following definitions:

- A “family caregiver” is a person who provides or intends to provide significant personal care and assistance to a relative who has an underlying physical or cognitive condition that prevents him or her from safely living independently; and
- A “relative” is a parent, spouse, child, sibling, grandparent, great-grandparent, first cousin, aunt, uncle, great-aunt, great-uncle, niece, or nephew, whether related by whole or half blood, by marriage, or by adoption.

The bill creates s. 464.2031, F.S., and requires the BON, in consultation with the AHCA, to develop the Program in accordance with 42 C.F.R. ss. 483.151-483.154 to train and certify family caregivers as CNAs to increase the health care workforce in Florida and authorize persons to provide trained nursing services to their relatives. A person who is a caregiver to a relative, and wants to serve as the relative’s designated CNA, may participate in the Program.

The Program must consist of at least 84 hours of training, and must include all of the following:

- A minimum of 40 hours of theoretical instruction in nursing that must be offered in various formats, and any interactive instruction must be provided during various times of the day, including, but not limited to, instruction in:
 - Person-centered care;
 - The aging process;
 - Communication and interpersonal skills;
 - Infection control;
 - Safety and emergency procedures;
 - Assistance with activities of daily living;
 - Dementia care;
 - End-of-life care;
 - Mental health and social service needs;
 - Care of cognitively impaired individuals;
 - Basic restorative care and rehabilitation;
 - Patient rights and confidentiality of personal information and medical records; and
 - Relevant legal and ethical issues.
- A minimum of 28 hours of skills training on basic nursing skills, including, but not limited to:
 - Hygiene, grooming, and toileting;
 - Infection control;
 - Skin care and pressure sore prevention;
 - Nutrition and hydration;
 - Measuring vital signs, height, and weight;
 - Safe lifting, positioning, and moving of patients;
 - Wound care;
 - Portable oxygen use and safety and other respiratory procedures;
 - Peripheral intravenous assistive activities and alternative feeding methods; and
 - Urinary catheterization and ostomy care.

A minimum of 16 hours of clinical training under direct supervision of a licensed registered nurse, to be completed in at least two separate shifts and in a BON-approved health care facility.

The bill authorizes a trainee who completes the Program to take the nursing assistant competency examination and, upon passing, the trainee is eligible for certification to practice as a CNA under the condition that he or she must serve as a designated CNA for his or her relative under contract with a licensed nurse registry for at least two years. After two years of such practice, the bill provides that the CNA may practice in any lawful setting and is no longer required to contract with a licensed nurse registry.

The bill authorizes the BON, in consultation with the AHCA, to adopt rules to implement the Program.

The bill provides an effective date of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DOH indicates it will experience an increase in revenues under the bill. The number of applicants is indeterminate; therefore, the fiscal impact cannot be calculated. One full-time equivalent (FTE) position will be required to implement the bill, according to the DOH. Salary is calculated at base of the position plus 58 percent for fringe benefits.

The DOH indicates it will also experience an increase in workload and expenses as follows:

- A recurring increase in workload associated with processing applications and issuing initial and renewal licenses. The impact is indeterminate, but it is anticipated that a minimum of one FTE will be required to implement the bill. One Regulatory Specialist III (PG 19), no travel. Based on the LBR standards, the total FTE cost is \$64,747 (\$44,314/Salary \$20,103/Expense \$330/HR);
- A non-recurring increase in workload and cost related to the development of a CNA training program for family caregivers, which current resources are adequate to absorb;
- An increase in workload associated with the additional complaints and investigations due to the Family Caregiver CNA Program. The impact is indeterminate; therefore, the fiscal impact cannot be calculated at this time;
- A nonrecurring costs for rulemaking, which current budget authority is adequate to absorb; and
- A nonrecurring increase in workload and costs associated with updating the Licensing and Enforcement Information Database System, Online Service Portal, Cognitive Virtual Agent, License Verification Search Site, and board website to support the new pathway for Family Caregivers to obtain CNA Certification. Current resources and budget authority are adequate to absorb.

The total estimated cost for the first year is \$64,747 in the following categories:

- Salary- \$44,314/Recurring;
- Expense- \$15,674/Recurring \$4,429/Non-Recurring; and
- Human Resources - \$330/Recurring.¹⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

The program's training requirements in theoretical and clinical instruction under the bill are significantly lower than those of current DOH-accredited CNA training programs. Under the bill, a CNA trainee is required to have only 40 hours of theoretical instruction, versus the current 80-hour theoretical instruction requirement for DOH-accredited CNA training programs. Similarly, the clinical instruction hours under the bill for a CNA are also greatly reduced, from 40 hours of

¹⁷ *Supra*, note 7.

direct supervision to only 28 clinical instruction hours, of which only 16 hours are required to be under the supervision of a licensed registered nurse.

The bill does not address the issues of what will happen to the certification of a person who becomes a CNA under the Program if any of the following occurs during the bill's required two-year contract period with a nurse registry:

- The designated relative no longer needs CNA care;
- The relative moves or dies;
- The CNA refuses to care for the designated relative; or
- Either the CNA or the nurse registry breaches the contract.

The bill also does not provide what, if any, disciplinary actions may be taken by the BON against a CNA who violates the provisions of the bill.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 464.201 and 464.203.

This bill creates section 464.2031 of the Florida Statutes.

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.