

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 1798

INTRODUCER: Senator Trumbull

SUBJECT: Home Health Care Services

DATE: February 5, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Morgan	Brown	HP	Pre-meeting
2.			AHS	
3.			FP	

I. Summary:

SB 1798 amends s. 400.487, F.S., authorizing contract staff to provide specified visits for a home health agency (HHA) under certain circumstances.

The bill amends s. 408.032, F.S., revising the definition of “health care facility” to include HHAs.

The bill also amends s. 409.905, F.S., authorizing an advanced practice registered nurse (APRN) to order or write prescriptions for Medicaid home health services.

The bill provides an effective date of July 1, 2024.

II. Present Situation:

Home Health Services

Home health services are health and medical services and supplies furnished to an individual in the home or place of residence. The types of services include:¹

- Nursing care;
- Physical, occupational, respiratory, or speech therapy;
- Home health aide services;²
- Dietetics and nutrition practice and counseling; and
- Medical supplies, restricted to drugs and biologicals prescribed by a physician.

¹ Section 400.462(15), F.S.

² Under 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 for Health Care Administration, or performs tasks delegated to him or her under ch. 464, F.S.

Home Health Agencies

A home health agency (HHA) is a person³ that provides one or more home health services.⁴

HHA personnel are direct employees⁵ or persons under contract with an HHA that enter the home or place of residence of patients at any time in the course of their employment or contract.⁶

Federal Conditions of Participation

An HHA must organize, manage, and administer its resources to attain and maintain the highest practicable functional capacity, including providing optimal care to achieve the goals and outcomes identified in the patient's plan of care, for each patient's medical, nursing, and rehabilitative needs.⁷

An HHA must assure that administrative and supervisory functions are not delegated to another agency or organization and that all services not furnished directly are monitored and controlled. An HHA must set forth, in writing, its organizational structure, including lines of authority and services furnished.⁸

An HHA that accepts the initial referral of a patient⁹ is responsible for patient care and must conduct and provide, either directly or under arrangements, all services rendered to patients.¹⁰

An HHA must provide at least one home health service directly but may provide the second service and additional services under arrangement with another agency or organization.¹¹

Florida Scope of Services

When nursing services are ordered for a patient, an HHA is required to provide case management by a licensed registered nurse directly employed by the HHA.¹² This includes the initial admission visit, all service evaluation visits, and the discharge visit.¹³

In certain situations where patients require other home health services outside of nursing, case management can be provided by specific direct employees of an HHA or a contractor.¹⁴

³ Section 1.01(3), F.S. The word "person" includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

⁴ Section 400.462(12), F.S.

⁵ Section 400.462(9), F.S. "Direct employee" means an employee for whom one of the following entities pays withholding taxes: a home health agency; a management company that has a contract to manage the home health agency on a day-to-day basis; or an employee leasing company that has a contract with the home health agency to handle the payroll and payroll taxes for the home health agency.

⁶ Section 400.462(13), F.S.

⁷ See 42 CFR 484.105

⁸ *Id.*

⁹ See 42 CFR 484.2

¹⁰ See 42 CFR 484.105(e)(3)

¹¹ See 42 CFR 484.105(f)(1)

¹² Fla. Admin. Code R. 59A-8.008.

¹³ Section 400.487(5), F.S.

¹⁴ *Supra* note 12.

However, an HHA's application for licensure must state explicitly what services will be provided directly by employees of the HHA or by contracted personnel,¹⁵ as the admitting HHA is ultimately responsible for all care provided through its employees or contract staff.¹⁶

An HHA is required to provide at least one service directly to patients.¹⁷

Certificate of Need Program

According to the Florida Health Facility and Services Development Act,¹⁸ a health care facility is a skilled nursing facility, hospice, or intermediate care facility for the developmentally disabled that does not rely solely on spiritual means through prayer for healing.¹⁹ These facilities must comply with a regulatory process known as Certificate of Need (CON) to obtain state approval before offering certain new or expanded services. Currently, the CON program does not regulate outpatient services, home health services, purchases of major medical equipment, assisted living facilities, or hospitals.²⁰

The Florida Medicaid Program

The Medicaid program is a voluntary, joint federal-state program that finances health coverage for individuals, including eligible low-income adults, children, pregnant women, elderly adults and persons with disabilities.²¹ The Centers for Medicare & Medicaid Services within the U.S. Department of Health and Human Services is responsible for administering the Medicaid program at the federal level. Florida Medicaid is the health care safety net for low-income Floridians. Florida's program is administered by the Agency for Health Care Administration (AHCA) and financed through state and federal funds.²²

Medicaid Home Health Care Services

States that elect to participate in the Medicaid program agree to cover a host of mandatory Medicaid services in accordance with Title XIX of the Social Security Act. As the single-state agency responsible for the administration of Florida's Medicaid program, the AHCA is required to provide reimbursement for these services, including home health care, when furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were rendered. Medicaid services are only provided as medically necessary.²³

Under the home health care services benefit, the AHCA reimburses for nursing and home health aide services, supplies, appliances, and durable medical equipment necessary to assist a recipient who is living at home. The AHCA requires prior authorization to determine the medical

¹⁵ *Id.*

¹⁶ *Supra* note 13.

¹⁷ *Supra* note 12.

¹⁸ Section 408.031, F.S.

¹⁹ Section 408.032(8), F.S.

²⁰ Agency for Health Care Administration, *Certificate of Need (CON) Program Overview*, available at <https://ahca.myflorida.com/health-care-policy-and-oversight/bureau-of-health-facility-regulation/certificate-of-need-and-commercial-managed-care-unit/certificate-of-need-con-program-overview> (last visited Feb. 3, 2024).

²¹ Medicaid.gov, Medicaid, available at <https://www.medicaid.gov/medicaid/index.html> (last visited Feb. 3, 2024).

²² Section 20.42, F.S.

²³ Section 409.905, F.S.

necessity for these services. An HHA must submit the recipient's plan of care and documentation that support the diagnosis to the AHCA when requesting prior authorization.²⁴

The AHCA cannot pay for home health services unless the services are medically necessary and:²⁵

- The services are ordered by a physician.
- The written prescription for the services is signed and dated by the recipient's physician before the development of a plan of care and any request requiring prior authorization.
- Outside of any exclusions, the physician ordering the services is not employed, under contract with, or otherwise affiliated with the HHA rendering the services.
- The physician ordering the services has examined the recipient within the 30 days preceding the initial request for the services and biannually thereafter.
- The written prescription for the services includes the recipient's acute or chronic medical condition or diagnosis, the home health service required, and, for skilled nursing services, the frequency and duration of the services.
- The national provider identifier, Medicaid identification number, or medical practitioner license number of the physician ordering the services is listed on the written prescription for the services, the claim for home health reimbursement, and the prior authorization request.

The Coronavirus Aid, Relief, and Economic Security Act

The federal Coronavirus Aid, Relief, and Economic Security (CARES) Act provided fast and direct economic assistance for American workers, families, small businesses, and industries through the implementation of a variety of programs²⁶ to address issues related to the onset of the COVID-19 pandemic. The CARES Act was passed by Congress on March 25, 2020, and signed into law on March 27, 2020.²⁷

Improving Care Planning for Medicare and Medicaid Home Health Services

Prior to the CARES Act, federal law only allowed a physician to order home health services for Medicare and Medicaid recipients.²⁸ Section 3708 of the CARES Act²⁹ expanded the allowable ordering provider type to include a nurse practitioner, a clinical nurse specialist, or a physician assistant.³⁰

²⁴ Section 409.905(4), F.S.

²⁵ *Id.*

²⁶ Centers for Medicare & Medicaid Services, *Home Health Agencies: CMS Flexibilities to Fight COVID-19*, available at <https://www.cms.gov/files/document/home-health-agencies-cms-flexibilities-fight-covid-19.pdf> (last visited Feb. 3, 2024).

²⁷ U.S. Department of the Treasury, *About the CARES Act and the Consolidated Appropriations Act*, available at <https://home.treasury.gov/policy-issues/coronavirus/about-the-cares-act> (last visited Feb. 3, 2024).

²⁸ Congress.gov, *H.R.748 – CARES Act, Summary*, available at <https://www.congress.gov/bill/116th-congress/house-bill/748> (last visited Feb. 3, 2024).

²⁹ Kaiser Family Foundation, *The Coronavirus Aid, Relief, and Economic Security Act: Summary of Key Health Provisions*, available at <https://www.kff.org/coronavirus-covid-19/issue-brief/the-coronavirus-aid-relief-and-economic-security-act-summary-of-key-health-provisions/> (last visited Feb. 3, 2024).

³⁰ Congress.gov, *H.R.748 – CARES Act, Text*, available at <https://www.congress.gov/bill/116th-congress/house-bill/748/text> (last visited Feb. 3, 2024).

III. Effect of Proposed Changes:

Section 1 amends s. 400.487, F.S., to allow contract staff to provide the initial admission visit, all service evaluation visits, and the discharge visit for an HHA to which a patient has been admitted for nursing services.

Section 2 amends s. 408.032, F.S., to revise the definition of “health care facility” to include a HHA.

Section 3 amends s. 409.905, F.S., to authorize an APRN to order or write prescriptions for Medicaid home health services. The APRN ordering the services may not be employed, under contract with, or otherwise affiliated with the HHA rendering the services.³¹

In order for the AHCA to reimburse when an APRN orders or writes prescriptions for HHA services, the bill also requires:

- The examination of the recipient by the APRN within the 30 days preceding the initial request for the services and biannually thereafter, which are the same current-law requirements for physicians.
- The national provider identifier, Medicaid identification number, or medical practitioner license number of the APRN must be listed on the written prescription, the claim for reimbursement, and the prior authorization request, which is also required of physicians under current law.

Section 4 provides an effective date of July 1, 2024.

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.

³¹ Section 409.905(4)(c)3., F.S. However, this subparagraph does not apply to an HHA affiliated with a retirement community, of which the parent corporation or a related legal entity owns a rural health clinic certified under 42 CFR part 491, subpart A, ss. 1-11, a nursing home licensed under part II of ch. 400, F.S., or an apartment or single-family home for independent living. For purposes of this subparagraph, the AHCA may, on a case-by-case basis, provide an exception for medically fragile children who are younger than 21 years of age.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill's addition of HHAs to the definition of a "health care facility" under the Florida Health Facility and Services Development Act may require the AHCA to incorporate HHAs in the CON program. This regulatory process may delay or reject the launch of new business plans, models, and HHAs.

C. Government Sector Impact:

SB 1798 may have a negative fiscal impact on the AHCA due to the increased workload that could result from applying the CON process to HHAs. CON batching cycles would need to be created for HHAs, and since the possible number of projects is indeterminate, it is unclear if existing Health Facility Regulation staff or resources could manage the volume.

VI. Technical Deficiencies:

SB 1798 changes the definition of a "health care facility" to mean a skilled nursing facility, hospice, intermediate care facility, or home health agency for the developmentally disabled. If the intent was to include HHAs in the definition of a health care facility under the Health Facility and Services Development Act, an amendment is needed to revise the language to mean a skilled nursing facility, hospice, intermediate care facility for the developmentally disabled, or a home health agency.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 400.487, 408.032, and 409.905.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
