

**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.)

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Prepared By: The Professional Staff of the Committee on Health Policy

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BILL: SB 452

INTRODUCER: Senator Harrell

SUBJECT: Home Health Aides for Medically Fragile Children

DATE: February 17, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Brown	HP	<b>Pre-meeting</b>
2.			AHS	
3.			FP	

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**I. Summary:**

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 standards<sup>1</sup> 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 being background screened. 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.

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 provisions of the bill are effective upon becoming law.

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<sup>1</sup> 42 C.F.R. 483.151-483.154 and 484.80

## II. Present Situation:

### Home Health Agencies

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

Home health aides<sup>4</sup> and certified nursing assistants<sup>5</sup> (CNAs) are unlicensed health care workers employed by a home health agency to provide personal care<sup>6</sup> 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.<sup>7</sup>

### 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:

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<sup>2</sup> s. 400.462(12), F.S.

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> Rule 59A-8.002(3), F.A.C.

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

The Model Waiver has a maximum capacity of twenty recipients and a reserved capacity for fifteen children transitioning into the community from a skilled nursing facility.<sup>8</sup>

### **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).<sup>9, 10</sup> 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.<sup>11</sup> However, other than those mentioned above, services furnished by relatives as defined in s. 429.02(18), F.S., household members, or any person with custodial or legal responsibility for the recipient are specifically not covered under the PDN policy.<sup>12</sup>

### **Family Caregiver Programs in Other States**

Currently, five states have family caregiver programs: Arizona, Colorado, New Hampshire, Pennsylvania, and Indiana.<sup>13</sup> 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 an HHA and, at

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<sup>8</sup> Application for a §1915(c) Home and Community Based Services Waiver, Florida AHCA, Jul 1, 2020, available at [https://ahca.myflorida.com/medicaid/hcbs\\_waivers/docs/Model\\_Waiver\\_Document\\_2020.pdf](https://ahca.myflorida.com/medicaid/hcbs_waivers/docs/Model_Waiver_Document_2020.pdf) (last visited Feb. 16, 2023).

<sup>9</sup> 59G-4.261, F.A.C.

<sup>10</sup> Florida Medicaid, Private Duty Nursing Services Coverage Policy, AHCA, Nov. 2016 available at [https://ahca.myflorida.com/medicaid/review/Specific/59G-4-261\\_Private\\_Duty\\_Nursing\\_Services\\_Coverage\\_Policy.pdf](https://ahca.myflorida.com/medicaid/review/Specific/59G-4-261_Private_Duty_Nursing_Services_Coverage_Policy.pdf) (last visited Feb. 16, 2023).

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Team Select Home Care, Program Locations, available at <https://tshc.com/states-where-the-program-is-available/> (last visited Feb. 23, 2023).

that point, is eligible to be compensated by the state's Medicaid program for services they render to their family member.<sup>14</sup>

### III. Effect of Proposed Changes:

SB 452 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 AHCA, in consultation with the 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.
  - End-of-life care.
  - Postmortem care.”

The bill requires the AHCA, in consultation with the BON, to approve a training program created by a HHA that meets federal requirements<sup>15</sup> and that will train family caregivers as aides to provide trained nursing services to eligible relatives. The 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.

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<sup>14</sup> Supra n. 13

<sup>15</sup> Supra n. 1

- 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.
  - 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 prohibits an HHA from requiring an aide to repay or reimburse the HHA for costs associated with the training program and 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. 400.215, F.S., except that the AHCA must waive this requirement if the family caregiver has passed a background screening pursuant to ss. 400.215 or 400.809, F.S., within the previous 90 days and the caregiver's results are not retained in the clearinghouse.<sup>16</sup>

After becoming an aide, he or she must complete an HIV/AIDS training course and maintain a certificate in 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.

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.

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

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<sup>16</sup> Created pursuant to s. 435.12, F.S.

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 also 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.

The bill 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.

The bill also 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.

The bill amends several sections of law to include home health aides for medically fragile children 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 an HHA ensure that any tasks delegated to the aide meet state law requirements and that the aide is properly trained.

The bill makes several cross-reference changes to conform to the changes made in the bill.

The bill 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:**

SB 452 may have an indeterminate positive fiscal impact on family caregivers who are trained as aides able to be reimbursed for their time caring for their family member under the bill.

**C. Government Sector Impact:**

SB 452 may have an indeterminate negative fiscal impact on the AHCA due to additional Medicaid expenditures that will be required to be spent to reimburse family caregivers who become trained as aides. As of this writing, the AHCA has not provided an estimate of the bill's fiscal impact.

**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 Changes:**

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

None.

**B. Amendments:**

None.