

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1525 CS Elderly Affairs  
**SPONSOR(S):** Lopez-Cantera and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2364

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Elder & Long-Term Care Committee	6 Y, 0 N, w/CS	Walsh	Liem
2) Health Care Appropriations Committee			
3) Health & Families Council			
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

Committee Substitute for HB 1525 deletes the requirement for the Agency for Health Care Administration (AHCA) in consultation with the Department of Elder Affairs (DOEA) to integrate the Frail Elder Option program into the Nursing Home Diversion program.

The CS revises the eligibility requirements relating to financial solvency for entities providing services in the Nursing Home Diversion program.

The CS also deletes the requirement for AHCA and DOEA to integrate the Aged and Disabled Adult (ADA) Medicaid waiver and the Assisted Living for the Frail Elderly (ALE) Medicaid waiver into one waiver program.

CS/HB 1525 allows DOEA to move forward on implementation of the pilot program allowing Community Care for the Elderly (CCE) lead agencies to transition over a period of time into full providers of service under the nursing home diversion program.

It requires that the agency use a federally approved, actuarially certified rate methodology to develop reimbursement rates for the long-term care community diversion pilot project.

The CS deletes the requirement for the DOEA Comprehensive Assessment Review and Evaluation Services (CARES) program staff to annually review at least 20 percent of case files of Medicaid nursing home residents.

The Department of Elder Affairs reports that passage of this bill will result in significant cost savings to the state. See "Fiscal Comments" for additional information.

The act is effective upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

During the 2004 Session, the Legislature passed CS/SB 1226, which was enacted as Chapter 2004-386, L.O.F. This law made substantial changes to Florida's policies on long-term care. When the Governor signed the bill, he transmitted it to the Secretary of State with a letter<sup>1</sup> outlining some of his concerns with the bill. Ultimately, the Governor determined that despite his concerns, he was convinced that SB 1226 took

important first steps in a direction that will improve service delivery and efficiency in long-term care. The statewide modification of Area Agencies on Aging into Aging Resource Centers and the establishment of a capitation-based system of payment for the programs administered through these agencies constitute substantial and welcomed improvements in the organization of the service delivery system.

However, the transmittal letter expressed the Governor's major concern --- the merger of the Nursing Home Diversion and Frail Elder programs into one capitated program. This bill addresses those issues.

#### **FRAIL ELDER AND NURSING HOME DIVERSION PROGRAMS**

The Nursing Home Diversion pilot project (Nursing Home Diversion)<sup>2</sup> is designed to provide community-based services to people who are severely functionally impaired and have complex health needs. These individuals would require nursing home care if not enrolled in the waiver program.

Since December 1998, the diversion pilot has operated in four counties --- Orange, Osceola, Seminole, and Palm Beach. In September 2003, DOEA received approval from the federal Centers for Medicare and Medicaid Services (CMS) to expand the program to other areas of the state. The program is now administered in 25 counties in nine of the state's 11 planning and service areas.

Nursing Home Diversion is a managed care program, with all services needed by the individual capitated in a monthly rate. Providers are responsible for providing all services that would have been provided under the Medicaid state plan, plus an array of home and community-based services. The capitation rate does not vary based on an individual's service utilization. Providers subcontract with local providers for the majority of services. Beneficiaries choose providers from those under subcontract with the waiver provider. There are four waiver providers, three of them health maintenance organizations (HMO) and one "other qualified provider"<sup>3</sup> that is not an HMO.

The Frail Elder Option (Frail Elder) is overseen by AHCA, and offers medical, nursing home, and home and community-based services to individuals enrolled in a United Health Care Plan in Dade, Broward,

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<sup>1</sup> Letter from Governor Jeb Bush regarding Committee Substitute for Senate Bill 1226 to Secretary Glenda Hood, June 30, 2004, available at [http://www.myflorida.com/myflorida/government/laws/2004legislation/pdfs/SB\\_1226\\_letter.pdf](http://www.myflorida.com/myflorida/government/laws/2004legislation/pdfs/SB_1226_letter.pdf)

<sup>2</sup> Codified in s. 430.702, F.S., *et seq.*, the Long-Term Care Community Diversion Pilot Project Act.

<sup>3</sup> S. 430.703(7), F.S., defines an "Other qualified provider" as an entity licensed under chapter 400 that demonstrates a long-term care continuum and meets all requirements pursuant to an interagency agreement between DOEA and AHCA.

and Palm Beach counties. Enrollment is not limited to the elderly. Individuals must be 21 or older to enroll; however most enrollees are 65 or older.

After operating as a research and demonstration waiver for 27 months, the Frail Elder program was determined by CMS to be a cost-effective alternative to nursing home placement. With the added services, which were not available through the Medicaid state plan, individuals were diverted from more restrictive and costly nursing home placements.

Section 430.205(6)(c)4, F.S., provides that DOEA and AHCA shall merge the Frail Elder Option into the Nursing Home Diversion pilot project to create one capitated program. This mandate creates several implementation problems:

- Frail Elder is designed for individuals age 21 and older, while Nursing Home Diversion is designed for individuals age 65 and older who are dually eligible for Medicaid and Medicare. Not all Frail Elder consumers will be Medicare-eligible. Eligibility for the new program will have to change, or existing customers will lose their services. Nursing Home Diversion providers may not be interested in non-Medicare-eligible consumers since Nursing Home Diversion providers bill Medicare for numerous services. Inability to bill Medicare for these patients could negatively affect capitation rates.
- Nursing Home Diversion is operated under a separate Medicaid waiver and has its own line item appropriation in the General Appropriations Act each year. Frail Elder is operated out of savings from the annual Medicaid HMO appropriation. Combining the funds for these two programs will present significant accounting issues for the state.
- Nursing Home Diversion consumers are typically more frail than Frail Elder consumers. The Nursing Home Diversion Medicaid waiver provides for additional frailty criteria above and beyond a simple nursing home Level of Care determination for eligibility. This is intended to ensure that the Nursing Home Diversion waiver program serves only the most frail clients because the state is effectively prepaying for nursing home care for the life of the client within the capitation rate for Nursing Home Diversion. Lowering these frailty criteria will allow less-frail persons to enter the state's most expensive Medicaid waiver program.
- The average capitation rate for Nursing Home Diversion is roughly \$700 per person per month higher than the average capitation rate for the Frail Elder program. Most current Frail Elder consumers are properly placed in that program at an average monthly capitation rate of approximately \$1,430 per month. However, in the newly-mandated program, the state will be paying approximately \$2,200 per month to provide care to the same persons. DOEA reports that this will result in a yearly cost impact to the state that may exceed \$25,000,000. (See "Fiscal Comments" below for additional information.)

The CS deletes the requirement that, during the 2004-2005 state fiscal year, AHCA and DOEA develop an implementation plan to integrate the Frail Elder Option into the Nursing Home Diversion pilot project.

### **FINANCIAL SOLVENCY REQUIREMENTS**

The 2004 Legislature passed some increased financial standards for the "other qualified providers" serving clients of the Nursing Home Diversion Program. Those standards require the Department of Financial Services (DFS) to review certain provider financial records. However, DFS reports that they cannot perform the functions required because of ambiguities in the current statute.

The CS revises the standards so that DFS can implement the financial review process, which will allow "other qualified providers" to remain providers in the Diversion program.

## **AGED AND DISABLED ADULT AND ASSISTED LIVING FOR THE ELDERLY WAIVER PROGRAMS**

The purpose of the Medicaid Aged and Disabled Adult (ADA) Waiver is to help individuals who are at risk of nursing home placement to remain at home or in a community setting. The ADA Waiver serves individuals aged 60+ years who are unable to care for themselves without assistance through the Department of Elder Affairs and disabled adults aged 18-59 through the Department of Children and Families.

The Medicaid Assisted Living for the Elderly (ALE) Waiver helps severely impaired residents of assisted living facilities remain in an assisted living setting to avoid or delay being placed in more costly institutional care. To be eligible for the ALE Waiver, individuals must be aged 60 and up, meet Medicaid financial criteria, and be at risk of nursing home placement. In addition, clients must meet at least one of several impairment criteria, such as requiring total help with one or more daily tasks essential for independent living (i.e., eating, dressing, bathing), having a diagnosis of Alzheimer's disease or other dementia, having a degenerative or chronic medical condition that requires nursing services, or being a nursing home resident who can be served in an assisted living facility but not in a private residence.

The ALE Waiver provides services to residents with heavy care needs that exceed the cost of standard services provided in assisted living facilities (ALFs). While ALFs provide housing, meals, and one or more supportive services to persons who are unable to live independently, they often cannot fund the additional personal assistance and supervisory services that are necessary to keep a person out of a nursing home. Thus, the ALE Waiver makes available these additional services to meet the needs of the recipient, including personal care, medication administration, physical therapy, and intermittent nursing services.

Section 430.205(6)(b)2., F.S., provides that DOEA and AHCA shall integrate the ADA and ALE Waiver programs into one program. DOEA reports that the integration of these two programs will likely have no evident positive benefit for the state or the waiver clients, and is expected to have some adverse impacts:

- The ADA waiver serves both aged persons (ages 60+) as well as disabled adults (ages 18-59). The ALE waiver program serves only those aged 60 and older.
- The federal Centers for Medicare and Medicaid Services (CMS) has informed AHCA that if it intends to move forward on the integration of these Medicaid waiver programs, Florida will be required to offer assisted living facility and other services provided under the ALE waiver to all clients on the ADA waiver, including those aged 18-59 who were previously not eligible for ALF services.
- As of February 28, 2005, there were 1,658 persons ages 60 and older awaiting a slot in the ALE waiver. Of these, 223 were assessed at priority levels 4 or 5 (the most frail clients). The Department of Children and Families maintains the waiting list for services for the ADA waiver for those aged 18-59.

The CS deletes the requirement that AHCA and DOEA integrate the Aged and Disabled Adult Medicaid waiver and the Assisted Living for the Frail Elderly (Medicaid waiver into one waiver program.

## **CCE MEDICAID PILOT PROGRAM**

Section 430.205(6)(b)3., F.S., provides that DOEA and AHCA shall develop a program which allows Community Care for the Elderly (CCE) lead agencies to transition over a period of time into full providers of service under the nursing home diversion program. The first step prescribed by the Legislature is to integrate the ADA and ALE waivers prior to proceeding with implementation of this

project. Because CS/HB 1525 proposes to eliminate the integration of those two waiver programs, the CS includes language that allows DOEA to move forward on implementation of the pilot.

The CS also revises the current prescribed method for development of capitation rates for this project as the method is not likely to achieve an actuarially sound rate that will be approved by CMS. The CS requires that the agency use a federally approved, actuarially certified rate methodology to develop reimbursement rates for the long-term care community diversion pilot project.

### CARES REVISIONS

The DOEA Comprehensive Assessment Review and Evaluation Services (CARES) program performs the federally-mandated medical/functional assessment component to determine eligibility for Medicaid nursing home and other long-term care waiver programs.<sup>4</sup> Persons applying for Medicaid nursing home care are assessed by either a CARES nurse or social worker, with medical review by a physician prior to approval.

CS/SB 1226 made several revisions to the duties of the CARES program, including putting in place a requirement that CARES staff annually review at least 20% of the case files of all Medicaid nursing home residents to see which ones might be eligible to transfer to community-based settings.<sup>5</sup> The agency reports that, to carry out this mandate, the CARES program would require significant staff increases, which were not appropriated.

In addition, DOEA notes that it is highly unlikely that the state will ever be able to achieve a rate of nursing home transition that mirrors the 20 percent case file review requirement. The vast majority of Medicaid nursing home residents are too frail to move to community placements. Further, if CARES does locate someone who can safely move to the community, often the person declines to leave because they have lived in the nursing home for an extended period of time and feel it is their home, or because they have no viable community option to which to move. The state cannot force the person to transition out of the nursing home.

The CS deletes the requirement for the DOEA CARES program staff to annually review at least 20 percent of case files of Medicaid nursing home residents.

#### C. SECTION DIRECTORY:

**Section 1:** Amends s. 430.205, F.S.; deletes requirement that, during the 2004-2005 state fiscal year, AHCE and DOEA develop an implementation plan to integrate the Frail Elder Option into the Nursing Home Diversion pilot project; deletes requirement that, during the 2004-2005 state fiscal year, AHCA and DOEA integrate the Aged and Disabled Adult Medicaid waiver program and the Assisted Living for the Elderly Medicaid waiver program into one fee for service Medicaid waiver program serving the aged and disabled; requires, for the 2004-2005 state fiscal year, that AHCA and DOEA reimburse providers and develop uniform standards within the Aged and Disabled Adult Medicaid waiver program; provides AHCA specific grant of authority to adopt rules necessary to administer this section; requires that in the demonstration area, the lead agency shall be reimbursed on a prepaid or fixed-sum basis for all home and community based services provided under the long-term care community diversion pilot project, and by the end of the third year, the lead agency shall be reimbursed on a prepaid or fixed-sum basis for all services provided under the pilot; requires AHCA and DOEA to develop reimbursement rates in accordance with a federally-approved actuarially certified rate methodology for long-term care community diversion pilot project; deletes requirement that certain payment rates be negotiated and deletes maximum payment; makes evaluation of demonstration project subject to appropriation; deletes reference to an obsolete report; deletes requirement that AHCA and DOEA integrate Frail Elder Option into the Nursing Home Diversion pilot project.

<sup>4</sup> DCF performs the financial eligibility assessment.

<sup>5</sup> Codified at s. 430.7031(2), F.S.

**Section 2:** Amends s. 430.7031, F.S.; deletes requirement that CARES program staff annually review at least 20 percent of case files of nursing home residents.

**Section 3:** Amends s. 430.705, F.S.; revises eligibility requirements relating to financial solvency for entities providing services in the Nursing Home Diversion program.

**Section 4:** Provides that the act is effective upon coming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments" below.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

DOEA provides the following fiscal information.

This bill will save money in the state's Medicaid program by:

1. Allowing less-frail consumers currently enrolled in the Frail Elder program to continue to be served in that program at an approximate rate of \$1430 per month. Moving all these clients into the Nursing Home Diversion program would require an average increase of approximately \$700 per client per month.

This bill eliminates the necessity to move these clients out of the Frail Elder program. There are currently 2,885 clients enrolled in Frail Elder. There are currently six different capitation rates for the program: one for Medicare Parts A&B eligibles, one for Medicare Part B eligible only, and one for non-Medicare eligibles, for each of Miami-Dade and Broward Counties. It is somewhat difficult to compare Frail Elder clients to Nursing Home Diversion clients because the eligibility criteria are vastly different. However, for purposes of this analysis, we will examine the 2,353 clients currently enrolled in the Frail Elder program who are eligible for Medicare Parts A&B (which is required by Nursing Home Diversion eligibility standards) and who reside in Miami-Dade County.

Current capitation rate for these FE clients = \$1,395/month

Current capitation rate for NHD clients in Miami-Dade = \$2,231/month

Fiscal impact of placing these clients into NHD (which will be required if this bill is not passed):

	(2,353 FE clients * \$2,231)	= \$5,249,543	→ future NHD payment
—	(2,353 FE clients * \$1,395)	= \$3,282,435	→ current FE payment
		= \$1,967,108	per month
		(\$1,967,108/mo * 12 months)	= \$23,605,296 per year

(Note: There are 532 additional clients served by Frail Elder who are not included in the 2,353 sample population used above, so the costs to move these clients into Nursing Home Diversion would increase this figure even more.)

2. Deleting the necessity to hire additional CARES staff to complete the mandated review of at least 20 percent of case files of nursing home residents. In order to complete this current mandate, at least 10 new CARES assessors (FTEs) would need to be hired.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not apply to counties or municipalities.

2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its March 30, 2005, meeting, the Committee on Elder & Long-Term Care adopted one amendment to HB 1525 as filed and favorably reported a Committee Substitute. The amendment revises the eligibility requirements relating to financial solvency, in s. 430.705(2), F.S., for entities providing services in the Nursing Home Diversion program.

This analysis is drafted to the Committee Substitute.