

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

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

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

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

FINAL HOUSE FLOOR ACTION: 117 Y's 0 N's **GOVERNOR'S ACTION:** Pending

SUMMARY ANALYSIS

CS/CS/HB 935 passed the House on February 15, 2024, and subsequently passed the Senate on March 5, 2024.

Medicaid is the health care safety net for low-income Floridians. Medicaid is a partnership of the federal and state governments to provide coverage for health services for eligible persons and is administered by the Agency for Health Care Administration. The federal government sets the minimum mandatory populations to be included in every state Medicaid program, and the minimum mandatory benefits. 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.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2024.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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 Agency for Health Care Administration (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.¹ 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.²

Medicaid Home Health Coverage

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

- 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 or physician assistant.

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

² *Id.*

³ S. 409.905(4), F.S.

⁴ *Id.*

Florida Medicaid 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.⁵

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.⁶ 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 21.⁷ The home health 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 home health agency 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.⁸

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 home health agency provider for PDN services provided by the parent or legal guardian of a recipient.⁹ The parent or legal guardian must be employed by a home health agency and have a valid license as a registered nurse or licensed practical nurse.

⁵ 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 (last visited January 31, 2023).

⁶ 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.

⁷ 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 (last visited January 31, 2024).

⁸ 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 (last visited January 31, 2024).

⁹ 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 (last visited January 31, 2024).

The Coronavirus Aid, Relief, and Economic Security Act

The federal Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020¹⁰ provided fast and direct economic assistance for American workers, families, small businesses, and industries through the implementation of a variety of programs¹¹ to address issues related to the onset of the COVID-19 pandemic.¹²

Prior to the CARES Act, federal law allowed only a physician to order home health services for Medicare and Medicaid recipients.¹³ The CARES Act¹⁴ authorized nurse practitioners, clinical nurse specialists, and physician assistants to order home health services.¹⁵

Effect of the Bill

The bill allows the Florida Medicaid program 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 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.

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.

¹⁰ Coronavirus Aid, Relief, and Economic Security Act of 2020, Pub. L. No. 116-136, H.R. 748, 116th Cong. (Mar. 27, 2020).

¹¹ 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).

¹² 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).

¹³ 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).

¹⁴ 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).

¹⁵ 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).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.