

STORAGE NAME: h2245.cf
DATE: March 31, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
Children & Families
ANALYSIS**

BILL #: HB 2245 (formerly PCB CF 00-10)

RELATING TO: DCF Rule Authority

SPONSOR(S): Committee on Children & Families and Representative Murman

TIED BILL(S):

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

- (1) Children & Families YEAS 8 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

Section 120.536, F.S., limits agency rulemaking authority to specific powers and duties granted by the enabling statute. Section 120.536, F.S., requires agencies to report to the Joint Administrative Procedures Committee all rules that exceed this authority. This bill provides specific rulemaking authority to the Department of Children and Family Services in areas where rules have exceeded the authority granted in current statute.

The bill changes statute to provide for rulemaking authority in the following areas:

- Supported living services for persons with developmental disabilities (s. 393.066) to limit the number of persons living together in a dwelling and the density of dwelling units in an area.
- Medicaid (in addition to the Agency for Health Care Administration) (s. 409.919) to allow for Medicaid eligibility determinations and Medicaid funded services.
- WAGES eligibility, including rules for:
 - Criteria for income eligibility standards (s. 414.085).
 - Criteria for determining eligibility (s. 414.095).
 - Criteria for diversion (s. 414.15) and
 - Exemptions from required immunizations for religious and other reasons (s. 414.13).
- Eligibility requirements for the Refugee Assistance Program. This is a federal program that has not had specific department rulemaking authority before (s. 409.953).

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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 type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

This bill provides for rulemaking authority for existing programs where administrative rules are required and already promulgated. The bill will provide statutory authority for rule making only in specific areas.

B. PRESENT SITUATION:

Section 120.536, F.S., limits agency administrative rulemaking authority to specific laws to be implemented. An agency may only adopt rules that implement or interpret the specific powers and duties granted by the enabling legislation. No agency has the authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation. Agencies cannot adopt rules that implement general legislative intent or polity.

The purpose of s.120.536, F.S., is to limit the role of government. It prevents agencies from creating administrative rules, that have the force of law, that exceed specific statutory provisions enacted by the Legislature.

Section 120.536, F.S., requires each agency to provide a list of each rule that exceeds its rulemaking authority to the Joint Administrative Procedures Committee. It requires repeal of the rules and legislation to allow for specific rule making where needed.

In October 1999, the Department of Children and Family Services identified 18 rules that exceed the rulemaking authority of s. 120.536, F.S. and proposed legislation for consideration by the Legislature to provide for needed authority.

C. EFFECT OF PROPOSED CHANGES:

Grants limited rulemaking authority to the Department of Children and Family Services in specific areas not provided for in current statute.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 amends subsection 393.066(9), F.S., relating to supported living services for persons with developmental disabilities.

Portions of administrative rule 65 11.005 (2)(a) and (2)(d) promulgated in January 1995 limit the number of persons with developmental disabilities living together in a dwelling and

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the density of dwelling units in an area. The amendment adds these provisions to s. 393.066(9), F.S.

Section 2 amends s. 409.919, F.S., relating to rulemaking authority for Medicaid .

This amendment restores rulemaking authority for Medicaid that was inadvertently lost through a 1999 legislative revisors bill that changed the word "department" (DCF) to the word "agency" (AHCA) in s. 409.919, F.S. It adds the Department of Children and Families to s. 409.919, F.S., to provide for all Medicaid-related functions of the department, including service provision and eligibility determination. The department has promulgated 16 Medicaid specific and several other partially Medicaid-related rules under the authority previously granted by s. 409.919, F.S.

Section 3 creates s. 409.953, F.S., that provides rulemaking authority for establishing eligibility requirements for the Refugee Assistance Program. This is a federal program that has not had specific rulemaking authority in this area before.

Section 4 amends s. 414.085, F.S., relating to income eligibility standards for the WAGES program. Adds provision for department rulemaking authority for income eligibility standards for the WAGES program.

Section 5 creates subsections 414.095(13)(c) and 414.095(20), F.S., relating to determining eligibility for the WAGES program. Adds authorization for establishing criteria and administering eligibility determination for the WAGES program.

Section 6 amends s. 414.13, F.S., relating to childhood immunizations required as a condition of eligibility for cash assistance. Authorizes rule making to provide for exemptions from the required immunizations including religious reasons.

Section 7 creates subsection 414.15(7), F.S., relating to diversion from temporary cash assistance. Adds authorization for establishing criteria and administering diversion from temporary cash assistance.

Section 8 establishes the act shall take effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

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B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

Rules are already promulgated by the department in these areas. There is potential fiscal impact to the department if the bill is not passed. The department is subject to litigation by any individual affected by a polity it makes for which it does not have rulemaking authority.

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:

N/A

B. RULE-MAKING AUTHORITY:

The bill provides specific rulemaking authority in several program areas. See section analysis.

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C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON Children & Families:

Prepared by:

Staff Director:

Glenn A. Mitchell

Robert Barrios