

STORAGE NAME: h2245a.grr

DATE: April 19, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL RULES & REGULATIONS
ANALYSIS**

BILL #: HB 2245 (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) GOVERNMENTAL RULES & REGULATIONS YEAS 8 NAYS 0
 - (3)
 - (4)
 - (5)
-

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 (department) in areas where rules have exceeded the authority granted in current statute.

The bill provides for rulemaking authority in the following areas:

- Supported living services for persons with developmental disabilities (s. 393.066, F.S.) - 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, F.S.) - to allow for Medicaid eligibility determinations and Medicaid funded services.
- WAGES eligibility, including rules for:
 - Criteria for income eligibility standards (s. 414.085, F.S.);
 - Criteria for determining eligibility (s. 414.095, F.S.);
 - Criteria for diversion (s. 414.15, F.S.); and
 - Exemptions from required immunizations for religious and other reasons (s. 414.13, F.S.).

In addition, the bill provides rulemaking authority to the department for determining eligibility requirements for the Refugee Assistance Program. This is a federal program that has not had specific department rulemaking authority before (s. 409.953, F.S.).

The bill has no fiscal impact, and is to take effect upon becoming a law.

There is one amendment traveling with the bill.

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"/> |

B. PRESENT SITUATION:

Rulemaking Authority

In 1996, the Legislature significantly revised the Administrative Procedure Act (APA) which was designed to require executive branch agencies to more closely adhere to statutory authority when agencies adopt rules. The 1996 amendments created a new section, s. 120.536(1), F.S., requiring existing and proposed rules to implement, interpret or make specific the particular powers and duties granted by the enabling statute. This "map-tack" provision ensures that agency rules closely relate to the enabling statute and, thus, imposes a more stringent standard.

The Legislature recognized that imposing a new statutory standard to determine the validity of rules might suddenly invalidate many rules which had previously been adopted by the agencies under the older, more lenient standard. Rather than immediately invalidate existing rules, the 1996 reform legislation required each agency to examine all of its rules that had been adopted prior to the effective date of the 1996 amendments, in light of the new "map-tack" standard, and report to the Joint Administrative Procedures Committee (JAPC) the list of rules which exceeded the new standard.

Rules placed on the list were temporarily shielded from legal challenges that they are invalid under the new "map-tack" provision. This shield left those rules in place during the 1998 legislative session, allowing the Legislature to determine which policies established by those rules should be codified in statute. If legislation enacted during the 1998 session provided statutory support for the rule, it remained in effect. On the other hand, the new section directed agencies to initiate repeal of any rule for which there is no authorizing legislation by January 1, 1999. Notably, an existing agency rule successfully challenged under the new APA for lack of statutory authority requires that the agency discontinue its reliance on the rule and the agency may have to pay attorney's fees and costs.

Subsequent to the 1996 amendments to the APA, several appellate cases have sought to interpret the "map-tack" standard. In *St. Johns River Water Management District v. Consolidated-Tomoka Land Co., et al.*,¹ the petitioner land owners challenged proposed

rules of the District that would create a regulatory subdistrict in the Spruce Creek and Tomoka River Hydrologic Basins, and would create new standards for managing and storing surface waters in developments within this basin. An Administrative Law Judge (ALJ) in the Division of Administrative Hearings held that although the proposed rules were not arbitrary or capricious, were supported by competent and substantial evidence, and substantially accomplish the statutory objectives, the rules were invalid as a matter of law because the rules lacked the underlying statutory detail required by the new rulemaking standard in ss. 120.52(8) and 120.536(1), F.S. The District appealed on this issue.

The First District Court of Appeal reversed the ALJ's final order, holding the proposed rules valid. In doing so, the court applied a "functional test based on the nature of the power or duty at issue and not on the level of detail in the language of the applicable statute." The court laid out its analysis as follows:

The question is whether the rule falls within the range of powers the Legislature has granted to the agency for the purpose of enforcing or implementing the statutes within its jurisdiction. A rule is a valid exercise of delegated legislative authority if it regulates a matter directly within the class of powers and duties identified in the statute to be implemented. In applying this test, the court found that delegated legislative authority was to identify geographic areas that require greater environmental protection and to impose more restrictive permitting requirements in those areas. The challenged rules fell within the class of powers delegated by the statute and therefore were a valid exercise of delegated legislative authority.

The 1999 Legislature amended the APA to provide that an agency may adopt only rules that implement or interpret "specific powers and duties" granted by statute. Chapter 99-370, Laws of Florida, clarified the rulemaking standard to reflect the legislature's intent to limit the authority of agencies to adopt rules. The 1999 revision rejected the judicial interpretation in the *Consolidated-Tomoka* case which created a functional test to determine whether a challenged agency rule is directly within the agency's class of powers and duties. The legislature again recognized that revising the standard to determine the validity of rules might invalidate rules which had been adopted or reviewed under a different interpretation of the 1996 standard. Consequently, Ch. 99-370, L.O.F., provided for another round of rule review and authorization. Agencies reviewed existing rules and provided in October 1999, to the JAPC, a list of rules adopted before June 18, 1999, which exceed the new standards for rulemaking authority found in s. 120.536(1), F.S. The Legislature will consider in the 2000 Regular Session specific legislation that would authorize the identified rules. For any rule not authorized, the agency is to initiate repeal proceedings by January 1, 2001. The JAPC or any substantially affected person may petition for repeal of an identified rule after July 1, 2001.

RULES IDENTIFIED BY THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES

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

C. EFFECT OF PROPOSED CHANGES:

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

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

Restores rulemaking authority for Medicaid that was inadvertently lost through a 1999 Legislative Revisor's Bill that changed the word "department" (Department of Children and Families) to the word "agency" (Agency for Health Care Administration) 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., which provides rulemaking authority for establishing eligibility requirements for the Refugee Assistance Program. This is a federal program that has not had specific rulemaking authority 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 ss. 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 rulemaking to provide for exemptions from the required immunizations, including religious reasons.

Section 7 - Creates s. 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 that the act shall take effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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.

STORAGE NAME: h2245a.grr

DATE: April 19, 2000

PAGE 6

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

This bill provides for rulemaking authority for existing programs where administrative rules are required and already promulgated. In addition, the bill provides rulemaking authority to the department for determining eligibility requirements for the Refugee Assistance Program.

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 19, 2000, the Committee on Governmental Rules & Regulations adopted the following amendment and reported the bill favorably, as amended:

Amendment 1 - Removed Section 1, dealing with rule authorizations for supported living services, from the bill.

VII. SIGNATURES:

COMMITTEE ON CHILDREN & FAMILIES:

Prepared by:

Glenn A. Mitchell

Staff Director:

Robert Barrios

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL RULES & REGULATIONS:

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