

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/CS/HB 935 Home Health Care Services

**SPONSOR(S):** Health & Human Services Committee, Select Committee on Health Innovation, Franklin

**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1798

<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR or BUDGET/POLICY CHIEF</b>
1) Select Committee on Health Innovation	11 Y, 0 N, As CS	Guzzo	Calamas
2) Health & Human Services Committee	17 Y, 0 N, As CS	Guzzo	Calamas

**SUMMARY ANALYSIS**

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 and is administered by the AHCA. 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 care services.

Florida Medicaid pays for home health services necessary to assist a recipient living at home, including home health visits, nursing and home health aide services, supplies, appliances, and durable medical equipment. Under current law, Medicaid reimbursement is not available for home health services ordered by any practitioner other than a physician, such as a nurse.

The bill allows Medicaid to pay for home health services ordered by advanced practice registered nurses and physician assistants.

The bill has no fiscal impact on state or local government.

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

# 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 AHCA and financed by federal and state funds.

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.<sup>1</sup> 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 care services.<sup>2</sup>

#### Medicaid Home Health Coverage

Medicaid pays for nursing and home health aide services, supplies, appliances, and durable medical equipment, necessary to assist a recipient living at home.<sup>3</sup> Under current law, AHCA may not pay for these services unless they are medically necessary and:<sup>4</sup>

- 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 before any request requiring prior authorization.
- The physician ordering the services is not employed, under contract with, or otherwise affiliated with the home health agency 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 services 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.

Under current law, reimbursement is not available for home health services ordered by any practitioner other than a physician, such as a nurse.

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<sup>1</sup> Title 42 U.S.C. §§ 1396-1396w-5; Title 42 C.F.R. Part 430-456 (§§ 430.0-456.725) (2016).

<sup>2</sup> *Id.*

<sup>3</sup> S. 409.905(4), F.S.

<sup>4</sup> *Id.*

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.<sup>5</sup>

#### *Home Health Visits – Children and Adults*

Florida Medicaid covers home health visits, which may include any combination of skilled nursing or home health aide services visits, for recipients who have a medical condition or disability that substantially limits their ability to perform activities of daily living or instrumental activities of daily living.<sup>6</sup> The home health visit coverage policy includes up to four hours of intermittent home health visits per day for recipients under the age of 21 and pregnant recipients over the age of 21.<sup>7</sup> The home visit coverage policy also includes up to three hours of intermittent home health visits per day for non-pregnant recipients over the age of 21.

#### *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 of 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.<sup>8</sup>

#### *Private Duty Nursing Services – Children*

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 a HHA provider for PDN services provided by the parent or legal guardian of a recipient.<sup>9</sup> The parent or legal guardian must be employed by an HHA and have a valid license as a registered nurse or licensed practical nurse.

### **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 programs<sup>10</sup> to address issues related to the onset of the COVID-19

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<sup>5</sup> 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](https://ahca.myflorida.com/content/download/7034/file/59G-4-130_Home_Health_Visit_Services_Coverage_Policy.pdf) (last visited January 31, 2023).

<sup>6</sup> 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.

<sup>7</sup> 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](https://ahca.myflorida.com/content/download/7034/file/59G-4-130_Home_Health_Visit_Services_Coverage_Policy.pdf) (last visited January 31, 2024).

<sup>8</sup> 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](https://ahca.myflorida.com/content/download/7035/file/59G-4-215_Personal_Care_Services_Coverage_Policy.pdf) (last visited January 31, 2024).

<sup>9</sup> 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](https://ahca.myflorida.com/content/download/7036/file/59G-4-261_Private_Duty_Nursing_Services_Coverage_Policy.pdf) (last visited January 31, 2024).

<sup>10</sup> 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 January 31, 2024).

pandemic. The CARES Act was passed by Congress on March 25, 2020, and signed into law on March 27, 2020.<sup>11</sup>

Prior to the CARES Act, federal law only allowed a physician to order home health services for Medicare and Medicaid recipients.<sup>12</sup> The CARES Act<sup>13</sup> authorized nurse practitioners, clinical nurse specialists, and physician assistants to order home health services.<sup>14</sup>

### **Effect of the Bill**

The bill allows Medicaid to pay for home health services ordered by an advanced practice registered nurse (APRN) or a physician assistant (PA) who is not employed, under contract with, or otherwise affiliated with the home health agency rendering the services. The APRN or PA must have examined the recipient within the 30 days preceding the request for home health services. When ordering home health services, the APRN or PA must also include their national provider identifier, Medicaid identification number, or medical practitioner license number on the written prescription for the services. The APRN or PA must also include such information on all claims for home health reimbursement, and prior authorization requests.

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

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 409.905, F.S., relating to mandatory Medicaid services.

**Section 2:** Provides an effective date of July 1, 2024.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

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<sup>11</sup> 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 January 31, 2024).

<sup>12</sup> Congress.gov, *H.R.748 – CARES Act, Summary*, available at <https://www.congress.gov/bill/116th-congress/house-bill/748> (last visited January 31, 2024).

<sup>13</sup> 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 January 31, 2024).

<sup>14</sup> Congress.gov, *H.R.748 – CARES Act, Text*, available at <https://www.congress.gov/bill/116th-congress/house-bill/748/text> (last visited January 31, 2024).

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to impact county or municipal government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On February 2, 2024, the Select Committee on Health Innovation adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed a provision that allowed home health agency contracted staff to conduct initial admission visits, service evaluation visits, and discharge visits.
- Removed a provision that subjected home health services to Certificate of Need laws.

On February 8, 2024, the Health & Human Services Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment authorized Medicaid to pay for home health services ordered by a physician assistant.

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