

STORAGE NAME: h4167a.hhs

DATE: April 3, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
HEALTH AND HUMAN SERVICES APPROPRIATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 4167 (Formerly PCB LT 98-01b)

RELATING TO: Adult abuse, neglect, and exploitation

SPONSOR(S): Committee on Elder Affairs & Long Term Care, Representative Brooks & others

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) Elder Affairs & Long Term Care YEAS 7 NAYS 0
 - (2) HEALTH AND HUMAN SERVICES APPROPRIATIONS YEAS 12 NAYS 0
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

HB 4167 amends the Adult Protective Services Act found in sections 415.101-415.113, F.S. It removes from the statute reference to "self-neglect" and creates definitions of "disabled adult in need of services" and "elderly person in need of services". It requires onsite adult protective services investigators to determine whether a subject of a report is a disabled adult in need of services or an elderly person in need of services. The PCB provides for the referral of a disabled adult in need of services to the community care for disabled adults program and the referral of an elderly person in need of services to the community care for the elderly program under the Department of Elderly Affairs (DOEA). It provides that, in cases determined to be either a disabled adult in need of services or an elderly person in need of services, no classification of the report shall be made in the department's central abuse registry and tracking system and no notification pursuant to s. 415.1055 shall be required. The department may retain the records of such reports for up to 1 year. The bill provides that primary consideration shall be given by the community care for the elderly program to referrals by adult protective services of an elderly person in need of services or victims of abuse, neglect, or exploitation who are in need of immediate services to prevent further harm. It defines "primary consideration".

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Department of Children and Family Services

The Adult Protective Services (APS) program office and the Florida Abuse Hotline Information System (FAHIS), commonly known as the Abuse Hotline, are located in the Department of Children and Family Services (DCFS). Adult Protective Services is a program within the Aging and Adult Services office while FAHIS is administered by the Children and Families Support office. The APS program office is responsible for responding to calls made to the Abuse Hotline, investigating reports of abuse, neglect or exploitation of aged or disabled adults, providing protective services to those who require such services and for classifying reports made pursuant to the investigations as unfounded, proposed confirmed or confirmed.

The Adult Protective Services law is found in Part I of Chapter 415 [ss. 415.101-415.113, F.S.]. Presently, the law requires that any person who knows or has reasonable cause to suspect that an aged or disabled person is being abused must immediately report this information to FAHIS. Typically, a person will call FAHIS with a report of abuse, neglect or exploitation, with the information entered into the FAHIS central abuse registry and tracking system. The FAHIS will then contact the APS office in the appropriate service district, which will then begin an investigation to determine whether there is any indication of abuse, neglect or exploitation and, if any such condition exists, to determine the immediate and long-term risk of harm to the individual. If the individual who is the subject of the investigation has been abused, neglected or exploited, the APS office will determine the services necessary to safeguard and ensure the person's well being. According to the circumstances in each case, DCFS will either provide services, directly or through a contract, to the individual in their own home or, if necessary, remove the person to a safe place for the care or treatment. If the person lacks the capacity to consent to the offered services, DCFS must petition the appropriate circuit court for an order authorizing the provision of protective services. The APS office may call in the appropriate law enforcement agency if the case investigation discovers acts by second parties against an aged person or disabled adult.

The DCFS is required to complete its investigation no later than 30 days after receiving the initial report. After the completion of its investigation, the department must classify a report as either "proposed confirmed" or "unfounded," unless the report is closed without classification. Notice of an "unfounded" report is sent to the disabled adult or aged person, their guardian, if one has been appointed, and the alleged perpetrator. Notice to each individual is sent by regular mail. "Unfounded" reports are kept in the FAHIS files for one year, after which they are expunged from the central abuse registry and tracking system.

Notices of a "proposed confirmed" report must be given to the disabled adult or aged person, their guardian, if one has been appointed, their care giver, and the alleged perpetrator, as well as any legal counsel for these individuals. Notices of "proposed confirmed" reports must be personally served upon the alleged perpetrator in this state by an adult protective services investigator, a sheriff, or a private process server in the

district in which the alleged perpetrator resides, works, or can be found. Notice to other named persons may be sent by regular mail. In this notice the alleged perpetrator is informed of the facts of the case which support the department's decision to issue a "proposed confirmed" classification and of the alleged perpetrator's right to request a full copy of the report. The alleged perpetrator has the right to respond to the allegations by explaining or rebutting the allegations and to request that the department either amend or expunge the report, or both. The alleged perpetrator must respond to the "proposed confirmed" report within a 60-day time limit or else the "proposed confirmed" report automatically is converted into a "confirmed" classification.

If the Secretary of DCFS refuses to amend or expunge the "proposed confirmed" report, or fails to take any action on the alleged perpetrator's request, the alleged perpetrator has the right to request an administrative hearing, pursuant to Chapter 120, F.S., to challenge the department's classification. The alleged perpetrator must request the hearing within 30 days of the Secretary's rejection of the alleged perpetrator's request, or 60 days of inaction, whichever comes first. After the administrative hearing the Secretary will determine the final classification. The department will then either classify the report as "confirmed", "unfounded" or as "closed without classification". If the perpetrator still believes the classification is incorrect, that person may seek judicial review of the department's final decision. "Confirmed" reports of abuse, neglect or exploitation are kept in the FAHIS central abuse registry and tracking system for 50 years after the date the report is classified "confirmed".

Currently, when a case is closed without classification because it is determined by the investigator to be "self-neglect" as specified in s. 415.102(5)(c), the department must provide notices to the guardian of the disabled adult or elderly person, the disabled adult or elderly person, the care giver of that person, and any person or facility named in the report. Among other things, the notice must advise the "self-neglected person" of their right to request amendment or expunction of the report within 60 days. If the elderly or disabled person appeals the classification and the Secretary denies the appeal, the person has the right to an administrative hearing pursuant to chapter 120, but must meet specific time frames in instituting such an appeal.

In addition to any other penalty this or any other Florida Statute may impose on a person confirmed as a perpetrator, the person may also be subject to the following criminal penalties:

- a felony of the second degree for willfully or knowingly causing great bodily harm or permanent disability to an elderly person or disabled adult.
- a felony of the first degree for knowingly exploiting an elderly person or disabled adult if the funds, assets, or property involved in the exploitation are valued at \$100,000 or more; second degree if valued between \$100,000 and \$20,000; and, third degree if valued below \$20,000.
- a felony of the second degree for willfully or by culpable negligence neglecting an elderly person or disabled adult and thereby causing great bodily harm.

Department of Elderly Affairs

The Department of Elderly Affairs (DOEA) was created by the Florida legislature in 1991. Among the purposes provided in s. 430.03, F.S., the department has the responsibility to “Assist elderly persons to secure needed services ...” and “Promote the prevention of neglect, abuse , or exploitation of elderly persons unable to protect their own interests.” The department, through its area agencies on aging (AAA), administers both federal and state programs for the elderly. At present, elderly persons who have been identified by the APS program of the DCFS as having been abused, neglected, or exploited may be referred to the DOEA and may receive services on a “primary consideration” basis if a functional assessment determines that they are at risk of institutionalization. Such individuals may be maintained by APS as an open case and may receive services through the DCFS over an extended period of time.

B. EFFECT OF PROPOSED CHANGES:

The bill removes references to self-neglect from provisions relating to APS cases and reports. It sets up a system whereby individuals, who under current law would be charged with “self-neglect”, may be determined by adult protective services to be either a disabled adult in need of services or an elderly person in need of services. Such persons would no longer be classified in the central abuse registry and tracking system, so there would be no need to send letters notifying the person, their guardian, attorney or others of the person’s appeal rights. The bill revises DOEA requirements for providing assessment and services on an expedited basis to persons referred from APS.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No

(3) any entitlement to a government service or benefit?

No

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

No

d. Does the bill reduce total fees, both rates and revenues?

No

e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

section 415.102, section 415.1045, section 415.105, section 415.1055, and section 430.205, F.S.

E. SECTION-BY-SECTION RESEARCH:

This section need be completed only in the discretion of the Committee.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

not significant.

2. Recurring Effects:

The Department of Children and Family Services estimates that the changes proposed in this bill, related to the investigation and provision of services on a voluntary basis to persons suffering from neglect not caused by a second party, will result in a total workload reduction of approximately 10 percent. The Department of Elderly Affairs expects an indeterminate, but significant fiscal impact. The referral requirements of the bill anticipate that social services other than investigations currently being provided by the Department of Children and Family Services will be supplanted by DOEA funded services. The change for DOEA in responding to some referrals within 72 hours will result in some providers adding hours to their staff availability. However, the effect should be minimal, since many of the referrals are already clients of DOEA.

3. Long Run Effects Other Than Normal Growth:

Agency will be required to account for better service delivery to this group through performance based budgeting.

4. Total Revenues and Expenditures:

Indeterminate

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

This bill would revise the responsibilities carried out by both the Department of Children and Family Services (DCFS) and contract providers of the Department of Elderly Affairs (DOEA) regarding individuals reported to the Abuse Hotline. The affected elders would be, after investigation by an adult protective services investigator, those determined to be suffering the ill effects of neglect not caused by a second party perpetrator. The intent of the proposal is to relieve DCFS of costly, inappropriate classification and notification requirements as well as the extended provision of services for these persons. The proposal would then require contract providers of DOEA to accept an increased number of referrals for assessment and services, many of whom are already clients of DOEA. Some of these would require expedited services. A report matching elders who were reported to the DCFS hotline with DOEA client data indicated that over

70% of affected elders are current or prior clients of the DOEA. According to the DOEA the fiscal impact on DOEA is indeterminate, but significant. Since the bill would generally shift service responsibilities from one agency to another, and would mainly shorten the waiting period for the elder to be served, the total fiscal impact should be minimal.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

It has been reported by the DCFS that about a third of the reports investigated by APS annually involve cases of neglect of elderly or disabled adults in which no second party perpetrator is known or suspected. Many of these individuals may already be clients of the DOEA, being served or at least eligible for services under the community care for the elderly program or other programs. This bill, in removing reference to self-neglect as a cause of an abuse registry classification, would eliminate pejorative labeling and the accusatory approach to persons suffering from the ill effects of poverty, isolation, lack of mobility, and poor health or the diminishing capacities associated with the aging process. In contrast, such persons, would under the provisions of this bill, be treated as persons in need of care and services.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

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VII. SIGNATURES:

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AS REVISED BY THE COMMITTEE ON HEALTH AND HUMAN SERVICES

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