

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 Fiscal Policy

BILL: CS/SB 558

INTRODUCER: Health Policy Committee and Senator Burton

SUBJECT: Certified Nursing Assistants

DATE: March 27, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Brown</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Barr</u>	<u>Money</u>	<u>AHS</u>	<u>Favorable</u>
3.	<u>Looke</u>	<u>Yeatman</u>	<u>FP</u>	<u>Pre-Meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 558 creates a new designation of “qualified medication aide” (QMA) for certified nursing assistants (CNA) who work in a nursing home and meet specified licensure and training requirements. The bill allows a nursing home to authorize a registered nurse (RN) working in the nursing home to delegate medication administration to a QMA who is working under the direct supervision¹ of the RN.

In order to be designated as a QMA, a CNA must hold a clear and active certification as CNA for at least one year preceding the delegation; complete 40 hours of training that consists of the six-hour training course currently required for a CNA to administer medication in a home health setting and a 34-hour course developed by the Board of Nursing (BON) specific to QMAs; and successfully complete a supervised clinical practice in medication administration conducted in the nursing home.

The bill amends several sections of law related to the delegation of tasks to CNAs to conform to the changes made in the bill. The bill also specifies that CNAs performing the duties of a QMA may not be counted toward staffing requirements for nursing homes.

¹ “Direct supervision” is defined in Rule 64B9-15.001, F.A.C., to mean “the physical presence within the patient care unit of a healthcare facility or physical presence within a healthcare agency of a program instructor who assumes responsibility for the practice of the certified nursing assistant.”

This bill has an indeterminate fiscal impact on the Florida Department of Health. *See* Section V of this analysis.

The bill takes effect on July 1, 2023.

II. Present Situation:

Nursing Homes

Nursing homes in Florida are licensed under Part II of ch. 400, F.S., and provide 24 hour a day nursing care, case management, health monitoring, personal care, nutritional meals and special diets, physical, occupational, and speech therapy, social activities and respite care for those who are ill or physically infirm.² Nursing homes are regulated by the Agency for Health Care Administration (AHCA). Currently there are 708 nursing homes licensed in Florida.³

Certified Nursing Assistants

Florida's regulations of certified nursing assistants (CNA) is found in Part II of ch. 464, F.S. Section 464.201(5), F.S., defines the practice of a CNA as providing care and assisting persons with tasks relating to the activities of daily living. Activities of daily living include tasks associated with: personal care, maintaining mobility, nutrition and hydration, toileting and elimination, assistive devices, safety and cleanliness, data gathering, reporting abnormal signs and symptoms, postmortem care, patient socialization and reality orientation, end-of-life care, cardiopulmonary resuscitation (CPR) and emergency care, patients' rights, documentation of nursing-assistant services, and other tasks that a CNA may perform after training.⁴

A CNA can work in a nursing home, an assisted living facility, other community-based settings, a hospital, or a private home under general supervision.⁵ The Board of Nursing (BON), within the Department of Health (DOH), certifies CNAs, who must, among other qualifications, hold a high school diploma or equivalent, complete a 120-hour BON-approved training program, and pass a nursing assistant competency exam, which includes written and practical portions.⁶ A CNA must biennially complete 24 hours of in-service training to maintain certification.⁷

² Agency for Health Care Administration (AHCA) webpage, nursing homes, available at https://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Long_Term_Care/Nursing_Homes.shtml (last visited March 7, 2023).

³ Florida Health Finder Report, available at <https://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx> (last visited March 7, 2023).

⁴ Section 464.201, F.S.

⁵ Paraprofessional Healthcare Institute, *Who Are Direct-Care Workers?*, (Feb. 2011), available at <https://phinational.org/wp-content/uploads/legacy/clearinghouse/NCDCW%20Fact%20Sheet-1.pdf> (last visited March 7, 2023).

⁶ Section 464.203, F.S., and Fla. Admin. code r. 64B9-15.006. 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. § 483.95 requires 75 hours of training; Florida training requirements exceed the federal minimum training requirements.

⁷ Section 464.203(7), F.S.

The BON establishes the general scope of practice for CNAs. A CNA performs services under the general supervision⁸ of a registered nurse (RN) or licensed practical nurse (LPN).⁹ A CNA may perform the following:

- 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;
- Tasks associated with elimination, such as toileting, providing catheter care, and emptying or changing ostomy bags;
- Tasks associated with using assistive devices;
- Maintaining the environment and resident safety;
- Taking measurements and gathering data, i.e. pulse, blood, pressure, height, and weight;
- Recognition and reporting abnormal resident findings, signs, and symptoms;
- Post mortem care;
- Tasks associated with resident socialization, leisure activities, reality orientation, and validation techniques;
- Tasks associated with end of life care;
- Performing basic first aid, CPR, and emergency care;
- Tasks associated with compliance with resident's rights; 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.

Medication Administration by a CNA

Current law allows a RN to delegate medication administration duties to a CNA but only in a home health care setting or in a local county detention facility.¹⁰ Specifically, a CNA may administer oral, transdermal, ophthalmic, otic, rectal, inhaled, enteral, or topical prescriptions if the CNA has completed a six-hour initial training course approved by the BON and has been found competent to administer medication to a patient in a safe and sanitary manner.¹¹ Both the training and the competency determination must be conducted by a RN.¹² Additionally, a CNA must satisfactorily complete two hours of annual in-service training to maintain his or her authorization to administer medications. BON rules require the six-hour course to include:

- A glossary of common terminology for labeling of legend medications.
- Safe administration of oral, transdermal, ophthalmic, otic, rectal, inhaled, enteral, and topical prescription and over-the-counter medications.
- Record keeping and documentation of medication administration.
- Safe storage and proper disposal of medications.
- Prevention of medication errors.

⁸ Under general supervision, the registered nurse or licensed practical nurse does not need to be present but must be available for consultation and advice, either in person or by a communication device. Fla. Admin. Code R. 64B9-15.001(5).

⁹ Fla. Admin. Code R. 64B9-15.002.

¹⁰ Section 464.0156, F.S.

¹¹ Section 464.2035, F.S.

¹² *Id.*

- Home health care agency policies and procedures regarding medications.
- Recognizing, documenting and reporting adverse reactions to medications.¹³

Additionally, the BON has determined some medications to be outside the scope of practice for a CNA and has prohibited a CNA from performing the following:

- Administration of controlled substances listed in Schedule II, Schedule III, or Schedule IV of Section 893.03, F.S., or 21 U.S.C. s. 812;
- Administration by subcutaneous, intramuscular, or intravenous injection;
- Administration of legend drugs without original labeling identifying the patient, medication, dose, route and frequency of administration, prescriber, and expiration date.
- Administration of over-the-counter, non-prescription, medications without an order from a physician licensed under ch. 458, F.S., an osteopathic physician licensed under ch. 459, F.S., a podiatric physician licensed under ch. 461, F.S., or an advanced practice registered nurse licensed under s. 464.012 or 464.0123, F.S.
- Administration of over-the-counter, non-prescription medications not in the original packaging from the manufacturer.¹⁴

III. Effect of Proposed Changes:

Section 1 amends s. 400.211, F.S., to allow a nursing home to authorize a registered nurse (RN) to delegate tasks, including medication administration, to a certified nursing assistant (can) who has:

- Completed the six hour training course and found to be competent to administer medications pursuant to s. 464.2035, F.S.
- Has held a clear and active certification from the DOH for a minimum of one year immediately preceding the delegation.
- Completed a 34-hour training course approved by the Board of Nursing (BON) in medication administration and associated tasks. The training must include, but is not limited to:
 - Blood glucose level checks;
 - Dialing oxygen flow meters to prescribed settings; and
 - Assisting with continuous positive airway pressure devices.
- Has demonstrated clinical competency by successfully completing a supervised clinical practice in medication administration and associated tasks conducted in the nursing home.

Upon completing the requirements above, the bill provides that the CNA is designated as a qualified medication aide (QMA). The bill specifies that a QMA may only administer medication under the direct supervision¹⁵ of a nurse licensed under part I of ch. 464, F.S.; that a QMA must annually complete two hours of in-service training and validation required in s. 464.2035, F.S.; and that a nursing home must include medication administration by a QMA when complying with the federal requirement to track, analyze, and improve medical errors and adverse events.¹⁶

¹³ Rule 64B9-15.0025, F.A.C.

¹⁴ Rule 64B9-15.0026, F.A.C.

¹⁵ “Direct supervision” is defined in Rule 64B9-15.001, F.A.C., to mean “the physical presence within the patient care unit of a healthcare facility or physical presence within a healthcare agency of a program instructor who assumes responsibility for the practice of the certified nursing assistant.”

¹⁶ The federal requirement is in C.F.R. s. 483.75(e)(2).

The bill requires the BON, in consultation with the Agency for Health Care Administration (AHCA), to adopt rules to implement these provisions.

Section 2 amends s. 400.23, F.S., to specify that a CNA performing the duties of a QMA may not be included in computing the hours of direct care or the staffing ratios that a nursing home is required to maintain pursuant to s. 400.23, F.S.

Section 3 amends the nurse practice act in s. 464.0156, F.S., to allow a RN to delegate the administration of medications to a resident in a nursing home to a CNA who meets the requirements above.

Section 4 amends s. 464.2035, F.S., to allow a CNA to administer medications in a nursing home as well as in a home health setting, with the exception of rectal and enteral medications. The section also directs the BON to include in rule standards and procedures for a CNA administering medication to a resident of a nursing facility.

The bill makes additional technical and conforming changes.

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

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.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 558 may have a positive fiscal impact on nursing homes that are able to utilize QMAs to administer medication rather than be required to utilize an RN to perform the task.

C. Government Sector Impact:

The bill may have an indeterminate fiscal impact on the Department of Health (DOH).¹⁷

The DOH reports they 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 or home health agency patients to a certified nursing assistant or home health aide. The fiscal impact is indeterminate, and the DOH has not identified resources necessary to address the impact.

The DOH reports they will incur non-recurring costs for rulemaking and will experience a non-recurring increase in workload associated with updating the Licensing and Enforcement Information Database System (LEIDS), Online Service Portal (Versa Online), License Verification Search Site, Continuing Education Tracking System (CEBroker), ELI virtual agent, and the Board of Nursing website to support registration for medication authorization. However, the DOH indicates it will be able to absorb this nonrecurring impact with existing resources. The Agency for Health Care Administration reports the oversight requirements in the bill can be incorporated into existing processes and will not have an impact on state expenditures.¹⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹⁷ Florida Department of Health, HB 351 Bill Analysis (Jan. 26, 2023)(on file with the Senate Appropriations Committee on Health and Human Services).

¹⁸ Agency for Health Care Administration, HB 351 Bill Analysis (Jan. 26, 2023)(on file with the Senate Appropriations Committee on Health and Human Services).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 400.211, 400.23, 464.0156, and 464.2035.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on March 6, 2023:

The CS requires nursing homes when complying with the federal requirement to track, analyze, and improve medical errors and adverse events, to include medication administration performed by qualified medication aides.

- B. **Amendments:**

None.