

STORAGE NAME: h1865a.lt

DATE: April 10, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
Elder Affairs & Long Term Care
ANALYSIS**

BILL #: HB 1865

RELATING TO: Elderly Affairs

SPONSOR(S): Representative Fiorentino

TIED BILL(S): SB 2330 (Similar)

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

- (1) Elder Affairs & Long Term Care YEAS 11 NAYS 0
 - (2) Governmental Operations
 - (3) Health & Human Services Appropriations
 - (4)
 - (5)
-

I. SUMMARY:

The bill is a substantial rewrite of chapter 430, F.S., the chapter that authorizes and directs the activities of the Department of Elderly Affairs (DOEA). The bill revises licensure provisions related to assisted living facilities (ALFs), and adult family care homes. Responsibility for certain Medicaid programs, for regulatory policy for long term care facilities, and for long term care policy in general is transferred to DOEA. Provides for the release of confidential information from DOEA to other entities of government or the department's contractors. Creates a section related to the "mission" of the department. Provides that the department may secure copyrights, patents, and trademarks.

Revises provisions related to the designation of Area Agencies on Aging (AAAs) and DOEA's authority to rescind the designation or to take other intermediate sanctions. Revises provisions related to the department's volunteer programs. Revises provisions related to the community long term care diversion projects. The bill revises the provisions related to the Community Care for the Elderly (CCE) program and deletes the list of historical "core services." Allows DOEA to contract directly with service providers instead of using the eleven Area Agencies on Aging as the local contract administrators.

Revises provisions related to career service retention rights of persons hired in "time-limited project, grant, or trust fund personnel positions." Significantly revises the role of "lead agencies" from a "one-stop-shopping" model, providing case management services directly, and other services under contract, to providing only case management or a case management like service called "service coordination."

Throughout the bill, reference is made to the department reflecting the diversity of Florida and taking steps to encourage respect of person's cultural and ethnic heritage. Rule authority is provided in several sections. The bill includes provisions that appear to have a fiscal impact on the state budget, but a fiscal analysis is not yet available. Section 22 provides that the department may expend money from the "Grants & Donations" Trust Fund without a Legislative appropriation or approved budget amendment and exempts the trust fund from the service charges imposed by section 215.20, F.S.

The bill takes effect July 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

1. Less Government: The bill creates rule authority; it allows DOEA the option to contract directly for services instead of through the existing aging network structure, and this may require more staff in the department; it does create new obligations and work for the department.

B. PRESENT SITUATION:

The Federal Older American's Act

The Older Americans Act of 1965 as Amended calls for a range of programs that offer services and opportunities for older Americans, especially those at risk of losing their independence. The Act established the Administration on Aging (AoA), an agency of the U.S. Department of Health and Human Services, which is headed by the Assistant Secretary for Aging in the Department. Congress expressed its intent in a list of 10 objectives.¹

¹ The Congressional intent in establishing in the Older American's Act is expressed as follows:

The Congress hereby finds and declares that, ... it is the joint and several duty and responsibility of the governments of the United States, ... to assist our older people to secure equal opportunity to the full and free enjoyment of the following objectives:

- (1) An adequate income in retirement in accordance with the American standard of living.
- (2) The best possible physical and mental health which science can make available and without regard to economic status.
- (3) Obtaining and maintaining suitable housing, independently selected, designed and located with reference to special needs and available at costs which older citizens can afford.
- (4) Full restoration services for those who require institutional care, and a comprehensive array of community-based, long-term care services adequate to appropriately sustain older people in their communities and in their homes, including support to family members and other persons providing voluntary care to older individuals needing long-term care services.
- (5) Opportunity for employment with no discriminatory personnel practices because of age.
- (6) Retirement in health, honor, dignity - after years of contribution to the economy.
- (7) Participating in and contributing to meaningful activity within the widest range of civic, cultural, education and training and recreational opportunities.
- (8) Efficient community services, including access to low-cost transportation, which provide a choice in supported living arrangements and social assistance in a coordinated manner and which are readily available when needed, with emphasis on maintaining a continuum of care for vulnerable older individuals.
- (9) Immediate benefit from proven research knowledge which can sustain and improve health and happiness.
- (10) Freedom, independence, and the free exercise of individual initiative in planning and managing their own lives, full participation in the planning and operation of community-based services and programs provided for their benefit, and protection against abuse, neglect, and exploitation.

AoA administers key programs at the Federal level mandated under various titles of the Older Americans Act. These programs help vulnerable older persons to remain in their own homes by providing supportive services. Other programs offer opportunities for older Americans to enhance their health and to be active contributors to their families, communities, and the Nation through employment and volunteer programs.

OAA: STATE AND COMMUNITY PROGRAMS

Several Titles of the Act provide for supportive in-home and community-based services. Title III supports a range of services including nutrition, transportation, senior center, health promotion, and homemaker services. Title VII places emphasis on elder rights programs, including the nursing home ombudsman program, legal services, outreach, public benefit and insurance counseling and elder abuse prevention efforts. AoA awards funds for Titles III and VII to the 57 State Agencies on Aging (sometimes referred to as State UNITS on Aging) which are in every State and Territory. Under Title VI, AoA also awards funds to 216 tribes and native organizations to meet the needs of older American Indians, Aleuts, Eskimos, and Hawaiians.

OAA: Funding to the States

Program funding is allocated to each State Agency on Aging, based on the number of older persons in the State, to plan, develop, and coordinate systems of supportive in-home and community-based services. Most States are divided into Planning and Service Areas (PSAs) so that programs can be effectively developed and targeted to meet the unique needs of the elderly residing in that area. Nationwide some 660 Area Agencies on Aging (AAA) receive funds from their respective State Agencies on Aging to plan, develop, coordinate and arrange for services in each PSA. In rural areas, an AAA may serve the needs of elderly people living in a number of counties, while other AAA's may serve the elderly living in a single city.

AAA's contract with public or private groups to provide services. There are some 27,000 service provider agencies nationwide. Sometimes, the AAA may act as the service provider, if no local contractor is available. Supportive services fall under several categories, including.

- ▶ Access Services such as information and referral, outreach, case management, escort and transportation; In-Home Services-which include chore, homemaker, personal care, home-delivered meals, and home repair and rehabilitation,
- ▶ Community Services including senior center, congregate meal, day care, nursing home ombudsman, elder abuse prevention, legal, employment counseling and referral, health promotion, and fitness programs.
- ▶ Caregiver Services such as respite, counseling, and education programs.

The Florida Department of Elderly Affairs (DOEA)

The Department of Elder Affairs (DOEA) was created by the legislature in 1992 in response to a 1988 general election constitutional referendum calling for the establishment of a state agency specifically focused on the needs and concern of elders. Chapter 430, F.S. establishes the Department of Elder Affairs as the agency responsible for administering aging services and programs, particularly the Federal Older American's Act, (OAA).

The following additional programs were transferred from the former Department of Health and Rehabilitative services (HRS) to DOEA:

- Community Care for the Elderly (CCE)
- Florida's Alzheimer's Disease Initiative
- Emergency Home Energy Assistance for the Elderly
- Long-term care Ombudsman

Subsequent Legislative sessions in 1993, 1995, and 1997 transferred additional programs and services for elders from HRS, The Agency for Health Care Administration, the Department of Children and Family services, the Department of Education, and the Department of Labor and Employment Security to DOEA including the following:

- Job Training Partnership Act, Older Worker Program
- Home Care for the Elderly (HCE)
- Comprehensive Assessment and Review for Long-term Care Services (CARES)

Responsibility for administrative rules was assigned to DOEA for Assisted Living Facilities (ALFs); Adult Family Care Homes (AFCHs); Hospice; Adult day care; and the Adult day Care Food program

Structure of the Aging System in Florida

The majority of programs administered by the Department of Elder Affairs are "privatized," meaning that the Department contracts with AAAs in each of 11 "planning and service areas." These eleven PSAs equate to the pre-1992 HRS districts.

The PSAs in turn select and contract with local agencies to deliver services. The AAAs act in place of district offices for the department, determining the needs for services in their areas, negotiating contracts for services purchased with state and federal funds, and monitoring performance of these contracts.

There are three major programs and funding sources for aging-related programs through DOEA: The **Older American's Act** (OAA); the **Medicaid Home and Community-based Services Waiver** ("Aged/Disabled waiver" or waiver); and, the general revenue-funded **Community Care for the Elderly** (CCE) program.

The OAA provides federal funds as described above and it allows services to be prioritized to seniors in greatest economic and social need.

The waiver program serves low-income elderly who, but for the provision of waiver services, are at risk of entering a nursing facility. Under the authority of the waiver, AHCA, and DOEA through its aging network, provide a variety of health and social services. Each waiver participant chooses a case manager who completes an assessment and then in collaboration with the participant develops a plan of care. All plans of care are subject to the approval of the Medicaid agency. Medicaid Waiver Specialists are on staff in each AAA to provide technical assistance, monitoring, and training to waiver providers. The Specialists' positions are funded through General Revenue with a 50 percent Medicaid federal match.

The Community Care for the Elderly Program

The Community Care for the Elderly (CCE) program was created by the Legislature in 1973. The CCE program provides community-based services organized along a continuum of care to assist functionally-impaired older people live in the least restrictive environment suitable to their needs. Under the CCE program, AAAs select *lead agencies* that operate for the most part in a particular county (Palm Beach County has two lead agencies, each serves a portion of the county; and, in some smaller counties, a Lead agency serves multiple counties). The lead agencies all provide case management, and many lead agencies provide both case management and other CCE services.

The statute defines the CCE service system as:

a service network comprising a variety of home-delivered services, day care services, and other basic services, hereinafter referred to as "core services," for functionally impaired elderly persons which are provided by several agencies under the direction of a single lead agency. Its purpose is to provide a continuum of care encompassing a full range of preventive, maintenance, and restorative services for functionally impaired elderly persons.

Services and Activities include: Adult day care, case management, case aide, chore, companionship, medical supplies, counseling, escort, emergency alert response systems, emergency home repair, home health aide, homemaker, information & referral, legal assistance, physical therapy, shopping assistance, occupational therapy, speech therapy, and home nursing. Services are provided by 54 "lead agencies" (43 non-profit and 11 county/local government agencies) and their contractors. The statutes do not provide a list of services that are either required or to which the agency is limited.

Eligibility: 60 years of age and functionally impaired as measured by a standardized assessment instrument. Priority is given to people who are at risk of entering a nursing home or persons who have been abused, neglected or exploited and referred by the Adult Protective Services Team.

In 1996-97 41,990 persons were served at an average cost of \$2,364 per person. In 1995 the Legislature revised the CCE program to allow the Department of Elder Affairs to charge

and collect fees from people based on their ability to pay. Estimates are that fees collected in 1997-98 were \$1.1 million statewide.

The Medicaid Program and the Single State Agency Requirement

Medicaid is a medical assistance program that pays for health care for the poor and disabled. The program is jointly funded by the federal government, the state, and the counties. The federal government, through law and regulations, has established extensive requirements for the Medicaid program. The Agency for Health Care Administration is the single state agency responsible for the Florida Medicaid Program. The statutory provisions for the Medicaid program appear in ss. 409.901 through 409.9205, F.S.

Federal regulations (42 CAR 430.10) require that each state that has a Medicaid program designate a single state agency to administer or supervise the administration of the Medicaid plan and make rules and regulations that it follows in administering the plan. The agency must not delegate, to other than its own officials, the authority to exercise administrative discretion in the administration or supervision of the plan or to issue policies, rules, and regulations on program matters. If other State or local agencies or offices perform services for the Medicaid agency, they must not have the authority to change or disapprove any administrative decision of the Medicaid agency, or otherwise substitute their judgment for that of the Medicaid agency with respect to the application of policies, rules, and regulations issued by the Medicaid agency.

DOEA currently operates the elder portion of Florida's Aging/Disabled Waiver program, and the CARES program (pre-admission screening of medical necessity for nursing home care) under an interagency agreement with the Agency for Health Care Administration.

The CARES Program

CARES is the comprehensive nursing home pre-admission assessment process for Medicaid eligible persons who are considering nursing home placement or applying for a Medicaid home and community-based waiver program as a diversion from institutional care. The federal Medicaid program requires states to operate a CARES screening process. Medicaid participates in the cost of the CARES team with enhanced federal financial participation at the rate of 75 percent federal to 25 percent state money.

C. EFFECT OF PROPOSED CHANGES:

Related to Area Agencies on Aging (AAA)

Accountability of the AAA to the local communities is moved from the Executive Director to the board of directors (section 14). The department is granted authority to rescind the designation of a AAA or take other intermediate steps if it fails to meet or to adhere to the terms of its contract with the department, violates statute, rule, or department standards, lacks financial stability, fails to continue or expand services after a declaration of a state of emergency or fails to implement a department-approved grievance procedure.

Policy & Regulation

The department is granted authority to evaluate and promulgate regulatory policy (Rules) for long term care facilities and long term care services. Responsibility for licensure, certification, complaint investigation, and sanctioning long term care providers currently resides with AHCA.

Services

The department is granted authority to continue contracting with public or private entities to deliver services or it may administer such programs directly.

The department is directed to maintain or improve the “environmental, cultural, behavioral, psychological, economic, and social well-being” of consumers, using the least restrictive environment that is “safe” and cost-effective. One inference of this provision is that “cost-effectiveness” is to be a primary value and other considerations are to be ranked lower.

The department is directed to serve the most frail elders first in the CCE program according to the department’s assessment instrument.

Finances & Intellectual Property

Requires each provider under contract to provide CCE services must provide a minimum of 10 percent of the funding necessary for the support of “project operations.” The bill removes the requirement that the department expend funds only following a Legislative appropriation or an approved budget amendment. The department is granted authority to obtain patents, copyrights, and trademarks and to enforce its rights to that protection to any “legitimately acquired work products.”

Research & Study

The department is granted authority to “develop, arrange, oversee, and conduct research in the field of aging.” The requirement that the department study and plan for programs to meet the identified and projected needs of elders is deleted.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends section 20.41, F.S., the authorizing chapter for the department. Removes language related to the secretary’s duty to administer the program and authority to hire staff as necessary. Provides that the department will operate through planning and service areas (PSAs) designated by the department by rule. Provides that the department establish and operate the Office of the State Long-Term Care Ombudsman. Removes language that provided that the Ombudsman program was “administratively housed” in the department. Language that expressed the autonomy of the Ombudsman by expressly prohibiting the department from subjecting the Ombudsman to “control, supervision, or direction by the department” is removed.

Enumerates the duties of the department in exercising its responsibilities in accordance with s. 305 of Pub. L. No. 89-73, the federal Older American’s Act of 1965 (also called the Act). Specifically, the department is to: develop a plan; receive and distribute all funds provided through the Act in accordance with a formula developed by the department; be

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“primarily responsible” for the planning, policy development, administration, coordination, priority setting, and evaluation of all state activities related to the objectives of the Act.

Deletes language requiring that the department designate and contract with AAAs in each of the department’s PSAs. Deletes language requiring the AAAs to ensure a coordinated and integrated provision of long term care services.

Deletes language requiring the department to ensure management information resources provide the ability to share and integrate information collected and reported by AAAs.

Deletes language requiring the department to contract with the governing body of each AAA and the provision that the board ensure the accountability of the AAA to the local communities in each PSA.

Deletes language directing the AAA board to appoint a chief executive officer in consultation with the secretary and the delegation of responsibility for agency management, board policy, and accountability for the AAA’s performance.

Deletes the provisions that subject the AAAs to chapter 119, F.S., relating to public records and to chapter 286.011 and 286.012, F.S., relating to public meetings when considering contracts that require expenditures.

Section 2. Corrects a cross reference.

Section 3. Corrects a cross reference.

Section 4. Limits this section to a description of facilities that are exempt from licensure as assisted living facilities (ALFs). Adds a provision that exempts persons participating in the HCE program for ALF licensure. Deletes language that required a facility that provides only personal care, and no other supervision, to be licensed as an ALF if the owner is not licensed as a home health agency. Deletes the requirement that home health agencies providing services pursuant to this section provide liability insurance for its employees.

Section 5. Adds to section 400.618, F.S., Definitions, a provision clarifying that a person who owns or rents a home and provides personal care services for one or two adults who do not receive optional state supplementation (OSS) also must “not hold the home out to the public as an adult family-care home” to be exempt from licensure. Persons who are receiving a subsidy under the HCE program are exempt from licensure as an ALF. Deletes the language that provided an exemption to persons who were providing room, board, and personal care only to their own relatives.

Section 6. Amends section 409.904, F.S., related to OSS. Makes technical changes and provides that the Agency for Health Care Administration (AHCA) assign to DOEA responsibility for nursing home pre-admission screening, and for administering three of the four Medicaid home and community-based waivers that serve elders.

Section 7. Renumbers section 410.502, F.S., related to housing and living arrangements and special needs of the elderly as section 430.075, F.S. Adds “assisted living” to the list of living arrangements that the department and AAAs are to develop through public and private auspices.

Section 8. Removes the provision that allowed the department to also be known as the “Department of Elder Affairs.”

Section 9. Creates section 430.016, F.S., related to confidential information. Provides that information held by the department that is confidential and exempt from public records requirements may be released to other governmental entities or to contractors of the department. The receiving entity or party shall retain the confidentiality of the information as provided by law.

Section 10. Section 430.03, F.S., related to the "purposes" of the department is changed to the "mission" of the department. This section proposes that to that end the department "advise, assist, protect, and advocates for the state's elderly residents." Further, the department is given responsibility for "evaluating and promulgating regulatory policy" for long term care facilities and for providing long term care services. DOEA is directed to provide "opportunities for personal development" and employment of persons age 60 and older. The department is authorized to develop, arrange, oversee, and conduct research on aging and to promote and implement pilot projects. The department's research agenda may include development of new services and delivery systems, modified living environments, use of assistive devices and evaluation of pilot projects serving elders.

Further, the department is directed to emphasize initiatives which coordinate and "integrate" the needs of elders along the continuum of care. The department is to review and comment on state plans, budgets and policies that affect older persons and is to provide technical assistance to any agency, organization, association, or person representing the needs of older individuals.

DOEA is directed to encourage and enlist the services of volunteers, encourage self-care, support the efforts of caregivers and promote activities that assist persons of diverse ages, cultural backgrounds and ethnic traditions to benefit from intergenerational relationships that promote, "unity, support, and respect for one another."

DOEA is directed to:

- establish and maintain a management information system;
- promote compassionate, culturally competent and adequate end-of-life care;
- develop and establish self-directed care programs;
- develop structurally integrated, comprehensive system that determines eligibility, assesses the person's level of care needs for "supportive community-based, long term care services";
- contract with public or private entities or directly administer planning and service provision using whichever is most efficient and cost-effective;
- develop and implement training for caregivers and providers;
- encourage and actively solicit contributions and grants
- promote the development of public-private partnerships to maximize consumer choice;
- hold public meetings around the state;
- call upon state agencies as needed;
- prepare a master plan addressing aging policies and programs in the state.

Section 11. A new section, 430.035, F.S., is created with definitions of the following terms:

- AAA
- assessment
- care plan
- caregiver
- case aide services

- case management
- community care service area
- Department (providing that the department may be known as “the Department of Elder Affairs”)
- Elder, elderly person, or older individual
- functionally impaired
- Lead agency
- planning and service areas
- respite
- service coordination
- stipend

Section 12. Section 430.045 is created to provide the department with authority to secure letters of patent, copyrights, and trademarks on any legitimately acquired work products and to enforce its rights. The department is granted authority to “license, lease, assign or otherwise give written consent” for the use of any protected product. The department is granted authority to take any action necessary to enforce its rights; to enforce the collection of any payments for the manufacture or use of any product; sell any product; and to “do all other acts necessarily and proper” to execute the powers and duties conferred in this section. The department is authorized to sell any product whether that product is protected by a department patent, copyright, or trademark except when restricted by public records law.

The department must notify the Department of State when patent, copyright, or trademark rights secured or used. Provides that the proceeds from the sale of products or the right to manufacture or use a protected product are to be deposited in the department’s Grants and Donations Trust Fund. This section provides that those deposits “may be appropriated to finance activities of the department and that the department’s Legislative budget requests should give special consideration to using these funds for research and development projects. Provides a definition of “product.”

Section 13. Revises provisions related to the Advisory Council. Provides that a majority of members “reflect the state’s racial and cultural diversity” and deletes the requirement that the advisory council have a “balanced minority and gender” representation. Vacancies occurring in the middle of a term are to be filled only for the remainder of the term to retain staggered appointments. Deletes obsolete language related to the initial appointments of members.

Section 14. Creates 430.065 related to AAAs. Essentially re-creates the language related to AAAs deleted in section 1 of the bill. Accountability of the AAA to the local communities is moved from the Executive Director to the board of directors.

The department shall rescind designation of a AAA or take intermediate measures against the AAA if the department finds that the AAA has failed to maintain standards enumerated. The department is granted rule promulgation authority for this section.

Section 15. Amends 430.07, F.S., related to volunteer services. The department is directed to develop and coordinate a comprehensive statewide volunteer program. Deletes the provision that it be “**by and for**” elders. Provides further guidance about the volunteer services program. Provides that the department adopt rules to establish “standards of practice” relating to screening, selection, training, and supervision of volunteers and “volunteer program components.”

Section 16. Amends section 430.071, F.S., related to the "RELIEF," Respite for Elders Living in Everyday Families program. Provides authority for promulgating rules establishing the program's components, "standards and procedures for determining the need for respite services and for service delivery."

Section 17. Amends section 430.202, F.S., Community Care for the Elderly (CCE), Legislative intent. Provides a policy direction that the most frail elders are served first if providing care for such persons in their own homes does not exceed the average annual cost of nursing home care and does not jeopardize their safety.

Section 18. Amends section 430.205, F.S., Community care service system. Deletes the phrase "*service system*" and the title is changed to "community care for the elderly program"; lists services to be provided by at least one CCE program in each PSA. Those services include: assessment, care planning, service coordination, case aide services, case management, legal assistance, counseling, *material aid*, companion, homemaker, chore services, shopping assistance, escort, transportation, home-delivered meals, emergency home repair, respite, adult day care, personal care, home health aide services, emergency alert response, consumable medical supplies, *medical therapeutics*, and home nursing.

Lead agencies are selected every three years through a request for proposals or an "invitation to negotiate." The AAA shall select lead agencies using guidelines developed by the department with the AAAs and adopted in administrative rule. The guidelines must accomplish a list of ideals enumerated including: quality, cost-effective services that are "elder-friendly"; encourage competition; and, ensure that case managers and service coordinators do not act to promote services provided by their employing agency.

AAAs, with the department's agreement, can exempt a Lead agency who meets or exceeds standards and units of local government that provide a fair-share local case match, provide certain activities, provide choice of case managers, and are subject to an annual review to ensure compliance with these requirements.

Adds authority for "research" to the department's authority to conduct demonstration projects. In addition to evaluating the cost-effectiveness of the demonstration projects, the department is to evaluate "*the minimization of factors causing acute episodes which result in hospitalization.*"

Provides for an assessment of functional impairment to be done to each applicant according to criteria developed by the department and adopted by rule. The assessment criteria are to permit the department to prioritize service delivery to those most at risk of nursing home placement, if providing home-based services is the **most cost-effective option** and does not jeopardize the person's **safety**.

Provides that the department serve individuals most in need according to the assessment without regard to whether they were referred by adult protective services. Identifies funding sources. Provides that the department evaluate the CCE program on several delineated criteria. Provides that the department adopt rules establishing standards for the "provision of care," and for screening, selecting, training, and supervision of service providers and staff.

Section 19. Creates 430.2055, F.S., community care for the elderly service contracts and copayments. The department, or its designee, shall contract with public or private agencies or organizations for the services needed by a CCE program. The contractor must ensure

that all funding sources and informal community resources have been “considered” before using CCE funds. The department and the contracting agency may accept gifts and grants to fund services in a community care service area.

Section 20. Multiservice senior center. Amends s. 430.206, F.S., to include listing of services to be delivered at multiservice senior centers to elderly persons and their caregivers. Mandates that services be provided in a “culturally appropriate” fashion.

Provides that the department shall have a proportionate reversionary interest in the center if state funds are appropriated to construct, acquire or renovate the center. Prohibits the sale of such centers without written notice to the department.

Section 21. Confidentiality of information. Amends s. 430.207, F.S., to make technical and conforming changes.

Section 22. Grants and Donations Trust Fund. Amends s. 430.41, F.S., to remove the requirement that expenditures can only be made with legislative appropriation. Allows the department to raise money for the Trust Fund and use Trust Fund monies to support its mission. Lists examples of services which could be funded by this trust fund. Exempts trust fund from the service charge imposed by s. 215.20.

Section 23. Renumbers s. 430.42 to create s. 430.82.

Section 24. Time-limited project, grant, or trust fund personnel. Creates s. 430.43 to allow the department to hire time-limited project, grant, or trust fund personnel. Provides that such personnel shall not be subject to the requirements for authorized positions, designates the time that such personnel can be employed, and offers these employees all career service rights except retention rights.

Section 25. Alzheimer’s Disease Initiative. Creates s. 430.5011 to provide a short title for section 430.5011 - 430.504: “Alzheimer’s Disease Initiative.”

Section 26. Alzheimer’s Disease Advisory Committee. Renumbers s. 430.501 to create section 430.5012. Removes findings language in 430.501(1).

Deletes the Alzheimer’s Disease Advisory Committee’s responsibility to evaluate the performance of the department, and provides that the committee advises the department about disorders relating to Alzheimer’s disease. Amends 430.501(3) to make technical changes.

Creates subsection (3) to require the committee to evaluate the need for additional memory disorder clinics. Deletes the department the ability to collect funds in its Grants and Donations Trust Fund and expend the same for programs relating to Alzheimer’s disease.

Section 27. Alzheimer’s disease; memory disorder clinics and day care and respite care programs. Amends s. 430.502 to add the Legislature’s findings about Alzheimer’s disease and the Legislature’s intent to establish memory disorder clinics. Amends s. 430.502(1) - (6) to make technical and conforming changes. Amends s. 430.502 (2) and s. 430.502(6) to change the way in which research results are reported. Creates s. 430.502(7) to allow the department to deposit donated funds for Alzheimer’s research in its Grants and Donations Trust Fund and allocate these funds for research purposes. Creates s. 430.502(8) to authorize the department to adopt rules as necessary.

Section 28. Alzheimer's Disease Initiative Copayments. Amends s. 430.503 to restructure client contributions from fees to copayments based on the individual's ability to pay. Allows for the AAA to create rules setting copayment schedules.

Section 29. Confidentiality of information. Amends s. 430.504 to make conforming changes.

Section 30. Home care for the elderly. Amends s. 430.601 to make technical and conforming changes.

Section 31. Home care for the elderly program; rules. Amends s. 430.603 to require the department to administer the home care for the elderly program. Defines this program. Requires the department to screen, select, train, and supervise providers of home care for the elderly.

Section 32. Department determination of inability to provide home care. Amends section 430.604 to make technical and conforming changes.

Section 33. Subsidy payments. Amends section 430.605 to allow the department to adopt rules to create a schedule of subsidy payments. It revises the list of items that are considered a part of the subsidy. Specifically, it deletes: medical, pharmaceutical, and dental services. Those services are "special supplemental payments." Makes technical changes.

Section 34. Legislative findings and intent. Amends section 430.701, F.S., to provide focuses on the long term care needs of Florida's elderly residents and the study of cost-effective long-term care.

Section 35. Amends section 430.702, F.S., to make conforming changes.

Section 36. Definitions. Amends section 430.703, F.S., to make conforming changes and delete the definition of "community diversion."

Section 37. Section 430.705, F.S., tool of the long term care community diversion projects is amended to require the department to develop a rate setting methodology that:

1. ensures that there are sufficient savings from the state Medicaid nursing home budget category to fund the projects; and,
2. ensure that expenditures do not exceed the average nursing home cost in the pilot project area, excluding Medicaid acute care costs and Medicaid cost-sharing.

The department is directed to evaluate:

1. the standards in existing Medicaid managed care contracts to determine if they are adequate to ensure access, quality, and cost-effective care to elders;
2. the cost-effectiveness of the pilots;
3. the impact of nursing home bed growth on state expenditures;
4. methods to encourage competition among long-term care providers;
5. criteria for selecting long term care providers;
6. criteria for participant eligibility; and,
7. the provision of services to determine if the participant's quality of life has improved.

In selecting the pilot project area, the department shall also consider the availability of managed care organizations.

Section 38. Section 430.707 related to the long term care community diversion projects is amended. DOEA is required to include in the contracts qualifications for managed care organizations participants, criteria for participant eligibility, and quality of care standards including outcome measures, utilization review, grievance and conflict resolution, patient satisfaction, and standards for care and service. These quality assurance standards are applied to all contractors and subcontractors.

Section 39. Section 430.80 related to "Implementation of a teaching nursing home pilot project" is renumbered as 400.337, F.S.

Section 40. Repeals the following sections:

- 430.02 related to Legislative intent.
- 430.04 related to duties and responsibilities of the department.
- 430.101 related to the administration of federal aging program.
- 430.203 related to Community Care for the Elderly; definitions.
- 430.204 related to Community Care for the Elderly core services; department powers and duties.
- 430.502 related to home care for the elderly; definitions.
- 430.704 related to evaluation of long term care community diversion projects.
- 430.706 related to quality of care standards for the diversion projects.
- 430.710 related to long term care interagency advisory board.

Section 41. The act takes effect on July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

No revenues are associated with this bill.

2. Expenditures:

The bill does not require new expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

No revenues are identified in the bill.

2. Expenditures:

No new expenditures are required.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

Service provider agencies have argued that if multiple lead agencies are created in a community care service area, that less total dollars will be available for each provider to serve the same number of clients. They have argued that basic infrastructure costs associated with running the CCE program are not diminished by creating more lead agencies. Instead, those costs would be present for each of the lead agencies. Meeting these costs would reduce the total dollars available for services.

The department argues, however, that it is essential to provide more lead agencies and therefore more choices to consumers.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Section 22 of the bill, amending s. 430.41, F.S., Grants & Donations Trust Fund, deletes the provision that those monies can only be expended pursuant to a Legislative appropriation or an approved amendment to the department's operating budget, pursuant to chapter 216, F.S. Article VII, Section 1 of the State Constitution provides that

c. No money shall be drawn from the treasury except in pursuance of appropriation made by law.

B. RULE-MAKING AUTHORITY:

New or revised rule making authority is provided to the department in several sections of the bill, including:

- 430.065 related to the performance of AAAs
- 430.07 related to the department's volunteer services program
- 430.071 related to the RESPITE program
- 430.205 related to the CCE program for selecting lead agencies and for criteria to determine functional impairment, standards for the provision of care, and related to service providers
- 430.2055 related to copayment schedule
- 430.502 related to Alzheimer's disease; memory disorder clinics, and day care and respite providers
- 430.603 related to screening, selection, training, and supervision of persons wanting to provide home care to the elderly (HCE) services

C. OTHER COMMENTS:

Related to drafting:

It is recommended that *definitions* not include substantive law. To that end, revisions of section 11 of the bill, related to section 430.035, F.S., are recommended.

Interpreting statutory direction provided in Legislative Intent sections is difficult for the Courts. Therefore, it is recommended that Section 17 of the bill, related to 430.202, F.S., be revised to move the policy direction out of the intent section. The essence of this policy is expressed in section 430.205, F.S., "Community Care".

Other:

Section 11 provides a definition of a "caregiver" for purposes of chapter 430. The OAA, however, provides two distinct definitions for services and persons served under the federal program. The sponsor may want to consider limiting the definition of "caregiver" to state general revenue-only funded services instead of the entire chapter or adopt both of the federal definitions.

Section 14 grants the department authority to sanction a AAA that fails to provide "highest quality services possible in the most efficient and cost-effective manner." The department has substantial authority under the federal Act to take corrective or sanctioning actions against a AAA that fails to perform adequately.

The provisions that grant the department authority to "develop, arrange, oversee, and conduct research in the field of aging" may have the effect of redirecting the department's focus toward research that is more generally about the aging process and less specifically focused on practical solutions to problems and needs which are more clearly the state's responsibility to address.

The provision that allows the department to administer programs directly, if implemented, may challenge the department to develop a sub-state structure to adequately manage service provision.

The idea of “cost-effectiveness” being a primary consideration in the decision matrix may be a policy decision that may not be best made by oblique reference. Directing the department to maintain or improve *environmental, cultural, and economic* well-being may be obligating the department to attempt to manage social problems beyond its control, capability, and limited resources.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The bill was substantially amended in the Elder Affairs & Long Term Care committee meeting on April 5, 2000. The changes are summarized by section as follows:

Section 1: The amendment restores the existing statutory language related to “purpose”.

Section 2: Definitions are clarified and some are moved from the section of definitions related specifically to the CCE program to this section which relates to the chapter as a whole.

Section 4: Area Agencies on Aging (AAAs) provisions are consolidated into one section.

- ▶ It tracks the federal Older American’s Act related to the duties of the AAAs and under what circumstances the state can take disciplinary action against them.
- ▶ It provides a range of sanctions instead of just removing a AAA’s designation.
- ▶ It provides that each AAA consider Community Care for the Elderly service needs when developing the area plan required by the Older American’s Act.
- ▶ It provides that when adequate services are not available in a department’s Planning & Service Area (a district), the AAA may directly provide services for a limited amount of time.

Section 5: Community care for the elderly, Legislative intent. Provides that the most impaired elders will be served first , if the cost of serving a person is not more than the average cost of nursing home care and the person can be safely cared for in the home.

Section 6: Definitions related to Community Care for the Elderly are revised.

Section 7: It revises provisions related to the community care for the elderly service system.

- ▶ It provides that each AAA must give each CCE lead agency budget flexibility to buy the services that consumers need and want.
- ▶ Lead agencies are selected every three years through a bid process, lead agencies that meet department prescribed standards can be exempted from the competitive bid process.

- ▶ It requires that case managers and service coordinators act on behalf of clients and that referrals for services are not made to benefit one provider over another equally qualified provider.
- ▶ It requires that DOEA ensure that AAAs monitor CCE agency services and assess customer satisfaction.
- ▶ It authorizes the department to adopt its functional assessment protocol in rule.
- ▶ It provides that when a AAA determines that elders are not getting services they need and the AAA has given the CCE "lead agency" an opportunity to remedy the problem, if the inadequacy continues, the AAA may issue a request for proposal or an invitation to negotiate for one or more additional lead agencies. The department must adopt standards, in rule, against which the lead agency will be judged for compliance before the AAA can issue a request for proposal or invitation to negotiate.

Section 8: Community care for the elderly service contracts and copayments provisions are revised, allowing the department to directly provide or contract for services when the needs of elders are not being met.

Section 9-10: repeals 430.204, and cross-references in chapter 20, F.S.

VII. SIGNATURES:

COMMITTEE ON Elder Affairs & Long Term Care:

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