

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 642

SPONSOR: Appropriations Subcommittee on Health and Human Services and Senator Fasano

SUBJECT: Elderly Community Care Services

DATE: April 22, 2003                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Liem</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable</u>
2.	<u>Collins</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/ 1 Amendment</u>
3.	<u>Peters</u>	<u>Belcher</u>	<u>AHS</u>	<u>Fav/CS</u>
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

The bill makes the following changes to elderly services programs:

- Removes the Director of the Office of Long-Term Care Policy from the office’s advisory council and provides that the council must elect a chair from among its membership to serve for a 1-year term. The chair may not serve more than 2 consecutive terms.
- Allows the Office of Volunteer Community Service to provide direct payment of lodging and transportation expenses to a volunteer or a vendor on behalf of a volunteer.
- Provides guidelines for prioritizing services under the Community Care for the Elderly program that include the recipient’s frailty level, risk of institutional placement and their ability to pay for services.
- Allows the Office of State Long-Term Care Ombudsman to collocate with the headquarters office of the Department of Elderly Affairs.

The bill amends ss. 430.041, 430.07, and 430.205, Florida Statutes. The bill repeals section 65 of Chapter 2001-45, Laws of Florida.

## II. Present Situation:

### Office of Long-Term-Care Policy

The Office of Long-Term Care Policy, created in s. 430.041, F.S., was established in the Department of Elderly Affairs to improve and coordinate the long-term care service delivery process. The Director of the Office of Long-Term Care Policy is appointed by and serves at the

pleasure of the Governor and is under the general supervision of the Secretary of Elderly Affairs. The Office has a thirteen member advisory council, whose chair is the Director of the Office of Long-Term Care Policy, to provide assistance and direction to the office and ensure that the appropriate state agencies are properly implementing recommendations from the office. The Department of Elderly Affairs provides administrative support and services to the Office of Long-Term Care Policy. State agencies, including the State University System, are to provide staff to assist the office. The office was required to submit to the advisory council, by December 1, 2002, a preliminary report of its policy, legislative and funding recommendations and is required to revise and update the report annually and resubmit it to the advisory council by November 1 of each year. The advisory council must review and recommend changes to the preliminary report and each subsequent annual report within 30 days after the receipt of the preliminary report and make revisions to the Director of the Office of Long-Term Care. The office must submit the final report, and subsequent annual reports, to the Governor and Legislature within 30 days after receipt of any revisions suggested by the advisory council.

### **Office of Volunteer Community Service**

The Office of Volunteer Community Service is created in s. 430.07, F.S., within the Department of Elderly Affairs. The office is responsible for compiling an inventory of services needed by elderly persons; compiling an inventory of services being provided to elderly persons to meet those needs; determining which services needed by elderly persons are not being provided; determining which services currently not being provided can be provided by older persons acting as volunteers; identifying those state rules and policies which restrict volunteer service by or for older persons and propose corrective actions; identifying methods of promoting volunteer service by and for older persons; developing a comprehensive volunteer program that includes an intergenerational component and draws on the strengths and skills of the state's older population and, to the extent possible, implements the volunteer service credit program; and encouraging contributions and grants through private, state, and federal sources for the purpose of promoting, implementing, or evaluating volunteer programs by or for older persons.

### **Community Care for the Elderly Program**

The Department of Elderly Affairs administers the Community Care for the Elderly (CCE) program under ss. 430.202-430.207, F.S. To determine functional impairment, the Department administers a needs assessment utilizing a standardized assessment instrument. The assessment is administered to each person applying for case management and other in-home and community-based services. This assessment instrument is, among other things, used to determine the likelihood that the assessed individual would have to enter a nursing home without in-home and community-based services and to assist the case manager in tailoring the care plans that will assist functionally impaired elderly persons to live as independently as possible in their own homes or in the home of relatives or caregivers. To ensure that functionally impaired elderly persons are able to reside in the least restrictive environment, the Department has established the following standards for prioritization of individuals for in-home and community-based service delivery:

*Individuals at risk for abuse, neglect or exploitation* - Under s. 430.205(5), F.S., those elderly persons who are determined by the Adult Protective Services division of the Department of Children and Families (APS) to be victims of abuse, neglect, or exploitation who are in need of immediate services to prevent further harm are given primary consideration for receiving CCE

services. As used in this subsection, “primary consideration” means that an assessment and services must commence within 72 hours after referral to the Department (or as established in Department contracts containing local protocols developed between Department service recipients and APS).

*Individuals residing in a long-term care facility that is placed in receivership* - Under s. 400.126(12), F.S., those elderly persons residing in a long-term care facility that is placed in receivership who are subsequently determined through a CARES assessment to be a resident who could be cared for in a less restrictive setting or as someone who does not meet the criteria for skilled or intermediate care in a nursing home will be referred for in-home or community-based care, as appropriate for the resident. Residents referred pursuant to this subsection are given primary consideration for receiving services under the CCE program in the same manner as persons classified to receive such services under s. 430.205(5), F.S.

*Functionally impaired individuals in nursing homes who could return to the community or individuals at high risk for nursing home placement* - Under ss. 430.202, 430.204(2), and 430.204(6)(a) and (b), F.S., the Department has established the following priority criteria for service delivery:

- Individuals in nursing homes under Medicaid who could be transferred to the community;
- Individuals in nursing homes whose Medicare coverage is exhausted and who may be diverted to the community;
- Individuals in nursing homes that are closing and who can be discharged to the community;
- Individuals whose mental or physical health condition has deteriorated to the degree that self care is not possible and they have no capable caregiver, meaning institutional placement will occur within 72 hours; or,
- Individuals who have been assessed and are pending enrollment in the Long Term Care Community Diversion Project (s. 430.705, F.S.).

*Functionally impaired individuals not in the above groups* - Under ss. 430.202, 430.204(2), and 430.204(6)(a) and (b), F.S., service delivery for other assessed individuals not prioritized into the groups above, regardless of referral source, will receive services to the extent that remaining funding is available. Order of priority for services is set according to a prioritization policy that ensures that service delivery maximizes cost-avoidance, cost-effectiveness, and program efficiency by targeting services to those individuals who are most frail and at the highest risk for nursing home placement, and that, in keeping with subsections 430.204(6)(a) and (b), F.S., may not be eligible to receive services under the Aged and Disabled Medicaid Waiver program. The Department’s current policy, established through the CCE contracts with the area agencies on aging (AAAs), requires that individuals not prioritized into groups above be prioritized according to a scale that rates individuals according to one of the following priority scores based on their frailty and likelihood of entering a nursing home (listed in highest frailty level to lowest frailty level).

Priority Level 5  
 Priority Level 4  
 Priority Level 3  
 Priority Level 2

### Priority Level 1

Individuals seeking in-home or community-based services are assessed for impairments in activities of daily living (ADLs) (ex: ability to bathe oneself, dress oneself, etc.), impairments in instrumental activities of daily living (IADLs) (ex: ability to pay one's bills, answer the phone, shop, etc.), presence of a primary caregiver, and the caregiver's ability to continue to provide care. Each individual is asked to provide a self-declared statement of income and assets.

In keeping with the requirements of ss. 430.204(2) and 430.204(6)(a) and (b), F.S., which mandate the use of federal resources to the extent possible, the Department's prioritization standards further require CCE Lead Agencies to identify potentially Medicaid-eligible CCE consumers by analyzing data in the Client Information, Registration and Tracking System (CIRTS) obtained through the consumer assessment process. If upon analyzing impairment data and an individual's self-declared statement of income and assets, a Lead Agency determines that an individual appears to be Medicaid Waiver-eligible, the Lead Agency staff refers the individual to CARES for level of care determination and to the Department of Children and Families Economic Self-Sufficiency Unit for determining financial eligibility. Due to the complexity of the eligibility determination process, a decision may take months from the date of referral for eligibility until the date the client begins receiving services. Current Department contracts with the AAAs and Lead Agencies stipulate that individuals identified as potentially Medicaid Waiver-eligible can be served with Department contract funds during the time that they are pending Medicaid Waiver eligibility determination. However, if a person is determined eligible for Medicaid Waiver, they are to be transitioned from CCE services to Medicaid Waiver services.

Under s. 430.204(8), F.S., the Department has established a "fees for service" co-payments system on a sliding scale based on a client's ability to pay. The fees range from \$1 for an elderly person with an income below \$522 per month, to a maximum fee of 3 per cent of income for an elderly person with an income above \$3,257 per month.

The Department requires the AAAs to ensure that the CCE Lead Agencies establish annual co-payment goals. The AAAs have the option to withhold a portion of the Lead Agencies' Request for Payment if goals are not met according to the Department's Co-Payment Guidelines. Individuals may opt to contribute funds in lieu of an assessed co-payment. The contribution must be equal to or greater than the assessed co-payment that corresponds to their income (see above).

Co-payments collected in the CCE program are reinvested in the program and are used solely to increase program funds for services within the area served by the Lead Agency.

Lead Agencies are required by DOEA to review CIRTS data to identify potentially Medicaid-eligible CCE consumers. Those who are identified, and are subsequently approved, are transitioned to Medicaid Waiver services. Typically, those transitioned are the CCE consumers with the lowest amount of income and assets. Those who fall just over the threshold for Medicaid-eligibility are generally served through CCE funds, if they meet a significantly high "frailty and likelihood of entering a nursing home" priority score and funding is available. Though CCE consumers are not Medicaid-eligible (unless their Medicaid-eligibility is pending) due to various factors—generally income and/or assets—their typical income level would not

allow them to privately pay for services other than for a very short period of time, which would quickly deplete their financial resources.

The Department is currently examining the possibility of using self-declared income levels as a limited-weight factor in determining priority score. However, the weighting of the income component of the score would be considered as a sub-component after the current frailty weightings are applied, rather than an independent variable that would carry a weighted score equivalent to other factors that more accurately reflect frailty and likelihood of nursing home placement.

### **Long-Term Care Ombudsman Program**

The Florida Long-Term Care Ombudsman Program (LTCOP) was initiated in 1975 under Chapter 75-233, Laws of Florida. The Legislature's intent was to create a volunteer-based Program to discover, investigate and remedy conditions that constitute a threat to the rights, health, safety or welfare of residents of long-term care facilities and to conduct investigations to further the enforcement of laws, rules and regulations that safeguard the health, safety and welfare of residents. The statutory authority for the LTCOP is found in part I of chapter 400, F.S.

### **III. Effect of Proposed Changes:**

**Section 1.** Amends s. 430.041, F.S., to remove the Director of the Office of Long-Term Care Policy from the office's advisory council. Provides that the council must elect a chair from among its membership to serve for a 1-year term. The chair may not serve more than two consecutive terms.

**Section 2.** Amends s. 430.07(9), F.S., to encourage volunteerism by elders regardless of socio-economic status. The Office of Volunteer Community Service is authorized to provide direct payment of lodging and transportation expenses to a vendor on behalf of a volunteer approved as necessary by the department, or prepayment, or reimbursement of lodging and transportation expenses directly to the volunteer. Expenditures are not to be authorized in excess of the appropriated amount.

**Section 3.** Amends s. 430.205(5), F.S., to specify that the department must consider in prioritizing services under the Community Care for the Elderly program the potential recipient's ability to pay, their frailty, and their risk of institutional placement. Those who are less able to pay must receive a higher priority than those who are better able to pay.

**Section 4.** Repeals section 65 of Chapter 2001-45, Laws of Florida, that prevents the Office of State Long-Term Care Ombudsman from collocating with the headquarters office of the Department of Elderly Affairs.

**Section 5.** Provides an effective date of July 1, 2003 except as otherwise provided.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

**C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Last fiscal year, CCE consumers contributed over \$1.5 million through co-payments that went directly to pay for services for additional consumers. At the average CCE cost per person per year, co-payments supported services for 625 individuals at no cost to the state. Prioritizing all CCE placements by lowest ability to pay may result in all CCE co-payment funding being eliminated, with the result that 625 fewer consumers would be served statewide.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.