

The bill provides for a memorandum of understanding between FEFVR and the association, specifying that the contract agreement between the two entities covers the period between July 1, 2008, and the execution date of the final agreement.

The bill deletes current requirements relating to recruitment, screening, selection of personal care attendants, selection of eligible participants, and development of an implementation plan. The bill also adds “psychologists” to the list of professionals who can determine the need for personal care attendant services.

The bill provides that all persons who are enrolled in the personal care attendant program authorized in s. 413.402, F.S., or who are enrolled in the pilot personal care attendant project authorized in ch. 2006, L.O.F., as of June 30, 2008, are automatically eligible for and enrolled in the revised program.

This bill substantially amends ss. 413.402 and 413.4021, F.S., and creates an undesignated section of law.

II. Present Situation:

Personal Care Attendant Program

Sections 413.402 and 413.4021, F.S., establish and provide a specific funding source for a personal care attendant program (PCA program) that is intended to enable eligible persons who are disabled due to a traumatic spinal cord injury to return to work with the assistance of personal care attendants. The personal care attendant program was established as a pilot in 2002⁴ and made permanent and statewide in 2005.⁵ Currently, 31 participants are approved to receive quarterly funding (approximately \$1954 per participant per quarter) from the PCA program.⁶

Pursuant to s. 413.402, F.S., FACIL is responsible for developing the program in a collaborative effort with the Brain and Spinal Cord Injury Program (BSCIP) in the Department of Health (DOH), the Department of Revenue (DOR), the Florida Medicaid program in the Agency for Health Care Administration (AHCA), FEFVR, and the Division of Vocational Rehabilitation of the Department of Education (DOE).⁷

Persons eligible to participate in the program must:

⁴ Chapter 2002-286, L.O.F.

⁵ Chapter 2005-172, L.O.F. Pursuant to ch. 2002-286, L.O.F., the pilot PCA program was to be implemented by July 1, 2003. However, by February 2005, no individuals had been served. (See Florida Senate Judiciary Committee, *Senate Staff Analysis and Economic Impact Statement SB 720* (March 29, 2005)). As a result, in 2005, in addition to making the PCA program permanent and potentially statewide, the Legislature modified the eligibility criteria to include not only individuals who currently live or have recently moved out of a nursing home, but also individuals who are employed but, due to loss of a caregiver, are at risk of losing employment and returning to a nursing home.

⁶ In the last quarter (ending December 31, 2007), only 29 of the participants received funding, because two participants had not documented their PCA expenses and they cannot receive funding until the documentation is received. At one time, two other participants were eligible for the program, but they dropped out for various reasons. See E-mail from Dan Casady, PCA Program Manager (February 27, 2008), on file with the Senate Committee on Children, Families and Elder Affairs (CFEA).

⁷ Section 413.402, F.S.

- Be at least 18 years of age and be significantly disabled due to a traumatic spinal cord injury;
- Require a personal care attendant for bathing, dressing, bowel and bladder management, and transportation;
- Require a personal care attendant to maintain substantial gainful employment;
- Be able to hire and supervise a personal care attendant; and
- Meet one of the following requirements:
 - Live in a nursing home;
 - Moved out of a nursing home within the preceding 180 days due to participation in a Medicaid home and community-based waiver program targeted to persons with brain or spinal cord injuries; or
 - Is employed but, because of a loss of a caregiver, will lose employment and potentially return to a nursing home.⁸

The association, in cooperation with DOH and FEFVR, is responsible for developing the program to recruit, screen, select, and train candidates as personal care attendants.⁹ These entities are also responsible for establishing procedures for selecting persons for participation in the program.¹⁰

The association, in cooperation with DOR, BSCIP, AHCA, a representative from the state attorney's office in each of the judicial circuits participating in the program, FEFVR, and DOE, is also responsible for the development of a plan for implementation of the PCA program.¹¹

The Department of Health is responsible for establishing a workgroup to oversee the implementation and administration of the PCA program. The workgroup includes representatives from each of the relevant state entities, as well as two persons with traumatic spinal cord injuries or family members of persons with traumatic spinal cord injuries.¹²

There are two funding sources for the PCA program:

- Tax Collection Enforcement Diversion Program; and
- Fees from the Motorcycle Specialty License Plate.¹³

Tax Collection Enforcement Diversion Program

In conjunction with the establishment of the PCA program, the Legislature directed DOR, in cooperation with FACIL and the Florida Prosecuting Attorneys Association, to select judicial circuits in which to operate a tax collection enforcement diversion program ("tax diversion

⁸ Section 413.402(1), F.S.

⁹ Section 413.402(2) and (3), F.S. Pursuant to s. 413.402(2)(b), F.S., the services of a nurse registry licensed pursuant to s. 400.506, F.S., may be utilized to recruit and screen candidates and to operate as a fiscal intermediary through which payments are made to individuals performing services as personal care attendants under the program.

¹⁰ Section 413.402(4), F.S. Upon implementation, the PCA program established additional eligibility criteria: participants must work at least 32 hours per week, earn between \$10,800 and \$60,000 and not be eligible for SSDI or SSI payments. *See* E-mail attachment from Dan Casady, PCA Program Manager (February 27, 2008), on file with CFEA.

¹¹ Section 413.402(5), F.S.

¹² Section 413.402(6), F.S.

¹³ Sections 413.4021(1) and 320.08068(4)(d), F.S.

program") to collect unpaid sales taxes from delinquent business owners.¹⁴ Fifty percent of the collections from the tax diversion program are deposited into the operating account of FEFVR to be used to operate the PCA program and to contract with the state attorneys participating in the tax diversion program.¹⁵ The statute directs FEFVR to select an entity to administer the PCA program.

Six judicial circuits¹⁶ (Fourth, Eleventh, Thirteenth, Fifteenth, Sixteenth¹⁷ and Seventeenth) currently participate in the tax diversion program and generate an average of \$978,861 per year for the PCA program.¹⁸

Motorcycle Specialty (Bikers Care) License Plate Fees

The Department of Highway Safety and Motor Vehicles (DHSMV) offers a specialty tag to any owner or lessee of a motorcycle who chooses to pay the additional cost.¹⁹ DHSMV collects an annual use fee of \$20 from the sale of each motorcycle specialty license plate and distributes the fees to the Able Trust. The Able Trust is permitted to retain up to 10 percent of the funds for administrative costs and distributes the remaining funds as follows:

- Twenty percent to the Brain and Spinal Cord Injury Program Trust Fund;
- Twenty percent to Prevent Blindness Florida;
- Twenty percent to the Blind Services Foundation of Florida;
- Twenty percent to FEFVR to support the PCA program; and
- Twenty percent to FACIL to be used to leverage additional funding and new sources of revenue for the centers for independent living in this state.

The PCA program receives an average of \$51,000 per year from the Motorcycle Specialty License Plate program.²⁰

The administration expenses for the PCA program have accounted for less than two percent of the program's receipts in the last two fiscal years.²¹

¹⁴ Section 413.4021, F.S.

¹⁵ Section 413.4021(1), F.S. The contract amount for each state attorney cannot exceed \$50,000.

¹⁶ With the exception of Monroe County in the Sixteenth Circuit, the counties in which the PCA program was initially implemented align with the judicial circuits in which the tax diversion program currently operates: Miami-Dade, Hillsborough, Broward and Palm Beach (which are all single county court circuits) and Duval. The PCA program was originally restricted to residents of the five counties in which the tax diversion program operated, but it is now open to all residents. *See* E-mail from Dan Casady, PCA Program Manager (February 27, 2008), on file with CFEA.

¹⁷ The Sixteenth Circuit has only recently begun participation in the tax diversion program and, according to DOR, has not generated any revenue as yet. *See* E-mail from Debbie Thomas, Legislative and Cabinet Services Specialist, Florida Department of Revenue (February 26, 2008), on file with CFEA.

¹⁸ The Able Trust received \$808,253.63 in FY 2005-2006, and \$1,149,879.06 in FY 2006-2007 from the tax diversion program. The Able Trust, Customer Ledgers (PCA/State of Florida), July 1, 2005 to June 30, 2006 and July 1, 2006 to June 30, 2007.

¹⁹ Section 320.08068(2), F.S.

²⁰ In FY 2005-2006, the PCA program received \$46,888.75 from the motorcycle specialty tag fee program, and in FY 2006-2007, the program received \$55,806. The Able Trust, Vendor Ledgers (MSP/PCA), July 1, 2005 to June 30, 2006 and July 1, 2006 to June 30, 2007.

²¹ In FY 2005-2006, the program's administration expense was \$6,800 with total receipts of \$855,142. In FY 2006-2007, the administration expense was \$22,708 with total receipts of \$1,205,685. *See* E-mail and attachment from Martina Schmid,

Florida Work Incentive Personal Assistance Services (PAS) Pilot Program

In 2006, the Legislature appropriated \$400,000 in non-recurring general revenue to the Department of Children and Families (DCF or the department), and directed the department to partner with FACIL to develop a pilot program to provide personal care attendants to eligible individuals in Orange, Osceola, Lake, and Seminole counties. The Legislature provided that eligible participants in the program would include individuals with any significant physical or mental disability, not only individuals with traumatic spinal cord injuries.²²

Pursuant to a contract administered by DCF, FACIL developed and implemented the Florida Work Incentive PAS Pilot Program (PAS project).²³ The PAS project provides each participant up to \$1,500 per month (depending on income) to pay for reimbursement of actual PCA expenses.²⁴ The PAS project began enrollment in January 2007, and currently has 11 participants.²⁵

Because the appropriation establishing the pilot project specified non-recurring general revenue, the PAS project is still operating under the 2006 appropriation. DCF was permitted to carry forward the unspent balance of the original appropriation to fund the program's operations in FY 2007-2008.²⁶ However, without new funding, the program will not continue after July 1, 2008.

III. Effect of Proposed Changes:**Section 1**

Amends s. 413.402, F.S., requiring FEFVR (the Able Trust) to contract with the association by no later than October 1, 2008, to administer the James Patrick Memorial Work Incentive Personal Attendant Services Program to provide personal care attendants to individuals who have severe and chronic disabilities of all kinds and who otherwise meet specified eligibility criteria.

Provides that the association shall receive 12 percent of the funds paid to program participants from the funds to be deposited with the Able Trust pursuant to ss. 320.08068(4)(d) and 413.4021(1), F.S., to administer the program.

Amends eligibility standards for the PCA program. In order to be eligible to participate, an individual must:

- Be 18 years of age.
- Be a legal resident of Florida.
- Be significantly and chronically disabled.
- Require personal care assistance with at least two activities of daily living.

Executive Director, FACIL (February 27, 2008), on file with CFEA; The Able Trust, Vendor Ledgers (MSP/PCA) and Customer Ledgers (PCA/State of Florida), July 1, 2005 to June 30, 2006 and July 1, 2006 to June 30, 2007.

²² Chapter 2006-25, L.O.F., Specific Appropriation 340.

²³ Florida Work Incentive PAS Program, Policies and Procedures (available from FACIL) at p. 2.

²⁴ Florida Work Incentive PAS Pilot Program, Program Description and Eligibility Criteria (available from FACIL).

²⁵ See E-mail from Martina Schmid, Executive Director, FACIL (February 26, 2008), on file with CFEA.

²⁶ Ch. 2007-72, s. 19, L.O.F. According to Lee Ann Kelly-Christenson, Senior Management Analyst II, Adult Services Program Office, DCF, the actual carry-forward amount was \$202,000 in non-recurring funds.

- Require a personal care attendant in order to accept or maintain employment.
- Be able to acquire and direct a personal care attendant.

Deletes the requirement that a participant must be either a resident or recent resident of a nursing home, or employed but at risk of losing employment.

Deletes requirements relating to the recruitment, screening and selection of personal care attendants. Requires the association to provide training to program participants on hiring and managing personal care attendants and, in cooperation with an oversight group, adopt and revise the policies and procedures of the PCA program. Establishes the membership of the oversight group.

Adds “psychologists” to the list of professionals who can determine the need for personal care attendant services, and provides for a memorandum of understanding between FEFVR and the association, specifying that the agreement covers the period between July 1, 2008, and the execution of the final agreement.

Deletes provisions requiring procedures for selecting eligible participants and for implementing the program.

Section 2

Amends s. 413.4021, F.S., deleting a provision directing FEFVR to select an entity to administer the PCA program.

Corrects the FEFVR account description to reflect its appropriate designation as a “special reserve” account.

Section 3

Creates an undesignated section of law providing that individuals enrolled in the PCA program and in the PAS project as of June 30, 2008, will be automatically eligible for and enrolled in the new PCA program set forth in this bill.

Section 4

Provides an effective date of July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Individuals with a broader range of disabilities than those caused by traumatic spinal cord injury will have an opportunity to hire personal care attendants, thus obtaining or maintaining gainful employment.

The capacity of the program proposed by the bill is uncertain because the cost of participation varies widely: the PCA program pays its participants approximately \$650 per month (\$7800 per year),²⁷ while the PAS project, although it authorizes payments up to \$1500 per month, pays an average of \$1300 per month (\$16,000 per year).²⁸ Assuming the program's annual receipts total approximately one million dollars, after statutory payment to the six state attorney's offices that operate the tax diversion program (\$300,000) and administrative expenses (\$120,000), the proposed program could serve between 34 and 70 individuals each year. The two programs are currently serving a combined total of 42 individuals.

C. Government Sector Impact:

According to DOE, for every dollar spent to assist people with disabilities, \$16 are returned to the economy in terms of saved public funds and taxes paid. The potential savings from increased employment of individuals with significant disabilities may also be seen in reduced long-term care costs. If individuals with significant disabilities are employed and self-sustaining in the community, they are more likely to avoid more expensive long-term care options, up to and including nursing home care.²⁹

Although administrative expenses account for less than two percent of the funds received currently by the PCA program, the bill provides that the association will receive 12 percent of the funds paid to program participants to administer the PAC program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²⁷ See E-mail from Dan Casady, PCA Program Manager (February 27, 2008), on file with CFEA.

²⁸ See E-mail from Martina Schmid, Executive Director, FACIL (February 26, 2008), on file with CFEA.

²⁹ Florida Department of Education, *2008 Bill Analysis SB 370* (revised November 26, 2007). As of January 2007, the average daily reimbursement rate for nursing home care in Florida was \$170.18 per day (\$62,115.70 per person per year).

VIII. Additional Information:

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

CS by Committee on Health and Human Services Appropriations on April 8, 2008:

Provides a deadline of October 1, 2008, for the Florida Endowment Foundation for Vocational Rehabilitation and the Florida Association of Centers for Independent Living to sign an agreement, and reduces the administrative payment to the association from 15% to 12% of the funds paid to program participants.

Provides for a memorandum of understanding between FEFVR and the association, specifying that the agreement covers the period between July 1, 2008, and the execution date of the final agreement.

Adds “psychologists” to the list of professionals who can determine the need for personal care attendant services, and corrects the FEFVR financial account description to reflect its appropriate designation as a “special reserve” account.

CS by Committee on Children, Families and Elder Affairs on March 5, 2008:

Clarifies that in order to be eligible for the PCA program, an individual must be a *legal* resident of the state, and deletes requirement that an individual must have been a resident of the state for 12 months prior to making application to the program.

- B. **Amendments:**

None.