

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 351 Certified Nursing Assistants  
**SPONSOR(S):** Healthcare Regulation Subcommittee, Robinson, W.  
**TIED BILLS:** **IDEN./SIM. BILLS:**

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			
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

Nursing assistants or nursing aides generally work in nursing homes, although some work in assisted living facilities, other community-based settings, or hospitals. The Florida Board of Nursing (Board), within the Department of Health (DOH), certifies nursing assistants who must, among other things, hold a high school diploma or equivalent, complete a 120-hour board-approved training program, and pass a nursing assistant competency exam.

Current law authorizes certified nursing assistants (CNAs) to administer certain types of medication to a patient of a home health agency or to a patient in a county detention facility upon delegation of such task by a registered nurse. Current law does not authorize a registered nurse to delegate to a CNA the task of medication administration to a patient in a nursing home.

HB 351 authorizes CNAs to administer certain medications, upon delegation by a registered nurse, to patients in nursing homes if the CNA meets certain training and experience requirements. The bill creates the designation of qualified medication aide (QMA) for such a CNA. The bill requires a CNA to meet the following requirements to become a QMA:

- Hold a clear and active certification as a nursing assistant from DOH for at least one year;
- Complete a 34-hour training course on medication administration and associated tasks including blood glucose level checks, dialing oxygen flow meters to prescribed settings, and assisting with continuous positive airway pressure devices; and
- Demonstrate clinical competency by successfully completing a supervised clinical practice in medication administration and associated tasks in the facility.

The bill requires a registered nurse to delegate to a QMA the task of administering medication and limits the types of medication a QMA may administer to oral, transdermal, ophthalmic, otic, inhaled, or topical prescription medication. The bill requires a QMA administering medication to be supervised by a registered nurse, licensed practical nurse, or an advanced practice registered nurse. The supervising nurse must be on the premises when a QMA is administering medication.

The bill requires the Board to approve the training course and provides rulemaking authority to the Board to establish standards and procedures for the administration of medication by a CNA in a nursing home.

The bill prohibits a nursing home from counting a QMA's hours worked providing direct care towards the direct care staffing ratios required by current law.

The bill has an indeterminate, insignificant, negative fiscal impact on DOH. The bill has no fiscal impact on local governments.

The bill provides an effective date of July 1, 2023.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h0351a.HRS

**DATE:** 3/10/2023

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

#### **Federal Requirements for Nursing Assistant Training Programs**

Nursing assistants or nursing aides generally work in nursing homes, although some work in assisted living facilities, other community-based settings, or hospitals.<sup>1</sup> Federal law requires states to establish a competency evaluation program that an individual must successfully complete to become a certified nursing assistant/aide (CNA).<sup>2</sup>

Pursuant to Federal law, a state must either establish a combined nurse aide training program and competency evaluation program or only a competency evaluation program.<sup>3</sup>

A nurse aide training program must:<sup>4</sup>

- Consist of at least 75 hours of training;
- Include at least 16 hours of supervised training; and
- Ensure that students only perform services for which they have been trained and found proficient, which must be provided under the general supervision of a licensed nurse or a registered nurse.

A nurse aide competency evaluation program must include a written or oral examination and a skills demonstration. States are required to establish a standard for satisfactory completion of the competency evaluation program. To complete the competency evaluation successfully, an individual must pass both the written or oral examination and the skills demonstration.<sup>5</sup>

#### **Florida CNA Requirements**

The Florida Board of Nursing (Board), within the Department of Health (DOH), certifies nursing assistants who must, among other things, hold a high school diploma or equivalent, complete a 120-hour board-approved training program, and pass a nursing assistant competency exam.<sup>6</sup> CNAs are required to complete 24 hours of in-service training every two years, which must include two hours of training on medical error prevention and safety.<sup>7</sup>

The Board establishes the general scope of practice for CNAs, who perform certain services related to the activities of daily living under the general supervision of a registered nurse or licensed practical nurse, including:<sup>8</sup>

- Personal care services, such as bathing, dressing, grooming, and light housekeeping;
- Tasks associated with maintaining mobility, such as ambulating, transferring, positioning, lifting, and performing range of motion exercises;
- Nutrition and hydration tasks, such as feeding or assisting with eating and drinking;

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<sup>1</sup> Paraprofessional Healthcare Institute, *Understanding the Direct Care Workforce*, available at <https://phinational.org/policy-research/key-facts-faq/> (last visited February 24, 2023).

<sup>2</sup> 42 C.F.R. s. 483.151.

<sup>3</sup> Id.

<sup>4</sup> 42 C.F.R., s. 483.152.

<sup>5</sup> 42 C.F.R., s. 483.154.

<sup>6</sup> S. 464.203, F.S., and r. 64B9-15.006, F.A.C. Eighty hours must be classroom instruction and 40 hours must be clinical instruction, 20 of which must be in long term care clinical instruction in a licensed nursing home. 42 C.F.R. § 483.152 requires 75 hours of training; Florida training requirements exceed the federal minimum training requirements.

<sup>7</sup> Rule 64B9-15.011, F.A.C.

<sup>8</sup> Rule 64B9-15.0015, F.A.C., and rule 64B9-15.002, F.A.C.

- Tasks associated with elimination, such as toileting, providing catheter care, and emptying or changing ostomy bags;
- Tasks associated with using assistive devices, such as dentures, eyeglasses, hearing aids, wheelchairs, walkers, crutches, and restraints;
- Maintaining the facility environment and resident safety;
- Taking measurements and gathering data, i.e. pulse, blood pressure, height, and weight;
- Reporting abnormal resident findings, signs, and symptoms;
- Post mortem care;
- Tasks associated with end of life care;
- Tasks associated with resident socialization, leisure activities, and reality orientation;
- Performing basic first aid, CPR, and emergency care; and
- Documentation of CNA services provided to the resident.

A CNA may not work independently and may not perform any tasks that require specialized nursing knowledge, judgment, or skills.<sup>9</sup>

### Nurse Delegation of Duties

Under current law, a registered nurse is authorized to delegate any task, including medication administration, to a CNA, if the registered nurse determines that the CNA is competent to perform the task, the task is delegable under federal law, and the task:<sup>10</sup>

- 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.

### *Medication Administration*

Medication administration is to obtain and provide a single dose of a medication to a patient for his or her consumption.<sup>11</sup> Current law authorizes a CNA to administer medication to a patient of a home health agency if the CNA has been delegated such task by a registered nurse.<sup>12</sup> The delegating nurse is required to tell a CNA the expected outcome of the delegation, limits of authority, time frame for the delegation, nature of the supervision required, and must verify the delegate's understanding of such information.<sup>13</sup>

When administering medication, a CNA must be under the general supervision of a registered nurse or a licensed practical nurse, which means the CNA must be able to contact the nurse by a communication device.<sup>14</sup> The delegating nurse may assign responsibility for supervision of a CNA performing a delegated task to another person with equal or greater licensure status.<sup>15</sup> The supervising nurse is responsible for the total nursing care of a patient.<sup>16</sup>

A CNA is required to meet certain training and education standards prior to administering medication to a patient of a home health agency. Specifically, the CNA must:<sup>17</sup>

<sup>9</sup> Rule 64B9-15.002(5), F.A.C.

<sup>10</sup> S. 464.0156, F.S.

<sup>11</sup> S. 465.003, F.S.

<sup>12</sup> S. 464.0156(2), F.S., and 464.2035(1), F.S.

<sup>13</sup> Rule 64B9-14.002(3), F.A.C.

<sup>14</sup> Rule 64B9-15.002(1)(o), F.A.C., and 64B9-15.002(6), F.A.C.

<sup>15</sup> Rule 64B9-14.002(4), F.A.C., and 64B9-14.001 (9), F.A.C.

<sup>16</sup> Rule 64B9-14.002(4), F.A.C.

<sup>17</sup> S. 464.2035, F.S.

- Be delegated such task by a registered nurse;
- Complete an initial 6-hour training course approved by the Board or the Agency for Health Care Administration (AHCA);
- Be found competent to administer medication to a patient in a safe and sanitary manner; and
- Complete two hours of annual in-service training in medication administration and medication error prevention approved by the Board.

A registered nurse or physician must conduct the training and determine whether the CNA can competently administer medication, and annually validate such competency.<sup>18</sup>

The types of medication that a CNA is authorized to administer include oral, transdermal, ophthalmic, otic, rectal, inhaled, enteral, or topical prescription medications. A registered nurse is prohibited from delegating to a CNA, the administration of:<sup>19</sup>

- Medications listed as Schedule II, Schedule III, or Schedule IV controlled substances, except for the administration of an insulin syringe that is prefilled with the proper dosage by a pharmacist or an insulin pen that is prefilled by the manufacturer;
- Medications by subcutaneous, intramuscular, or intravenous injection;
- Legend drugs without original labeling identifying the patient, medication, dose, route and frequency of administration, prescriber, and expiration date;
- Over-the-counter, non-prescription, medications without an order from a physician or an advanced practice registered nurse; and
- Over-the-counter, non-prescription, medications not in the original packaging from the manufacturer.

Current law requires the Board and AHCA to adopt rules, in consultation with each other, on the standards and procedures that a CNA must follow for medication administration to a patient of a home health agency.<sup>20</sup> Such rules must address qualifications for trainers, medication label requirements, documentation and recordkeeping, storage and disposal of medication, instructions for safe medication administration, informed consent, training curriculum, and validation procedures.<sup>21</sup>

Under current law, a registered nurse is not authorized to delegate to a CNA medication administration to a patient in a nursing home.

## Medication Aides

### Medication Aides in other states

A medication aide<sup>22</sup> is a CNA who has received additional formal training to perform technical aspects of medication administration, under the supervision of a licensed nurse, to a patient in a nursing home.<sup>23</sup> Florida does not currently authorize the use of medication aides in nursing homes; however, 37 states currently authorize the use of medication aides in nursing homes with varying requirements relating to training (hours and topics), competency evaluation, authorized medications, supervision, and CNA work experience, including:<sup>24</sup>

- 25 states that require a specific amount of training hours — high 124 hours, median 77 hours, and low 20 hours;

<sup>18</sup> *Id.*

<sup>19</sup> Rule 64B9-15.0026, F.A.C.

<sup>20</sup> S. 464.2035(3), F.S.

<sup>21</sup> *Id.*

<sup>22</sup> Also referred to as qualified medication aides, certified medication aides, or medication technicians.

<sup>23</sup> Judith E. Walsh, MBA, Sandi J. Lane, PhD, Jennifer L. Troyer, PhD, Impact of Medication Aide Use on Skilled Nursing Facility Quality, *The Gerontologist*, Volume 54, Issue 6, December 2014, Pages 976–988, <https://doi.org/10.1093/geront/gnt085> (last visited February 26, 2023).

<sup>24</sup> Staff of the Healthcare Regulation Subcommittee conducted a 50-state review of state laws relating to the authorized use of medication aides in nursing homes.

- 27 states that require medication aides to have prior experience as a CNA; and
- 20 states that require some form of supervision by a licensed nurse over a medication aide in the performance of administering medication.<sup>25</sup>

State	Training Hours	CNA Experience	Supervised Administration
Alabama	Not specified	None	Licensed nurse is on the premises
Arizona	100 hours	6 months	No
Arkansas	100 hours	1 year	Licensed nurse on the premises
Colorado	Not specified	1,000 hours	Direct telephone access to licensed nurse
Connecticut	21 hours	None	No
Georgia	Not specified	None	No
Idaho	80 hours	None	No
Illinois	Not specified	2,000 hours	No
Indiana	100 hours	1,000 hours	Direct supervision (undefined)
Iowa	Not specified	None	No
Kansas	75 hours	Yes (duration not specified)	Varying levels determined by the delegating nurse
Kentucky	105 hours	6 months	Yes (undefined)
Louisiana	120 hours	1 year	Direct supervision (undefined)
Maryland	60 hours	1 year	No
Michigan	75 hours	2,000	Yes (undefined)
Minnesota	48 hours	Yes (duration not specified)	No
Missouri	68 hours	6 months	No
Montana	100 hours	4,000 hours	Licensed nurse on the premises of the facility
Nebraska	40 hours	None	No
Nevada	100 hours	None	Yes (undefined)
New Mexico	24 hours	None	Periodic observation of skills
North Carolina	24 hours	Yes (duration not specified)	Yes (undefined)
North Dakota	80 hours	No	No
Ohio	70 hours	Yes (duration not specified)	No
Oklahoma	Not specified	Yes (duration not specified)	No
Oregon	Not specified	Yes (duration not specified)	Yes (undefined)
Rhode Island	Not specified	Yes (duration not specified)	Yes (undefined)
South Carolina	Not specified	Yes (duration not specified)	Yes (undefined)
South Dakota	20 hours	None	Delegating nurse must be readily available
Tennessee	60 hours	1 year	Yes (undefined)
Texas	120 hours	Yes (duration not specified)	No
Utah	100 hours	2,000 hours	Yes (undefined)
Vermont	124 hours	2,000 hours	Yes (undefined)
Washington	100 hours	1,000 hours	Yes (undefined)
West Virginia	Not specified	1 year	Delegating nurse must be onsite or on-call 24 hours
Wisconsin	Not specified	2,000 hours	No
Wyoming	Not specified	Yes (duration not specified)	No

### Medication Aide Research

As the number of states that allow the use of medication aides in nursing homes has grown over the years, studies have been conducted to determine if there are any negative or harmful impacts associated with the administration of medication by medication aides.

One study evaluated the effect of regulations allowing for medication aides on the use of other nurse staffing, deficiencies, and Nursing Home Quality Initiative health outcome measures. The study found that nursing homes in states allowing medication aide use did not experience a reduction in registered nurse use or licensed practical nurse use. The study also found that medication aide use: decreased the probability that a facility received a deficiency citation for unnecessary drug use or having a medication error rate greater than or equal to 5%; had no effect on deficiencies for significant or

harmful medication errors; resulted in fewer total deficiency citations; and decreased use of physical restraints.<sup>26</sup>

Between 2004 and 2008, the Arizona State Board of Nursing developed a medication technician program and pilot tested it in six nursing homes to determine the impact on patient health and safety of licensed nurses delegating medication administration to trained CNAs. The results showed no differences in patterns of medication errors before and after the introduction of medication technicians, and structured interviews revealed that participants viewed the role favorably, with reported increased role satisfaction on the part of delegating nurses.<sup>27</sup>

## **Nursing Home**

### Staffing Requirements

Florida, along with 26 other states, has statutory requirements for staff-to-resident ratios in nursing homes. Florida law requires a minimum weekly average of 3.6 hours of direct care per resident per day, consisting of:<sup>28</sup>

- A minimum of 2 hours of direct care per resident per day provided by CNAs.
- A minimum of 1 hour of direct care per resident per day provided by licensed nurses.
- The remaining 0.6 hours that may be provided by any other employee of the facility who provides direct patient care except for a person whose primary duty is maintaining the physical environment of the facility.

Current law also prohibits nursing homes from licensing below one CNA per 40 residents or one licensed nurse per 40 residents.<sup>29</sup>

### Quality Assurance and Performance Improvement Program

Pursuant to the Centers for Medicare and Medicaid Services (CMS) conditions of participation (COPs), a nursing home must meet certain requirements in order to receive payment under the Medicare or Medicaid programs.<sup>30</sup> The COPs require nursing homes to develop, implement, and maintain quality assurance and performance improvement programs (QAPs).<sup>31</sup> A QAPI is a data driven and proactive approach to quality improvement by the continuous study and improvement of facility processes.<sup>32</sup> A nursing home's QAPI is required to have performance improvement activities to track medical errors and adverse resident events, analyze their causes, and implement preventive actions and mechanisms that include feedback and learning throughout the facility.<sup>33</sup>

## **Effect of the Bill**

HB 351 authorizes CNAs to administer certain medications, upon delegation by a registered nurse, to patients in nursing homes if the CNA meets certain training and experience requirements. The bill creates the designation of qualified medication aide (QMA) for such a CNA. Specifically, the bill requires a CNA to meet the following requirements to become a QMA:

- Hold a clear and active certification as a nursing assistant from DOH for at least one year immediately preceding the delegation;

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<sup>26</sup> *Supra* note 23.

<sup>27</sup> Randolph PK, Scott-Cawiezell J. Developing a statewide medication technician pilot program in nursing homes. *J Gerontol Nurs.* 2010 Sep;36(9):36-44. doi: 10.3928/00989134-20100330-06. Epub 2010 Apr 22. PMID: 20438012.

<sup>28</sup> S. 400.23(3), F.S.

<sup>29</sup> S. 400.23(3), F.S.

<sup>30</sup> 42 C.F.R., §483.1 (2016).

<sup>31</sup> 42 C.F.R., §483.75 (2016)

<sup>32</sup> Centers for Medicare & Medicaid Services, QAPI Description and Background, available at <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/QAPI/qapidefinition>, (last visited March 10, 2023).

<sup>33</sup> 42 C.F.R., § 483.75(e)(2) (2016).

- Complete a 34-hour training course on medication administration and associated tasks including blood glucose level checks, dialing oxygen flow meters to prescribed settings, and assisting with continuous positive airway pressure devices; and
- Demonstrate clinical competency by successfully completing a supervised clinical practice in medication administration and associated tasks in the facility.

The bill requires a registered nurse to delegate to a QMA the task of administering medication and limits the types of medication a QMA may administer to oral, transdermal, ophthalmic, otic, inhaled, or topical prescription medication.

The bill requires a QMA to be under the direct supervision of a registered nurse, licensed practical nurse, or advanced practice registered nurse when administering medication as delegated by a registered nurse. Direct supervision means the supervisor must be on the premises.<sup>34</sup> This is a higher standard of supervision than is currently required for a CNA administering medication to a patient of a home health agency.

The bill prohibits a nursing home from counting a QMA's hours worked providing direct care towards either the one hour that is required by current law to be provided daily by a CNA or the two hours that is required to be provided daily by a licensed nurse. It also prohibits them from counting a QMA's hours towards the staffing ratios required by current law. Specifically, they may not be counted towards the required minimum staffing ratio for CNAs of one CNA per 20 residents or the required minimum staffing ratio for licensed nurses of one licensed nurse per 40 residents.

The bill requires the Board to approve the training course and provides rulemaking authority to the Board, in consultation with AHCA, to establish standards and procedures for the administration of medication by a CNA in a nursing home.

Finally, the bill requires nursing homes to document their performance improvement activities related to medication administration by a CNA in accordance with the federally required quality assurance and performance improvement program.

The bill provides an effective date of July 1, 2023.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 400.211, F.S., relating to persons employed as nursing assistants; certification requirement.

**Section 2:** Amends s. 400.23, F.S., relating to rules; evaluation and deficiencies; licensure status.

**Section 3:** Amends s. 464.0156, F.S., relating to delegation of duties.

**Section 4:** Amends s. 464.2035, F.S., relating to administration of medication.

**Section 5:** Provides an effective date of July 1, 2023.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

None.

##### 2. Expenditures:

DOH anticipates it will experience an increase in workload associated with additional calls, complaints, investigations, and prosecution due to the expanded authority for registered nurses to

delegate the administration of medication to nursing home residents.<sup>35</sup> DOH also anticipates it will incur non-recurring cost for rulemaking.<sup>36</sup> These costs can be absorbed within current resources.

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

1. Revenues:

None.

2. Expenditures:

None.

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

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect local or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill provides sufficient rulemaking authority to DOH to implement the provisions of the bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On March 9, 2023, the Healthcare Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Allowed a registered nurse to utilize the full extent of their delegable authority under current law to delegate medication administration to a CNA in a nursing home;
- Required nursing homes to document their performance improvement activities related to medication administration by a CNA in accordance with the federal quality assurance and performance improvement program; and
- Makes technical changes to address drafting issues.

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<sup>35</sup> Florida Department of Health Agency Analysis for HB 351 dated January 26, 2023.

<sup>36</sup> *Id.*