

# 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: SB 642  
 SPONSOR: Senator Fasano  
 SUBJECT: Elderly Community Care Services  
 DATE: March 1, 2003      REVISED: 03/20/03 \_\_\_\_\_

	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>AHS</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

Senate Bill 642 specifies that, in the Community Care for the Elderly program of the Department of Elderly Affairs, a factor that must be considered in prioritizing individuals who are to receive services is the potential recipient’s ability to pay. Those who are less able to pay must receive a higher priority than those who are better able to pay.

The bill amends section 430.205(5), of the Florida Statutes.

**II. Present Situation:**

The Department of Elderly Affairs (DOEA or the Department) 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.

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

**Section 1.** Amends s. 430.205(5), F.S., to specify that a factor that must be considered in prioritizing services under the Community Care for the Elderly program is the potential recipient's ability to pay. Those who are less able to pay must receive a higher priority than those who are better able to pay.

**Section 2.** Provides an effective date of July 1, 2003.

### **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:**

DOEA reported that it has computed through its statistical modeling that, due to varying needs and frailty levels of CCE consumers, CCE needs to serve approximately 45 consumers to achieve 10 nursing home diversions. If all 625 consumers who receive CCE services through co-payment funding were no longer eligible to receive services because their funding source was eliminated, using the statistical model described above, DOEA believes that approximately 139 of the displaced individuals would require nursing home placement. Multiplying the 139 consumers times the average cost to Medicaid for nursing home placement (\$40,646) yields a \$5.6 million potential cost to the state.

The bill may also potentially carry a workload and expense for DOEA and/or DCF based on the extent to which the Department(s) will be required to go to determine a potential CCE client's "ability to pay."

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The Department expressed concern that a requirement to weight inability to pay (based on income) higher in the prioritization system than frailty or risk of nursing home placement, conflicts with the purpose of the CCE program to assist functionally impaired elderly to remain in their own homes. The standardized assessment forms utilized by the Department collect social resources and caregiver support information, which are more heavily weighted to judge frailty and likelihood of nursing home placement. The Department believes these factors, rather than ability to pay, can more accurately project a consumer's potential for imminent or eventual nursing home placement. For example, although one consumer may have a slightly higher income than another, factors such as living with a caregiver may have more influence on whether or not a nursing home placement is impending.

**VIII. Amendments:**

#1 by Children and Families:

Provides guidelines for prioritizing potential service recipients for the community care for the elderly program. First, consideration is to be given to the individual's frailty and likelihood of nursing home placement. Then consideration may be given to the individual's ability to pay.