

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.)

Prepared By: Children and Families Committee

BILL: CS/SB 2136

SPONSOR: Children and Families Committee and Senator Baker

SUBJECT: Administration of Medication

DATE: April 5, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Munroe</u>	<u>Wilson</u>	<u>HE</u>	<u>Fav/1 amendment</u>
2.	<u>Collins</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Notwithstanding ch. 464, Part I, F.S., the Nurse Practice Act, SB 2136 would allow unlicensed direct care staff who provide services to persons with developmental disabilities in a comprehensive transitional education program and who are designated by the director of such program to administer, or assist in the administration of, oral, otic, transdermal, ophthalmic, inhaled, rectal, or topical prescription medications under the general supervision of a Florida-licensed registered nurse as provided in s. 393.506, F.S.

This committee substitute changes a reference from “day programs” to “day habilitation services” for purposes of s. 393.506, F.S., and further directs the Agency for Persons with Disabilities to adopt rules to implement s. 393.506, F.S., administration of medication.

This bill amends section 393.506, Florida Statutes.

II. Present Situation:

Developmental Disabilities Program

Under chapter 393, F.S., the Agency for Persons with Disabilities administers the home and community-based services waiver (HCBW) for persons with developmental disabilities. The purpose of this waiver is to promote and maintain the health of individuals with developmental disabilities through the provision of medically necessary supports and services that will help the individual live in the community and avoid the necessity for institutional placement. Most community-based services for the developmental disabilities program are delivered by the private sector, both non-profit and for-profit organizations, and include services such as support

coordination, personal attendant services, respite care, supported employment, adult day training, companion services, and dental services.

Chapter 393, F.S., defines “comprehensive transitional education program” to mean a group of jointly operating centers or units, the collective purpose of which is to provide a sequential series of educational care, training, treatment, habilitation, and rehabilitation services to persons who have developmental disabilities and who have severe or moderate maladaptive behaviors. The services provided by a comprehensive transitional education program must be temporary in nature and delivered in a structured residential setting with the primary goal of incorporating the normalization principle to establish permanent residence for persons with maladaptive behaviors in facilities not associated with the program. The comprehensive transitional educational program is a large program that has the capacity to serve as many as 120 residents who reside in smaller residential units in three locations. Currently, this program provides services to 86 residents who are all prescribed some type of medication. The services provided by a comprehensive transitional education program are funded under a Medicaid program waiver.

The administration of medication to persons with developmental disabilities in the comprehensive transitional educational program requires a nurse. Individuals with developmental disabilities who reside in smaller residential settings may have properly trained and validated direct care staff administer medications to them. In such smaller settings, trained direct care staff, in effect, functions as a surrogate family. Section 393.506, F.S., provides an exception to the requirements of the Nurse Practice Act, to authorize medications to be administered to persons with developmental disabilities when such persons are in programs or facilities that do not and may not function as surrogate family such as day programs or intermediate care facilities.¹

Notwithstanding ch. 464, Part I, F.S., the Nurse Practice Act, unlicensed direct care services staff providing services to persons with developmental disabilities in day programs and intermediate care facilities for the developmentally disabled may administer oral, transdermal, inhaled, or topical prescription medications as provided in section 393.506, F.S. Under section 393.506, F.S., for day programs, the director of the facility or program must designate in writing unlicensed direct care services staff who are eligible to be trained to assist in the administration of or to administer medication. The director of an intermediate care facility for the developmentally disabled may designate unlicensed staff who may provide medication assistance under the general supervision of a Florida-licensed registered nurse.

Each facility, institution, or program under s. 393.506, F.S., must include in its policies and procedures a plan for training designated staff to ensure the safe handling, storage, and administration of prescription medication. These policies and procedures must be approved by the agency before unlicensed direct care services staff assist with medication. The policies and procedures must include, at a minimum, the following provisions:

- An expressed and informed consent for each client;

¹ Section 393.506, F.S., refers to “day programs” as defined in s. 393.063, F.S., but s. 393.063, F.S., does not define “day programs.” Section 393.063, F.S., does define “day habilitation facility” and “day habilitation services.”

- The director of the facility, program, or provider must maintain a copy of the written prescription, and that prescription must include the name of the medication, the dosage and administration schedule, the reason for the prescription, and the termination date; and
- Each prescribed medication must be kept in its original container and in a secure location.

The training required in s. 393.506, F.S., must be conducted by a registered nurse or a Florida-licensed medical physician or osteopathic physician.

Nurse Practice Act

Chapter 464, Part I, F.S., provides for the regulation of nursing in Florida by the Board of Nursing in the Department of Health. The board has adopted administrative rules relating to the delegation of tasks to unlicensed assistive personnel.² A registered nurse or licensed practical nurse must use nursing judgment to consider the task or activity to be delegated. The delegation process must include communication to the unlicensed assistive personnel which identifies the task or activity, the expected or desired outcome, the limits of authority, the time frame for the delegation, the nature of the supervision required, verification of the delegate's understanding of assignment, verification of monitoring and supervision. The registered nurse or licensed practical nurse, under the direction of the appropriate licensed professional must not delegate those activities not within the delegating or supervising nurse's scope of practice.

Nursing activities that include the use of the nursing process and require the special knowledge, nursing judgment or skills of a registered or practical nurse may not be delegated to unlicensed assistive personnel. Such nursing activities include: the initial nursing assessment or any subsequent assessments; the determination of the nursing diagnosis or interpretations of nursing assessments; the establishment of nursing care goals and development of the plan of care; and the evaluation of progress in relationship to the plan of care. The nursing practice act and rules do not expressly prohibit a registered nurse or licensed practical nurse from delegating the administration of medication but, in effect, requires the nurse to determine the competency of the unlicensed person who is delegated any nursing task or activity to ensure that the person is competent and that the person's competency has been validated.

III. Effect of Proposed Changes:

The CS/SB 2136 amends s. 393.506, F.S., to provide that, notwithstanding ch. 464, Part I, F.S., the Nurse Practice Act, unlicensed direct care staff who provide services to persons with developmental disabilities in a comprehensive transitional education program and who are designated by the director of such program may administer, or assist in the administration of, oral, otic, transdermal, ophthalmic, inhaled, rectal, or topical prescription medications under the general supervision of a Florida-licensed registered nurse as provided in s. 393.506, F.S.

This committee substitute changes a reference from "day programs" to "day habilitation services" for purposes of s. 393.506, F.S., which provides an exception to the requirements of the Nurse Practice Act, to authorize medications to be administered to persons with developmental disabilities when such persons are in programs or facilities that do not and may not function as

² See Chapter 64B9-14, Florida Administrative Code.

surrogate family such as day habilitation services or intermediate care facilities. The bill further directs the Agency for Persons with Disabilities to adopt rules to implement s. 393.506, F.S., administration of medication.

The provisions of this bill apply to the state's one Comprehensive Transitional Educational Program (CTEP) and would allow properly trained and validated direct care staff to administer medications that would otherwise have to be administered by a nurse. It is questionable whether this practice will result in a lower quality of care for persons with a developmental disability who reside in this setting or if there will be an increased risk for medication administration errors. However, the implementation of similar practices in intermediate care facilities has not resulted in any reported adverse effects on clients.

Providing the agency with direction to adopt rules to implement the provisions of s. 393.506, F.S., will help to provide parameters for the administration of medication by direct care staff. These rules may also help to achieve a standardized process by which these medications are administered.

The effective date of the bill is upon becoming a law.

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:

The implementation of this bill would result in potential cost savings for the Comprehensive Transitional Educational Program (CTEP) which would no longer be required to have medications provided by a nurse.

C. Government Sector Impact:

There will be an undetermined cost for staff time to develop and promulgate the rule as directed by this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to officials at the Agency for Persons with Disabilities, there are currently two nurses on staff to serve 120 persons in a comprehensive transitional education program which has three locations. These nurses are authorized to administer all prescribed medications to persons in that program. If the bill is adopted, the direct care staff may, when appropriate, under the general supervision of a nurse, administer medications to individuals in the program. The dosage route of administration is expanded to include administration of oral, otic, transdermal, and ophthalmic, inhaled, rectal, or topical prescription medications.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
