# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/CS/HB 391 Home Health Aides for Medically Fragile Children
**SPONSOR(S):** Health & Human Services Committee, Health Care Appropriations Subcommittee, Healthcare Regulation Subcommittee, Tramont
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 452

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Healthcare Regulation Subcommittee | 15 Y, 0 N, As CS | Guzzo | McElroy |
| 2) Health Care Appropriations Subcommittee | 13 Y, 0 N, As CS | Smith | Clark |
| 3) Health & Human Services Committee | 18 Y, 0 N, As CS | Guzzo | Calamas |

## SUMMARY ANALYSIS

Currently, two Medicaid programs that authorize the Agency for Health Care Administration to pay a family member caregiver to provide home health services to a Medicaid enrollee: the Consumer Directed Care Plus Program (CDC+) and the Participant Directed Option (PDO). However, the CDC+ program only reimburses for certain personal care services, and the PDO program only applies to adult long-term care Medicaid enrollees. No family caregiver option is available for medically fragile children.

The bill creates the Home Health Aide for Medically Fragile Children Program to provide an opportunity for family caregivers to receive training and gainful employment. The bill allows a family caregiver to be reimbursed by Medicaid, as a home health aide for medically fragile children (HHAMFC), for care provided to a relative who is 21 years old or younger with an underlying physical, mental, or cognitive impairment, eligible to receive skilled care or respite care services under the Medicaid program. The bill requires AHCA to establish a fee schedule with a family caregiver reimbursement rate of $25 per hour for up to 8 hours per day.

The bill authorizes a HHAMFC to perform certain tasks if delated by a registered nurse, such as medication administration, tasks associated with activities of daily living, maintaining mobility, nutrition and hydration, and safety and cleanliness. The bill requires services provided by a HHAMFC to result in a reduction in the number of private duty nursing service hours provided to an eligible recipient. Further, the bill prohibits services provided by a HHAMFC from duplicating private duty nursing services provided to an eligible recipient.

The bill requires the Agency for Health Care Administration (AHCA), in consultation with the Board of Nursing, to approve HHAMFC training programs developed by home health agencies which meet certain criteria.

The bill provides civil liability protections for a home health agency (HHA) that terminates or denies employment to a home health aide for medically fragile children for failure to comply with HHAMFC regulations or whose name appears on a criminal screening report of the Department of Law Enforcement.

Beginning January 1, 2025, the bill requires AHCA to conduct annual assessments of the Home Health Aide for Medically Fragile Children Program and report the findings to the Governor and the Legislature.

The bill provides $353,589 in recurring funds and $118,728 in nonrecurring funds from the Health Care Trust Fund, four Full-Time Equivalent (FTE) positions and associated salary rate, for the purpose of implementing provisions in the bill.

The bill would have an indeterminate, significant, negative fiscal impact on AHCA not addressed in the bill's appropriation, and no fiscal impact on local government. See Fiscal Comments.

The bill becomes effective upon becoming law.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Background**

**Florida Medicaid**

Medicaid is the health care safety net for low-income Floridians. Medicaid is a partnership of the federal and state governments established to provide coverage for health services for eligible persons. The program is administered by the Agency for Health Care Administration (AHCA) and financed by federal and state funds. AHCA delegates certain functions to other state agencies, including the Department of Children and Families (DCF), the Department of Health, the Agency for Persons with Disabilities, and the Department of Elderly Affairs (DOEA).

The structure of each state's Medicaid program varies and what states must pay for is largely determined by the federal government, as a condition of receiving federal funds.[1] Federal law sets the amount, scope, and duration of services offered in the program, among other requirements. These federal requirements create an entitlement that comes with constitutional due process protections. The entitlement means that two parts of the Medicaid cost equation – people and utilization – are largely predetermined for the states. The federal government sets the minimum mandatory populations to be included in every state Medicaid program. The federal government also sets the minimum mandatory benefits to be covered in every state Medicaid program. These benefits include home health services.[2] States can add benefits, with federal approval.

States have some flexibility in the provision of Medicaid services. Section 1915(b) of the Social Security Act provides authority for the Secretary of the U.S. Department of Health and Human Services (HHS) to waive requirements to the extent that he or she "finds it to be cost-effective and efficient and not inconsistent with the purposes of this title." Section 1115 of the Social Security Act allows states to implement demonstrations of innovative service delivery systems that improve care, increase efficiency, and reduce costs. These laws allow HHS to waive federal requirements to expand populations or services, or to try new ways of service delivery.

Florida operates under a Section 1115 waiver to use a comprehensive managed care delivery model for primary and acute care services, the Statewide Medicaid Managed Care (SMMC) Managed Medical Assistance (MMA) program.[3] Florida also has a waiver under Sections 1915(b) and (c) of the Social Security Act to operate the SMMC Long-Term Care (LTC) program to provide long-term care services, including nursing facility and home and community-based services, to individuals age 65 and over and individuals age 18 and over who have a disability.[4]

Home Health Services

The SMMC program covers home health services that are medically necessary and can be safely provided to the recipient in their home or in the community, including home health visits (skilled nursing and home health aide services), private duty nursing (PDN) services, and personal care services.[5]

[1] Title 42 U.S.C. §§ 1396-1396w-5; Title 42 C.F.R. Part 430-456 (§§ 430.0-456.725) (2016).
[2] S. 409.905, F.S.
[3] S. 409.964, F.S.
[4] *Id*.
[5] Florida Medicaid Home Health Visit Services Coverages Policy (November 2016), available at https://ahca.myflorida.com/content/download/7034/file/59G-4-130_Home_Health_Visit_Services_Coverage_Policy.pdf (last visited April 4, 2023).

*Home Health Aide Visits - Children*

Florida Medicaid covers home health aide visits for recipients under the age of 21 who have a medical condition or disability that substantially limits their ability to perform activities of daily living or instrumental activities of daily living.[6] The home health visit coverage policy includes up to four hours of intermittent home health visits per day for any combination of skilled nursing or home health aide services.[7]

*Personal Care Services - Children*

Personal care services are for Medicaid recipients who require more extensive care than can be provided through a home health visit. They are provided by unlicensed (HHA) personnel to assist Medicaid recipients under the age of 21 with activities of daily living and instrumental activities of daily living to enable recipients to accomplish tasks they would be able to do for themselves if they did not have a medical condition or a disability. A recipient may receive up to 24 hours or personal care services per day that have been determined to be medically necessary and that can be safely provided in the recipient's home or in the community.[8]

*Private Duty Nursing Services - Adults*

PDN services are skilled nursing services provided to recipients under the age of 21 by a registered nurse or licensed practical nurse. A recipient may receive up to 24 hours of private duty nursing services per day if they have a physician's order for PDN services that are medically necessary and can be safely provided in their home or their community. The PDN coverage policy also allows for reimbursement of up to 40 hours per week of an HHA provider for PDN services provided by the parent or legal guardian of a recipient.[9] The parent or legal guardian must be employed by an HHA and have a valid license as a registered nurse or licensed practical nurse.

**Home Health Aides**

Federal Home Health Aide Regulations

Pursuant to the Centers for Medicare and Medicaid Services (CMS) conditions of participation (COPs), a Medicare certified HHA must ensure that their employees or contractors providing home health aide services comply with federal training and competency requirements.[10]

*Training*

Home health aide training must include classroom and supervised practical training in which the trainee demonstrates knowledge while providing services to an individual under the direct supervision of a registered nurse, or a licensed practical nurse under the supervision of a registered nurse. Classroom and supervised practical training must total at least 75 hours. A minimum of 16 hours of classroom training must precede a minimum of 16 hours of supervised practical training as part of the 75 hours.[11] A home health aide training program must address each of the following subject areas:[12]

---

[6] Activities of daily living include bathing, dressing, eating, maintaining continence, toileting, and transferring. Instrumental activities of daily living include grocery shopping, laundry, light housework, meal preparation, medication management, money management, personal hygiene, transportation, and using the telephone to take care of essential tasks.
[7] *Supra* note 5.
[8] Florida Medicaid Personal Care Services Coverage Policy (November 2016), available at https://ahca.myflorida.com/content/download/7035/file/59G-4-215_Personal_Care_Services_Coverage_Policy.pdf (last visited April 4, 2023).
[9] Florida Medicaid Private Duty Nursing Services Coverage Policy (November 2016), available at https://ahca.myflorida.com/content/download/7036/file/59G-4-261_Private_Duty_Nursing_Services_Coverage_Policy.pdf (last visited April 4, 2023).
[10] 42 C.F.R., §484.80.
[11] 42 C.F.R., §483.152.
[12] *Id*.

- Communication and interpersonal skills.
- Observation, reporting, and documentation of patient status and the care or service furnished.
- Reading and recording vitals.
- Basic infection prevention and control procedures.
- Basic elements of body functioning and changes in body function that must be reported to an aide's supervisor.
- Maintenance of a clean, safe, and healthy environment.
- Safety and emergency procedures.
- Hygiene, grooming, and toileting.
- Safe transfer techniques and ambulation, and normal range of motion and positioning.
- Adequate nutrition and fluid intake.
- Recognizing and reporting changes in skin condition and
- Any other task that the HHA may choose to have an aide perform as permitted under state law.

*Competency Evaluation and In-service Training*

An individual may furnish home health services on behalf of an HHA only after that individual has successfully completed a competency evaluation program.[13] The competency evaluation must be performed by a registered nurse in consultation with other skilled professionals, as appropriate by observing an aide's performance of the task with a patient or pseudo-patient.

A home health aide must receive at least 2 hours of in-service training during each 12-month period under the supervision of a registered nurse. The training may be offered by any organization and may occur while an aide is furnishing care to a patient. If there has been a 24-month lapse in furnishing home health aide services for compensation, the individual must complete another training and competency evaluation program before providing services again.[14]

Florida Home Health Aide Regulations

Home health aides are not licensed or certified in Florida. A home health aide that is employed by or contracted with a licensed HHA must provide documentation of 40 hours of training on topics similar to the CMS requirements or demonstrate competency through a competency test administered by the HHA.[15] The competency test is a combination of a written exam and demonstration of skills through the performance of 14 tasks in the presence of a registered nurse or a licensed practical nurse under the supervision of a registered nurse.

Under current law, a registered nurse is authorized to delegate any task, including medication administration, to a home health aide, if the registered nurse determines that the home health aide is competent to perform the task, the task is delegable under federal law, and the task:[16]

- 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;
- Involves 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.

**Family Caregiver Programs**

Nearly half of children and youth with special health care needs receive family-provided care at home.[17] Family caregivers tend to have financial challenges due to reduced or lost employment, and forego an

[13] 42 C.F.R., §483.40.
[14] *Id*.
[15] Rule 59A-8.0095(5), F.A.C.
[16] S. 464.0156, F.S.

estimated $17.6 billion in earnings per year.[18] Family caregivers of children and youth with special health care needs also tend to develop health issues of their own from the enduring physical and mental strains imposed on the them in caring for their children.[19] Family caregivers report a need for information related to managing stress, finding time for oneself, and balancing work and family responsibilities, but what they report to need the most are policies that offer financial support for the caregiving they provide.[20]

States can use Medicaid funds to pay family caregivers of children and youth with special health care needs for the assistance they provide with activities of daily living or instrumental activities of daily living through state plan options and federal Medicaid waiver authorities that allow for participant-directed (also referred to as self-directed) services. Through these options, Medicaid enrollees or their representatives have "employer authority" and are able to choose who provides their Medicaid-funded services, which may include a family caregiver. Florida already allows this under the CDC+ program for children with developmental disabilities and under the Participant Direction Option program for adult LTC recipients.

States can also use Medicaid funds to pay family caregivers to provide certain medical assistance tasks such as administering medications. When provided in the home, these services are considered home health services, which are federally defined to include nursing services, medical supplies and equipment, and home health aide services, physical and occupational therapy, speech pathology and audiology services provided by an HHA.[21] These services may be covered by a state's mandatory Medicaid State Plan Home Health benefit or by the Early, Periodic, Screening, Diagnosis and Treatment (EPSDT) benefit.[22]

A state's Medicaid State Plan Home Health benefit can also be used to reimburse family caregivers of children with special needs for skilled nursing, home health aide, and other therapeutic services. However, according to a recent study on state approaches to reimbursing family caregivers of children with special needs, these services require the provider to meet certain professional qualifications and, often, to be employed by a HHA, both of which may pose barriers for family caregivers.[23] Additionally, few states allow home health state plan benefits to be participant-directed, as a result, children or their legal representatives may not have the employer authority to hire their family caregiver to provide services.[24] Instead, states can modify provider qualifications to reduce education and training barriers for appropriate services, and develop policies that are designed to support family caregivers in gaining the necessary credentials to provide reimbursable services for family caregivers. Three states have used this method to establish family caregiver programs—Colorado, Arizona, and Missouri.[25]

Family Caregiver Programs in Florida

*Consumer Directed Care Plus Program*

---

[17] Olivia Randi, Eskedar Girmash, and Kate Honsberger, *State Approaches to Reimbursing Family Caregivers of Children and Youth with Special Health Care Needs through Medicaid*, National Academy for State Health Policy (January 15, 2021), available at https://nashp.org/state-approaches-to-reimbursing-family-caregivers-of-children-and-youth-with-special-health-care-needs-through-medicaid/ (last visited April 4, 2023).
[18] John Romley, Aakash Shah, Paul Chung, Marc Elliott, Katherine Vestal, Mark Schuster, *Family-Provided Health Care for Children with Special Health Care Needs. American Academy of Pediatrics* (January 2017).
[19] National Alliance for Caregiving and AARP. *Caregivers of Children: A Focused look at Those Caring for A Child with Special Needs Under the Age of 18*. November 2009, available at https://www.caregiving.org/wp-content/uploads/2020/05/Report_Caregivers_of_Children_11-12-09.pdf (last visited April 4, 2023).
[20] Cara Coleman, *Not Just Along for The Ride: Families Are The Engine That Drives Pediatric Home Health Care*, Health Affairs Blog (April 18, 2019), available at https://www.healthaffairs.org/do/10.1377/hblog20190415.172668/full/ (last visited April 4, 2023).
[21] 42 C.F.R. §440.70.
[22] Through the EPSDT benefit, state Medicaid agencies are required to provide children under age 21 with all Medicaid services that can be covered through federal Medicaid law. *See* Center for Medicaid and CHIP Services, Early and Periodic Screening, Diagnostic, and Treatment, available at https://www.medicaid.gov/medicaid/benefits/early-and-periodic-screening-diagnostic-and-treatment/index.html (last visited April 4, 2023).
[23] *Supra* note 17.
[24] *Id*.
[25] *Id*.

The Agency for Persons with Disabilities is responsible for the operation of the Developmental Disabilities Individual Budgeting (iBudget) Waiver.[26] The purpose of the iBudget Waiver is to provide home and community-based supports and services to eligible recipients with developmental disabilities living at home or in a home-like setting utilizing an individual budgeting approach.

The Consumer Directed Care Plus Program (CDC+), authorized by a Federal 1915(j) Medicaid State Plan Amendment,[27] permits recipients of all ages with a developmental disability to self-direct their own provider for personal care assistance services, which may include a legally liable relative of the recipient.[28] Personal care assistance services include assistance with eating, meal preparation, bathing, dressing, personal hygiene, and activities of daily living, and housekeeping if considered essential to the health, safety, and welfare of the recipient. To be eligible for the CDC+ Program, a recipient must:[29]

- Be enrolled in the iBudget Waiver;
- Reside in their own home or the home of a relative; and
- Not have been previously disenrolled from the CDC+ Program due to their mismanagement or inappropriate use of Medicaid funds.

The relative of a recipient is not required to be licensed to provide personal care assistance services, but they must be at least 16 years old and have at least one year of experience working in a medical, psychiatric, nursing or childcare setting or working with individuals with developmental disabilities—routine care provided to a relative who has a developmental disability satisfies this requirement.[30]

*Participant Direction Option*

The participant direction option (PDO) is a service delivery model that enables LTC adult beneficiaries to exercise decision-making over allowable services and how those services are delivered, including the ability to hire and fire service providers.[31] Enrollees choosing to participate in the PDO service delivery model actively manage their own health care and are responsible for hiring and managing their direct service worker, who may be a neighbor, family member, or friend.[32]

The LTC plan is responsible for implementing and managing the PDO and must ensure the PDO is available to all enrollees who have one or more of the following services on their plan of care and who live in their own home or family home: adult companion care, attendant nursing care, homemaker services, intermittent and skilled nursing, or personal care. Direct service workers who provide attendant care or intermittent and skilled nursing services must be a registered nurse or a licensed practical nurse. Direct service workers providing adult companion, homemaker, or personal care services are not required to be licensed or certified.

The PDO service delivery model is not available to children.

No family caregiver option is available for medically fragile children.

**Direct Care Workforce Survey**

[26] S. 393.0662, F.S.
[27] Federal 1915(j) waivers authorize state Medicaid programs to allow recipients to self-direct personal assistance services and hire legally liable relatives to provide such services. *See* https://www.medicaid.gov/medicaid/home-community-based-services/home-community-based-services-authorities/self-directed-personal-assistant-services-1915-j/index.html (last visited April 4, 2023).
[28] Florida Medicaid Consumer-Directed Care Plus Program Coverage, Limitations, and Reimbursement Handbook (October 2015) available at https://apd.myflorida.com/cdcplus/docs/CDC_Plus_Program_Handbook_2015.pdf (last visited April 4, 2023).
[29] *Id.*
[30] *Id.*
[31] Agency for Health Care Administration, Participant Direction Option Manual, available at https://ahca.myflorida.com/medicaid/statewide-medicaid-managed-care/long-term-care-plans2 (last visited April 4, 2023).
[32] *Id.* Direct service worker means the employee(s), directly-hired by a participant, providing PDO services as authorized on the care plan. The direct service worker(s) may be any qualified individual chosen by the participant, including a neighbor, family member, or friend. The direct service worker(s) is paid by the Managed Care Plan based on a set rate.

Current law requires nursing homes, assisted living facilities, HHAs, hospices, and homemaker and companion services providers to complete a survey on their direct care workforce upon licensure renewal. The survey includes the following information:

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

AHCA is required to review and analyze the data received at least monthly and publish the results of the analysis on its website.

## Effect of the Bill

### Home Health Aides for Medically Fragile Children

The bill creates the Home Health Aide for Medically Fragile Children Program in response to the national health care provider shortage and its impact on medically fragile children and their family caregivers to provide an opportunity for family caregivers to receive training and gainful employment.

The bill allows a family caregiver to be reimbursed by Medicaid, as a home health aide for medically fragile children (HHAMFC). To qualify, the care must be provided to a relative who is 21 years old or younger with an underlying physical, mental, or cognitive impairment that prevents him or her from safely living independently. The relative must also be eligible to receive skilled care or respite care services under the Medicaid program.

Authorized Tasks

The bill authorizes a HHAMFC to perform certain tasks if delegated by a registered nurse, including medication administration[33] and tasks associated with:

- Activities of daily living, including bathing, dressing, eating, maintaining continence, toileting, and transferring;
- Maintaining mobility;
- Nutrition and hydration;
- Assistive devices;
- Safety and cleanliness;
- Data gathering;
- Reporting abnormal signs and symptoms;
- Postmortem care;
- End-of-life care;
- Patient socialization and reality orientation;
- Cardiopulmonary resuscitation and emergency care;
- Residents' or patients' rights;
- Documentation of services performed;
- Infection control;
- Safety and emergency procedures;
- Hygiene and grooming;
- Skin care and pressure sore prevention;
- Wound care;

[33] Including oral, transdermal, ophthalmic, otic, rectal, inhaled, enteral, or topical prescription medications.

- Portable oxygen use and safety and other respiratory procedures;
- Tracheostomy care;
- Enteral care and therapy; and
- Peripheral intravenous assistive activities and alternative feeding methods.

The bill requires services provided by a HHAMFC to result in a reduction in the number of private duty nursing service hours provided to an eligible recipient. Further, the bill prohibits services provided by a HHAMFC from duplicating private duty nursing services provided to an eligible recipient.

Eligibility Requirements

The bill authorizes an HHA to employ a HHAMFC who meets certain eligibility requirements. Specifically, the individual must:

- Be at least 18 years old;
- Be a family caregiver of an eligible relative;
- Demonstrate a minimum ability to read and write;
- Successfully pass background screening requirements; and
- Complete an approved training program or have graduated from an accredited prelicensure nursing education program and are waiting to take the state licensing exam.

Training Requirements

The bill requires AHCA, in consultation with the Board of Nursing, to approve HHAMFC training programs developed by HHAs. A training program must consist of at least 85 hours and include at least 40 hours of theoretical instruction in nursing, 20 hours of skills training on basic nursing, 16 hours of clinical training under the direct supervision of a licensed registered nurse, and an unspecified minimum number of hours of training on HIV/AIDS infections. Additionally, a HHAMFC must also obtain and maintain a current certificate in cardiopulmonary resuscitation (CPR) and complete 12 hours of annual in-service training each 12-month period. The training on HIV/AIDS and CPR may be counted towards the 12 hours of in-service training.

The 40 hours of theoretical instruction in nursing must include the following topics:

- Person-centered care;
- Communication and interpersonal skills;
- Infection control;
- Safety and emergency procedures;
- Assistance with activities of daily living;
- 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.

The 20 hours of skills training must consist of basic nursing skills training in the following areas:

- Hygiene, grooming, and toileting;
- 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 safety and other respiratory procedures;
- Tracheostomy care;
- Enteral care and therapy;

- Peripheral intravenous assistive activities and alternative feeding methods; and
- Urinary catheterization and ostomy care.

The bill requires a HHAMFC to complete the six hours of training required by current law for home health aides prior to administering medication upon delegation by a registered nurse.

The bill requires training to be offered in various formats, and any interactive instruction must be provided during various times of the day. The bill requires HHAs to provide the training for free to a parent, guardian, or family member of a medically fragile child. If a HHAMFC allows 24 months to pass without providing any personal care services to an eligible relative, the family caregiver must retake all required training.

Liability and Confidentiality

The bill provides civil liability protections for an HHA that terminates or denies employment to a home health aide for medically fragile children for failure to comply with HHAMFC regulations or whose name appears on a criminal screening report of the Department of Law Enforcement.

The bill prohibits an HHA from using the criminal records or juvenile records of a vulnerable adult for any purpose other than determining if the individual meets the requirements of the Home Health Aide for Medically Fragile Children Program.

Annual Report

Beginning January 1, 2025, the bill requires AHCA to conduct annual assessments of the Home Health Aide for Medically Fragile Children Program and report their findings by January 1 of each year to the Governor, the President of the Senate and the Speaker of the House of Representatives. The bill requires the report to include an assessment of caregiver satisfaction with the program, identify additional support that may be needed by home health aides for medically fragile children, and assess the rate and extent of the hospitalization of children receiving home health services from a HHAMFC compared to those receiving traditional home health services.

Direct Care Workforce Survey

Current law requires nursing homes, HHAs, hospices, and homemaker and companion services providers to complete a workforce survey upon each biennial licensure renewal. The bill requires HHAs to include data on home health aides for medically fragile children in their direct care workforce surveys.

Implementation

The bill authorizes AHCA to modify any state Medicaid plans and implement any federal waivers necessary to implement the Home Health Aide for Medically Fragile Children Program.

The bill requires AHCA to establish a fee schedule for HHAs to pay home health aides for medically fragile children at a rate of $25 per hour for up to 8 hours per day.

The bill becomes effective upon becoming a law.

B. SECTION DIRECTORY:

**Section 1:** Amends s. 400.462, F.S., relating to definitions.
**Section 2:** Amends s. 400.464, F.S., relating to home health agencies to be licensed; expiration of license, exemptions; unlawful acts; penalties.
**Section 3:** Amends s. 400.476, F.S., relating to staffing requirements, notifications; limitations on staffing services.
**Section 4:** Creates s. 400.4765, F.S., relating to home health aide for medically fragile children program.
**Section 5:** Amends s. 400.489, F.S., relating to administration of medication by a home health aide; staff training requirements.
**Section 6:** Amends s. 400.490, F.S., relating to nurse-delegated tasks.
**Section 7:** Creates s. 400.54, F.S., relating to annual assessment of the home health aide for medically fragile children program.
**Section 8:** Amends s. 408.822, F.S., relating to direct care workforce survey.
**Section 9:** Amends s. 464.0156, F.S., relating to delegation of duties.
**Section 10:** Provides an appropriation to implement the bill.
**Section 11:** Provides the bill will take effect upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill provides $353,589 in recurring funds and $118,728 in nonrecurring funds from the Health Care Trust Fund, four Full-Time Equivalent (FTE) positions and 186,483 of associated salary rate, for the purpose of implementing provisions in the bill.

   Additionally, AHCA expects the bill to have a negative fiscal impact on the Medicaid program, but the extent of the impact is indeterminate. The bill requires AHCA to adopt a minimum rate of $25 for a maximum of 8 hours per day for home health services provided by home health aides for medically fragile children. According to AHCA, "current Medicaid fee schedules for applicable services as specified in AHCA's promulgated fee schedules are $18.04 per visit for skilled nursing services and $17.32 per hour for a home health service provider.[34] The exact extent of the fiscal impact is indeterminate because AHCA does not have data identifying those Medicaid recipients with a family caregiver that would like to or currently meet the qualifications specified in the bill. The bill does not address a limit on the number of hours per year, but rather sets a maximum of eight

[34] Agency for Health Care Administration, Agency Analysis of 2023 HB 391 (March 1, 2023), on file with the House Healthcare Regulation Subcommittee.

hours per day per provider. This could increase the total number of hours to 2,920. Currently, there are 5,072 recipients that would fall into this population."[35]

AHCA's fiscal analysis is based on the assumption that all recipients who choose to enroll in the Home Health Aides for Medically Fragile Children Program are not currently receiving home health services under the Medicaid program, which may be in error.

The following chart highlights the potential increase in Medicaid spending based on the percent of participants eligible for this option as outlined in bill:[36]

| Participation % | Additional Cost at 2080 hours or 40 hours per week. | Additional Cost at Number of hours Claimed in SFY21-22 2219 hours | Additional Cost at 2920 hours or 8 hours per day/ 365 Days per year |
|---|---|---|---|
| 100% | $ 104,395,766 | $ 122,039,870 | $ 210,907,766 |
| 75% | $ 78,296,825 | $ 91,529,903 | $ 158,180,825 |
| 50% | $ 52,197,883 | $ 61,019,935 | $ 105,453,883 |
| 25% | $ 26,098,942 | $ 30,509,968 | $ 52,726,942 |
| 10% | $ 10,439,577 | $ 12,203,987 | $ 21,090,777 |
| 5% | $ 5,219,788 | $ 6,101,994 | $ 10,545,388 |
| 1% | $ 1,043,958 | $ 1,220,399 | $ 2,109,078 |

The appropriation in the bill funds the administrative costs of the new program, but does not address the indeterminate utilization costs estimated in the table above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Future expenditures related to the HHAMFC Program would be considered by the Social Services Estimating Conference in the Medicaid Expenditures forecast.

## 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.

[35] *Id.*
[36] *Id.*

B. RULE-MAKING AUTHORITY:

The bill provides sufficient rule-making authority to AHCA to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 28, 2023, the Healthcare Regulation Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Required services provided by a home health aide for medically fragile children to reduce an eligible relative's private duty nursing service hours; and
- Prohibited services provided by a home health aide for medically fragile children from duplicating private duty nursing services.

On April 12, 2023, the Health Care Appropriations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment provided funding authority, positions and associated salary rate, to implement provisions in the bill.

On April 17, 2023, the Health & Human Services Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment authorized a home health aide for medically fragile children to perform additional tasks if delated by a registered nurse, including: those associated with infection control; safety and emergency procedures; hygiene; grooming; skin care and pressure sore prevention; wound care; portable oxygen use and safety and other respiratory procedures; tracheostomy care; enteral care and therapy; and peripheral intravenous assistive activities and alternative feeding methods.

This analysis is drafted to the committee substitute as passed by the Health & Human Services Committee.