

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2236

SPONSOR: Health, Aging, and Long-Term Care Committee and Senator Klein

SUBJECT: Wheeled Mobility Act

DATE: April 1, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harkey</u>	<u>Wilson</u>	<u>HC</u>	<u>Fav/CS</u>
2.	_____	_____	<u>AHS</u>	_____
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill establishes requirements for home health agencies, home medical equipment providers, hospices, and professional support services under contract with the Agency for Health Care Administration (ACHA) to provide therapy services to individuals with mental retardation or developmental disabilities, that provide prescribed wheeled mobility devices to patients on an outpatient basis in either their regular or temporary place of residence. A “wheeled mobility device” is defined as a wheelchair or a wheelchair that includes a seated position system prescribed by an allopathic or osteopathic physician and required for use by a patient for more than six months. The bill provides a popular name, the “Consumer Protection Act for Wheeled Mobility”.

The bill requires any home care organization—an organization that provides home health services, hospice services, home medical equipment services or professional support services on an outpatient basis—that provides prescribed wheeled mobility devices to have for each recipient a complete written evaluation and recommendation by a credentialed wheeled mobility person or physical or occupational therapist. The bill establishes and defines a “credentialed wheeled mobility person”.

This bill creates one unnumbered section of law.

II. Present Situation:

Currently a certificate of medical necessity signed by a physician is required before the cost of a wheeled mobility device can be reimbursed by Medicaid or Medicare. The requirements for the contents of the certificate are specified by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), Coverage Issues Manual: Durable Medical

Equipment (DME). Medicaid requirements are in the DME/Medical Supply Coverage and Limitations Handbook, referenced in Rule 59G-4.070, F.A.C. The Medicaid handbook is currently being revised in rule development and a new comprehensive wheelchair evaluation form will be required which must be completed by a licensed physical therapist or occupational therapist, along with a physician's prescription or certificate of medical necessity for prior approval for all custom and power wheelchairs. The existing Medicaid handbook details the documentation required for medical necessity and the conditions patients must meet to get prior approval for a wheelchair.

There has been a concerted effort at both the state and national levels to increase the standards for wheeled mobility devices to increase quality and prevent fraud and misuse of the system. CMS announced an initiative aimed at stopping abuse of the power wheelchair benefit in the Medicare program in its September 9, 2003 press release. CMS reported that spending on power wheelchairs has increased by nearly 450 percent from 1999 to 2003, whereas the overall Medicare payments rose only 11 percent during that time period. CMS is reviewing the applications from companies that seek to provide power wheelchairs to ensure they meet reputable business standards of operation. CMS proposes to make regulatory enhancements to ensure that Medicare pays for medically necessary wheelchairs for its beneficiaries. The Agency for Health Care Administration has been encouraged to tighten its criteria for power wheelchair approvals under Medicaid through its rule development as well.

Even though there are requirements for the certificate of medical necessity and the evaluation, there are currently no requirements in state law that the providers of wheeled mobility devices have specific training, education or credentialing. The Rehabilitation Engineering and Assistive Technology Society of North America (RESNA), a national interdisciplinary association for the advancement of rehabilitation and assistive technologies, provides credentialing and continuing education for Assistive Technology Practitioners and Assistive Technology Suppliers. RESNA defines an "assistive technology device" as "any item, piece of equipment or product system, whether acquired commercially off the shelf, modified or customized that is used to increase or improve functional capabilities of individuals with disabilities." The term "Assistive Technology Practitioner" (ATP) is defined as a service provider who is "involved in analysis of a consumer's needs and training in the use of a particular device." An "Assistive Technology Supplier" (ATS) is defined by RESNA as a service provider who is "involved with the sale and service of rehabilitation equipment, assistive technology and commercially available products or devices."

To take the credentialing exams for ATP or ATS, RESNA requires an applicant to have a bachelor's degree in rehabilitative science and a year's experience in assistive technology (AT) direct consumer-related services. Rehabilitative science includes physical and occupational therapy, nursing, speech-language pathology and audiology, biomedical or rehabilitation engineering, orthotics and prosthetics, and rehabilitation technology. Additional AT direct consumer related experience and continuing education may be substituted for the degree. Some home medical equipment providers in Florida that provide customized wheelchairs have attended RESNA continuing education and participated in the credentialing program. However, there is no national or state requirement in law, rule or regulation that they do so.

There are minimum standards in the state licensing law that all home medical equipment providers must meet (s. 400.934, F.S.). A provider must ensure that personnel are appropriately

trained for the equipment and services offered, and are able to set up the equipment and must instruct consumers in the safe operation and maintenance of the equipment. A provider must honor all warranties, answer all questions or complaints about an equipment item, and accept returns of substandard or unsuitable items.

Organizations that sell wheeled mobility devices, as defined in this bill, must be licensed as home medical equipment providers to sell or rent and service such equipment in Florida under chapter 400, Part X, F.S. Wheelchairs of all types that are powered and customized are sold by hundreds of home medical equipment providers located in Florida and some out of state providers that sell to persons in Florida. Of the 1,980 home medical equipment (HME) providers licensed by AHCA as of February 2004, it is not known what number sell wheeled mobility devices. Medicaid also enrolled in its DME program numerous providers that sell wheeled mobility devices. Home health agencies and hospices may provide home medical equipment without having a home medical equipment license under s. 400.93(5), F.S. It is not known how many, if any, of the 1,176 home health agencies and 42 hospices licensed by AHCA directly provide powered and customized wheelchairs. Arrangements are typically made with HME providers to provide this type of equipment if prescribed by a physician.

Currently only 21 percent of the home medical equipment providers are inspected by AHCA. Under the state licensing law at s. 400.933(2), F.S., providers that are accredited by a national accrediting organization or have an oxygen retail establishment permit from the Department of Health are exempt from the AHCA licensing survey. Licenses are issued for a two-year period and providers inspected by AHCA are inspected at least once every two years or more often if deficiencies are found on inspections. Home health agencies are licensed annually and are inspected every one to three years or more often as required in Rule 59A-8.003(2), F.A.C., depending on the agency's record of compliance with state law and rules. Only about 5 percent of the home health agencies are exempt from the state licensure survey as permitted in state rules at Rule 59A-8.003(3), FAC. Hospices are inspected on an annual or biennial basis as required in s. 400.605(2), F.S. Complaints reported to AHCA are investigated and administrative action taken if not corrected. However, all complaints are not reported to AHCA; the state law does not require home medical equipment providers to give customers the AHCA toll-free complaint call center phone number.

Hospices may provide wheelchairs to their patients as part of the hospice Medicare or Medicaid benefit. Patients whose hospice care is reimbursed by Medicare or Medicaid must have a terminal prognosis of six months or less according to 42 CFR 418.20.

III. Effect of Proposed Changes:

This bill establishes requirements for the provision of wheeled mobility devices by home care organizations. The bill provides a popular name, stating that the act may be cited as the "Consumer Protection Act for Wheeled Mobility."

The bill defines the following terms:

- *Assistive technology practitioner (ATP)* means a service provider primarily involved in evaluating the consumer's needs and training in the use of a prescribed wheeled mobility device.
- *Assistive technology supplier (ATS)* means a service provider involved in the sale and service of commercially available wheeled mobility devices.
- *Credentialed wheeled mobility person* means:
 - A allopathic physician licensed under chapter 458, F.S., an osteopathic physician licensed under chapter 459, F.S., an occupational therapist licensed under chapter 468, F.S., or a physical therapist licensed under chapter 486, F.S.;
 - An individual who has obtained the designation of ATP or ATS, meeting all requirements thereof, as established by the Rehabilitation Engineering and Assistive Technology Society of North America (RESNA); or
 - An individual who has met the following requirements and provides to the home care organization providing prescribed wheeled mobility devices, where the individual is on staff:
 - Documentation to prove the completion of at least 15 hours of continuing education within the 12 months immediately prior to July 1, 2004, and by June 30 of all subsequent years, in the field of seating and wheeled mobility, which may include, but is not limited to:
 - Courses by health care professionals;
 - Courses by health care associations;
 - Courses by a college or university;
 - Courses by manufacturers;
 - Inservice training by manufacturers; or
 - Attendance at symposia or conferences.
 - Proof of at least 1 year's experience in the field of rehabilitation technology.
 - Three recommendations from health care practitioners licensed under chapter 458 or chapter 459, F.S., who can attest to the skills of the provider in seating and wheeled mobility.
- *Evaluation* means the determination and documentation of the physiological and functional factors that impact the selection of an appropriate seating and wheeled mobility device.
- *Home care organization* means an organization that provides home health services under part IV of chapter 400, F.S., hospice services under part VI of chapter 400, F.S., home medical equipment services under part X of chapter 400, F.S., or professional support services as defined in paragraph (f) to patients on an outpatient basis in either their regular or temporary place of residence. An entity is a "home care organization" if it does any of the following:
 - Holds itself out to the public as providing home health services, home medical equipment services, or hospice services.
 - Contracts or agrees to deliver home health services, home medical equipment services, or hospice services.
 - Accepts, in the organization's name, physician orders for home health services, home medical equipment services, or hospice services.

- Accepts responsibility for the delivery of home health services, home medical equipment services, or hospice services.
- Contracts to provide professional support services with the Agency for Health Care Administration under chapter 393, F.S.
- *Professional support services* means nursing services under chapter 464, F.S., speech-language pathology or audiology services under part I of chapter 468, F.S., occupational therapy services under part III of chapter 468, F.S., or physical therapy services under chapter 486, F.S., provided to individuals with mental retardation or developmental disabilities pursuant to a contract with the Agency for Health Care Administration under chapter 393, F.S.
- *Wheeled mobility device* means a wheelchair or wheelchair and seated positioning system prescribed by an allopathic physician licensed under chapter 458, F.S., or an osteopathic physician licensed under chapter 459, F.S., and required for use by the patient for a period of 6 months or more. The following Medicare wheelchair base codes are exempt from this definition: K0001, K0002, K0003, K0004, and K0006.

The bill requires each home care organization providing a prescribed wheeled mobility device in Florida to have on staff a credentialed wheeled mobility person. Each home care organization providing a prescribed wheeled mobility device must obtain for the recipient of the device a complete written evaluation and recommendation by a credentialed wheeled mobility person or physical or occupational therapist.

Beginning January 1, 2007, each home care organization providing a prescribed wheeled mobility device in Florida must obtain for the recipient of the device a complete written evaluation and recommendation by a credentialed wheeled mobility person who is, at minimum, a physician licensed under chapter 458, F.S., an osteopathic physician licensed under chapter 459, F.S., an occupational therapist licensed under chapter 468, F.S., a physical therapist licensed under chapter 486, F.S., or a person who has obtained the designation of ATP or ATS.

The bill will take effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

All home care organizations that provide customized and motorized wheelchairs must employ credentialed wheeled mobility persons. This would require employing new persons or obtaining training and credentialing for existing staff.

C. Government Sector Impact:

AHCA would incur the cost of informing home care organizations of the new requirements for the provision of wheeled mobility devices, modifying licensure application forms to incorporate the requirements of this bill, incorporating the verification of credentials in the surveys AHCA conducts and asking accrediting organizations to include the new requirements in their inspections.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.