

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 Fiscal Policy

BILL: CS/CS/SB 452

INTRODUCER: Fiscal Policy Committee; Appropriations Committee on Health and Human Services; and Senators Harrell, and others

SUBJECT: Home Health Aides for Medically Fragile Children

DATE: April 17, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Brown</u>	<u>HP</u>	<u>Favorable</u>
2.	<u>McKnight</u>	<u>Money</u>	<u>AHS</u>	<u>Fav/CS</u>
3.	<u>Looke</u>	<u>Yeatman</u>	<u>FP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 452 creates the Home Health Aides for Medically Fragile Children program to help ameliorate the impact of the shortage of health care workers on medically fragile children. The bill requires the Agency for Health Care Administration (AHCA), in consultation with the Board of Nursing (BON), to approve any training program created by a Home Health Agency (HHA) that meets the federal standards¹ for a nurse aide training program and which is meant to train family caregivers as home health aides for medically fragile children (aide).

The bill requires that such a program consist of at least 85 hours of training in specified topics and allows a HHA to employ a family caregiver as an aide if he or she has completed the training program and met other specified criteria, including background screening. The bill also requires an aide to complete HIV/AIDS and Cardiopulmonary Resuscitation (CPR) training and requires the employing HHA to ensure that the aide has 12 hours of in-service training every 12 months. The bill grants civil immunity to a HHA that terminates or denies employment to an aide who fails to maintain the requirements of the section or whose name appears on a criminal screening report.

¹ 42 C.F.R. 483.151-483.154 and 484.80

The bill allows the AHCA, in consultation with the BON, to adopt rules to implement the bill and requires the AHCA to assess the program annually and to modify the Medicaid state plan and implement any federal waivers necessary to implement the program.

The bill authorizes four full-time equivalent (FTE) positions with associated salary rate of 186,483, and \$353,589 in recurring funds and \$118,728 in nonrecurring funds from the Health Care Trust Fund in Fiscal Year 2023-2024 to the AHCA to implement provisions of the bill.

The bill has an indeterminate fiscal impact on the Florida Medicaid program. *See* Section V of this analysis.

The bill takes effect upon becoming law.

II. Present Situation:

Home Health Agencies

A “home health agency” (HHA) is an organization that provides home health services.² Home health services comprise health and medical services and supplies furnished to an individual in the individual’s home or place of residence.³

Home health aides⁴ and certified nursing assistants⁵ (CNAs) are unlicensed health care workers employed by a HHA to provide personal care⁶ to patients and assist them with the following activities of daily living:

- Ambulation;
- Bathing;
- Dressing;
- Eating;
- Personal hygiene;
- Toileting;
- Physical transferring;
- Assistance with self-administered medication; and
- Administering medications.⁷

² s. 400.462(12), F.S.

³ s. 400.462(15), F.S., home health services include the following: nursing care; physical, occupational, respiratory, or speech therapy; home health aide services; dietetics and nutrition practice and nutrition counseling; and medical supplies, restricted to drugs and biologics prescribed by a physician.

⁴ s. 400.462(14), F.S., a home health aide is a person who is trained or qualified, as provided by rule, and who provides hands-on personal care, performs simple procedures as an extension of therapy or nursing services, assists in ambulation or exercises, assists in administering medications as permitted in rule and for which the person has received training established by the agency, or performs tasks delegated to him or her under ch. 464, F.S.

⁵ s. 464.201(3), F.S., a CNA is a person who meets the qualifications of part II of ch. 464, F.S., and who is certified by the Board of Nursing as a certified nursing assistant.

⁶ s. 400.462(23), F.S., defines “personal care” as assistance to a patient in the activities of daily living, such as dressing, bathing, eating, or personal hygiene, and assistance in physical transfer, ambulation, and in administering medications as permitted by rule.

⁷ Rule 59A-8.002(3), F.A.C.

Florida's Medicaid Model Waiver

Florida's Model Waiver is an existing waiver designed to delay or prevent institutionalization and allow recipients to maintain stable health while living at home or in their community. The waiver's purpose is to provide medically necessary services to eligible children under 21 years of age who have degenerative spinocerebellar disease and are living at home or in their community or who are medically fragile and have resided in a skilled nursing facility for at least 60 consecutive days prior to entrance on the waiver. For the purposes of the waiver, "Medically Fragile" is defined as an individual who is medically complex and technologically dependent on medical apparatus or procedures to sustain life, or is dependent on a heightened level of medical supervision to sustain life, and without such services is likely to expire without warning.

The Model Waiver provides the following services to eligible recipients:

- Respite care;
- Environmental accessibility adaptations; and
- Transition Case Management.

The Model Waiver has a maximum capacity of 20 recipients and a reserved capacity for 15 children transitioning into the community from a skilled nursing facility.⁸

Private Duty Nursing Services

Currently, federal law allows Medicaid to reimburse for private duty nursing (PDN) services. 42 C.F.R. 440.80 defines PDN services as nursing services for beneficiaries who require more individual and continuous care than is available from a visiting nurse or routinely provided by the nursing staff of the hospital or skilled nursing facility. These services are provided:

- By a registered nurse or a licensed practical nurse;
- Under the direction of the beneficiary's physician; and
- To a beneficiary in one or more of the following locations at the option of the state:
 - His or her own home;
 - A hospital; or
 - A skilled nursing facility

Florida Medicaid allows PDN to be provided to recipients under the age of 21 years who require such services, and PDN can be provided by a HHA, a licensed practical nurse (LPN), or a registered nurse (RN).^{9, 10} If the PDN is provided by a parent or legal guardian of the recipient, Medicaid will reimburse for up to 40 hours per week, per recipient, so long as the parent or guardian has a valid LPN or RN license and is employed by a HHA.¹¹ However, other than those mentioned above, services furnished by relatives as defined in s. 429.02(18), F.S., household

⁸ Application for a §1915(c) Home and Community Based Services Waiver, Florida Agency for Health Care Administration, Jul. 1, 2020, available at https://ahca.myflorida.com/medicaid/hcbs_waivers/docs/Model_Waiver_Document_2020.pdf (last visited Feb. 16, 2023).

⁹ 59G-4.261, F.A.C.

¹⁰ Florida Medicaid, Private Duty Nursing Services Coverage Policy, Agency for Health Care Administration, Nov. 2016 available at https://ahca.myflorida.com/medicaid/review/Specific/59G-4-261_Private_Duty_Nursing_Services_Coverage_Policy.pdf (last visited Feb. 16, 2023).

¹¹ Id.

members, or any person with custodial or legal responsibility for the recipient are specifically not covered under the PDN policy.¹²

Family Caregiver Programs in Other States

Currently, five states have family caregiver programs: Arizona, Colorado, New Hampshire, Pennsylvania, and Indiana.¹³ Although each state has different specific criteria, the criteria are all similar in that the eligible relative must be under 21 years of age, qualify for the state's Medicaid program, and be medically fragile or medically complex. Each state also requires the caregiver to be trained and/or licensed as a CNA or that state's equivalent. Once the caregiver has achieved his or her training or licensure, he or she is required to obtain employment with a HHA and, at that point, is eligible to be compensated by the state's Medicaid program for services they render to their family member.¹⁴

III. Effect of Proposed Changes:

Section 1 creates s. 400.4765, F.S., to establish the Home Health Aides for Medically Fragile Children program. The bill amends s. 400.462, F.S., to define the following terms:

- “Approved Training Program” to mean “a course of training approved by the Agency for Health Care Administration (AHCA), in consultation with the Board of Nursing (BON), under s. 400.4765, F.S., to train family caregivers as home health aides for medically fragile children.”
- “Eligible Relative” to mean “with respect to the home health aide for medically fragile children program under s. 400.4765, F.S., a person 21 years of age or younger who is eligible to receive continuous skilled nursing or skilled nursing respite care services under the Medicaid program and is a relative of a home health aide for medically fragile children.”
- “Family Caregiver” to mean “a person providing or intending to provide significant personal care and assistance to an eligible relative 21 years of age or younger who has an underlying physical or cognitive condition that prevents him or her from safely living independently.”
- “Home Health Aide for Medically Fragile Children” to mean a family caregiver who meets the qualifications specified in s. 400.4765, F.S.; performs tasks delegated to him or her under chapter 464, F.S., while caring for an eligible relative; and provides care and assistance to an eligible relative relating to:
 - Activities of daily living, such as those associated with personal care, maintaining mobility, nutrition and hydration, toileting and elimination, assistive devices, and safety and cleanliness.
 - Data gathering.
 - Reporting abnormal signs and symptoms.
 - Patient socialization and reality orientation.
 - Cardiopulmonary resuscitation and emergency care.
 - Residents’ or patients’ rights.
 - Documentation of services.

¹² Id.

¹³ Team Select Home Care, Program Locations, available at <https://tshc.com/states-where-the-program-is-available/> (last visited Feb. 20, 2023).

¹⁴ Team Select Home Care, Program Locations, available at <https://tshc.com/states-where-the-program-is-available/> (last visited Feb. 20, 2023).³

- End-of-life care.
- Postmortem care.
- Infection control.
- Safety and emergency procedures.
- Hygiene, grooming, and toileting.
- Skin care and pressure sore prevention.
- Nutrition and hydration.
- Wound care.
- Portable oxygen use and safety and other respiratory procedures.
- Tracheotomy care.
- Enteral care and therapy.
- Peripheral intravenous assistive activities and alternative feeding methods.
- Tasks delegated to the family caregiver under ch. 464, F.S.

Section 2 authorizes Home Health Aides for Medically Fragile Children (aides) to perform certain tasks delegated by a registered nurse, including medication administration, and requires licensed Home Health Agencies (HHAs) to ensure that aides providing such services are adequately trained to perform these tasks.

Section 3 requires HHAs to ensure that each aide employed by or under contract with the HHA is adequately trained to perform the tasks of a home health aide in the home setting and prohibits a HHA from requiring an aide to repay or reimburse the HHA for costs associated with the training program established under the bill.

Section 4 requires the AHCA, in consultation with the BON, to approve a training program created by a HHA that meets federal requirements¹⁵ and that will train family caregivers as aides to provide trained nursing services to eligible relatives. The training program must require a family caregiver to complete 85 hours of training, including, but not limited to:

- A minimum of 40 hours of theoretical instruction, offered in various formats and times of day, in nursing, including, but not limited to, instruction on all of the following:
 - 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.
 - Relevant legal and ethical issues.
- A minimum of 20 hours of skills training on basic nursing skills, including, but not limited to:
 - Hygiene, grooming, and toileting.
 - Skin care and pressure sore prevention.
 - Nutrition and hydration.

¹⁵ 42 C.F.R. 483.151-483.154 and 484.80

- Measuring vital signs, height, and weight.
- Safe lifting, positioning, and moving of patients.
- Wound care.
- Portable oxygen use and safety and other respiratory procedures.
- Tracheostomy care.
- Enteral care and therapy.
- Peripheral intravenous assistive activities and alternative feeding methods.
- Urinary catheterization and ostomy care.
- At least 16 hours of clinical training under direct supervision of a licensed registered nurse.

The bill exempts family caregivers who have graduated from an accredited nursing school but have not yet taken the state licensure exam from the requirement to take the training.

In addition to the required training, a family caregiver must care for an eligible relative; demonstrate a minimum competency to read and write; pass a background screening pursuant to s. 400.512, F.S., except that the AHCA must waive this requirement if the family caregiver has passed a background screening pursuant to ss. 400.512 or 400.809, F.S., within the previous 90 days and the caregiver's results are not retained in the Care Provider Background Screening Clearinghouse.¹⁶

If a family caregiver allows 24 consecutive months to pass without performing any nursing-related services for an eligible relative, the family caregiver must recomplete the training program prior to serving as an aide.

After becoming an aide, he or she must complete an HIV/AIDS training course and maintain a certificate in cardiopulmonary resuscitation (CPR). Additionally, the HHA employing the aide must ensure that he or she completes 12 hours of in-service training during each 12-month period as a condition of employment. The bill specifies that the HIV/AIDS training may count toward the 12 hours of training and that the HHA must maintain documentation demonstrating compliance with this requirement.

The bill grants civil immunity to a HHA for terminating or denying employment to an aide who fails to maintain the requirements of the bill or whose name appears on a criminal screening report of the Florida Department of Law Enforcement. The bill also grants immunity from a cause of action and monetary liability to any licensed facility or the facility's governing board, medical staff, disciplinary board, agents, investigators, witnesses, employees, or any other person for any action taken in good faith to comply with the section.

The bill specifies that a HHA, or its agent, may not use criminal records or juvenile records relating to vulnerable adults for any purpose other than determining if the person meets the requirements of the section and that the HHA must maintain the confidentiality of any such records or information it obtains that is confidential and exempt from public records laws.

¹⁶ Created pursuant to s. 435.12, F.S.

The bill also specifies that provisions of services by an aide reduces the eligible relative's PDN service hours covered by Medicaid and may not be concurrently provided with any PDN services.

Sections 5 and 6 amend several sections of law to include aides along with certified nursing assistants and home health aides in allowing tasks to be delegated to the aide, including the administration of medication, and requiring that a HHA ensure that any tasks delegated to the aide meet state law requirements and that the aide is properly trained.

Section 7 requires the AHCA to conduct an annual assessment of the program. The assessment must include caregiver satisfaction with the program, identify additional supports that may be needed by aides, and assess the rate and extent of hospitalization of children who are attended by aides compared to those in home health services without such an aide. The AHCA must report its findings to the Governor and the Legislature by January 1 of each year beginning in 2025.

Section 8 requires the AHCA to modify the Medicaid state plan and implement any federal waivers necessary to implement the program. The AHCA is required to establish a Medicaid fee schedule for HHAs employing aides at \$25 per hour with no more than 8 hours per day.

Sections 9 and 10 make several cross-reference changes to conform to the changes made in the bill.

Section 11 authorizes four full-time equivalent (FTE) positions with associated salary rate of 186,483, and \$353,589 in recurring funds and \$118,728 in nonrecurring funds from the Health Care Trust Fund in Fiscal Year 2023-2024 to the AHCA to implement provisions of the bill.

Section 12 provides that the act is effective upon becoming law.

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.

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

None.

B. Private Sector Impact:

CS/CS/SB 452 may have an indeterminate, positive fiscal impact on family caregivers who are trained as Home Health Aides for Medically Fragile Children (aides) and reimbursed for time spent caring for a family member under the bill.

The bill prohibits a Home Health Agency (HHA) from requiring an aide to repay or reimburse the HHA for costs associated with the training program. Therefore, any costs associated with providing the required training under the bill will be absorbed by a HHA.

The cost for a level 2 background screening with five years of fingerprint retention within the Care Provider Background Screening Clearinghouse is \$61.25.¹⁷ The number of individuals impacted by this requirement is indeterminate.

The bill specifies that services provided by aides reduce the private duty nursing service hours covered by Medicaid for that patient and may not be provided concurrently with private duty nursing services. Private duty nursing services may experience a reduction in reimbursement for time spent caring for a family member under the bill, contingent on the level of care directed by the patient's physician and the level of participation by family caregivers trained as aides.

C. Government Sector Impact:¹⁸

The bill will have an indeterminate fiscal impact on the Florida Medicaid program in order to reimburse family caregivers who become trained as aides, and will depend on the level of care directed by the patient's physician and the number of eligible family caregivers who qualify as an aide and provide services.

The bill specifies that services provided by aides reduce the private duty nursing service hours covered by Medicaid for that patient and may not be provided concurrently with private duty nursing services. The Florida Medicaid program may realize an indeterminate, positive fiscal impact if aides are able to provide care that would otherwise have been provided through private duty nursing services. However, this is contingent on the level of care directed by the patient's physician and the level of participation by family caregivers trained as aides.

¹⁷ Florida Department of Law Enforcement, SB 452 Bill Analysis (Feb. 17, 2023) (on file with the Senate Appropriations Committee on Health and Human Services).

¹⁸ Agency for Health Care Administration, SB 452 Bill Analysis (Mar. 1, 2023) (on file with the Senate Appropriations Committee on Health and Human Services).

The bill requires the Agency for Health Care Administration (AHCA) to establish a Medicaid fee schedule for HHAs employing aides at \$25 per hour with no more than eight hours per day per provider. Current Medicaid fee schedules for applicable services as specified in the AHCA’s promulgated fee schedules are \$18.04 per visit for skilled nursing services and \$17.32 per hour for personal care services, which is approximately 44.34 percent less than the proposed reimbursement rate. As these services are provided on a “per visit” basis and not hourly, it is difficult to predict the exact impact of establishing a new rate methodology for services provided by aides. Further, although Florida Medicaid establishes fee schedules for home health services provided through the Fee-For-Service delivery system, health plans participating in Florida’s Statewide Medicaid Manage Care Program do not have to pay the AHCA established rates and may negotiate mutually agreed-upon rates with HHA providers, unless specified in Federal and/or State law, or in their contract with the AHCA.

The bill does not address a limit on the number of hours per year, but rather sets a maximum of eight 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. The table below highlights the potential cost increase to the Florida Medicaid program based on a projected rate of participation for eligible relatives as outlined in the bill:

Florida Medicaid Program Potential Fiscal Impact			
Rate of Participation	2,080 hours or 40 hours per week	2,219 hours (number of hours claimed in FY21-22)	2,920 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 AHCA has also identified the following fiscal impacts in order to meet the requirements outlined in the bill:

Training Program

- One (1) full-time equivalent (FTE) Senior Management Analyst Supervisor – Selected Exempt Service (SES) to implement and oversee reviews of training program submissions, manage stakeholder input, and develop rules.
- Two (2) FTE Registered Nurse Consultants to review training programs for compliance with state and federal requirements and manage provider inquiries.

Annual Assessment

- An estimated cost of \$150,000 in contract services to develop a data collection tool or modify an existing AHCA system to collect the information and an additional recurring \$50,000 for system maintenance and enhancement.
- One (1) FTE Medical Health Care Program Analyst to analyze the results of the data.

Direct Care Workforce Survey

- The bill amends the direct care workforce survey in section 408.822, F.S., to include aides and requires additional reporting requirements for these caregivers. The AHCA is already working on implementation of the survey and will leverage existing resources to address any changes needed.

Further, changes in the bill would require the AHCA to update rules, as well as the Florida Medicaid Management Information System (FLMMIS). The AHCA may also need to update the Medicaid state plan and/or its waivers to sure the State has proper federal authority to allow Medicaid reimbursement for family caregivers. These actions are part of the Florida Medicaid program's routine business practices and can be accomplished using existing resources.

The AHCA estimates that implementation of CS/CS/SB 452 will result in non-recurring expenditures of \$ 472,317 in year 1, and recurring expenditures of \$353,589 in years 2 and 3. The bill authorizes four full-time equivalent (FTE) positions with associated salary rate of 186,483, and \$353,589 in recurring funds and \$118,728 in nonrecurring funds from the Health Care Trust Fund in Fiscal Year 2023-2024 to the AHCA to implement provisions of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 400.462, 400.464, 400.476, 400.489, 400.490, 768.38, and 768.381.

This bill creates the following sections of the Florida Statutes: 400.4765 and 400.54.

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 Fiscal Policy on April 13, 2023:

The committee substitute:

- Amends the definition of “home health aide for medically fragile children” to add specified services to the list of services that an aide may perform in order to match with the services that an aide is required to be trained to provide under the bill.
- Specifies that provisions of services by an aide reduces the eligible relative’s PDN service hours covered by Medicaid and may not be concurrently provided with any PDN services.

CS by Appropriations Committee on Health and Human Services on March 8, 2023:

The committee substitute:

- Makes a technical correction to the statutory cross-reference for background screenings.
- Authorizes positions and an appropriation.

B. Amendments:

None.